

1
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4
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VIRGINIA RACING COMMISSION

October 26, 2010

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:43 a.m.

COMMISSION MEMBERS:

- Peter C. Burnett, Chairman
- I. Clinton Miller,
- Mark T. Brown
- Stuart Siegel
- David Reynolds

COMMISSION STAFF:

- David S. Lermond, Jr., Acting Executive Secretary
- Kimberly M. Carter, Office Administrator

ATTORNEY GENERAL'S OFFICE

Amy K. Dilworth

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I N D E X

	Page
1	
2	
3	1. Approval of the minutes of the regular meeting of September 28, 2010 3
4	
5	2. Commissioners Comments 3
6	3. Executive Secretary's Report
7	a. Deadline for Submitting Requests for 2011 Live Racing Dates 6
8	b. Legal Opinion on Internet Cafes dated October 15, 2010 12
9	c. Review of Pari-Mutuel Handle Reports 34
10	4. Stakeholders 56
11	a. Colonial Downs Update for the 2010 Harness Meet
12	5. Public Participation 57
13	6. Set Next Meeting -- November 30, 2010 58
14	8. Closed Meeting 63
15	9. Adjournment 64
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1 MR. BURNETT: Well, good morning. We're going
2 to start. We hope Mr. Reynolds is going to join us and
3 nothing -- he's had no significant difficulties, but we
4 expect he may join us. I'm seeing somebody walking across
5 the parking lot right now, I think. That's Mr. Pettis.
6 He's no substitute for a fellow Commissioner.

7 The first item of business is to approve our
8 minutes under tab one. Has everybody had a chance to review
9 those, and are there any changes, corrections?

10 Do we have motion?

11 MR. BROWN: I make a motion to approve.

12 MR. SIEGEL: Second.

13 MR. BURNETT: It's been moved and seconded that
14 the minutes be approved. All in favor indicate by saying
15 aye.

16 NOTE: All indicated by voting aye.

17 MR. BURNETT: The minutes are approved.

18 Move onto Commissioner's Comments. Do you have
19 comments from --

20 MR. SIEGEL: I'd like to thank Dave for the
21 donuts. It's the nicest perk we've had since I've been on
22 the Commission.

23 MR. LERMOND: You're welcome.

24 MR. BURNETT: Well, Virginia doesn't spare the
25 change when it comes to the Racing Commission. Thank you,

1 Dave.

2 AS I think everybody knows, Vic Harrison submitted
3 his resignation a week or so ago and is going to be taking a
4 position with Penn National and will be at least initially
5 running a dog track in Florida, and is going to get into the
6 Penn National system. In the interim, we feel like we're in
7 very capable hands with Mr. Lermond as our Acting Executive
8 Secretary. We are going to go into a closed session at the
9 end of this meeting to discuss how we will go about replac-
10 ing the Executive Secretary, and we'll report further on
11 that as appropriate.

12 I think Vic was a wonderful person to have with us
13 and we're sorry to lose him, but I know from my perspective,
14 when a person feels like they have a better opportunity at
15 another place, they have given it the appropriate thought,
16 it's foolish for any existing employee to try and resist
17 some advance in their own career. So we wish him the best,
18 and he's offered to provide us any ongoing support and
19 advice that we might ask for as we go forward, so we'll stay
20 in touch at some level.

21 Any other Commissioner Comments?

22 All right. We'll move into the Executive
23 Secretary's report. Mr. Lermond?

24 MR. LERMOND: Thank you, Mr. Chairman. Good
25 morning to you and to your Fellow Commissioners.

1 Before I get into one of the items I have listed
2 on the agenda, I just wanted to take a minute and talk about
3 the VHHA fishing trip was held on October 7th. Mr. Wool-
4 nough was nice enough to invite me along on this fishing
5 trip out into the Chesapeake Bay. There were about 40 or so
6 horsemen on the boat. The boat was rented out just for the
7 horsemen, so there was nobody else there.

8 It was beautiful weather, everyone had a great
9 time. Unfortunately, nobody really caught a lot of fish and
10 as a fisherman, that was maybe a little more disturbing to
11 me than the rest of them, because I really didn't hear too
12 many comments about the lack of fish. The comments I heard
13 were how great it was and how nice it was to get a day away
14 from the racetrack. These people work very hard seven days
15 a week, and I think, you know, this idea of taking them out
16 fishing for half a day was wonderful. I got to know a lot
17 of the names I see in the program. Now I can put faces to
18 those names, and I just wanted to commend Mr. Woolnough on
19 his efforts, and I think it was a really good use of the
20 breakage money.

21 MR. PETRAMALO: Was there a sufficient amount of
22 beer on the boat?

23 MR. LERMOND: There was a fair amount of beer,
24 yes.

25 MR. BURNETT: Dave just brought donuts though.

1 MR. PETRAMALO: Unfortunately, we had to cancel
2 the fish fry. That didn't work too well.

3 MR. BURNETT: You had a beer fry instead?

4 MR. PETRAMALO: There you go.

5 MR. BURNETT: I'm glad that was a success.

6 MR. LERMOND: It was very much so. I'd like to
7 see that occur each year. I don't know what his plans are
8 for that, but I think it was great, a great event.

9 The first item I have is the deadline for
10 submitting the racing date requests. Mr. Harrison alluded
11 to this at the last month's meeting, and I guess we kind of
12 stopped short from setting a date. In the past, a long time
13 ago, it used to be that there was a date set in the rules.
14 I think it was September 1st or maybe October 1st, I can't
15 remember which, but it was really too early, especially for
16 the harness meets that had in some cases not even concluded
17 yet to think about requesting the dates. So as long as I
18 can remember, the Commission sets a date each year for which
19 it would like to have requests received by.

20 I would recommend this year that we set the date
21 for the request at December 15th, which would be roughly a
22 week before the December meeting. Then I'd like to see oral
23 presentations at the December meeting from the parties. I
24 think that would give the Commissioners an opportunity to
25 ask questions on their presentations; it would give an op-

1 opportunity for the public to participate if they so choose.
2 we could put the requests up on the website as soon as we
3 receive them so the public can get a chance to look at them
4 before the meeting, and then with all of that done, I think
5 it would give Staff a good opportunity to take all of that
6 into account and write a good -- two good staff reports on
7 both the harness and thoroughbred and ask that the Commis-
8 sion make their decision at the January meeting.

9 I did check with Mr. Petramalo and Mr. Stewart
10 and Mr. Woolnough, and I think they're all agreeable to the
11 deadline; however, I wanted to check with the Commissioners
12 to see if they had any thoughts on this year's schedule.

13 MR. BURNETT: Gentlemen?

14 I guess my only concern is that this is always
15 the moment of optimism when we're all going to play well in
16 the sandbox and come up dates and there's not going to be
17 any problems and we're just going to get this done in no
18 time and then reality kicks in and it takes more meetings
19 than we thought, and without casting blame in any direction,
20 the Commission is soon under pressure to make a decision be-
21 cause the Racing Secretaries want to get books out and
22 Racing Secretaries want to be traveling around and inviting
23 people in and all of that, so I would think -- I think we
24 would be prudent to assume, if history is any guide, that
25 we'll not be making a decision in one meeting and that we

1 ought to leave ourselves a cushion of a second meeting to
2 get to the final answer of what dates we are going to award,
3 and if that's the case, under the current scenario, we might
4 not have dates until mid-February or the end of February,
5 and I don't think the Commission has a problem with that.
6 But if the question is going to be whether Colonial Downs or
7 either of the horsemen's groups would have a problem with
8 that if they've gone past January.

9 MR. STEWART: It's always been done in the past in
10 that fashion, so I don't see that it's a huge problem.

11 MR. BURNETT: That's two.

12 MR. PETRAMALO: That's fine.

13 MR. BURNETT: Okay, three.

14 well, anybody have any problem with that?

15 MR. BROWN: well, I was going to say because I
16 was going to suggest we do it in the November meeting to get
17 it started, and then we've got the December meeting to play
18 with it or January if we need to, and like you said, given
19 past history, we've always taken two or three meetings to
20 get this done.

21 MR. MILLER: Mr. Chairman, what is the date you
22 suggested that the parties have their proposed dates?

23 MR. LERMOND: 15th of December.

24 MR. MILLER: 15th of December?

25 MR. LERMOND: That would be roughly a week before

1 the meeting in December if we went with the 21st of
2 December.

3 MR. MILLER: I think, Mr. Chairman, that once
4 the interested parties, the horsemen and the track, present
5 their dates to us, we ought to allow sufficient time for
6 anyone other than them or segments of those parties to give
7 us input, so a couple weeks from December to the January
8 meeting, you know, four weeks is probably not long enough,
9 so I think your suggestion of at least carrying it over
10 until the February meeting would be prudent.

11 MR. BURNETT: Is there any reason that any of
12 the parties couldn't get their dates to us by mid-November?
13 In other words, start the process earlier, and then we've
14 got a double cushion, we've got one on the front end to tell
15 the public and get input and we've got some room on the back
16 end if we can't get resolution quickly.

17 MR. PETRAMALO: Well, my thought is that there
18 are so many things going on now, and it would be helpful not
19 to have to come up with something in November. When I say
20 things going on, discussions between the horsemen and Colon-
21 ial.

22 Now, bear in mind that the, quote, dust-ups in the
23 past have been over the number of race days. Now we have in
24 place a contract, which at least between the two of us, re-
25 solves that issue, not to say that there aren't other things

1 to discuss, but the bottom line is I would be not unduly
2 optimistic in saying that we'll probably not have a major
3 dust-up this year, and we can probably make deadlines that
4 start with December 15th and even carry over to February.

