

Symposium on Law Schools and Gaming Law

Joseph Kelly

THE LAST TIME I had the pleasure of writing an introduction to a scholarly gaming symposium by academics was in 1986, for a publication entitled *Transnational Gaming Law* ((8)(1) NY LAW SCHOOL JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, Winter 1986). Three of the contributors, Tony Cabot, Bob Faiss, and I. Nelson Rose, are among the contributors to this publication, 25 years later. In 1986, gambling lawyers were uncommon. In 1986, when I was chair of the International Bar Association section on Gaming law, I would receive several letters a year from lawyers requesting information on legal issues or problems involving wildlife, such as zebras, but there was minimum worldwide interest in legal gambling.

The major change since 1986 is that gambling has become increasingly acceptable because of the proliferation of casinos and other gambling opportunities, resulting largely from Native American gambling expansion, riverboat casinos, video lottery terminals, and Internet gambling. Currently, there are many law school classes on gambling law, including a seminar on poker law (September 2011) conducted by Harvard Law Professor Charles Nesson. With the proliferation of gaming, courts are increasingly likely to cite scholarly gaming articles in reported cases. In *Franceschi v Harrah's Entertainment, Inc.*, 2011 U.S. Dist. LEXIS 254 (D.Nev.), for example, a federal court in a gaming case cited as authority works by Lionel Sawyer & Collins, I. Nelson Rose, Anthony Cabot and a GAMING LAW REVIEW article. Gaming academics have also been utilized by governments to help draft legislation and as expert consultants. In addition, it has become increasingly common for academics

to testify as experts in gaming-related litigation. Today, there are also about a dozen scholarly gaming journals, such as *GLRE*, devoted exclusively to gambling topics. In 1985, there was only one such publication. On November 15, 2011, the HARVARD JOURNAL OF LAW AND TECHNOLOGY flew me to Boston to address approximately 100 Harvard Law students on Internet poker and to participate in a two-hour seminar on interactive poker law. That would have been unthinkable in 1986.

The scholarly contributions of law school professors to this symposium cover a wide variety of scholarly topics. The pioneer role of women in the law is discussed by Professor Robert M. Jarvis in "*Frisco Lil*": *Law Student, Gambler Heroine*, which is about a 1941 movie which "remains one of the most progressive movies to ever come out of Hollywood." The film portrays Frisco Lil in a positive light as a blackjack dealer and law student, at a time when strong women were a rarity in film.

The serious issue of gambling at colleges and graduate schools is covered at length by Professor Joseph L. Lester in *The Law School Gamble: The Threat of Problem Gaming*, which is a "vice that no one talks about." His suggestion of "10 Recommendations" for a school-wide policy would result in a "win-win opportunity" if colleges and graduate schools would treat problem gambling similar to the way they treat alcohol abuse.

In *Law Professors and the Gaming Industry*, I. Nelson Rose (perhaps the world's leading authority in gaming law) discusses the professor as an expert witness in the emerging world of gaming law. Rose informatively breaks the expert role into categories such as 1) Testifying in Court on the Law; 2) Testifying on Not-Quite the Law (*e.g.* what is a VLT); and 3) the Role of a Law Professor as Gaming Consultant.

Joseph Kelly is a professor of Business Law at SUNY College Buffalo.

Professor Ronald J. Rychlak, in *Emerging Issues in Gaming Law: A Call for Scholars!* stresses the “need for more and better scholarship in this underserved area of law.” Important areas of scholarly research include the impact of gambling legalization on problem gambling, the poor, the environment, and crime; there is also a need for further research to help minimize underage gambling. In addition, there is an acute need for legal scholarship on Indian gambling, online gaming, sports wagering, and modern lotteries.

Unlike many law professors who teach courses on gambling law, Professor Jeffrey A. Standen, in *Gaming Law vs. Gambling Law*, is concerned that too much emphasis is placed on “Gaming Law,” which he believes concentrates excessively on the gaming industry—and especially on casino law. Instead, he urges a focus on “Gambling Law,” which would include pari-mutuel horserace wagering, stock market speculative activity, insurance contracts, and the positive social benefits resulting from gambling, which would hopefully “secure a permanent spot in the law school curriculum for the important consideration of gambling.”

A contemporary analysis of law school gaming courses is the subject of *Gaming Law in the Academic World: Is There a Fourth Wave?* by Professor Keith C. Miller. In an exhaustive survey of law school curriculum, Professor Miller notes that after Professor Jarvis’ 2007 article on gaming law courses, there might be another, or fourth, wave in gaming law courses. While noting the increase in law courses on gaming, international gaming symposia, scholarly treatises and texts, Miller points out that there has not been a gaming law section in the American Association of Law Schools. Also, gaming law courses occasionally revolve around the expertise of one individual, such as Dean Kevin Washburn. When Professor Washburn

left Harvard and Minnesota law schools, his gaming courses were not filled by any other professor. An excellent appendix of law school gaming classes will be most valuable to any professor considering teaching a class on gambling law

Most interesting is the interview, “*In the First Person*”: *A Conversation with Vanessa Selbst*, by Robert D. Faiss, adjunct faculty at UNLV Law School. Ms. Selbst, now a Yale third year law student, took a year off after her second year at Yale to play poker professionally. She opined that poker has helped her in certain law classes “because there’s a lot of expected value decisions...” as to how, for example, to value payouts for damages. She also believes good lawyers and good poker players share common characteristics, such as “analytical deductive-reasoning skills.”

In *Gaming Law Careers for Law Students*, Anthony N. Cabot *et al* summarize how gaming law helped in formulating the careers of individuals who became lawyers at gaming law firms, gaming regulators, in-house counsel to gaming operators or gaming suppliers, and in many other areas. The article contains useful career summaries of nine lawyers who became successful in government gaming careers, tribal gaming law, gaming securities law, and in-house counsel for an international gaming device company.

Gaming law is a fascinating—and societally and economically important—topic; if you didn’t believe that, odds are good that you wouldn’t be reading GRLE. The articles in this symposium, however, help make clear just *how* fascinating and important this often-underestimated area is—and how much gaming law has changed, grown, and contributed over the past decades, as well as how much opportunity exists for further growth, study, and development. To all those who have been part of gaming law, whether in academia or in the industry, this symposium is dedicated to you.