

Becky Harris\*

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## WESTERN LEGAL HISTORY GAM(BL)ING EDITION

Oh, there's black jack, and poker, and the roulette wheel  
A fortune won and lost on every deal  
All you need's a strong heart and a nerve of steel  
Viva Las Vegas, Viva Las Vegas<sup>1</sup>

### Introduction

When I contemplated where I might spend most of my life, Las Vegas never came to mind. After living in Las Vegas for twenty-six years I have come to love it, and the rest of Nevada, with my whole heart. Never did I think I would ever lead the world's most highly regarded gambling regulatory body. Responsible for comprehensively regulating the multi-billion dollar gambling industry in the State of Nevada, tough issues were never in short supply during my tenure, from the repeal of the Professional and Amateur Sports Protection Act (PASPA) and the emergence of sports betting across the United States, various Wire Act issues, sexual harassment matters and the #MeToo Movement, to the gaming implications from the legalization of recreational cannabis, the more than 400 people comprising the Nevada

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1. "Viva Las Vegas" written by Doc Pomus and Mort Shuman, 1964, recorded by Elvis Presley at RCA.

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Gaming Control Board and the Nevada Gaming Commission were always up to the task leading the way for Nevada and the rest of the world.

### **Gambling, Gaming or Gam(b)ling?**

“You like potayto, I like potahto; you like tomayto, I like tomahto; potayto, potahto, tomayto, tomahto, let’s call the whole thing off!”<sup>2</sup>

And so it is with gambling or gaming both often used to refer to games of chance. Gambling or gaming involves the risking of consideration, usually money, on an uncertain outcome for the chance to win something. More succinctly when the three elements of chance, prize, and consideration are combined the result is a game of chance. Those that defend the term gambling argue that gaming is simply a euphemism, a chance to disassociate an activity from gambling, thereby making it more socially acceptable, even a strategic plan by the gaming industry to call gambling something other than what it is.

If you are looking to end the debate and come away with a better understanding of how the terms came into use, you will not find it here. Of the available source material, evidence abounds for both points of view but there is no definitive answer. According to the Oxford English Dictionary, gaming has a longer history in the English lexicon than the word gambling. A derivative or variant of game or gaming, the term gambling was born.<sup>3</sup> The American Gaming Association supports this origin. According to by James Philip Quinn and Thomas L. Clark, “While some people assume the word gaming was created as a way to “re-invent” the casino industry, history tells a different story. The word “gaming”—defined as the action or habit of playing at games of chance for stakes—actually dates back to 1510, predating use of the word “gambling” by 265 years. The words “gambler,” “gambling” and “gamble” all were considered slang when they came into use in the 18th century, implying that the activity involved unduly high stakes. The word “gamble” was essentially considered a term of reproach, according to The Oxford English Dictionary, and would only be used by those who “condemn playing for money altogether.”<sup>4</sup> One could argue that based on this analysis, the term gamble was a judgmental term used against those whose behavior appeared to be unseemly or played games for stakes.

Both the Associated Press Stylebook and the New York Times Manual of Style and Usage prefer gambling to gaming for clarity’s sake. Colloquially,

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2. “Let’s Call the Whole Thing Off,” Geroge and Ira Gershwin, 1937.

3. Cite to English Oxford Dictionary and Alexandra Franz-Harder

4. As quoted by the Columbia Journalism Review, quoting the OED, the book *Fools of Fortune* by James Philip Quinn, and *Dictionary of Gambling and Gaming* by Thomas L. Clark, [Place your bets - Columbia Journalism Review \(cjr.org\)](http://www.cjr.org/place_your_bets)

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there is no doubt that the term gambling refers to activities that take place when engaging in casino games.<sup>5</sup> The term gaming is much less clear when one must differentiate between skill-based games, social games, and esports, each of which, in addition to games of chance, bears the moniker of gaming.

With so many stakeholders using the term gaming in a variety of contexts to mean vastly different activities across various industries, confusion and misunderstanding around the terms will continue. Clarity will not come anytime soon. It seems that the best we can do is accept that games of chance can be referred to as gambling or gaming depending on the perspective of the stakeholder. In an effort to be clear, the title of this edition of the Ninth Judicial Circuit Historical Society's *Western Legal History Journal* is titled Gam(bl)ing. That way there can be no confusion, right? Maybe not, as for me, unless otherwise a term is specified by a stakeholder, I refer to games of chance, gambling, and gaming as gam(bl)ing in my introduction. The contributing authors do not use this term in their writings. It will be for you to ascertain which activities they refer to when engaging the terms gambling or gaming.