5 I wouldn't see why it would even need to be
6 carried over to February, but again, maybe I'm unduly
7 optimistic.

8 MR. BURNETT: Optimism is a good thing. We just
9 have you the reality of the history guiding us a little bit
10 as well.

11 what would the thought be of perhaps having -- our
12 next meeting is currently set for -- because our fourth
13 Tuesday falls on Thanksgiving week, we had thought of having
14 our next meeting on the 30th of November. What if we just
15 moved you ahead two weeks and had that -- have you tell us
16 at the next meeting dates and --

17 MR. PETRAMALO: Well, let me suggest this: Maybe
18 the 30th of November would be a good time to give you a sta-
19 tus report, this is where we are, this is what we propose,
20 this is what the track has proposed, or maybe we can even
21 tell you it looks like we're going to come up with the same
22 proposal on the 15th. I don't have any strong feelings one
23 way or another.

24 MR. STEWART: Well, I think the 15th of November
25 is a little soon to fully evaluate the results of the har-

1 ness meet.

2 MR. BROWN: So what about the 30th?

3 MR. STEWART: Pardon me?

4 MR. BROWN: What about the 30th?

5 MR. STEWART: Well, I mean you've got Thanksgiving
6 week in there, and I just -- I think the 15th of December is
7 a more realistic date.

8 MR. SIEGEL: Do we have a December meeting set?

9 MR. BURNETT: No, and I think we were going to
10 think about whether we want it the week of Christmas for
11 obvious reasons.

12 Our standard practice is to shoot for the same
13 Tuesday of the month, the fourth Tuesday, but as we set it
14 each month we have to take into account holidays and other
15 issues.

16 My view is we've been down this road many a time
17 and I think it's when folks are required to address this,
18 they will address this. When they're not, it will get put
19 off until it's necessary, and maybe a good compromise here
20 is to have what each party wants for dates reported to us
21 regardless of whether there's agreement at our next meeting
22 on the 30th, and we can ask for formal requests thereafter,
23 but at least we would have -- if they can reach agreement,
24 great, if they can't, put in your formal requests and we'll
25 set a date and we're going to make a decision at that time

1 in our next meeting. Does that make sense?

2 MR. BROWN: Yes, it would.

3 MR. SIEGEL: Yes, I think that's what you were
4 suggesting, is that not correct?

5 MR. PETRAMALO: Yes.

6 MR. SIEGEL: You don't have to be firm.

7 MR. BURNETT: We're not asking you to have an
8 agreement by the 30th. We're asking you to tell what dates
9 you want, we're talking -- we want to know dates, we want to
10 know how many days each of you want, not that we're getting
11 close or any of that. And then we'll decide at that time
12 what makes reasonable sense in terms of asking for a formal
13 request. Hopefully, everybody gets together. If they
14 don't, we'll set a schedule of when we actually decide.

15 All right. Next item?

16 MR. LERMOND: All right. My next item is the
17 legal opinion that was issued on October 15th. Senator
18 Houck, I think --

19 MR. BURNETT: Houck.

20 MR. LERMOND: Houck, sorry, originally had asked
21 for an opinion back in the summer and it was issued on July
22 30th. The Attorney General was given a hypothetical scenar-
23 io about these sweepstakes establishments, and after looking
24 at the facts as they were presented to him, he ruled that it
25 was not illegal gambling because one of the three elements

1 were missing, and that element was consideration. The other
2 two, you have to have prize and chance, I think. Prize,
3 chance, and consideration are the three elements.

4 In his first opinion, he deemed that the con-
5 sideration element was missing and therefore it was a legal
6 activity. However, sometime later, he was presented with
7 another hypothetical scenario, which I believe is much more
8 close to the reality of what occurs at these internet cafes
9 and in some cases the truckstops in that they're really pur-
10 chasing these \$5 phone cards, but in reality, if you've ever
11 going into the truckstops where they have these, they're
12 thrown all over the floor, and in the internet cafes, they
13 are purchasing internet time, but if you look, no one's on
14 the internet, they're all playing the games.

15 So with this different set of circumstances, the
16 Attorney General said that he believed that as described to
17 him, it would constitute illegal gambling because all three
18 elements, the prize, chance, and consideration are present.
19 He did, however, put in there that each has to be looked at
20 on a case-by-case basis, which I think is normally the case
21 with a lot of the opinions that are issued.

22 Unfortunately, I spoke to Jeanna Bouzek from
23 Colonial Downs yesterday, and she informed me that none of
24 the locations as far as she had known had closed down or
25 changed their activity in any way after this opinion had

1 come out, and in an e-mail that she wrote to me, there is
2 just an alarming rate of these things popping up. There's
3 six of them in Emporia that affect the Alberta OTB; there's
4 five in Chesapeake, and there's actually another one getting
5 ready to open right next door to the SWF in Chesapeake; one
6 is supposed to open a block and a half from the Broad Street
7 location, and I believe she said there were 12 other ones
8 that are due to open sometime soon in the Richmond area.

9 MR. PETRAMALO: Are these all the same operator,
10 the same individual, or just --

11 MR. LERMOND: I'm not real sure. Jeanna, could
12 you comment on it?

13 MR. STEWART: I think that, you know, there's a
14 variety of people that are in this business.

15 MR. PETRAMALO: I'm thinking from the law en-
16 forcement standpoint, if you go to Sam Smith and you indict
17 Sam Smith, it's more effective if Sam Smith is running 12 of
18 these in three different counties as opposed to, you know,
19 having 12 different individuals who aren't related, because
20 I think the point that the Attorney General made in his
21 opinion -- opinions, both of them, is that really this up to
22 the local Commonwealth's Attorney to decide whether or not
23 something ought to be done.

24 MR. BURNETT: Do you have an opinion, Dave, as to
25 whether any of these -- the activities at any of these in-

1 internet cafes constitute a violation of the Racing Act?

2 MR. LERMOND: Not without referring to our legal
3 counsel, really. I wouldn't want to make that call myself,
4 but it's such a big problem, and I can't imagine that Racing
5 is the only agency affected; we've got the Lottery, we've
6 got Charitable Gaming. I think, you know, generally there's
7 only so many gambling dollars to go around and if a guy
8 spends his afternoon at the internet cafe when he normally
9 would have stopped home and got Lottery tickets but he
10 doesn't have any more cash, then the Lottery loses out,
11 these places aren't regulated; there's nobody protecting the
12 public as to whether to take out his 10 percent or 20 per-
13 cent, or who knows what it is?

14 MR. BURNETT: Let me be more precise in my
15 question. I think the fact that they're cutting Racing's
16 grass or the Lottery's grass or anything else doesn't neces-
17 sarily -- because it's diverting dollars that might other-
18 wise be spent in pari-mutuel wagering that we regulate
19 doesn't necessarily make that activity a violation of the
20 Racing Act. I'm wondering if there is any activity that is
21 betting on racing on these machines of any sort. I'm guess-
22 ing there isn't, but I'm just asking the question as much
23 for the record as anything to be clear that we probably
24 don't have any obligation to report it to anybody as we
25 would with an *all-horse-racing.com* type of environment, and

1 probably there isn't much we can do from our own -- we don't
2 have any enforcement authority ourselves, but other than re-
3 porting it, and as I said, I don't think we're necessarily
4 obligated to report this activity. That's my point.

5 MR. LERMOND: To the best of my knowledge, there's
6 no horse racing betting going on, and nothing that remotely
7 would bring the Racing Act into it. It's just illegal gamb-
8 ling -- it may be, case-by-case basis.

9 MR. BURNETT: well, I think this is a serious
10 issue in so far as the operators of the OTBs really notic-
11 ing their customers are drifting elsewhere. Is that fair
12 Jeanna?

13 MS. BOUZEK: Yes, sir.

14 MR. SIEGEL: AND if we don't play a role, who
15 will? It seems to me that we need to do what we can do to
16 support Colonial Downs and support what our Racing Act calls
17 for.

18 MR. LERMOND: They've gone as far as to put flyers
19 on the cars in the parking lot at the Hull Street location
20 and I believe other locations as well.

21 You know, if you look at the numbers for Hull
22 Street this month, they're down 27 percent, and I just don't
23 think that's the trend of racing. If you look at -- I know
24 recently I read where the thoroughbred handle year-to-date
25 is down like eight percent maybe, but in Virginia we're down

1 15 percent, so there's got to be something else that's hurt-
2 ing us other than just the slow recovery of the economy.

3 MR. BURNETT: And I'm concerned -- I agree with
4 Frank that it looks like the Attorney General essentially
5 put it on each Commonwealth Attorney to look at the factual
6 scenario in his or her jurisdiction and take what action he
7 or she deems necessary, and I'll pick on Martinsville a lit-
8 tle bit -- they apparently passed an ordinance making some
9 of this activity okay. I would think that it might be a
10 little bit dicey in Martinsville for a Commonwealth Attorney
11 to be jumping on some of these facilities and perhaps embar-
12 rassing the City Council, perhaps not -- there may be a dif-
13 ference of opinion as to how these operations are run, and
14 you could get a lot of varying results from the hundred-plus
15 jurisdictions we've got and Commonwealth Attorneys around
16 the State in terms of enforcing these things. If it's our
17 only route, I'm all for it, but I -- I'm with you, Commis-
18 sioner Siegel, I think we need to figure out whatever way we
19 can --

20 MR. SIEGEL: The longer we wait the harder it's
21 going to be because they're popping up, and instead of hav-
22 ing whatever the number was, 15, we may have 35 pretty
23 quickly.

