

**Practical Perspectives on
Gambling Regulatory Processes
for Study by Japan: Eliminating
Organized Crime in Nevada
Casinos**



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Practical Perspectives on Gambling Regulatory Processes for Study by Japan: Eliminating Organized Crime in Nevada Casinos

Introduction

This document provides a research-based overview by the UNLV International Gaming Institute (IGI) and International Center on Gaming Regulation (ICGR) on how the threat of organized crime in the casino industry has been successfully addressed via regulatory, legal, and industry self-policing measures. It is important to note at the outset that the elimination of organized crime in Nevada casinos has contributed to unprecedented success in Las Vegas, as integrated resorts have thrived with support from global banks and investment companies in a manner that would be impossible with any organized crime association. Just as importantly, this elimination has led to widespread public acceptance of an activity, gambling, that used to be highly stigmatized in the United States – in a manner familiar to observers of current-day Japan. Today, as a direct result of this effort, Las Vegas tourism is at an all-time high, with more than 42 million visitors to the city last year.¹

As Japan embarks upon a new era of regulated casino gaming, our research goal in this report is to provide a thorough review of how Nevada contributed to and dealt with the elimination of organized crime from its tourism industry, and how successful these measures were in promoting a flourishing travel destination.

Report Contents

The report opens with an introduction to the legalization of casino gaming in Nevada that includes an overview of the initial revenue-focused regulatory structure, as well as the evolution to the current system that emphasizes suitability standards. This section describes the rise and downfall of organized crime with discussion on how highly-publicized cases helped positively contribute to the modern gaming regulatory system. This section also includes an analysis of the policy reasons that guide current regulatory structures.

Next, the report details the intensive gaming licensing process and disciplinary procedures that are highly effective barriers to organized crime. This section discusses casino compliance programs that help protect against money laundering and other criminal risks, and analyzes the regulatory oversight of junket operators and VIP gaming rooms in both Nevada and Singapore, thereby providing insights into why there are few organized crime concerns in these gaming jurisdictions. This section closes with a discussion on how the Nevada experience has (and has not) been applied in other domestic and international jurisdictions with historical mob-influenced markets.

¹ Las Vegas Convention & Visitors Authority, Historical Las Vegas Visitor Statistics, available at <http://www.lvcva.com/includes/content/images/media/docs/Historical-1970-to-2016.pdf>.

Finally, a conclusion and recommendations section applies both of these reviews to the unique case of Japan, with particular focus on how policy decisions on relevant topics (including licensing and other key variables) can underpin a well-designed regulatory system.

Historical Review of the Legalization of Casino Gaming in Nevada

The expansion of commercial casino gaming within the United States (as well as internationally) is a relatively recent phenomenon. Although unregulated gaming has been documented throughout the United States for hundreds of years, the images of such “underground” activities are often portrayed as card games in saloons or smoke-filled poker games operated behind closed doors for which a secret knock is required to gain entry. Just last year, however, archaeologists unearthed what might have been the first casino in America by discovering more than 17,000 ancient tribal gambling game pieces in Utah that dated back about 800 years.²

Further, gambling has historically been part of the public landscape in America, with several variations of legalized lotteries existing as early as when European settlers established the original colonies. In fact, lotteries were used to help construct Washington D.C., to help establish Harvard University, and to help fund the Revolutionary War. With various bouts of legalization followed by prohibition, the modern lottery was re-introduced in 1964 and now operates in 44 of the 50 states.

Gambling Legalization in Nevada – The (Not So) Wild West

The first state to legalize commercial casino gaming was Nevada in 1931. Nevada had periodically attempted to legalize commercial gaming prior to 1931. Even prior to becoming a state, gambling was offered to persons traveling through the territory,³ including those who may have been heading to San Francisco for the historic “gold rush.” Well into the twentieth century, most of the gambling activities, whether legal or illegal, were centralized in northern Nevada rather than the southernmost jurisdiction of Las Vegas, where the majority of gambling occurs today.

In 1861, the territory of Nevada passed strict legislation making it a felony crime to operate gaming.⁴ Despite this, gambling remained a part of the status quo within the community.⁵ Then, in 1864, while gambling operations continued to exist illegally in the newly-established state, Nevada added to its state constitution a prohibition against the state authorizing a lottery or the sale of lottery tickets.⁶

The following year, the Nevada State Legislature attempted to legalize gambling and create a licensing system for operators, but it was vetoed by state Governor Henry G. Blasdel who was

² Becca Stanek, *Archeologists discover 800-year-old ‘casino’ in Utah*, The Week (Dec. 18, 2015), available at <http://theweek.com/speedreads/595097/archaeologists-discover-800yearold-casino-utah>

³ Legalized Gambling in Nevada: Its History, Economics and Control, Nevada Gaming Commission & State Gaming Control Board, at 7 (1963)

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

morally opposed to gambling.⁷ But, in 1869, the Legislature overrode the governor's veto and once again legalized gambling.⁸ Under this system, gaming operators would pay a quarterly license fee and there were very few restrictions, except for persons under age 17.⁹ Gambling particularly flourished in Virginia City, Nevada, located in the northern part of the state near Reno and Lake Tahoe, with 49 gambling saloons operating in 1878.¹⁰

Gambling remained legal under this limited structure until 1909, when pressure from anti-gambling groups resulted in a law that gave establishments 18 months to close their doors or face felony prosecution.¹¹ However, that didn't eliminate the presence of gambling.¹² Although the law was amended six years later to permit small-stakes wagering for drinks, cigars, or prizes worth up to USD \$2, full-scale gambling persisted and the prohibitions were rarely enforced.¹³

Nevada recognized that legalizing a full array of gaming activities would both hamper the illegal market and bring in tax revenue. During the late nineteenth century, Nevada and many other states suffered from extensive political corruption caused by bribery and lobbying by such industries as mining and railroads, as well as a variety of illegal activities in its mining camps.¹⁴ To avoid making matters worse, "Nevada also wanted to avoid the pitfalls of political corruption that came with a flourishing underworld of illegal gambling."¹⁵ Nevada recognized that legalizing a full array of gaming activities would hamper the illegal market, while bringing in tax revenue.¹⁶

Nevada's Wide-Open Gambling Bill

Frustrated with rampant illegal gambling operations and "lack of regulation," in 1931, a representative from a small, rural county in Nevada proposed a "wide-open gambling bill" before the Nevada State Legislature.¹⁷ Although there was significant opposition to the proposed legislation, the bill was signed into law on March 19, 1931.¹⁸ The law did little in the form of regulation, but did authorize "all forms of gambling including bookmaking [horse racing] and sports betting."¹⁹

The new gaming law required that taxes and fees be collected at the local county level,²⁰ which was overseen by the local law enforcement agency. However, the local police did not perform

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Id.* at 9.