### **The Economic Impact of Gam(bl)ing**

Often misunderstood by those who don't live here, Las Vegas has been called "the brightest spot on earth," not because fortunes can be won, destinies changed, and the never-ending siren song of possibility, but rather because of the "millions of lights" found along the strip.<sup>6</sup> There is simply no other place like Nevada with its bright lights, promises of million dollar payouts, and billion dollar integrated resorts. Though Las Vegas and Nevada can be considered synonymous, one cannot forget Reno the "Biggest Little City in the World," or Wendover, Elko, Lake Tahoe, Pahrump and the multitude of tiny cities dotting the Nevada desert where locals and visitors alike come to spend their time and their money. The gaming and resort industry in Nevada accounts for more than 386,000 jobs, about one third of Nevada's workforce. With an economic impact of over US\$90 billion or "43% of the state's gross domestic product," gaming and hospitality are critical industries for Nevada.<sup>7</sup>

Tribal gam(bl)ing has grown from bingo halls in the 1970s<sup>8</sup> to commanding almost half of all gam(bl)ing revenue in the United States.<sup>9</sup> With

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5. [Place your bets - Columbia Journalism Review \(cjr.org\)](http://www.cjr.org)

6. [39 Interesting Facts About Las Vegas that May Surprise You | Golden Gate Hotel & Casino Las Vegas \(goldengatecasino.com\)](http://goldengatecasino.com)

7. [The Impact of Gaming in Nevada \(nevadaresorts.org\)](http://nevadaresorts.org)

8. [History | National Indian Gaming Commission \(nigc.gov\)](http://nigc.gov)

9. [The Economic Impact of Tribal Gaming: A State-By-State Analysis - American Gaming Association](http://american-gaming.org)

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more than 250 tribes involved in gam(bl)ing it is no surprise that tribal gaming supports over 1 million jobs nationwide.<sup>10</sup> Collectively Indian tribes own the majority of United States casinos, more than 500,<sup>11</sup> with commercial casinos accounting for 468 as of 2022.<sup>12</sup>

Nationwide, gam(bl)ing has an economic impact of US\$329 billion annually.<sup>13</sup> The gam(bl)ing industry is also a significant employer responsible for supporting 1.8 million jobs across the United States.<sup>14</sup> Forty-six states offer legal regulated gambling in casinos.<sup>15</sup> The repeal of PASPA spurred the largest expansion of legal regulated gambling the United States has seen in decades as several states rushed to cash in on the sports betting bonanza. Sports betting is currently legal and operational in 38 states, the District of Columbia and Puerto Rico with 6 more considering legalization either through legislative efforts or at the ballot box. When asked why sports betting legalization is happening so quickly, I respond, I am surprised it is taking so long.

### **The Destigmatization of Gam(bl)ing**

Legalized regulated gambling is no longer banished to a sparsely populated section in the Western United States desert, is not a fad, and is not in decline. Indeed, as lawmakers look for solutions to backfill budgets and pay for social programs, legalizing and expanding gambling offerings become more attractive and more mainstream. According to an annual Gallup poll on morally acceptable behaviors, 71% of Americans find gambling morally acceptable.<sup>16</sup> With such a high acceptance by the American people, the barriers for politicians to overcome regarding gambling expansion are almost inconsequential.

### **Regulating with Integrity**

What remains to be done? Regulate with integrity. Tony Dungy, an NFL head coach with a Superbowl Championship under his belt defined it this way: "Integrity is what you do when no one is watching; it's doing the right thing

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10. [Indian Gaming Association | To Protect & Preserve](#)

11. [Indian Gaming Association | To Protect & Preserve](#)

12. [Casino count US 2022 | Statista](#)

13. [American Gaming Association - American Gaming Association](#)

14. [American Gaming Association - American Gaming Association](#)

15. [American Gaming Association - American Gaming Association](#)

16. [Americans Say Birth Control, Divorce Most 'Morally Acceptable' \(gallup.com\)](#)

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all the time, even when it may work to your disadvantage.”<sup>17</sup> Integrity means having strong principles and values. Integrity also means having a firm unwavering commitment to ethical behavior. It is critical that gam(bl)ing operators have a robust regulatory framework with appropriate oversight to ensure integrity in gam(bl)ing operators.

Consider another type of integrity – regulatory integrity. In my view, this type of integrity has a specific meaning of its own. I define regulatory integrity as having the right types of guidelines, regulations, and policies in place coupled with a transparent accountability mechanism. The ideal is to have the right mechanisms in place to allow regulators to judge and address the behavior of those they regulate. A gaming license is a privileged license and those possessing a license must be held accountable to a standard. That standard should contain integrity such that there is no tolerance for variation within it.