24 MR. BURNETT: Does Colonial Downs have any
25 suggestions as to how the Commission might help in this

1 effort? I assume you-all object to these things.

2 MR. STEWART: well, we've studied it quite
3 extensively. we've kind of evaluated what we think ought to
4 be done. Obviously, we don't have any police powers, so I'm
5 not sure I can recommend anything to you.

6 MR. PETRAMALO: who would you report something
7 like this to? The Secretary of Commerce or -- I mean I'm
8 thinking if there was an ABC store selling liquor -- this
9 now is before the stores could sell it privately, of course,
10 but if there's an ABC store selling liquor and the manager
11 of that store finds out that somebody down the block is
12 selling hootch out of the back of his or her house, natur-
13 ally the ABC person reports.

14 It would seem to me you folks are in analogous
15 position. I mean your charge is to promote, sustain and
16 grow, and much of our sustenance and growth depends on the
17 vibrance of the wagering off-track, and if there's something
18 out there that is illegal that's eating into that, it would
19 seem to me you have some responsibility to do something.

20 MR. BURNETT: well, I'm not sure -- and Frank has
21 risen in the back so we'll see if he agrees -- I'm unaware
22 of any requirement in the Act such as we have with all-horse
23 racing where it involves pari-mutuel wagering on horses that
24 we have to report to anybody. But I agree with your analy-
25 sis that we have a duty to promote, sustain, and that that

1 would encompass doing what is necessary to protect racing
2 from illegal poaching, if you will.

3 Let's hear what Frank thinks of that analysis.

4 MR. FERGUSON: well, I was just going to, I guess,
5 point out that the ABC analogy is not necessarily accurate
6 because they do, in fact, have law enforcement authority and
7 they have the ability to arrest those guys.

8 But having said that, it's a very, very daunting
9 issue, and the General Assembly found that out last session
10 when the bill came in from Delegate Athey that was intended
11 to address some of these cases, quote free-spin machines
12 that are up in Front Royal -- and by the way, the estimates
13 of 15 or 30, I think those are way, way, way low. I think
14 they're probably close to a hundred and maybe more. More
15 opening almost every day.

16 But the bill that was introduced by Delegate Athey
17 was intended to address this problem, and it resulted in the
18 amendment that was cited in the first AG opinion requesting
19 Delegate Janis, and the fact scenario that was in that par-
20 ticular opinion, as Dave pointed out, was such that the At-
21 torney General was sort of constrained to say, well, in that
22 case, it's probably not illegal.

23 But there are endless variations on this; new ones
24 are limited only by the creativity of the vendors, and as a
25 result, I think the point I'm getting to is this: At least

1 from my consulting point of view, there's not a whole lot
2 that the Racing Commission can do in terms of stopping it
3 right now. What I think can be done, potentially, is sup-
4 port further efforts at legislation to minimize or eliminate
5 this activity; I think certainly the Commission may be able
6 to make their concern about this known, and they have. They
7 have made it known to the Governor's office and to the
8 Secretary of Trade and Commerce. But I don't necessarily
9 have a lot of optimism that this is going to be a short term
10 solution to this problem.

11 So to be the bearer of bad news, I guess, you
12 know, because I can tell you that Amy and the Commissioners
13 and sometimes myself, we've -- and Vic and Dave, you know,
14 we've been wrestling with this for at least six months, and
15 probably for over a year really, and every time we think we
16 have it nailed down, it's -- you know, something else pops
17 up.

18 One of latest iterations of this is of the
19 so-called donate zones or charitable zones where you actual-
20 ly can buy -- you pay to make a donation through this
21 machine to whatever charity it may be accepting, and you get
22 awarded so many credits for every \$10 or \$5 or \$100 that you
23 make in the way of a donation and your participation is
24 limited only by the amount of donation you make.

25 Clearly, the vendor is taking a cut of that

1 donation, but they're doing it as a fundraiser so it becomes
2 increasingly difficult to understand -- I mean, for example,
3 I don't know whether any of the fact scenarios that were in
4 that recent opinion would account for this.

5 MR. PETRAMALO: So in other words, I put in \$5 as
6 a donation, and that would basically entitle me to play on
7 this machine?

8 MR. FERGUSON: \$5 worth of credits.

9 MR. PETRAMALO: \$5 worth of credits, and then at
10 some point if I were successful in playing the game, money
11 would be given back to me in return for giving me credits.

12 MR. FERGUSON: Right.

13 MR. PETRAMALO: And then the operator somehow or
14 other makes a piece of this, but some money does legiti-
15 mately -- some does go to a legitimate charity?

16 MR. FERGUSON: Presumably. You know, but it may
17 only be five percent of the handle, as it were.

18 MR. PETRAMALO: Is there anything in State law
19 regulations that determines or defines what charitable
20 organization or the amount that would have to go to a char-
21 itable organization for it to pass muster?

22 MR. FERGUSON: Well, I'll defer that question to
23 Amy; she also represents The Charitable Gaming Commission.
24 Yes, that's one of the areas of confusion that's developed
25 with these internet cafe's is that they think by stating

1 that they're making some sort of charitable donation from
2 the profits that they're reaping that that neutralizes any
3 legal problem that they might otherwise have.

4 My opinion as counsel to the Charitable Gaming
5 office is that it does not; there are only three forms of
6 charitable gaming in the Commonwealth, and that's bingo,
7 instant bingo, and electronic bingo. There are no other
8 games that are approved for charitable gaming in the
9 Commonwealth, so to the extent that these internet cafes
10 suggest that they're conducting charitable gaming, that's
11 just simply not the case.

12 MR. PETRAMALO: I see. So even if I were an
13 operator giving 75 percent of my profits to this charity, it
14 still wouldn't pass muster, because what I am doing is not
15 within one of the three --

16 MS. DILWORTH: Right. You would have to be deemed
17 a qualified organization that's defined under the charitable
18 gaming laws; you would have to apply for and receive a per-
19 mit, and from there, your activity would be regulated, and
20 all of your money raised would be subject to audit by Char-
21 itable Gaming, and there would be a minimum proceeds re-
22 quirement that would apply, and it doesn't matter how much
23 money you're donating; it doesn't change the fact that in
24 certain cases, it will be deemed illegal gambling if there
25 are the three elements involved: Payment of consideration

1 for a chance to win a prize.

2 MR. PETRAMALO: Well, without getting into it too
3 far, suppose I was a running a legitimate bingo game for --

4 MS. DILWORTH: As a nonprofit charitable
5 organization?

6 MR. PETRAMALO: Right. How much -- as the
7 operator, how much would I have to pay over to say the
8 Catholic church?

9 MS. DILWORTH: Whatever your designated charity
10 beneficiary is, the minimum proceeds requirement currently,
11 and it does seem to change every year with the legislature,
12 but at the present time it's 10 percent.

13 MR. PETRAMALO: So I would only have to give
14 10 percent to the church, and I could keep the other
15 90 percent?

16 MS. DILWORTH: To apply to your operating costs.

17 MR. BURNETT: Which include your payment out to
18 the win.

19 MR. PETRAMALO: No, I understand. I understand.
20 Interesting.

21 MR. BURNETT: I'm very impressed with this
22 opinion, and I know that a couple of lawyers in this room
23 had a lot to do with its writing, and what I like about it
24 is it gets to the heart of the problem. That is that where
25 not only does it identify these three factors that are re-

1 quired, but it also I think makes a very good case for
2 looking at the true intent of the operator, even though they
3 may be making -- appearing to meet technical requirements,
4 and if the true purpose is to run an internet cafe, then
5 it's an internet cafe and it's illegal. If its purpose is
6 charitable gaming, that's obvious what's going on there, so
7 it's sort of a -- if it walks, sounds, and behaves like a
8 duck, it probably is, and I think it's -- you know, it's
9 impressive that the authors were able to find right on point
10 quotes from the United States Supreme Court to put in the
11 opinion. That Attorney General must be staying up late at
12 night writing these opinions, must be working on them very
13 hard, I can see.

14 But I agree with Frank's advice that legislation
15 may well be our best avenue, and I wonder with the legis-
16 lative season upon us, if we shouldn't see if we can't find
17 an eager patron that is as bothered by this activity as we
18 are and would be willing to put some energy into coming up
19 with a statute that both has some teeth and reasonable
20 definition in it such that we can expect to put a stop to
21 this activity.

22 MR. PETRAMALO: But I don't understand why you
23 need new legislation. Amy has just described why Frank's
24 discussion of the donation model is illegal, and the Attor-
25 ney General has explained why these other forms are illegal.

1 It seems to me it's a law enforcement issue. The laws are
2 on the books but nobody's enforcing them.

3 MS. DILWORTH: Well, the bottom line -- may I
4 speak?

5 MR. BURNETT: Please.

6 MS. DILWORTH: The bottom line is that the Common-
7 wealth's Attorneys are looking for some guidance here. They
8 don't think that the statute is clear enough, and in fact,
9 the statute as it was eventually enacted was nothing like
10 the statute as introduced as a bill. That happens all the
11 time, but it happened in this case. So you've got a very
12 watered down version of the bill that was introduced, and
13 it's an attempt to make the description of illegal gambling
14 machines clearer, eventually resulted in that description
15 becoming cloudier and more easily circumvented.