¹⁰ "A Marvelous Book, Territorial Enterprise" (Feb. 26, 1878) at 2.

¹¹ *See supra* n.3 at 10.

¹² *Id.*

¹³ *Id.* at 10-11.

¹⁴ *See* Leslie Nino Fidance, "The Mob Never Ran Vegas," *GAMING LAW REVIEW & ECONOMICS*, Vol. 13, Number 1 at 1 (2009).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See supra* n. 3 at 11.

¹⁸ *Id.*

¹⁹ Jerome H. Skolnick, "House of Cards: The Legalization and Control of Casino Gambling" 108 (1978).

²⁰ *See supra* n. 3 at 11.

background reviews or analyze the suitability of gaming operators. Although there were prohibitions on operating gaming without a license and against cheating, local law enforcement primarily collected gaming taxes and issued licenses.²¹

Under this localized system, however, the state did not have any control over gaming or enforcement of regulations, even though there were state prohibitions for operating without a license and cheating.²² In addition to concerns about this situation, Nevada leaders realized that the growth of the 1930s and 1940s, and the anticipated growth that would follow the end of World War II, meant the state could benefit from additional revenues.²³ Therefore, in 1945, the Nevada State Legislature tasked the Nevada Tax Commission with creating rules and regulations over gaming.²⁴ This led to the granting of authority for certain employees of the Nevada Tax Commission to have police powers, including arresting authority and the ability to access records and financial statements.²⁵ Meanwhile, gambling operators in Reno, Nevada, looked to distinguish themselves from illegal gambling operators and entrepreneurial crime figures by legitimizing gambling on a moral basis in addition to their legal, regulated status.²⁶ They did this by making sure the gambling rooms could be seen in full view from city sidewalks, “creating the impression that there was nothing to hide.”²⁷

Developing The Strip – The Mob Moves In

In the southern part of the state of Nevada, with the engineering marvel Hoover Dam suddenly evolving into a major attraction after construction began in 1931, the leaders of Las Vegas welcomed those who were willing to invest to boost tourism and the local economy.²⁸ This meant that when reputed mobsters began entering the local casino business – especially when Benjamin “Bugsy” Siegel opened the Flamingo Hotel & Casino in 1946, local officials and citizens accepted it without major pushback.²⁹ Even Nevada’s Lieutenant Governor recognized that “undesirables” were heading some of the casinos and concluded that “as long as they conduct themselves properly ... I think no harm comes of it.”³⁰ Indeed, if notorious persons and illegal gambling operators were not permitted to run the casinos in those early days, the gaming industry as we know it (and likely Las Vegas itself) would have ceased to exist.³¹ These figures brought “the funds and skills required for the more sophisticated [gaming] industry” to be

²¹ *Id.* at 11-12.

²² *Id.*

²³ *See supra* n. 14 at 27-28.

²⁴ *See supra* n. 3 . at 12.

²⁵ *Id.*

²⁶ John M. Findlay, “People of Chance: Gambling in American Society from Jamestown to Las Vegas” 118-20 (1986); *see also supra* n. 19.

²⁷ *See supra* n. 19 at 109.

²⁸ Mary Ellen Glass, “Nevada’s Turbulent 50s,” University of Nevada Press (1981) at 26-27.

²⁹ *Id.* at 27; *see also* Ronald A. Farrell & Carole Case, “The Black Book and the Mob,” University of Wisconsin Press (1995) at 23.

³⁰ *See supra* n. 14 at 28.

³¹ *See supra* n. 28 at 27..

developed³², especially because banks and other public financing groups refused to loan money or invest in casinos.³³ According to gaming research pioneer and father of the gambling research discipline, William R. Eadington, “[t]hrough the industry was distinguished by high profits and economies of scale, it lacked access to mainstream sources of financial capital through either debt or equity markets, and therefore had to rely on creative, sometimes questionable, source of financing in order to expand.”³⁴

Despite the Nevada Tax Commission’s increased powers, organized crime still had a presence in Nevada casinos, and the costs borne by the state were massive. During these difficult times, Nevada lost millions in revenues from skimming operations that took as much as \$7 million per year from just one casino, which was pocketed by organized crime members on the other side of the country.³⁵ Allowing operators of illegal gambling businesses outside of Nevada to legally operate casinos within Nevada may have exacerbated the problem.³⁶

Importantly, however, the organized crime presence in Nevada casinos was not itself organized, as there was no single organized crime enterprise that ran a majority of the casinos.³⁷ Rather, “there was a loosely-defined group of individuals with various degrees of involvement and ties to organized crime.”³⁸ And even with such affiliations, some gambling operators chose to conduct business within the confines of the law and regulations, deciding that it was better to follow the rules than risk being shut out of the industry.

In 1953, the Nevada Legislature decided to establish the qualifications for obtaining a gaming license.³⁹ Quite minimally, “automatic” disqualifiers included: (1) conviction of a felony, larceny, narcotics violation, or firearms violation within the past five years; (2) being under 21 years of age; and (3) being a non-citizen/foreign person.⁴⁰ Most notably, conviction for a gambling offense was not a disqualifier for gambling licensure.

A Turning Point – The Kefauver Hearings and Aftermath

Around this same time, a “politically ambitious” United States Senator from Tennessee, Estes Kefauver, began to hold Congressional hearings across the country – in 14 cities⁴¹ – as part of a U.S. Senate Special Committee to Investigate Crime in Interstate Commerce targeting organized crime activities.⁴² Because he was concerned about the presence of organized crime in Nevada

³² See Farrell & Case, n. 29 at 22,

³³ William S. Boyd, *Foreword*, NEVADA GAMING LAWYER 3 (Sept. 2016).

³⁴ William R. Eadington, *The Economics of Casino Gambling*, 13 J. ECON. PERSP. 173, 175 (1999).

³⁵ J. Patrick Coolican, “Was life really better when the Mob ruled Las Vegas?” Las Vegas Sun (Feb. 20, 2012).

