PREFACE

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History clearly shows that humans have gambled since the earliest stages of recorded time. Gambling in the colonies was widespread in prerevolutionary America. Lotteries were numerous and served as a way to fund governmental operations and institutions of higher learning. The initial endowments of schools like Yale, Columbia, and Princeton, can attribute their beginnings to lottery proceeds. Even George Washington was known to partake in games of chance. That our founders gambled should come as no surprise; they were bold in their vision and were certainly not risk averse.

Since the creation of our nation, the United States has experienced several waves of gambling expansion and retraction. These alternating waves portray a society that either viewed gambling as a matter of entertainment and government revenue enhancement, or recoiled at the societal and economic costs of the activity. Few would disagree that we are currently in the midst of a dramatic proliferation of gambling. Its growth in the United States includes the dynamic expansion of gaming on tribal lands. Moreover, gambling's ascendance is not confined to the U.S. Its global reach has broadened as technology has broken down many of the geographical barriers to gambling. Internet gambling, for example, is only a few keystrokes away.

It is with this background that the Drake Law Review and the International Masters of Gaming Law cosponsored a gaming law symposium on September 12, 2008, at the Drake Law School. The symposium focused on many of the current issues in gaming law. As an area of law worthy of discrete study, gaming law is relatively new to our jurisprudence. However, the range of issues examined in just one day was striking. This symposium issue includes only a sample of the diverse issues that were explored in both the presentations that were given and the papers that were submitted by the participants in this unique collaboration. Two presenters who have made substantial contributions to the literature of gaming law warrant special mention. Indeed, I. Nelson Rose, Professor of Law at Whittier Law School, and William Thompson, Professor of

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Business Law at the University of Nevada-Las Vegas, are two of the pioneers in gaming law. The Drake Law Review wishes to acknowledge their leadership in gaming law and thank them for helping to make the symposium a success.

One of the fastest-growing areas of gaming, if not the fastest, is Indian gaming. Two articles in this issue demonstrate the complex doctrinal and policy issues underlying this topic. Heidi Staudenmeier and Anne Bishop address the problems facing parties who find themselves defendants in a tribal court. Their article describes the entry of a default judgment by a tribal court against one of the leading gaming companies in the world, Harrah's. This judgment, exceeding $3 billion, arose out of a contract termination dispute involving plans for a tribal casino. Staudenmeier and Bishop describe the background of the dispute and the enforceability of the judgment. Their conclusion may not give comfort to Harrah's—or to other parties who ignore tribal proceedings.

Professors Steven Light and Kathryn Rand further explore Indian gaming by providing a retrospective on the twenty-year-old Indian Gaming Regulatory Act (IGRA). This law, designed to allow tribes to operate casinos and provide for tribal economic development while establishing a regulatory framework involving both federal and state governments, has helped some tribes achieve a modicum of success in their pursuit of economic self-sufficiency. But as Professors Light and Rand point out, no one could have foreseen that tribal gaming would become the multibillion-dollar industry that it is today. With this growth has come the increased politicization of Indian-gaming regulation. Their article traces the evolution of the IGRA and Indian gaming and makes cautious predictions about the future.

In addition to these two articles, the symposium was enriched by a presentation by Dennis Whittlesey of Dickinson Wright PLLC. He described the political struggle in Washington between regulators of Indian gaming in the Bureau of Indian Affairs and the Department of the Interior. Whittlesey suggested that with a new administration taking over, one can expect to see significant changes in the regulation of Indian gaming.

Not all casinos become success stories. Although the public may be shocked to learn that any casino is in financial distress, two high-profile casino operations entered bankruptcy proceedings in 2008. The economic crisis beginning in 2008 has shattered the notion that the gaming industry is "recession-proof." Because of states' heavy regulation of gaming, casino bankruptcy proceedings take on an additional element of complexity that is

usually absent from the typical bankruptcy reorganization proceeding. The article by Robert Stocker and Peter Kulick provides a practical framework for how the bankruptcy process interacts with state regulation of gaming and identifies the challenges the attorney must confront.

The common law definition of what activities constitute gambling varies from state to state. As the article by Anthony Cabot, Glenn Light, and Karl Rutledge demonstrates, it is not always easy to make meaningful distinctions between games that will be considered gambling and those that will not. Their article examines the definitions states use for games of skill and games of chance, highlighting the growth in games that have elements of skill. They propose that states adopt legal tests that are informed by mathematical evidence on the chance elements of an activity. Only by doing this can states develop consistent standards for analysis. The mathematical aspect of these issues was the topic of a fascinating presentation at the symposium by Bob Hannum, Professor of Mathematics at the University of Denver.

Both the Wire Act of 1961 and the Unlawful Internet Gaming Enforcement Act of 2006 regulate those in "the business of betting or wagering." But courts have not definitively decided what activities constitute "the business of betting or wagering." Ben Hayes and Matthew Conigliaro examine the background of both of these statutes, and conclude that businesses must actually make bets or wagers, thereby having a stake in the outcome of the bet or wager, in order to be in "the business of betting or wagering." Businesses engaging in commercial activity only tangentially related to gambling should be excluded from the definition. This is an important distinction, they maintain, if the statutes are to be read consistently with other federal laws.

One of the emerging issues in the gaming world is the application of state smoking bans to casinos. Ronald Rychlak's article analyzes the spirited public policy debate on this matter and the economic impact these bans might have on the gaming industry. His article frames the issue that was the topic of a panel discussion that focused on the Iowa Smokefree Air Act of 2008. The panel was moderated by Jack Ketterer, Administrator of the Iowa Racing and Gaming Commission. Participants included the following: Matt Gannon, Assistant Attorney General of Iowa, who has responsibility for enforcing the Act; Joe Massa, General Manager of Riverside Casino; and George Eichorn, an attorney who represents tavern and restaurant owners who claim the statute unfairly discriminates against them. The panelists discussed the Iowa law's exclusion of casino gaming areas from the list of sites where the Act applied and the litigation

challenging this provision. All agreed that this issue would continue to percolate in the Iowa legislature.

Lawyers representing gaming clients are faced with distinctive ethical challenges. Sean McGuinness of Lewis and Roca provided a thoughtful perspective on these issues from his vantage point as one who has been attorney, corporate counsel, and regulator. The Drake Law Review thanks him for enriching the symposium with his remarks.

The Drake Law Review enjoyed its partnership with the International Masters of Gaming Law in sponsoring the symposium and wishes to thank that organization for its many forms of support, including financial support. The Drake Law Review would also like to thank the others who helped contribute to the success of the symposium through their financial support:

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