16 MR. BURNETT: Therein lies the challenge.

17 MR. SIEGEL: If these organizations out there
18 don't meet the criteria that is pretty clear, why is the
19 Attorney General not in a position to act?

20 MS. DILWORTH: Well, the Attorney General -- the
21 jurisdiction for enforcement of the criminal code lies with
22 each Commonwealth Attorney within their jurisdiction and so
23 it will be up to that Commonwealth's Attorney to bring what
24 charges he or she deems appropriate and to prosecute that,
25 and it will be in all cases a question of fact as to whether

1 the three elements are involved in any given scenario. As
2 Frank mentioned, these scenarios are endless in variation,
3 and that is why it ultimately comes down to a question of
4 fact that has to be presented to a judge or jury.

5 MR. SIEGEL: Is the Attorney General's office not
6 in a position to at least contact these Commonwealth Attor-
7 neys to let them know this is an issue?

8 MS. DILWORTH: Oh, the Commonwealth's Attorneys
9 are well aware of it, and the office receives calls every
10 day about this issue.

11 MR. SIEGEL: So they're just failing to act?

12 MS. DILWORTH: The Commonwealth's Attorneys?

13 MR. SIEGEL: Uh-huh.

14 MS. DILWORTH: No, there are several that are in
15 on-going proceedings right now.

16 MR. SIEGEL: And some aren't?

17 MS. DILWORTH: And some aren't.

18 MR. BURNETT: Is it felonious activity versus a
19 misdemeanor?

20 MS. DILWORTH: The violation of 18.2 --

21 MR. FERGUSON: I think the charge of operating a
22 gambling enterprise is a felony. If it's a mere possession
23 of a gambling machine or a participation in illegal gambling
24 is a misdemeanor.

25 MR. BURNETT: Where I'm going with this is

1 essentially direct indictment. I'm wondering if you
2 couldn't put together a standard complaint that could be
3 presented by an individual who went to one of these things,
4 observed what they observed, fill out the form that has all
5 the appropriate criteria in it, appears before a Grand Jury
6 in that jurisdiction and asks for a true bill of indictment.
7 Now the Commonwealth Attorney's got a bill to take forward,
8 and it's going to have a chilling effect, I would think.

9 MR. FERGUSON: Harkening back to my days as a
10 prosecutor many years ago, from the 10,000 cases I prose-
11 cuted, that only happened once, and the Grand Jury returned
12 a not a true bill in that situation. It wasn't a gambling
13 question, but it was -- so, my only point is while that's
14 certainly a possibility, the practice is not to do it that
15 way.

16 MR. BURNETT: Oh, yes, I'm aware of that. Loudoun
17 County got itself a little bit famous on a sign ordinance
18 when the Commonwealth Attorney thought that these signs that
19 real estate agents plaster all over the roads everywhere in
20 violation of various ordinances was not worth the time to
21 fool with, and this 75 year-old man who is now 90 started
22 appearing before the Grand Jury on a regular basis with pho-
23 tographs and affidavits of people putting the signs down as
24 violating the law, and it wasn't very long before the Com-
25 monwealth Attorney felt compelled to do something about it.

1 I mean the Grand Jury started returning true bills; the
2 Commonwealth Attorney felt compelled to do something about
3 it, and for about 15 years we've been pretty much free of
4 signs on the sides of the road now. It was just that the
5 citizens rose up and did something about it. I wonder if
6 horse racing citizens might like to take similar action.

7 MR. FERGUSON: And I don't recall the nuances of
8 the Multi-Jurisdictional Grand Jury legislation or statute
9 because it gets -- it was changed frequently some years ago,
10 but it's been fairly static since then, but my guess is an
11 allegation of widespread, illegal gambling activity might be
12 enough to result in the creation of a Multi-Jurisdictional
13 Grand Jury, and maybe that's the way to go. It only occurs
14 to me as you tell me that, so you know --

15 MR. BURNETT: Do those grand juries come with a
16 special prosecutor?

17 MR. FERGUSON: Yes, it's an assigned Commonwealth
18 Attorney, but yes.

19 MR. BURNETT: Around it has budgetary
20 ramifications, I take it?

21 MR. FERGUSON: Some but probably not overwhelming.

22 MR. MILLER: Mr. Chairman, who takes the
23 initiative to set up a multi-jurisdictional grand jury?

24 MR. FERGUSON: Well, normally it comes from a
25 Commonwealth's Attorney or from some local official, at

1 least, but and I can't recall the statute, but it's cer-
2 tainly possible that a judge could order one on his own, for
3 example, and I think that sufficient citizens could request
4 it as well.

5 MR. MILLER: Couldn't that be -- how about the
6 Attorney General of Virginia? If he sees what he feels is
7 an apparent illegality, couldn't the Attorney General of
8 Virginia take the initiative to appear before be a Circuit
9 Court Judge and request a Multi-Jurisdictional Grand Jury?

10 MR. FERGUSON: I'm sure that --

11 MR. MILLER: That's been done in the past, I
12 believe.

13 MR. FERGUSON: I believe it has and --

14 MR. MILLER: That would be a suggestion we ought
15 to make to the Attorney General if he feels he has a duty as
16 -- you know, every time someone runs for Attorney General in
17 Virginia, they talk about being the chief law enforcement
18 officer in Virginia; they talk about the crime rate being
19 down, et cetera, et cetera, but in reality, we find that the
20 Attorney General, when push comes to shove, doesn't want to
21 get involved in combating directly criminal activity.

22 MR. BURNETT: Would it make any difference if
23 Senator Houck, or would Senator Houck be a person that might
24 be able to request a special prosecutor and Multi-Juris-
25 dictional Grand Jury?

1 MR. FERGUSON: Again, without the statute in front
2 of me, I can't say; but I'm not aware off the top of my head
3 of any particular status that a legislator enjoys in that
4 regard.

5 MR. BURNETT: Okay. Thanks.

6 MR. PETRAMALO: Isn't there some police
7 organization, maybe it's the State Police that would have
8 the authority at least to investigate across jurisdictions
9 and come up with a report about what was found with regard
10 to these mushrooms that are sprouting up? It seems to me
11 that would be a starting point if the State police said,
12 well, look here we've looked at these operations in five
13 different counties and this is what's going on and it
14 violates the law. Isn't that the way it starts? Do the
15 State Police have that authority to go across counties?

16 MR. BURNETT: I think they do, but my sense of it
17 is as a matter of resource management. I mean they know
18 that moonshine's being made right this minute up in the
19 hills.

20 MR. BROWN: Not in the hills, everywhere.

21 MR. BURNETT: Thank you. Not that he knows
22 anything about it.

23 But are they going to go chase them, and what
24 resources are they going deploy, and I think vagary of this
25 statute and it's enforcement really slows down the effort to

1 go after it, and you know, I think Frank probably just did
2 this far better than I can, but I think a lot of these Com-
3 monwealth's Attorneys look at what they're going to charge,
4 they like getting convictions, and if they think that some-
5 one's going to be able to slip and slide under a sloppy
6 statute, then they're less inclined to start if they're not
7 going of be successful.

8 MR. MILLER: You know, Mr. Chairman, I think one
9 of the problems is that the State Police, the Attorney
10 General, any legislator -- they're timid about taking -- I
11 guess maybe that's not the word -- they're timid about tak-
12 ing such initiative against so-called illegal gambling be-
13 cause I think that with the charitable gambling we have in
14 Virginia now, most of that churches and veteran's groups,
15 with the lotteries, with pari-mutuel betting, et cetera, et
16 cetera -- gambling has become such a way of life in Vir-
17 ginia that people, the citizenry really is very blase about
18 it. I mean that's why it's tough to get a true bill indict-
19 ment returned in many instances because the citizens say,
20 wait a minute, this poor guy's running -- he calls it what-
21 ever he calls it; here's a couple of Attorney General opin-
22 ions that are, in the mind of the lay person, seem contra-
23 dictory, not clear; the legislature can't pass a clear
24 statute, everyone's gambling, money's rolling in, why should
25 we get exercised about owning and operating a little gamb-

1 ling place down on the corner that may or may not be il-
2 legal? So you don't have the public -- the public's just
3 not exercised about it at all in my opinion. I mean we're
4 exercised about it because of the financial implications on
5 our particular segment of what we're mandated to oversee.
6 We're exercised about it; the track's exercised about it,
7 you're exercised about it. The average citizen could care-
8 less about it, the way I see it.

9 MS. DILWORTH: And just to advise the Commission,
10 I'm looking at the statute or the section of the statute
11 relating to the Office of the Attorney General and criminal
12 cases, and it's 2.2-511, and it lists the specified cir-
13 cumstances in which the Attorney General does have authority
14 to institute or conduct criminal prosecutions in the Circuit
15 Courts, and there's no specified circumstance for illegal
16 gambling.

17 Now, that doesn't mean that he can't participate
18 as a special -- or one of his assistants cannot participate
19 as special counsel if requested to do so by the local Com-
20 monwealth's Attorney, but the Attorney General shall have no
21 authority is the language.

22 MR. MILLER: Mr. Chairman, is criminal fraud in
23 there in the specified areas?

24 MS. DILWORTH: I can let you look at it. It's
25 very lengthy, but I can let you read through it. I don't

1 see criminal fraud.

2 MR. MILLER: I'll bet you in there somewhere
3 there's enough of a general statement that you could extra-
4 polate out the fact that the Attorney General can go after
5 someone committing criminal fraud.

6 I would suggest that someone claiming that they're
7 collecting money for a charitable organization when they're
8 not properly licensed or meet the criteria that Amy has told
9 us about that you have to meet, that if you go out to the
10 public and you say you are, that's fraud. I mean that's
11 criminal fraud, pure, simple.