³⁶ See *supra* n.14 at 28.

³⁷ *Id.* at 39.

³⁸ *Id.* (citing David G. Schwartz, *Vegas and the Mob: The Real Story*, CASINO CONNECTIONS NEVADA, Mar. 2008 at 27).

³⁹ Lionel Sawyer & Collins, NEVADA GAMING LAW: THE AUTHORITATIVE GUIDE TO NEVADA GAMING LAW 56 (3d Ed. 2000)

⁴⁰ *Id.*

⁴¹ See *supra* Farrell & Case, n. 29 at 24.

⁴² Jeff German, “From Siegel to Spilotro, Mafia influenced gambling, regulation in Las Vegas,” L.V. Rev. Journal (Mar. 9, 2014)

casinos, Senator Kefauver held one of those hearings in Las Vegas on November 15, 1950.⁴³ It is difficult to overemphasize the importance of these hearings in forever transforming the landscape of Las Vegas – and the global gaming industry.

The Kefauver Committee called several witnesses with alleged ties to organized crime to testify.⁴⁴ One of the conclusions from the Committee hearings was that Nevada’s existing gaming licensing system within the Tax Commission failed to adequately keep unsavory characters out of the industry.⁴⁵ As impetus, Kefauver and other anti-gambling politicians were keen for the federal government to impose a 10% tax on wagering,⁴⁶ which would have been devastating to Nevada’s industry.

To keep these federal threats at bay, the state of Nevada committed to a stronger regulatory system that would focus on the suitability of individuals who could operate casinos. An additional public spotlight on organized crime contributed to this goal: revelations in a Las Vegas newspaper that organized crime figures owned hidden interests in several local casinos and had never been licensed. The Nevada State Gaming Control Board was created in 1955 to serve as “the enforcement and investigative unit” of the Nevada Tax Commission.⁴⁷ Thus, the Gaming Control Board, to this day a globally respected body, came into being – in some ways – because of organized crime, in order to remove the “unsavory” elements that existed in Nevada casinos.⁴⁸ At the same time, the Nevada State Legislature set out the public policy for having regulated gaming by deeming the operation of gaming to be a “revocable privilege” that would be “licensed and controlled so as to protect the public health, safety, morals, good order and general welfare” of those in the state.⁴⁹

Almost immediately thereafter, the judiciary began to validate the authority of gaming regulators to remove unsavory persons from the state’s gaming industry. In the 1957 case of *Nevada Tax Commission v. Hicks*⁵⁰, the Nevada Supreme Court evaluated the suspension of two gaming licenses by the Nevada Tax Commission. The court concluded that the determination of suitability was a matter reserved for the expertise of the Nevada Tax Commission and that it was not the role of the courts to evaluate such decisions.⁵¹ Further, the court recognized the important responsibility of the gaming regulators to keep out crime by noting:

Organized crime must not be given refuge here through the legitimatizing of one of its principal sources of income. Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by

⁴³ *Id.*

⁴⁴ *See supra* n. 28 at 24.

⁴⁵ *Id.* at 25.

⁴⁶ *See id.* at 32.

⁴⁷ *See supra* n. 35.

⁴⁸ *Id.*

⁴⁹ *See* NRS 463.0129 (1955)

⁵⁰ 73 Nev. 115 (1957)

⁵¹ *Id.* at 122.

gambling beyond our borders. If this is to be accomplished not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized.⁵²

Two years later, the Nevada Gaming Commission was created in order to relieve the administrative burden of overseeing the industry carried by the Tax Commission, and to further insulate gaming regulation from political pressures.⁵³ As a result, Nevada established a two-tier gaming regulatory system, whereby the Nevada Gaming Control Board, made up of three full-time members, oversaw the hundreds of staff members representing various functions of the agency – audit, technology, investigations, enforcement, administration, tax and license – and made recommendations on licensing matters and served in a prosecutorial function on others. The second tier was the Nevada Gaming Commission, a Governor-appointed civilian body, consisting of five part-time members, which served as final authority on licensing matters and adjudicator on other issues.

During this period, then-Governor of the State of Nevada, Grant Sawyer, the “father of modern gaming regulation,” issued a public statement on its new “Get tough and stay tough” approach to the gaming industry.⁵⁴ It read, in part:

It is essential that exhaustive investigations be conducted as to present licensees in order to be as certain as humanly possible that criminal elements, mobs, or syndicates have neither interests nor control of existing businesses. New applicants should be most carefully screened as to background with particular emphasis on criminal or mob associations.⁵⁵

Certainly, this stance by Governor Sawyer was necessary in order to stave off threats of federal government interference and “raids” of Nevada casinos because the United States Attorney General at the time, Robert Kennedy, saw gambling as central to the spread of organized crime.⁵⁶ In 1961, the Governor learned of a “federal strike force that was being put together to invade every major casino in Reno and Las Vegas.”⁵⁷ Governor Sawyer and his state attorney general, Roger D. Foley, visited Washington, D.C., and were able to stop the raid. Despite federal wiretaps and an increased interest in a Department of Justice shutdown of Nevada casinos, the gaming industry continued to expand in Nevada.⁵⁸

Under Governor Sawyer’s new administrative standard to “hang tough,” the Nevada Gaming Control Board began circulating a list of “undesirables” to Nevada casinos with a warning that

⁵² *Id.* at 119.

⁵³ *See supra* n. 35.

⁵⁴ *See supra* n. 3 at 13.

⁵⁵ *Id.* at 12.

⁵⁶ *See supra* n. 42 (quoting David Schwartz)

⁵⁷ “Hang Tough! Grant Sawyer: An Activist in the Governor’s Mansion,” University of Nevada Oral History Program (1993) at 89.

⁵⁸ *Id.*

persons on the list were not to frequent their establishments or else their gaming license was at risk of being revoked.⁵⁹ Thus, in 1960, the famous “Black Book” was created by Nevada gaming regulators.⁶⁰ Formally known as the List of Excluded Persons, the first list contained the names of 11 persons with ties to organized crime families.⁶¹ Those on the list were banned from all Nevada casinos.⁶²

Probably unanticipated by these early supporters of strict regulation was a phase that ushered in modern Las Vegas, a record-breaking and globally-popular tourist site. Indeed, without this period that “cleaned out” organized crime elements, the city would never have begun to generate the desirable tourism metrics it does today.