Wanting to reinforce its already robust regulatory structure, the Nevada Legislature declared the state’s gam(bl)ing public policy to be:

NRS 463.0129 – Public policy of state concerning gaming; license or approval revocable privilege.

1. The Legislature hereby finds, and declares to be the public policy of this state, that:

(a) The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.

(b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming . . . [is] conducted honestly and competitively, that establishments which hold restricted and nonrestricted licenses where gaming is conducted and where gambling devices are operated do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, . . . and that gaming is free from criminal and corruptive elements.

(c) Public confidence and trust can only be maintained by strict regulation . . .

With the passage of the legislation, the concept of “strict” regulation in gam(bl)ing was born. Adopted and adhered to by jurisdictions around the globe, “strict” is the standard with which the United States regulated gaming

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17. [TOP 25 QUOTES BY TONY DUNGY \(of 153\) | A-Z Quotes \(azquotes.com\)](https://www.azquotes.com)

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industry complies. Sometimes despite being the articulated standard, strict regulation can be unwieldy and create unintended barriers.

While subsection (c) suggests that states that “public confidence and trust can only be maintained by strict regulation . . . there is nothing to suggest that smart regulation cannot also be “strict.” Smart regulation is visionary, adaptive to new situations, and includes a healthy dose of common sense. There is absolutely no reason smart regulation can’t be strict too. Integrity is a key component of smart regulation; in actuality there is probably even a higher degree of integrity in smart regulation! Some of the articles contained in this journal illustrate some of the absurdities of strict regulation and some show the application of smart regulation. It is left to reader to determine if strict and smart regulation are mutually exclusive or can be used collaboratively to guide a rapidly transforming industry.

### **Western Legal History Gam(bl)ing Edition**

I am particularly excited by the tremendous contributions from this edition’s authors. The topics are diverse as are the jurisdictions highlighted in the articles. Topic selection ranges from robust treatment of today’s pressing issues in gam(bl)ing, to historical reviews that provide insight into the formation of gambling policy, to witty anecdotes. Even the authors are incredibly diverse, from law students to seasoned gaming attorneys and former regulators. In short, there is something for everyone.

Michael S. Gilmore brings over 40 years of experience from the Idaho Attorney General’s office where he worked on a host of exciting issues and argued cases at both the state and federal level, including the United States Supreme Court. Mr. Gilmore continues to share his expertise as an adjunct law professor at the University of Idaho and through the Leavitt Institute. Mr. Gilmore’s article provides a comprehensive history of gambling law in Idaho from its territorial days to the present.

Riana Durrett served as the Executive Director of Nevada Dispensary Association (Association) where she transformed the Association into the primary regulatory and government affairs voice for Nevada’s cannabis industry. The Association has become the primary resource for best practices in the cannabis industry. Appointed to Nevada’s Cannabis Compliance Board, she serves as Vice-Chair. She is the newly appointed Director of the University Nevada Las Vegas (UNLV) Cannabis Compliance Board. Ms. Durrett describes the policy decisions that shaped the creation of Nevada’s Cannabis Control Board as Nevada established a robust regulatory structure based on its success in regulating gaming.

Javiera Sothers is a Juris Doctor candidate (2025) at the William S. Boyd School of Law at UNLV. Ms. Sothers tackles the fight for self-regulation and the survival of Indian gaming. She provides a fascinating overview of the origins of tribal gaming and how the Yavapai Indian community stood its

ground against the federal government to the collective benefit of the Arizona tribes and arguably all gaming tribes.

Jordan Hollander serves as a Deputy Attorney General for the New Jersey Division of Gaming Enforcement and is responsible for casino and employe licensing. He coordinates licensing application investigations in the casino and sports wagering industries and prosecutes violations of the New Jersey Casino Control Act. Mr. Hollander explains federal gaming law in the context of online gambling and legal regulated sports betting. This is an article one will want to refer to again and again.

Norm Brand has over 35 years of experience as an arbitrator and mediator in labor, employment, and pension cases. He has been named a "Super Lawyer" in Alternative Dispute Resolution for over a decade. Mr. Brand brings his wealth of experience as he traces the history of legalizing tribal casino gambling in California. He then assesses the different rules governing tribal labor relations contained in the California Compacts. Finally, he examines how the organization, negotiation of collective bargaining agreements, and the outcome of arbitrations under Union or Tribe agreements are affected by Compact labor relations provisions.

Sara Partida is an expert in data privacy law, government affairs, and public policy. She is an experienced corporate counsel currently working in the gaming industry where her work centers on data privacy issues. Ms. Partida discusses technological innovation from 1891 to the present. She explores the necessity of regulatory innovation to address new technologies and concludes her insightful article with a some thoughts on what the future holds.