12 MS. DILWORTH: well, if this statute is construed
13 as allowing him the authority to institute or conduct the
14 criminal prosecution of such activity, my interpretation is
15 that it would only be with the concurrence of the local
16 Commonwealth's Attorney.

17 MR. BURNETT: Is this statute separate from the
18 Multi-Jurisdictional Grand Jury statute?

19 MS. DILWORTH: This statute is contained in the
20 Department of Law section of the Administrative Law statute.
21 This statute relates to the powers and duties of the At-
22 torney General.

23 MR. BURNETT: Okay, so --

24 MS. DILWORTH: In criminal cases.

25 MR. BURNETT: -- Multi-Jurisdictional Grand Juries

1 and special prosecutors would unlikely be in that statute?

2 MS. DILWORTH: I don't see it addressed here, no.

3 MR. FERGUSON: I think it's in the criminal
4 procedure title, which is 18.2, I think.

5 MR. BURNETT: Okay.

6 well, we can spend a lot of time on this. I think
7 we, as a Commission, should see what our counsel can further
8 advise us about an appropriate avenue to promote and protect
9 racing as best we can and decide on what, if any, action we
10 should take in the near future.

11 Maybe we could ask our consultant, Frank, or
12 capable counsel, Amy, to give that some thought and get back
13 to all of us or me, and I'll pass it along, and we can at
14 least have a cogent response to anybody who says, well,
15 what's the Racing Commission doing about these internet
16 cafes and the impact they're having on racing? I think we
17 ought to the have some answer to that.

18 All right. Anything else on that subject?

19 Mr. Lermond, you're going to review the
20 pari-mutuel handle reports with us?

21 MR. LERMOND: Yes, sir. We don't get to do this
22 very often, but when I looked at the agenda, it looked kind
23 of light so I thought I'd take this chance to just run
24 through some of the reports that normally appear each month.

25 If you go to Tab 3 of the books, the first one

1 actually you don't see each month. This is kind of a snap-
2 shot of the numbers after the first 22 performances at this
3 years harness meet.

4 The on-track attendance is actually up by 3200
5 people. This is due largely in part to the County Fair on
6 the weekend, but I'm not so sure if you were to take that
7 out of the equation, you still may be up a little bit. I'd
8 have to do some further research on that, and I'll give you
9 a better report next month when all the numbers are in. But
10 I think that's somewhat of a good sign.

11 The next line down I definitely see as somewhat of
12 a positive in that the in-state wagering on Colonial Downs
13 races is only down 4.6 percent, and that's 31,000. These
14 are the people in Virginia betting on the Virginia product,
15 and when you look at the next line down where the out-of-
16 state's down 24 percent, you know, at least the people here
17 recognize that the racing is a good quality and it's
18 bet-able, and so I think if anything, that's the silver
19 lining on this page.

20 MR. BURNETT: Can I ask you a question on that
21 particular page?

22 MR. LERMOND: Sure.

23 MR. BURNETT: You've recall that Stan Bowker has
24 always been a believer in the connection to the horses, the
25 owners, the trainers, the grooms being a source of signifi-

1 cant handle in turn at the track. Do you have an opinion as
2 to what part of this \$652,000 is generated by people right
3 here on the grounds betting on horses that they're aware of
4 by the horse racing community, if you will? It's a very
5 strong community, in my view, and it would be very consist-
6 ent in that regard from year to year. You've got more or
7 less the same number of horses and owners on the grounds.

8 MR. LERMOND: I don't have an exact number. I
9 can tell that the first couple of days when there wasn't a
10 betting machine in the cafeteria that the horsemen were up
11 in arms over that fact that they couldn't bet on their
12 horses, so if that's any indication, I think your point is
13 well-taken.

14 The next report, we'll see this each month. The
15 only thing I did different was I added a column for 2008,
16 and if you look at the top portion this is the total handle
17 all breeds. You can really see how it's declined each year.
18 After of the first nine months this year, it was 15.6 per-
19 cent down over wherever they were the year before, and if
20 take it out two years and compare 2010 with 2008, you were
21 down 30 percent.

22 Again, the thing I see here that may be a silver
23 lining again is that if you look at March through September,
24 the percentage decrease is much less than it had been run-
25 ning. January and February, they were -- you know, we had

1 some bad weather in 2009 and that could have been part of
2 it. But you know, I -- it seems like it's starting to turn
3 around. I hate to jump back to internet cafes, but I'm sure
4 they're not helping the recovery of the handle. But the
5 last time we saw a positive number in that percentage change
6 column was in October of 2007, thirty-five months ago.

7 So, you know, each month I put the numbers
8 together and I'm hoping -- I'm almost hoping just for a zero
9 instead of a negative number, and I hope one day we will see
10 that again.

11 The next report, again, you see this each month.
12 The thing that sticks out to me when I look at this is if
13 you look at the subtotals for the betting locations, the
14 bricks and mortar, we're at 82.6 million. If you look at
15 the total for the ADWs, you're at 41.8. That's means that
16 ADW is roughly 34 percent of the total handle in Virginia,
17 and I think as we all know, that number has been going up,
18 and if you were to look at the same report a year ago, the
19 percentage of ADW would have been 28 percent, and if you go
20 back into 2008, that number is 24. So in two years, you've
21 gone from ADW being a quarter of the handle to now being a
22 third.

23 MR. BURNETT: Dave, if my math is correct here,
24 we're at three-quarters of the way through the year, and so
25 we're looking at a run for the year if trends hold of about

1 165 or 67 million dollars, some place that area as gross
2 handle?

3 MR. LERMOND: That is correct. Typically the last
4 quarter of the year is not as high as some of them.

5 MR. BURNETT: Correct me if I'm wrong, but that's
6 more like down 15 percent over -- I'm remembering highs of
7 about -- total handles of about 200 million, and Ian may
8 have a better recollection than I do.

9 MR. STEWART: Yes, I think it approached that.

10 MR. BURNETT: At one time even before ADW days,
11 we were totaling around \$200 million. I remember that being
12 a target at some Horsemen's discussions.

13 MR. LERMOND: I think that is correct. It may
14 have been '07 or '08 that we hit that almost 200 million.

15 MR. PETRAMALO: I remember Stan put out a report
16 or something saying the first time we've gone over 200
17 million. There was some ADW in there, but certainly it was
18 just a contingency.

19 MR. BURNETT: And this is dollars wagered by
20 Virginians on horse racing is the fair way of looking at
21 this?

22 MR. LERMOND: Correct.

23 MR. BURNETT: So from our very best -- our all
24 time best, if you want to call it that about \$200 million,
25 and we hit -- say we hit 165, we're going to be down about

1 17 percent, which I'm just seeing that as a little bit
2 brighter spot than when I hear 30 percent down and all this
3 other. It's -- built into this is a shift of numbers from
4 conventional betting, if you will, to ADW betting, but in
5 terms of the population of Virginia betting on horses, it's
6 off about 17 percent from our best, not necessarily last
7 year.

8 Do you know what we did last year total?

9 MR. LERMOND: No, but I tell you that last year
10 the handle was down 18 percent in bricks and mortar and that
11 the ADW, I think, was up only about four percent.

12 MR. BURNETT: I could probably do that math, but
13 yes.

14 MR. PETRAMALO: Well, if you did it from high
15 point to low point, high point being 200 million and low
16 point being 160, it's a 20 percent drop.

17 MR. BURNETT: Exactly.

18 MR. LERMOND: The next report is on the same
19 stores analysis. This was, I believe, Mr. Reynolds. I
20 should call it the Reynolds report; he had requested this
21 shortly after he joined the Commission. It's a good look at
22 how the individual sites are performing compared to how they
23 did in the same month in the prior year. Even though the
24 total down in the month was 10 percent, you know, I see
25 maybe two silver linings here. I think they're the SWF

1 lites if you want to call them, the Finn McCools and the
2 Mulligans. Right now Finns is on pace to do 200 million for
3 a year.

4 MR. BURNETT: 250,000.

5 MR. LERMOND: well, 200 million for the year it
6 should.

7 MR. REYNOLDS: No, no.

8 MR. STEWART: Two million.

9 MR. LERMOND: I'm sorry, two million. I'm really
10 trying to see the silver lining in this. Two million, which
11 is really I think a pretty good number. It's more than
12 Colonial Downs estimate --

13 MR. SIEGEL: when did it open?

14 MR. LERMOND: Opened in April, I believe.

15 MR. SIEGEL: So you have a little than less
16 two-thirds of a year in that two million dollar number?

17 MR. STEWART: well, he's just saying the 177 a
18 month --

19 MR. SIEGEL: If you annualize it?

20 MR. LERMOND: Is \$2 million.

21 You know, it's -- we've talked about Finns before,
22 but it's in a nice area out in Innsbrook; I think in some
23 cases you're getting different clientele than you would at
24 some of the OTBs in Richmond.

25 The one that I really like tracking is Mulligan's.

1 They, you know, started not gangbusters, but what you see
2 and what I see is that every couple weeks, it looks like
3 that they just keep plugging away and they just keep getting
4 higher and higher and higher. It's not a line like this
5 (indicating), but it's a growth, and you're talking about a
6 time in the year when football and everything else is going
7 on when normally the pari-mutuel handle's going this way.
8 It's actually reversing the trend.