Nevada’s Corporatization Phase

Only a few years after the Black Book and the aborted raid, Howard Hughes, a reclusive billionaire businessman, started purchasing casinos in Las Vegas, including those run by criminal organizations.⁶³ Notably, Hughes brought in a new generation of leaders, introducing business school graduates to operate the casinos and implementing a bottom line profit-motive.⁶⁴ This was the beginning of corporate America’s entrance into the gaming industry and the emergence of casino gaming as a legitimate form of business. Then, in 1969, the Nevada State Legislature amended the state’s gaming laws to allow corporations and similar business entities to obtain casino gaming licenses; until then, every individual owner of a share of a casino had to be licensed, making corporate ownership impossible.⁶⁵ These laws have since been expanded to allow for private equity financing; casino ownership, whether directly or indirectly, by publicly-traded corporations; and investment and financing by banks, insurance companies, pension funds, mutual funds, and other public options.⁶⁶

Meanwhile, the suitability standards required to operate a gaming establishment increasingly became a barrier to entry for criminal organizations wishing to commence business in Nevada gaming. In 1975, the Nevada Gaming Commission adopted a regulation, pursuant to authority given to it by the Nevada State Legislature,⁶⁷ requiring that a person, in order to obtain a gaming license and in addition to the existing minimal qualifications for a license, demonstrate to the satisfaction of the Nevada Gaming Commission that they are (1) “a person of good character, honesty, and integrity;” (2) “a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry;” and (3) a person

⁵⁹ *See supra* n. 3 at 12.

⁶⁰ *See supra* n. 42.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ “Gaming Regulation in Nevada: The Second Sawyer Administration as remembered by Guy W. Farmer,” University of Nevada Oral History Program (2006) at 42.

⁶⁵ *See supra* n. 42.

⁶⁶ *See generally* NRS 463.482 to 463.645; NGC Regulations 15, 15A, 15B, 15C, and 16.

⁶⁷ NRS 463.150.

with “adequate business competence and experience for the role or position for which application is made.”⁶⁸

Remnants of the Mob and Frank “Lefty” Rosenthal

Although the modernized regulatory regime, enhanced suitability standards, and the Black Book were significant tools for keeping new organized crime groups from entering into the gaming industry, mob associates from the early days continued to linger in casino operations in the 1970s and 1980s. During this time, Frank “Lefty” Rosenthal became a consultant to the Chairman of Argent Corporation, which operated 4 casinos in Las Vegas, including the famed (and now imploded) Stardust.⁶⁹ Frank Rosenthal was alleged to be tied to organized crime and was a known public figure in Las Vegas who, at one time, hosted his own television show. More importantly, however, Rosenthal played a significant role in shaping and solidifying the Nevada gaming regulatory scheme.

Rosenthal’s early career involved a history of professional gambling and illegal bookmaking throughout various cities in the United States before landing in Las Vegas in 1967.⁷⁰ As a result, he had a series of gambling arrests and was even barred from racetracks in Florida.⁷¹ It was discovery of these arrests through communications with the Federal Bureau of Investigation, allegations of bribing college athletes to fix games, and suspected ties to organized crime members that led the Nevada Gaming Commission to mandate that Rosenthal appear for an investigative hearing on whether he was acting in a capacity with “significant influence over Argent Corporation,”⁷² which would require him to be found suitable. After two days of hearings, the Nevada Gaming Commission ordered Rosenthal to submit a gaming license application.⁷³

During the hearings on the gaming license application, the Nevada Gaming Control Board explained to Rosenthal:

[C]ertain questions regarding your past and your background have been brought up, and the burden is your[s] to come forward and tell us that those items are true or explain how they could have arisen.⁷⁴

It was also during this time that the Nevada regulators learned of money skimming operations at Argent gaming properties.⁷⁵

⁶⁸ NGC Regulation 3.090.

⁶⁹ Kirk D. Homeyer, “Jeffrey A. Silver: The Man Who Exiled Frank ‘Lefty’ Rosenthal from Nevada Gaming,” 4 UNLV GAMING L.J. 73, 78 (Spr. 2013).

⁷⁰ *Id.* at 77.

⁷¹ *Id.* at 82.

⁷² *Id.* at 78; *see also State v. Rosenthal*, 93 Nev. 36, 39, 559 P.2d 830 (1977)

⁷³ *Rosenthal*, 93 Nev. at 40.

⁷⁴ *See supra* n. 69 at 93.

⁷⁵ *Id.* at 80.

Upon Rosenthal's failure to provide adequate evidence to support a finding of suitability, the Nevada Gaming Control Board recommended denial of Rosenthal's gaming license, which was a decision then unanimously made by the Nevada Gaming Commission.⁷⁶ In its ruling, the Commission concluded that Rosenthal was "'a person whose licensing by the State [of Nevada] would reflect or tend to reflect discredit'" upon the state. This prompted the beginning of a series of court cases filed by Rosenthal to challenge the Nevada gaming system.

In his first challenge to the gaming authorities, Rosenthal alleged to the state court that the Commission decision was "arbitrary and capricious" and violated his constitutional rights.⁷⁷ Although the lower court nullified the Commission's decision, the Supreme Court of Nevada reversed that decision and upheld the Commission ruling.⁷⁸ The court acknowledged that "gaming is a matter of privilege conferred by the State rather than a matter of right" and that gaming is a specialized matter for qualified gaming regulators to oversee without court intrusion.⁷⁹ The court also noted that since gaming investigative hearings or licensing decisions were not equivalent to criminal proceedings, but rather were administrative processes, hearsay testimony could be relied upon.⁸⁰ Thus, judicial review of Commission decisions is very limited.⁸¹

In response to this first *Rosenthal* court ruling, the Nevada State Legislature amended the public policy of the state in 1977 to highlight the importance of keeping crime out of casino operations. The revised law provided that "the gaming industry [must be] free from criminal and corruptive elements" through "strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment."⁸²

In addition, the qualifications for a gaming license were expanded and broadened to match the existing Nevada Gaming Commission regulation, so that it was required that persons seeking a gaming license demonstrate that they were "of good character, honesty and integrity" and that prior conduct, criminal history, reputation, habits, and associations do not threaten "public interest" or regulation of gaming.⁸³ In addition, the Nevada Gaming Commission has to be satisfied that a gaming license applicant does not "create or enhance the dangers of unsuitable, unfair or illegal practices, methods and financial arrangements incidental thereto" and is, overall, qualified to have a license in support of the state's public policy reasons for gaming.⁸⁴

⁷⁶ *Id.* at 94.