Travis Studdard obtained his Juris Doctor from the William S. Boyd School of Law at University Nevada Las Vegas. He clerks full-time in the Eighth Judicial District Court for the Honorable Joe Hardy, Jr. in Las Vegas, Nevada. Mr. Studdard's article is a pure delight. Revealing little-known details about Wyatt Earp's stint as a boxing referee, readers will come away knowing a bit more about this larger-than-life legend and his impact on gambling in California.

Jason Pope serves as the California Gambling Control Commission's (Commission) Chief Counsel. Prior to his Chief Counsel role, Jason was a presiding officer and attorney for the Commission for over a decade. Mr. Pope has extensive experience regulating and licensing cardrooms, third party providers of proposition player services, and their employees under the California Gambling Control Act. Mr. Pope also has significant experience working with Tribal nations' gaming agencies on Tribal regulations, Compact findings of suitability, and compliance issues. Mr. Pope delves into the historical development of gambling in the State of California shining a light on the interplay between California Tribes, cardrooms, and horse racing tracks. A discussion of the tension between a desire for legal regulated sports betting and the illegal market provides the perfect conclusion.

Jennifer Roberts is a Vice President and General Counsel for WynnBET. She has the distinction of being a former gaming regulator in the first all mobile sports wagering jurisdiction in the United States – Tennessee. She has extensive experience representing gaming law clients from her time as a gaming attorney as is an adjunct law professor at William S. Boyd School of Law and the S. J. Quinney School of Law at the University of Utah. Ms. Roberts' article provides context for the necessity of regulatory compliance in gaming and why compliance programs are required by Nevada gaming regulators. She highlights the common elements that are central to all compliance plans and explains, "compliance programs help gaming companies stay out of trouble and help regulators from having to dedicate resources from limited budgets to monitor company activities."

John Maloney spent time as a former gaming regulator on two continents, having spent 8 years with the Nevada Gaming Control Board in the Investigations Division and 4 years with the Queensland Casino Control Commission in Australia. As a gaming attorney Mr. Maloney represents gaming operators, key employees, gaming manufacturers, gaming equipment distributors, and various investors domestically and internationally. Mr. Maloney is also co-chair of the international gaming law subcommittee at the American Bar Association. Drawing on his vast experience as a former gaming regulator, Mr. Maloney shares his thoughts about gaming regulation generally, what jurisdictions can do to streamline redundant processes, and how to maintain regulatory integrity. He leaves the reader with thoughtful questions that should be pondered in every gaming jurisdiction.

Andrea Ordin has spent a large portion of her career in public service: starting at the California Attorney General's office in 1966 (as part of the first "big" class of women in the class of 1965, when most private sector legal jobs were still closed for women, but government offices had opened their doors more widely); then as the Assistant District Attorney of Los Angeles County; as the United States Attorney of the Central District of California; and then back to the California Attorney General's office. She brings this lens and expertise to her article on the 1939 raid led by then California Attorney General Earl Warren to seize and dismantle the S.S. Rex, an offshore gambling ship operated by Tony Canero, a shadowy organized crime figure.

Dan Hartman is the former Director of the Colorado Division of Gaming where he served as chief regulator for 4 years. PASPA was repealed under Mr. Hartman's tenure and Colorado quickly became a leader in the legalized regulated sports betting market. Mr. Hartman reviews *The Business of Sports Betting*, a first of its kind textbook focusing on the various elements of conducting sports betting in a legal regulated environment.

## Conclusion

Whether you refer to this activity as gambling, gaming or gam(bl)ing, this edition of the Ninth Judicial Circuit Historical Society's Western Legal



History Journal will provide you with interesting insights and practical tips on how to navigate an innovative industry that continually reinvents itself and is sensitive to changing technologies. For the simply curious, I hope you enjoy the diverse array of articles provided here. Perhaps you find some inspiration, a little entertainment; but most of all, I hope you will come away with a better appreciation of the regulatory oversight requires to operate a casino, cardroom, sports book, or horse track.

In Spanish, *viva* can mean live, alive, hurray and cheer.<sup>18</sup> In English, *viva* is used to express goodwill or approval.<sup>19</sup> With almost 75% of Americans expressing approval for gambling, I can almost hear a quiet hum rising from the desert floor echoing Elvis' exultant shout, "Viva Las Vegas!" "Viva Las Vegas!"

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18. [What does viva mean in Spanish? \(wordhippo.com\)](http://wordhippo.com)

19. [Viva Definition & Meaning - Merriam-Webster](http://www.merriam-webster.com/dictionary/viva)

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