9 MR. PETRAMALO: Have you been out to Mulligan's to
10 actually watch what's going on?

11 MR. LERMOND: We've been there several times, I
12 like to go at night when football is going on, but we have
13 made several visits. Again, I think it's even -- they have
14 even got -- the prospect of new betters at Mulligan's is
15 probably the best anywhere because you've got these young
16 sports-minded people that are already there and I think
17 you've got a real good opportunity to you turn these people
18 into somebody that might come out to the races one day, or
19 you know, open an account, participate in some way in
20 pari-mutuel wagering here in Virginia.

21 Mulligans did \$53,000 in September, and with
22 five days to go, they're already at \$73,000, and I'm think-
23 ing they'll do about \$90,000 in October, which is a 70 per-
24 cent increase over the year or the month before.

25 I have to give credit to Colonial and their staff

1 for coming up with this idea, this SWF. I think it makes a
2 lot of sense in the economy that we're in where they don't
3 have to make a huge investment to get something open and
4 expand the exposure of wagering to the public in Virginia.

5 There's a staff down there that we spoke to on
6 Friday, and he said that every day he's explaining to people
7 how to bet, what's win, place, show? And they're new people
8 and for me, that's exciting because I think that's what we
9 need to focus on is getting more people involved and
10 expanding to the extent we can here.

11 MR. BURNETT: Dave, let's put a little finer point
12 on that. I agree with you a hundred percent.

13 The difficulty that I see is getting the betting
14 public in the markets that we want to penetrate to use a
15 form of betting that so far they haven't been too enthus-
16 iastic about in these environments, these ADWs. I think you
17 told me that at Finn McCool's, it's 90 percent conventional
18 machines and the automatic tellers and 10 percent ADW, and
19 that's not much of a problem in a referendum county where
20 you're allowed to have the other betting to get your 90
21 percent. I think what would be an interesting comparison
22 would be to look at an environment similar to Mulligan's or
23 similar to Finn McCool's that does not have a referendum,
24 and therefore, only ADW activity can take place in that
25 particular facility and see what impact that has on the

1 volume of betting, enthusiasm of the crowds and what addit-
2 ional burdens it puts on the track to kind of educate bet-
3 tors to bet in a way that they're not perhaps used to and is
4 perhaps a little bit more cumbersome.

5 But I guess my question is is Mulligan's the same
6 as Finn McCool's to your knowledge in terms of that split in
7 ADW versus conventional?

8 MR. LERMOND: Yes, and it's actually -- the
9 split is much less with the ADW. If you give somebody their
10 choice of using a self machine or a teller as opposed to
11 going over here where they have to have an account and they
12 have to put their account number in, they're going to choose
13 the conventional method every time. But what I'm getting to
14 in I think it's the next report or two is that when you take
15 just the EZ Horseplay locations, and there's several that
16 are doing very well -- one is in Charlottesville which is
17 VFW, you're two hours from an OTB in Vinton, you're two
18 hours from Richmond, and this place -- last week, they did
19 \$12,000 just through the ADW machines. There's a place in
20 Washington County down 81 near Abingdon, which -- I'm sorry,
21 they're the ones who did 12,000 last week. The place in
22 Charlottesville does anywhere from seven to sometimes eight
23 thousand a week.

24 MR. BURNETT: I mean if Colonial Downs on its
25 technology had a machine version 2.0 that would accept a

1 card that had the account number on it and the money, and
2 the patron need only go over and take that card and swipe it
3 through the machine, now they're ready to bet -- that's the
4 way the cards do it at conventional racetracks when you open
5 an account with them, do you think that would make an impact
6 on the way people would bet? I'm looking at Jeanna too if
7 she knows this stuff. You watch those people --

8 MR. STEWART: Well, I think that being able to
9 take cash is a primary. It's the primary driver. That's
10 why the machines are successful. If you want to build more
11 handle, then you need wider distribution of machines.

12 MR. PETRAMALO: How can you track the handle at
13 the Abingdon VFW?

14 MR. LERMOND: They track it. Colonial provides
15 me -- they do it on the ISP addresses in the computers that
16 are being used.

17 MR. PETRAMALO: I see. It's not the account,
18 because my account is in Lovettsville and --

19 MR. BURNETT: Oh, you're talking about in terms of
20 --

21 MR. PETRAMALO: The ADW tracking EZ Horseplay
22 handles at the Abingdon VFW.

23 MR. STEWART: We track it through the terminals.
24 The piece that you missed is that for every dollar that's --
25 every couple dollars that's bet through the kiosk touch

1 screen terminals at the clubs is about another 30 percent
2 that's bet at home, so you're not only creating players that
3 play at those sites, but they also play at home.

4 MR. PETRAMALO: Oh, no, I understand that. I'm
5 just trying to try figure out --

6 MR. BURNETT: You get a bonus that you don't get
7 with cash play, right?

8 MR. STEWART: Right. But what I'm saying is you
9 take the numbers that Dave's talking about and add another
10 30 percent to them to really see what the impact is at any
11 given location.

12 MR. BURNETT: Okay.

13 MS. BOUZEK: Given the choice between cash and the
14 account, they're always going choose cash because they don't
15 want to give up their address and their social security
16 number and all that; but when you give it to them, if that's
17 their only option, they will do it.

18 MR. BURNETT: Once they have done that, and that
19 seems to be the real pump is the initial hurdle of giving it
20 up -- once they've done that, can you get them grooved in it
21 so that there's no big deal between cash and using their
22 account?

23 MS. BOUZEK: No, for some reason, I mean have to
24 say no unless the guy really doesn't want somebody to know
25 what they're doing.

1 MR. BURNETT: Well, I know in Charlestown when
2 they put slots in, they initially put in no coin out, you
3 know, just vouchers, and when they put that coin-in/coin-
4 out, people went crazy. People just seem to like the touch
5 and feel of it.

6 MS. BOUZEK: Right, put your cash in and get the
7 ticket out.

8 MR. LERMOND: Jeanna's absolutely correct. When
9 they don't have a choice, then they don't -- a lot of them
10 don't mind using EZ Horseplay terminals. You know, that's
11 the only option. You want to do it legally, so there you
12 go.

13 MR. PETRAMALO: In my uneducated view -- in my
14 uneducated view, promotion is the key. If I can see this
15 stuff on the screen, big screen, High Definition -- or most
16 of it's not High Definition -- watching it, bingo, that's
17 what's going to fuel my desire to go in and put a few
18 dollars down on something.

19 MR. BURNETT: One of the things we haven't
20 discussed here is that I've just got to believe based on
21 what's been told to us while we sat here on the dais the
22 stuff about Finn McCool's and Mulligan's, and knowing some
23 of the details on opening the southern tier OTBs, not just
24 the initial expense of opening them, but the ongoing expense
25 of operating, just the amortization of buildings of that

1 expense and the like, it seems to me if you can get a two to
2 \$3 million run rate out of one of these bar-type locations
3 that the overhead factor on an operational basis, that ser-
4 vice alone is going to be a tremendous savings, so I would
5 hope that that's -- I'm assuming it is an incentive to our
6 racetrack partners here to be opening these things up, be-
7 cause their more economical to operate.

8 MR. STEWART: Don't forget, these are licensed
9 OTBs, so you're limited to ten.

10 MR. BURNETT: No, no, but I'm saying even your
11 VFWS are probably even less expensive to operate on a
12 day-to-day basis.

13 MR. STEWART: Well, I mean clearly they are.

14 MR. BURNETT: You've got some machine costs.

15 MR. STEWART: There the issue is distribution
16 into other locations. I've spoken on this issue a number of
17 times.

18 We can use some support from the Racing Commission
19 on this venture.

20 MR. PETRAMALO: We want half the number the
21 Lottery gets. The Lottery's got 4900 outlets.

22 MR. STEWART: Six thousand.

23 MR. PETRAMALO: Six thousand? We'll take three
24 thousand. Is that all right with you, Ian?

25 MR. STEWART: We'll start there.

1 MR. BURNETT: Dave's going to have to get a new
2 pair of running shoes because he won't be driving site to
3 site. He'll be running from site to site. There's no need
4 to get in the car if you get that network going.

5 And I will tell you that I do have -- I just
6 wanted to make sure the Stakeholders know this: I have from
7 our former Executive Secretary -- I guess he's still with
8 us, but he's not today -- a draft of a letter to Mr. Powell,
9 Assistant Commonwealth's Attorney, and a draft to the Attor-
10 ney General and the Superintendent of the State Police on
11 *allhorseracing.com* and hoping to have these out within a day
12 or two.

13 MR. STEWART: That would be great.

14 MR. BURNETT: So that's the level of support at
15 the moment, but I think another form of support that should
16 obviate the need for these letters -- there's really two
17 kinds: One is seeing if we can't get this Chairman's letter
18 for lack of a better term up on the internet with the sup-
19 porting documents from other Commonwealth's Attorneys, and
20 I've got to believe that the second item would be a bit more
21 helpful in many respects, and that's getting a set of regs
22 out, which we have in draft, that walk through what we ex-
23 pect to get from our applicants for -- just as EZ Horseplay
24 put in an ADW location, it would give you our Good House-
25 keeping seal of approval that's going to generate some form

1 of a document or approval that can handed to a Commonwealth
2 Attorney or handed to a regulatory counsel in another state,
3 et cetera, et cetera, and we are working on those, and de-
4 spite our change in personnel, I hope that will move apace,
5 and we'll get it done quickly.