⁷⁷ *Rosenthal*, 93 Nev. at 40.

⁷⁸ *Id.* at 47.

⁷⁹ *Id.* at 40-41.

⁸⁰ *Id.* at 44.

⁸¹ *Id.* at 41.

⁸² See NRS 463.0129 (1977) (emphasis added).

⁸³ NRS 463.170(2).

⁸⁴ *Id.*

After the court ruled against him, Rosenthal did not give up and disassociate from the gaming industry. Instead, he took a position as “Food and Beverage Director” and later “Entertainment Director” at the Stardust Hotel,⁸⁵ believing that his salary and titles would not classify him as a key employee and thus in need of licensing. The Nevada Gaming Commission saw through the ruse and directed him to file an application for a suitability determination as key employee.⁸⁶ At a joint meeting of the Nevada Gaming Control Board and Nevada Gaming Commission, Rosenthal was again denied a gaming license for his new positions.⁸⁷ Rosenthal’s complaint to the court was that the Gaming Control Board and Nevada Gaming Commission should not have met jointly.⁸⁸ The Supreme Court of Nevada rejected this argument and validated the Nevada Gaming Commission’s authority to “deny the application, remand the matter back to the Board for further investigation or grant approval.”⁸⁹

Not finding recourse in Nevada state courts, Rosenthal tried to maintain his (and his organized crime affiliates’) hold on the gaming industry. He challenged the Nevada regulatory system in U.S. federal court as causing a violation of his civil rights.⁹⁰ What he found, however, was that the federal courts were not sympathetic. The court concluded that members of the Nevada Gaming Control Board and Nevada Gaming Commission are protected by state immunity while serving as regulators within the authority given to them, including “deciding on the suitability of a potential licensee, in disciplining a licensee, or in revoking a work permit.”⁹¹ In ruling against Rosenthal, the federal court confirmed that “members of the State Gaming Control Board and the Nevada Gaming Commission are charged with the awesome responsibility of regulating the gaming industry in Nevada and keeping undesirable elements out of the gaming industry.”⁹²

In the end, Rosenthal, the organized crime figure, was in fact the figure most responsible for the state’s ultimate “cleanup” – and for its abilities to enforce this cleanup from this point onward.

Eliminating the Outliers – Current Nevada Regulation

To further efforts in the fight against organized crime presence in Nevada casinos in the early 1980s, the Nevada Gaming Control Board established a separate division called the Special Investigations and Intelligence Division.⁹³ The purpose of this division was “investigating post-licensing, non-routine gaming problems such as hidden ownership interests in casinos, organized crime involvement in Nevada, and intelligence gathering.”⁹⁴ The division has since been incorporated into the Enforcement Division, but the concern with hidden ownership interests and

⁸⁵ *Rosenthal v. State*, 96 Nev. 959, 960, 620 P.2d 874 (1980).

⁸⁶ *Id.*

⁸⁷ *Id.* at 961.

⁸⁸ *Id.* at 961-62.

⁸⁹ *Id.* at 962.

⁹⁰ *Rosenthal v. State*, 514 F.Supp. 907 (1981).

⁹¹ *Id.* at 913-14.

⁹² *Id.* at 914. (emphasis added)

⁹³ Nevada Gaming Commission & State Gaming Control Board, *Gaming Nevada Style* 18 (Apr. 1984)

⁹⁴ *Id.*

organized crime operating the casinos has been superseded by “organized criminal groups” involved in cheating schemes and crimes against the casinos from the outside.⁹⁵

Although the regulators had been successful against Rosenthal in the courts, the skimming and organized crime presence at the Stardust had not disappeared. In 1982, the Nevada Gaming Control Board began investigating FBI reports that the casino manager and assistant casino manager were involved in or aided skimming (i.e., “unlawful removal of casino revenue”).⁹⁶ Undercover investigations by the Nevada Gaming Control Board revealed that fake fill slips [documents generated when chips/cash are delivered for play] were being generated, but the money was never delivered to the games.⁹⁷ In 1983, legitimate family-run casino operators, Boyd Gaming, were approached by the Nevada Gaming Control Board to assist in taking over gaming operations at the Stardust.⁹⁸ Boyd Gaming agreed, so by December of that year the Nevada Gaming Control Board suspended the gaming licenses of the Stardust and an emergency court order allowed Boyd Gaming to take over.⁹⁹ After 16 months of oft-challenging times with employees and management loyal to the prior owners, who were still operating the non-gaming amenities, the Stardust group gave up and sold the establishment to Boyd Gaming.¹⁰⁰

By the mid-1980s, with the help of federal racketeering laws—particularly, the Racketeer Influenced and Corrupt Organizations Act (RICO) that was passed in 1970 – multiple organized crime figures were convicted by the federal government for skimming money at Las Vegas casinos.¹⁰¹ The corporate world, meanwhile, continued to expand its foothold in Nevada gaming operations and the regulators continued to enforce stringent suitability requirements.

Although it was documented and understood that organized crime had influence over some casino gaming operations, “they *never* controlled the institutions that comprise the gaming regulatory system or the local community; thus, *the mob never ran Vegas.*”¹⁰² It is also important to highlight that not every casino or gaming operation was touched by organized crime. While it is more entertaining to focus on the “scandalous” history of Las Vegas, it is certainly not a complete history –many entirely legitimate family-owned gaming businesses contributed to the foundation and development of Las Vegas.

After several decades of regulated gaming, the stringent Nevada regulatory system has successfully kept organized crime away. There are currently four primary tools in Nevada gaming that continue to shield the industry from unsuitable persons or associations – (1) pre-licensing investigations by regulators; (2) compliance and due diligence by operators; (3)

⁹⁵ See Enforcement Division, Nevada Gaming Control Board & Gaming Commission, available at <http://www.gaming.nv.gov/index.aspx?page=46>

⁹⁶ Paul A. Bible, *The Stardust Skim*, NEVADA GAMING LAWYER 14 (Sept. 2016).

⁹⁷ *Id.*

⁹⁸ See Boyd *supra* n. 33 at 3.

⁹⁹ See Bible *supra* n. 96 at 14; *see also id.*

¹⁰⁰ See Boyd *supra* n. 33 at 4.

