

**Written Testimony of Donald W. Kleine**  
**Douglas County Attorney**  
**before the**  
**House Committee on Oversight and Government Reform**  
**“A Casino in Every Smartphone: Law Enforcement Implications”**  
**December 9, 2015**  
**2154 Rayburn House Office Building**

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Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee, thank you for giving me the opportunity to speak today about the challenges of local law enforcement in protecting our most vulnerable citizen from the dangers that lurk in the realm of online gambling. My name is Donald W. Kleine and I am the County Attorney for Douglas County, Nebraska, which encompasses Omaha and much of its metro area, and is home to over one-fourth of Nebraska’s residents.

As this Committee knows, prior to 2011, the Department of Justice (DOJ) interpreted the Wire Act<sup>1</sup> to prohibit wagering of any kind over interstate telecommunications, including the Internet. The Wire Act essentially served as a federal prohibition on online gambling. In 2011, DOJ revised its long-standing interpretation of the Wire Act to only apply to wagers placed on sporting events, opening the door to online gambling in the states without any input from law enforcement.

The FBI has warned Congress that online gambling is uniquely vulnerable to criminal activity, but DOJ’s dismantling of the Wire Act eliminated the risk of federal prosecution for online gambling. This left policing of online gambling to state and local officials with limited resources.

For example, my office has an annual budget of approximately eight million dollars. We have fifty-six attorneys dedicated to prosecuting approximately 3500 felonies that occur within Douglas County. Our office is largely focused on violent crimes, rather than online gambling. Moreover, while some violations of Nebraska’s anti-gambling laws are felonies, many are misdemeanors, making it even more difficult to devote precious resources to enforcement.

In addition to the limited resources available for enforcing the law, prosecution of gambling laws is especially difficult given that online gambling is inherently interstate and often has international implications. It has been my experience that law enforcement issues concerning in-person casino gambling are, for the most part, contained within the general vicinity of the gambling establishment.

But online gambling easily crosses domestic and international borders and can often be accessed by anyone with Internet access. Several countries have legalized online gambling and companies house servers that are accessible to people outside the host country. The primary companies operating these online gaming sites are massive foreign companies against whom it would be

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<sup>1</sup> 18 U.S.C. § 1084 (2006)

nearly impossible for my office to bring charges. These companies recognize that criminal prosecution by local officials would be very difficult which creates even more opportunities for these companies to defraud players and launder money for much more dangerous operations.

Even more troubling are the risks beyond illegal gambling associated with many online gambling sites. Credit card fraud, identity theft, and other financial crimes can occur when players disclose information that should be kept secure. Unlike other licensed and regulated activities, Internet gamblers often do not know who is operating the gambling site, if the games are honest, if winnings will be paid, or if the money wagered will be used for criminal purposes. Once an individual chooses to engage in online gambling activities, there are few remedies should they fall victim to a dishonest site.

The anonymous, virtual nature of online gambling also increases opportunities to gamble more frequently. As county attorney, I have prosecuted numerous crimes stemming from gambling issues, including white-collar crimes involving significant sums of money to neglect cases from parents not caring for their children due to gambling issues. Easy access to gambling is particularly dangerous to young people, who are two to three times more likely to develop a gambling problem. The Mayo Clinic compares the physiological impact of gambling to the impact drugs have on the brain's reward system. From a mental and emotional perspective, pathological gamblers are at increased risk to develop stress-related conditions, major depressive episodes, anxiety disorders, or substance abuse issues. Compulsive gambling also can lead to financial loss, increased crime, lost time at work, bankruptcies, strained relationships with family members, and even homelessness.

Finally, online gambling activities are extremely difficult to monitor because users can remain largely anonymous. Law enforcement often has limited tools to identify who is gambling illegal and from where they are engaging in the unlawful activity. Any smartphone, tablet, or laptop can be a vehicle for online gambling and it is virtually impossible to pinpoint players who sign on from isolated networks.

Members of the Committee, thank you for the opportunity to share my concerns with you today regarding the dangerous consequences of online gambling and the resources required to support a state-by-state regulating scheme. Law enforcement is charged with protection of our most vulnerable of citizens, but we cannot be expected to accomplish this monumental task alone. We need the important resources and expertise of the FBI and federal law enforcement to ensure those online gambling companies preying on our citizens are brought to justice.



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Donald W. Kleine was elected Douglas County Attorney in November, 2006. He was re-elected in November, 2010 and again in 2014. From 2003 to 2006 he was the Chief of the Criminal Bureau with the Nebraska Department of Justice. Prior to 2003, he served as the Chief Deputy Douglas County Attorney.

In his years of service as a Prosecutor, Don has tried many of the high profile criminal cases for Douglas County; State v. Christopher Edwards, which was the first jury trial in Nebraska where a murder conviction was obtained without the victim's body; State v. Roy Ellis, wherein after missing for six months, 12 year old, Amber Harris was found buried in Hummel Park, and State v. Arthur Lee Gales wherein Gales was convicted of two counts of 1<sup>st</sup> degree murder for the deaths of children Latara and Tramar Chandler. Most recently he handled the trial of Tracy Parnell in the shooting death of sixteen year old Arianna Carr. He has also had convictions on several serial rapists in Douglas County.

Don is on faculty at the Creighton University School of Law teaching Trial Practice and Criminal Prosecution. He serves on the Board of Directors for Project Harmony, (the Omaha metro area Child Advocacy Center), the Nebraska Supreme Court Subcommittee on Criminal Jury Instructions, and is a member of the Board of Directors of the Nebraska County Attorney's Association of which he is a past president. He is also on the National District Attorney's Association National Board of Directors and he is on the advisory board for Nebraska Organ Recovery. He has also been named a Fellow in the prestigious American College of Trial Attorneys.

Prior to becoming Chief Deputy County Attorney in 1991, he was in private practice with an emphasis on civil litigation and criminal defense. He graduated from Creighton University School of Law in 1977.