6 Anything else?

7 MR. LERMOND: Okay. Two more, I think. The next
8 one simply shows the different racetracks that the patrons
9 at the racetracks and SWFs have bet on and how much. Mr.
10 Chairman pointed out before the meeting that if you look at
11 the bottom under the Standardbred Signals that Colonial
12 Downs had more money bet on it than any other harness track
13 in the month of September.

14 And the other thing you can pick up off this
15 report is the percentage of each breed in the far right
16 column. If you look at the Thoroughbred Total, you're
17 almost 79 percent, and the Harness is about 21 percent. And
18 I think that's held pretty true since I've been here, in the
19 six years that I've been here. It's usually about one
20 dollar out of every five is bet on harness.

21 MR. BURNETT: Let me jump in before the Stan
22 Bowker analysis here. On this particular report, if you
23 look down at Tampa Bay Downs, 4.76 percent. I've got to
24 believe that -- of total handle is bet on Tampa Bay Downs.
25 I've got to believe that that bears some relationship to the

1 number of horsemen we have here from Tampa Bay Downs. Frank
2 and I talked about that earlier today. You develop these
3 loyalties and people get comfortable with tracks, trainers,
4 jockeys, and I think a lot of horsemen bet through their
5 home track, and they see the same horses that are here at
6 Tampa Bay, and so they get on those horses and those that
7 they become familiar with here, and I think you'll see some
8 other tracks that have the same phenomenon.

9 MR. LERMOND: Familiarity with the participants is
10 always a good factor for handle.

11 Tampa Bay also has -- I'm putting on my old
12 simulcast directors hat on -- they also run at a very good
13 time of the year when there's really not much going. A lot
14 of times New York or somebody will cancel, they'll have a
15 storm on the east coast, and the only one open is Tampa Bay
16 and they'll do five million in totals.

17 MR. PETRAMALO: When do they open? Early
18 December?

19 MR. LERMOND: They open early December and run up
20 through April, so --

21 It's a good signal. They have full fields, you
22 know, it's not the highest purses in the world, but that's
23 not always a big factor on handle. A lot of times it's the
24 number of horses in the races that play a huge part in the
25 handle.

1 The last report is a comparison of account
2 wagering. I touched on it earlier, but I think the silver
3 lining is this top one, EZ Horseplay. They're 67.4 percent
4 over where they were last year after nine months.

5 Altogether, ADW is up about 3.9 million, but half
6 of that is attributed to EZ Horseplay, and I think it's
7 again the efforts of being the staff and Mary, and you know,
8 going out and lining up these places that were willing to
9 take a chance with the EZ Hit Horseplay terminals. I be-
10 lieve they're almost at 40 now locations. And, you know,
11 like the Chairman, I like to try to point out the positive
12 in these numbers and I think that's certainly the case here.

13 MR. PETRAMALO: This is an interesting display
14 that you put out each month, and I love going over it, but
15 would it be too difficult to -- when you breakdown the top
16 line, January through September, to break out those numbers
17 in terms of Thoroughbred and Standardbred?

18 MR. LERMOND: No, I'd be happy to do that. You
19 know, I do that in total --

20 MR. PETRAMALO: Yes, you do that in total, but --

21 MR. LERMOND: I'd be happy to do that on a monthly
22 basis.

23 MR. PETRAMALO: If you could do that, that would
24 really be interesting to me.

25 MR. LERMOND: I would be happy to do that for you,

1 Frank.

2 MR. BURNETT: Dave, can I take you back three
3 pages or four pages to the 2010 Pari-Mutuel Activity by
4 Location?

5 You've got ADW companies at the bottom, and I
6 always look at this to see what in the Cool Aid here with
7 these various ADW companies, but if you look at that report,
8 Twinpires, Youbet, and Xpressbet, Virginians all made
9 money, right?

10 MR. LERMOND: What that means is that they made
11 more than 80 percent.

12 MR. BURNETT: They made more than the take-out,
13 okay.

14 MR. LERMOND: Exactly.

15 MR. BURNETT: But look at it going the other way,
16 it's a pretty good swing with EZ and TVG, a couple hundred
17 thousand dollars minimum, in some cases 300 or more.

18 I mean any explanation? Is it the kind of horse
19 player? What is it? It seems this is starting to look a
20 little bit like a pattern.

21 MR. LERMOND: Typically the ADW customers have
22 always done better when it comes to whether or not they're
23 going to beat the 20 percent take-out, and I think they're
24 more sophisticated, I think they study it more.

25 MR. BURNETT: But I'm asking the questions

1 within --

2 MR. LERMOND: Oh, within those two?

3 MR. BURNETT: Within the five, it seems like
4 those bottom three typically will beat the 80 percent and
5 the top two don't, and I'm just wondering whether it's got
6 something to do with demographic of the customer the demo-
7 graphic of Virginia somehow? I'm just guessing.

8 MR. LERMOND: I'd be happy to look more into that,
9 but I don't know that the customer for TVG is that much
10 different than the customer for EZ Horseplay, but it cer-
11 tainly is interesting to see those numbers, how they can
12 fluctuate from one provider to the next.

13 You know, the good news is that when they beat the
14 20 percent or come close to it, that's more money for them
15 to churn back through the windows on the other side of that
16 and maybe their effective take-out rate, instead of 20, is
17 now 22, then it's just less money for the churn, and the
18 churn's an important number when you look at it over the
19 longrun.

20 MR. BURNETT: How difficult would it be, if it's
21 even possible, to determine what percentage that really is,
22 how close to a full break-even? Is it possible to do that?

23 MR. LERMOND: Full break-even would be zero.

24 MR. BURNETT: Zero what?

25 MR. LERMOND: There would be no number there. The

1 bettors' win or loss would be zero. That would mean that
2 the bettor lost exactly 20 percent.

3 MR. BURNETT: No, no. But I'm saying not the
4 20 percent, the hundred percent.

5 In other words, forget the take-out. The bettor
6 bets two bucks. You're saying if this number is zero, we
7 get \$1.60 back?

8 MR. LERMOND: Correct.

9 MR. BURNETT: Can you tell me what number has to
10 be there to show that he got his \$2 back?

11 MR. STEWART: You need \$8.7 million.

12 MR. BURNETT: Now we're talking. Where did you
13 get that number?

14 MR. STEWART: Because that's the commission.
15 That's what comes off the top, so if everybody's going to
16 break even, then you --

17 MR. BURNETT: But is it possible to break it down
18 by provider? I don't even know where you got the 8.7 --

19 MR. PETRAMALO: It's in the column.

20 MR. LERMOND: He's saying if they didn't take
21 anything back, then you would get back a hundred percent.

22 MR. STEWART: I mean it's not theoretically
23 possible. You could get the money from out-of-state tracks,
24 so theoretically you could get 8.7 million dollars. It
25 would be a pretty good little trick, but you could do it.

1 MR. LERMOND: I can tell you that Xpressbet has
2 always done pretty well in this regard and I did look into
3 it years ago, and what I found is that Xpressbet, the Vir-
4 ginian residents that use Xpressbet bet a lot of money on
5 Maryland, Charlestown, Penn National. They get a set
6 familiarity that we spoke to earlier, and they may know a
7 little something -- they know the trainer and he says you
8 know, this horse looks like she's ready to go, and they may
9 make a few dollars as a result.

10 MR. BURNETT: Well, let me just ask a stupid
11 question based on what Ian just told us, and leaving out the
12 out-of-state piece, the number over there to the right under
13 Xpressbet, if that number were \$1,430,622.51, would you tell
14 me that all the bettors got their two bucks back exactly?

15 MR. STEWART: Uh-huh.

16 MR. LERMOND: I guess except for the breakage.

17 MR. BURNETT: Well, let's not get too -- I did say
18 51 cents. So that's my question.

19 So if we look at that, and again I'm not real
20 clear what the out-of-state piece -- how that factors in,
21 you're looking at those Xpressbet bettors got about 82 per-
22 cent back, right?

23 MR. LERMOND: Uh-huh.

24 MR. BURNETT: If that that 167 is about 10 percent
25 of 1,430,000, then they got about 82 percent, so they're --

1 MR. LERMOND: Their effective take-out rate is
2 18 percent instead of 20.

3 MR. BURNETT: Right. Their return on betting is
4 about 82 percent. Is my formula working okay?

5 MR. LERMOND: Okay.

6 MR. BURNETT: All right. Thank you. I'll shut
7 up. It's just an interesting statistic to me.

8 Anything else?

9 MR. LERMOND: That's all I have, Mr. Chairman.

10 THE COURT: All right.

11 Colonial Downs want to tell us about the Harness
12 Meet?

13 MR. STEWART: Yes. As of Sunday they said we'd
14 completed 22 days. I've got a slightly different attendance
15 note for this year. I'm showing we're up 3800 people.
16 Either way, we're up a little bit over the last year.

17 If you look at on-track wagering at the racetrack,
18 which is a little different number than one of the numbers
19 that Dave's showing, just adding what's set by the people
20 showing here both live and simulcast, it's up \$360, so it's
21 virtually identical to last year, which is kind of odd.

22 As Dave mentioned, the out-of-state wagering is
23 down a little over \$400,000. This year we've run 236 races
24 versus 223 a year ago, so as a practical matter, we've I
25 guess sort of run 23 race days if you use sort of the same

1 math as last year. Horses per race were 8.4 this year
2 versus 8.3 last year.

3 The daily average purses after 20 days were
4 virtually identical to last year at about \$37,500. Just
5 kind of as a point of comparison, the 2008 and 2007, they
6 were \$51,800.