¹⁰¹ See *supra* n. 42.

¹⁰² See *supra* n. 14.

disciplinary action against operators; and (4) government exclusion (i.e., the Black Book). These tools are discussed below.

Regulatory Mechanisms

Pre-Licensing and Background Investigations

In line with Nevada's public policy calling for the strict regulation of gaming, and because of its turbulent history in removing organized crime from the industry, the state has one of the most intensive, intrusive processes for obtaining a gaming license. A colloquial comparison in the industry is that pre-licensing investigation process can be more challenging than receiving high-level government security clearance.

In Nevada, gambling can be operated lawfully if one has a gaming license from the Nevada Gaming Commission.¹⁰³ This means in order to operate a casino, to have slot machines at a restaurant, to offer sports wagering, to operate table games, or in order to make or sell slot machines to casinos, one must acquire a gaming license.¹⁰⁴ The words or phrases "finding of suitability" or "approval" are frequently used interchangeably with the words "gaming license." For gaming purposes, each of these terms is subject to the same qualification standards and will generally require the same extensive investigation.

Companies or individuals are not allowed to engage in gaming activities until they are licensed, meaning they cannot open a casino, operate a casino, or manufacture gaming devices (or do anything that is required by the license).¹⁰⁵ However, executives and key employees of a gaming business can assume duties and responsibilities while a gaming license application is being processed. For example, if the President of the gaming company leaves for another job, the gaming operations can continue until the position is filled.

The burden of proving that one is suitable to receive a gaming license is on the applicant.¹⁰⁶ In general, the licensing process will require a review of the applicant's associations, habits, character, criminal record, business activities, financial affairs, litigation history, sources of funds, and business associates. It is the applicant who must demonstrate that they are an honest person, who is trustworthy, has a clean background, operates their other businesses in a legitimate way, does not associate with criminals, has no connections with organized crime, and does not carry considerable debt or have complaints from creditors about owed money.

Within the current standards of suitability, there are no specific disqualifiers that would cause the Nevada Gaming Commission to automatically reject a license applicant. This means that being convicted of a crime does not result in the automatic denial of a gaming license application. However, having a criminal record or history of arrests, it will substantially increase the likelihood of a person's being denied a gaming license. The Nevada gaming authorities will

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ NGC Regulation 5.040.

generally look at criminal history using a few factors – (1) the nature of the arrest or conviction (e.g., was it a felony? what was the alleged crime? was there resistance during the arrest? was it a gambling-related crime?); (2) number of arrests (e.g., were there multiple arrests? if so, for the same offense(s)?); (3) how long ago the arrest(s) took place (e.g., was the person young? did it take place several years ago versus days or months?) and (4) status of action (e.g., was the case dismissed? did the person serve jail time?).

The gaming license application consists of forms required by the Nevada Gaming Control Board for both the company and affiliated individuals. In general, for casino gaming or gaming device manufacturing licenses, certain individuals – owners, officers or directors, or key executives – will have to complete a personal suitability packet, which includes the 68-page Multi Jurisdictional Personal History Disclosure Form that asks, among other things, about schooling, where a person has lived, business interests held, gifts received, and finances; Nevada supplemental disclosure requesting information not asked in the Multi Jurisdictional Personal Disclosure Form; releases that allow agents to access information and waivers from liability; fingerprints; and an affidavit that information was fully disclosed.

Once an application is filed, it cannot be withdrawn without receiving approval from the Nevada Gaming Control Board.¹⁰⁷ In addition, any information given as part of the application or during the investigative process that may be subject to a constitutional privilege (i.e., United States Fifth Amendment self-incrimination, attorney-client privilege, etc.) is waived, or otherwise it can be grounds for denying a gaming license if exercised.¹⁰⁸ What all this means is that a business and its owners, officers, etc., must be certain that they can prove their suitability or they risk denial of a gaming license. Not only is there lack of judicial recourse with a vote for denial,¹⁰⁹ the denied applicant cannot do business with any other gaming licensee in the state of Nevada, such as being employed, serving as a consultant, or becoming a vendor.¹¹⁰

Once the completed licensing applications are submitted, the applications will proceed first to review by agents in Applicant Services, which is a sub-division of the Investigations Division of the Nevada Gaming Control Board. If the application is accepted as complete by these agents, it is assigned to an investigative team within the Investigations Division. Because the investigative process is so thorough, it can take several months, depending on the business structure, especially if a company is headquartered outside of the United States.

The rigor of this process can hardly be overstated, and indeed, is sometimes criticized by operators themselves. The total costs for the investigation must be paid by the applicant(s) and can cost many thousands of dollars, especially if the ownership structure is complicated or if a

¹⁰⁷ NGC Regulation 4.140.

¹⁰⁸ NGC Regulation 4.020.

¹⁰⁹ NRS 463.318.

¹¹⁰ A vendor is a supplier of goods or services or a person or company that does business with a gaming licensee, whether it be a construction company, paper towel supplier, or food and beverage supplier. This does not typically include companies that supply gaming equipment or services that are required to be licensed by the gaming authorities.

foreign company or foreign travel is involved. The investigation begins with an initial interview of the individual applicants by the assigned agents, which may be performed at offices of the Gaming Control Board or at the business headquarters. The initial interview is private and confidential, and generally, only the individual applicant and his or her attorney are present with the investigative team. In Nevada, the initial meeting is tape-recorded and in some circumstances, captured by video. The primary reason for this initial interview is to go through a complete examination of the completed application forms, particularly the Multi Jurisdictional Personal History Disclosure Form,¹¹¹ as well as to provide a record that can be referred to by the agents throughout the investigation. The investigative team will also ask questions relevant to their investigation or that expand upon the information provided in the application forms. The applicant is expected to bring his or her passport to the interview, so the agents can see where they have traveled.

Around the time of the interview, the agents will request an initial set of documentation, which includes such items as federal income tax returns for five years, bank account records for the past five years, business records, financial statements, and real estate documents. The investigators will generally request records from the past five years, although they are not limited in requesting information for any time period. There have been occasions in which the investigative team has requested records going back 10 years or more.

A separate investigative team from the Nevada Gaming Board's Corporate Securities Section of the Investigations Division is responsible for review of publicly-traded companies. This team generally works separately from the Investigations Division team and will charge separate investigative fees that must also be paid in advance of the investigation. This level of rigor, while likely unmatched in any other government-oriented background check in any other business setting, has provided the foundation for a clean industry.

