

# Op-Ed/Editorials - Nevada Supreme Court Orders Casino To Pay Card Counter

October 18, 2000

Professor I. Nelson Rose

Whittier Law School

Costa Mesa, CA.

On March 9, 2000, the Nevada Supreme Court ruled, 3 - 1, that the Monte Carlo Casino in Las Vegas had to give Richard Chen the \$40,400 he won by counting cards at blackjack.

The Opinion marks a turning point in the increasingly nasty war between casinos and card counters. But, in the long run, it may not be the good news it appears to be for professional players.

Although there were a few isolated earlier skirmishes, the battle began in earnest in 1962, with the publication of *Beat The Dealer* by Edward O. Thorp, Ph.D. Thorp, a mathematical genius, is considered a saint by devoted practitioners of the art of card counting. Casino owners and managers view him in quite a different light: not exactly the Devil incarnate, but certainly closer to the Godfather than to God.

From the objective view of the law, if there is such a thing, card counters are merely players who have enough skill to beat casinos at their own game. This does not mean the law is always going to be on the side of the players. Casinos, like most other businesses, in general have the right to exclude anyone, so long as they are not discriminating on the basis of race, gender etc. (In New Jersey, the Supreme Court ruled that the state's control of Atlantic City's casinos is so complete that only government regulators have the power to make rules to exclude skillful players).

The problem for card counters is that the law never remains an outside, objective dispenser of justice. In Western democracies, laws are not handed down as the word of God (as interpreted by high priests), but are made by human beings. Casinos are much better at playing politics than any group of gamblers.

A close look at the Chen decision shows how precarious the legal rights of card counters actually are.

Chen used a fictitious Burma passport to obtain \$44,000 in chips. By the time he had accumulated a total of \$84,400, it was discovered that he was a known card counter. So, the Monte Carlo refused to pay and called in the Nevada Gaming Control Board.

After two investigations, an agent of the Board told the casino it could give Chen the full \$84,400. But the casino gave him only his original buy-in, kept his winnings, and filed a petition for reconsideration with the Board.

Notice how the regulatory system works in Nevada. Even though the Board's agent found that Chen did nothing illegal, it did not order the casino to pay. The regulators merely said the casino could pay the player if it wished.

The full Board decided that Chen had committed a fraud on the Monte Carlo, so he could not collect. Strike one against the player.

Chen appealed the Board's ruling to the state district court. A player does not get anything like a full trial in a case like this, and the grounds for reversal are extremely limited. Courts can only overturn an administrative decision if the Board's action was "arbitrary, capricious, or contrary to law."

So, the district court ruled in favor of the Board. Strike two against the player.

Chen had the money to appeal to the State Supreme Court, where he hit his home run, winning 3-1. But, he could just have easily lost. Three of Nevada's seven justices voluntarily recused themselves, meaning they did not take part in the decision, apparently because they were part owners of casinos themselves.

Justice Miriam Shearing wrote the opinion, pointing out that the casino asked for a player's identification when more than \$10,000 in cash is involved not to detect card counters, but because it is required to do so by the government, to prevent money laundering. Although Chen lied, he did not commit a crime. And he won at blackjack because he could count cards, not because he presented a phoney I.D.

Change the facts or law slightly, and the player would be in big trouble. For example, using a phoney Burmese passport is not against the law, but making a false statement on a U.S. passport can get you five years in federal prison.

Justice Bill Maupin dissented. He would have upheld the decision of the Board not

only because courts give great deference to administrative rulings, but also because he felt Chen's fraud made it possible for him to obtain large denomination gaming tokens.

More frightening is the language Maupin used. For example, he stated, without being contradicted, "Gaming establishments have the unquestioned right to protect themselves against so-called 'card counters' who have developed expertise in the game of 'blackjack.'"

Maupin is echoing statements made by courts and regulators in New Jersey. Card counters on the East Coast won the first court battles, but lost the later political wars.

Atlantic City casinos have convinced judges and regulators that they need to employ counter-measure against the counters if the industry is to survive. So casinos cannot legally kick out skillful players, but they are allowed to openly discriminate against anyone they suspect of card counting.

The New Jersey Supreme Court has upheld regulations which limit a particular player to play only a single hand at a time out of an eight deck shoe, with a \$100 maximum bet, while all other players at the same table can bet \$1,000 each on multiple hands.

How will Nevada law-makers react to the Chen decision? Easy - they will simply change the law.

Chen got his money because he did nothing illegal. Although Nevada Regulation 6A requires players to show I.D. when they buy in for more than \$10,000 cash, there is nothing in the regulation making it a crime to show a phony I.D.

I predict that little loophole will be closed before the "virtual ink" in this magazine is dry.