7 MR. BURNETT: Both years?

8 MR. STEWART: Within a couple months.

9 And I guess at this point I'll sort of defer
10 further discussion of the meet itself until the November
11 meeting when the meets been completed.

12 MR. BURNETT: Okay. Questions of Mr. Stewart?

13 MR. BROWN: One thing I want to say, when I was
14 down there last Sunday, I saw a lot of families there, kids.
15 It seems to me like there was more there on a Sunday than
16 I've seen in a long time, it seems like there's getting to
17 be a lot of exposure to the younger set.

18 MR. STEWART: We did something early on. We did
19 one of these groupon deals; we sold a lot of the family
20 four-pack. Darryl's done a nice job promoting that. I
21 think it's showing a little impact, I agree.

22 MR. BURNETT: Anything else?

23 All right. We'll move to public participation.
24 Any member of the public wish to address the Commission?

25 Seeing none, we'll move to setting our next

1 meeting. We've had some discussion before the meeting as to
2 whether or not we need another meeting next month. My
3 thought is this: That regardless of our regular agenda, I
4 think it's in everybody's interest that whatever we decide
5 to do about filling the Executive Secretary's position, we
6 ought to do so expeditiously. Dave's wearing two hats right
7 now and has plenty of work on him, and regardless of whether
8 -- whoever sits in that seat, I think it's just in every-
9 body's interest to do it as quickly as we can, and we could
10 either -- I'm anticipating that we would probably have some
11 kind of closed session to review our outreach activities, if
12 that's the direction we go, so what's your pleasure with
13 respect to meeting either normally as we're doing today on
14 30th, which is the fifth Tuesday of the month? The Tuesday
15 after Thanksgiving week, or at any other time? Any
16 thoughts?

17 MR. LERMOND: Mr. Chairman, I'm sorry, but you did
18 request, I guess a status report on the 30th.

19 MR. BURNETT: Exactly. I suppose we could get
20 that in writing if we didn't want to have a meeting, but
21 let's see what the Commission wants to do.

22 MR. REYNOLDS: Well, you've got Christmas,
23 December, we'll likely cancel that month, so maybe you
24 shouldn't cancel November.

25 MR. BURNETT: I think we're going to have to deal

1 with -- maybe we could do that at the November meeting --
2 Dave also pointed out wisely that we have ADW licenses that
3 will need to be renewed. I think we can certainly continue
4 existing licenses as we have in the past on a temporary
5 basis until the January meeting, if we decide to go that
6 route so we wouldn't need to do that as well, have it on the
7 agenda. Maybe we ought to go ahead and have the meeting.
8 Is that you-all's thinking?

9 MR. SIEGEL: I think we should, and we probably
10 ought to decide before that date whether we're going to have
11 a December meeting with everybody's calendars and schedules.

12 MR. BURNETT: Do we want to pick a December
13 meeting today and then evaluate where we are in November, or
14 do you want to make an absolute decision? What's your
15 pleasure?

16 MR. SIEGEL: I'm okay either way.

17 MR. BURNETT: Who's got a calendar?
18 You're very high-tech Dave.

19 MR. SIEGEL: If you don't want to meet Christmas
20 week, we can always have a meeting two weeks later.

21 MR. BURNETT: Excuse me?

22 MR. SIEGEL: If you really don't want to meet
23 Christmas week, you're really going to end up with a meeting
24 two weeks after November 30th, and unless there's some
25 reason to have that meeting. Perhaps you don't want to go

1 ahead and make the decision now not to have it.

2 MR. BURNETT: Here's the way the dates work.
3 December 1st is a Wednesday, so our meeting the 30th of
4 November will happen on a Tuesday, and then there's the 7th
5 is a week later, the 14th is two weeks later as you say, and
6 if we're going to stay out Christmas week, which Christmas
7 is on a Saturday this year, then it would have to be the
8 week following Christmas, which is usually deadly as well
9 for a lot of people. We might consider slipping over to the
10 first week of January.

11 MR. SIEGEL: For the December meeting?

12 MR. BURNETT: (Nodding head indicating in the
13 affirmative) Or have a combined meeting for those two months
14 in mid-month perhaps.

15 MR. MILLER: Mr. Chairman, what about a combined
16 meeting for November and December and have it on December
17 1st?

18 MR. BURNETT: Or a little bit later perhaps,
19 December 7th?

20 MR. MILLER: Or December 7th. For that matter, we
21 could go, well --

22 MR. PETRAMALO: Whoa, that's Tucson. That's the
23 racing symposium in Tucson.

24 MR. BURNETT: 14th of December? We could have our
25 horsemen give us a status report in writing on days by the

1 30th of November and then we're back to having the discus-
2 sion --

3 MR. SIEGEL: I have a problem with the 14th. I
4 have an all day meeting that day. I could do the day after.

5 MR. BURNETT: The 15th?

6 MR. SIEGEL: 15th works for me.

7 MR. PETRAMALO: That would be a Wednesday?

8 MR. SIEGEL: Yes.

9 MR. BURNETT: Does that work for you? And I only
10 say with respect to the employment issue, we would decide on
11 our own whether or not we need to have a meeting in the in-
12 terim, a closed meeting, put that on the notice board and do
13 whatever we need to do for that, right? There's no need to
14 call a special meeting.

15 MR. MILLER: So you're suggesting that we have a
16 regular December meeting on December 15th?

17 MR. BURNETT: And have that be for November and
18 December.

19 MR. MILLER: And not meet on November 30th?

20 MR. BURNETT: Two weeks earlier.

21 MR. MILLER: That's fine with me.

22 MR. SIEGEL: I think that's a fine idea, and if we
23 need to meet on the personnel issue between now and then, we
24 can make that happen.

25 MR. BURNETT: What are we going to do about ADW

1 licenses? Is that going to create a problem?

2 MR. LERMOND: The 15th would be tough for me to
3 get all the staff reports done because I'm going to be in
4 Tucson.

5 MR. BURNETT: Is there any reason that we couldn't
6 grant our familiar and reliable ADW licensees an extension
7 into January for approval of those licenses? Their appli-
8 cations are due regardless, right?

9 MR. LERMOND: I would think for the
10 representatives that are going to come to the meeting, they
11 would probably appreciate that move to January.

12 MR. BURNETT: Their application deadline doesn't
13 change; it's just a matter of when we work on it, right, or
14 when we act on it?

15 MR. LERMOND: Right.

16 MR. BURNETT: So we can deal with continuing those
17 licenses on the 15th. Just make sure that's on the agenda.

18 MR. LERMOND: Absolutely.

19 MR. BURNETT: All right. Anything else with
20 respect to our next meeting?

21 MR. PETRAMALO: Our status reports are due on
22 November 30th and we will be back here on the 15th?

23 MR. BURNETT: Right.

24 MR. PETRAMALO: With no -- okay, we haven't
25 discussed January.

1 MR. BURNETT: We'll worry about January when we
2 come in December.

3 MR. MILLER: We have no November meeting?

4 MR. BURNETT: No November meeting. The November
5 meeting is out, just to be clear.

6 All right. Unless we have further public
7 business, pursuant to Virginia Code Section 2.2-3711 (A)(1)
8 and (A)(7), I move that the Commission convene in a closed
9 meeting for the purposes of discussion and consideration of
10 the resignation of a specific employees of the Commission,
11 prospective candidates for employment, and consultation with
12 legal counsel employed or retained by the Commission regard-
13 ing specific legal matters requiring the provision of legal
14 advice by such counsel.

15 Do I have a second?

16 MR. SIEGEL: Second.

17 MR. BURNETT: Moved and seconded. All in favor,
18 indicate by saying aye.

19 NOTE: All indicated by saying aye.

20 MR. BURNETT: All right. We're going into closed
21 session. Thank you.

22 NOTE: The Commission goes into closed session at
23 11:13 a.m. and reconvenes in open session at 12:04 p.m. as
24 follows:

25 MR. BURNETT: I hereby certify that pursuant to

1 Virginia Code Section 2.2-3712 that to the best of each
2 member's knowledge, (i) only public business matters law-
3 fully exempted from open meeting requirements under this
4 chapter and (ii) only such public business matters as were
5 identified in the motion by which the closed meeting was
6 convened were heard, discussed or considered in the meeting
7 by the Commission.

8 This is a rollcall vote. Mr. Miller?

9 MR. MILLER: Aye.

10 MR. BURNETT: Mr. Reynolds?

11 MR. REYNOLDS: Aye.

12 MR. BURNETT: Mr. Brown?

13 MR. BROWN: Aye.

14 MR. BURNETT: Mr. Siegel?

15 MR. SIEGEL: Aye.

16 MR. BURNETT: The Chair votes aye.

17 All right. We're in open session, and the only
18 thing we have to tell the public is that -- what we already
19 said before that we hope to get the letter out to Assistant
20 Commonwealth Attorney Powell this week as soon as it's been
21 finalized, and we also hope to get the letter with respect
22 to *allhorseracing.com* out to the Attorney General and the
23 Superintendent of State Police this week as well.

24 And I would ask for any motion to adjourn.

25 MR. SIEGEL: Motion to adjourn.

1 MR. MILLER: So moved.

2 MR. BURNETT: Motion and seconded. All in favor
3 indicate by saying aye.

4 NOTE: All indicated by voting aye, and the
5 hearing adjourned at 12:05 p.m.

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HEARING ADJOURNED

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CERTIFICATE OF COURT REPORTER

I, Roy Garrison Wood, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 12th day of November, 2010.

ROY GARRISON WOOD
REGISTERED PROFESSIONAL REPORTER