The investigation of the individual applicants is divided into personal and financial reviews. The personal component involves review of educational records, police records, court records, and having contact with persons who know the applicant, such as references or previous employers. Following the initial interview, the investigator may visit the individual at his or her office and may even visit his or her residence.

In addition, there will be a thorough investigation of financial documents or activities, as well as tax reporting. When agents request bank account records, the applicant must supply the statements from every type of account for the past five years (e.g., etrade, checking, savings, mutual fund). The agents will also ask for financing documents relating to any major purchases, such as homes or vehicles; request records pertaining to other businesses owned; and complete a detailed review of filed tax returns.

¹¹¹ The form, designated by the Nevada Gaming Control Board as Form 7, is accessible at <http://www.gaming.nv.gov/modules/showdocument.aspx?documentid=2476>

Since the investigation by the Gaming Control Board is so extensive, the agents performing the investigation are given broad powers by state law.¹¹² The agents may inspect business premises, demand access to records, and review e-mails and phone logs. The agents will also request access to the business, accounting, and tax records of the company seeking the license.

The applicant is expected to cooperate promptly and completely with the requests of the investigative agents. Any delay in response, or perceived lack of cooperation, can cause problems for the investigation and result in a delay in obtaining licensing. Thus, it is very important that the applicant cooperate fully with the investigation, and provide complete, direct, and truthful answers to inquiries by the investigative agents.

Near the end of the investigation, the applicant takes part in one final interview or closing conference. During the closing conference, the agents may question the applicant, with his or her attorney present, about any unresolved or unclear areas from the investigation. Usually, the closing conference is held by telephone. If a serious issue arose during the investigation, it may be reported to the Board and Commission as an “area of concern.” If there are no concerns, however, sometimes the applicant will not be involved in the closing conference, just the attorney.

In Nevada, at the conclusion of the investigation, the investigative agents prepare a detailed written report of their investigative findings that is then shared with the Nevada Gaming Control Board and Nevada Gaming Commission members. This confidential report is not accessible to the applicant or his or her attorney. Moreover, the Board’s records are not subject to disclosure to third parties in a civil proceeding absent a court order¹¹³ to ensure there is no chilling effect upon the lines of communication between an applicant and the Nevada Gaming Control and its agents. The Nevada Gaming Control Board and Nevada Gaming Commission will review the report prior to public meetings when license applications are heard and may refer to matters contained within the report, even if those matters seem private or sensitive in nature, during the hearing.

These meetings, which are transcribed by an official court reporter, provide the opportunity for applicants to demonstrate their suitability. The Gaming Control Board hears the matter and makes a recommendation that is sent to the Commission (unless the matter is referred back to staff for further investigation, or permitted to be withdrawn).¹¹⁴ The Nevada Gaming Commission also considers the application in a public setting and has the authority to approve, condition, limit, reject, or deny an application or component thereof “for any cause deemed reasonable.”¹¹⁵ As mentioned previously, the decision by the Nevada Gaming Commission is final and cannot be challenged in a court of law.¹¹⁶

¹¹² NRS 463.140.

¹¹³ NRS 463.341.

¹¹⁴ See NRS 463.1405(3).

¹¹⁵ NRS 463.1405(4).

¹¹⁶ NRS 463.318.

This intense pre-licensing process is one mechanism created by the Nevada gaming regulatory system to keep organized crime out of the industry.

Compliance Programs for Regulatory Requirements

If a company makes it through the strict licensing process, it must then put in place procedures to self-regulate and monitor all aspects of its business. As a result, gaming establishments typically have internal compliance departments or employees to make sure the business is following gaming rules and regulations. Many of the larger gaming companies follow a formal gaming compliance program required by the regulators.

In the Nevada gaming industry, compliance programs started 30 years ago when the Nevada Gaming Commission imposed a condition on a gaming license that the licensed company must establish a gaming compliance committee. A few years later, a discretionary condition for a gaming compliance program and review system was formalized in regulation.¹¹⁷ Today, the gaming compliance program requirement is commonly imposed on publicly-traded corporations, businesses with multiple gaming properties, and a few private companies that may have been challenged by previous gaming violations.

A compliance program is a contractual commitment between a gaming licensee and the Nevada Gaming Control Board, made pursuant to a gaming compliance plan, that the licensee will comply with laws and regulations. The compliance program is designed to prevent a company from engaging in business with unsuitable persons and to preemptively avoid issues that would result in disciplinary action against a license.

The gaming compliance plan establishes a compliance committee, outlines the number of compliance committee members, and details the qualifications required to be a compliance committee member. The gaming compliance committee is advisory only, but will often report to the company's Board of Directors or a subcommittee of the Board. The members may be entirely independent, but, if not, it is relatively common for a director of the company to serve as a compliance committee member as a means to keep the company informed about compliance issues. The compliance committee must have one member who is familiar with gaming laws and regulations, especially where the company is licensed. The compliance plan also sets out the role of the compliance officer.

The gaming compliance plan also confirms the types of reports that must be presented by the compliance officer to the gaming compliance committee for review. The reports that are commonly found in gaming compliance plans include purchase or sale of gaming devices; material transactions or business relationships; loans or financing; litigation; hiring or appointment of certain officers, directors, and key employees; tenants of a gaming property; junket operators (referred to in Nevada as “independent agents”)¹¹⁸; consultants and lobbyists,

¹¹⁷ NGC Regulation 5.045.

¹¹⁸ Independent agents are required to be registered with the Nevada Gaming Control Board (which is a much less stringent form of licensing than obtaining an actual gaming license) and report on their contractual arrangements

political contributions, and vendor relationships. When preparing the gaming compliance committee reports, the compliance officer is tasked to perform due diligence on outside persons or companies that fall within the reporting requirements to ensure that such persons or businesses are suitable. The plan will dictate that the due diligence must be performed prior to entering in the business relationship or once a certain level of business or monetary expenditures have been met. The plan will also call for due diligence to be conducted anytime the company or compliance officer receives derogatory information about an individual or entity it does business with regardless of any applicable monetary threshold for expenditures. For example, if a major casino resort is planning to enter into a contract with a new supplier of hotel bedding, the compliance officer must research the supplier, its owners and executives, and its business history to make sure that it is not connected to organized crime, money laundering, or any other criminal enterprise. Nevada does not license or register vendors to casinos, so the compliance program is used to review such businesses.

The compliance system is a vetting process performed by the gaming operators to help prevent unsuitable associations. To ensure that the compliance system is performing well, copies of the compliance officer reports and compliance committee minutes are provided to the Nevada Gaming Control Board. There are also periodic audits of the gaming compliance program by the Board agents. Having these multiple compliance tools available to both the industry and regulators prevents organized crime and other bad actors from entering or operating in the system.

Anti-Money Laundering (AML) Compliance¹¹⁹

In addition to gaming compliance, casinos are required to have compliance programs to prevent money laundering and terrorist financing (hereafter, collectively referred to as “AML”).¹²⁰ In the United States, although gaming laws and regulations are almost exclusively created and enforced by the individual states, AML is overseen by the federal government by two departments within the U.S. Department of Treasury – the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Service (IRS).

Under U.S. federal AML laws, certain casinos are required to report on currency transactions of USD \$10,000 or more, even if split among multiple transactions, that occur within a 24-hour period.¹²¹ This includes the name, address, social security number, and identification verification

with a licensee. Although independent agents have regulatory permission to issue and enforce credit for VIP customers, the Las Vegas casino operators that utilize contract with them generally do not give them such powers. The Nevada regulators have the discretion to call forward any independent agent for licensing. It is also not uncommon for casino hosts (i.e., employees of a gaming establishment) who cater to VIP markets to be required to file for suitability determination.

¹¹⁹ Casinos must also comply with the Office of Foreign Assets Control (OFAC), which is also part of the U.S. Department of Treasury, charged with enforcing economic and trade sanctions and protecting national security against certain foreign countries and individuals. *See* <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

¹²⁰ 31 C.F.R. § 1021.210.

¹²¹ *Id.* § 1010.311.

for customers involved in such transactions.¹²² An important element of AML is that FinCEN expects casinos to “know your customer.”¹²³ As such, not only is the identity of the customer required to be known by a casino for currency transactions exceeding USD \$10,000, but a casino must determine, if possible, where a customer’s money comes from through sufficient due diligence.

Additionally, casinos are required by the federal government to have an AML compliance program, which, at a minimum, requires (1) internal controls for ensuring AML compliance; (2) independent testing of the internal controls; (3) a compliance officer¹²⁴ and/or compliance committee; (4) employee training on AML; and (5) AML policies and procedures.¹²⁵ Casinos are also required to file reports on suspicious transactions of USD \$5,000, including those that are suspected or believed to have come from illegal activities or are done to avoid legal or regulatory requirements for AML.¹²⁶

Disciplinary Action for Lapse in Compliance

Nor does this level of rigor stop upon issuance of a license. Disciplinary action is another regulatory tool to ensure gaming operators conduct themselves in accordance with public policy to help prevent unsuitable associations. Lionel Sawyer & Collins, a law firm with an extensive history in gaming, wrote, “Disciplinary actions achieve many of the same goals as the criminal justice system. They serve to eliminate undesirable elements.”¹²⁷ Disciplinary action stems from the Nevada Gaming Commission having full and absolute authority to limit (i.e., place an expiration period on), condition (i.e., add a license condition to be satisfied, such as compliance), revoke, or suspend any gaming license or fine any casino for “any cause deemed reasonable” by the Commission.¹²⁸

One broad requirement is that gaming licensees must comply with all local, state, and U.S. federal laws.¹²⁹ This means that failure to comply with any law, even if outside the scope of gaming, including environmental, antitrust, liquor, or payment of taxes, can result in disciplinary action. Another trigger for disciplinary action is a licensee engaging in an “unsuitable method of operation.” This can be as broad as violating the health, safety, morals, or general welfare of people or causing discredit to the state of Nevada or the gaming industry or as specific as allowing persons who are visibly intoxicated to gamble or hiring a person as an employee who

¹²² *Id.* § 1010.312.

¹²³ *See id.* § 1021.600; *see also* “Remarks of Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network (Sept. 24, 2013), available at <https://www.fincen.gov/news/speeches/remarks-jennifer-shasky-calvery-director-financial-crimes-enforcement-network-6>.

¹²⁴ Some casinos have one compliance officer who is responsible for both gaming compliance and AML compliance, while other casinos have an AML compliance officer who is different than the gaming compliance officer.

¹²⁵ *See id.* § 1021.210.

¹²⁶ *Id.* § 1021.320.

¹²⁷ *See supra* n. 39 at 346.

¹²⁸ NRS 463.1405(4).

¹²⁹ NGC Regulation 5.011(8).

was previously found guilty of cheating at gaming.¹³⁰ Importantly, Nevada regulations provide that associating with persons of “notorious or unsavory reputation” can be cause for disciplinary action.¹³¹ However, due to pre-licensing standards, compliance programs, and due diligence, it is extremely uncommon to see claims for such a violation.

Because of the extensive compliance structure found within each gaming licensee, disciplinary actions that reach to the level of a public complaint and settlement are infrequent in Nevada. There were 8 such disciplinary actions against gaming licensees in 2016 and only 5 disciplinary actions in 2015.¹³² To date in 2017, there have been no public disciplinary actions taken.¹³³ These recent disciplinary actions range in severity of violations and resulting dispositions. For example, one recent disciplinary action taken against a Nevada gaming licensee resulted in a USD \$250,000 fine¹³⁴ for allegations that a Las Vegas casino owner directed an employee to violate internal controls and procedures in order to issue casino chips to the owner’s friend.¹³⁵ Meanwhile, three gaming companies were assessed fines ranging from USD \$1.5 million to USD \$5 million for alleged violations of federal AML laws.¹³⁶

The threat of disciplinary action by Nevada regulators, which could result in significant fines or even revocation of a gaming license, has served as a noteworthy deterrent to allowing unsuitable associations, including any affiliations with organized crime members.

Exclusion of Unsuitable Persons

Not only do casinos in Nevada have a common law right to exclude persons from their premises through trespass laws, but the government has also continued the use of the List of Excluded Persons (also known as the “Black Book”) as a means to prevent unsuitable persons from having access to gaming. Pursuant to Nevada laws and regulations, the Nevada Gaming Commission is authorized to exclude persons from entry into or frequenting certain licensed gaming establishments, including casinos.¹³⁷ The Black Book started as a way for Nevada regulators to keep known organized crime members away from gaming establishments and has since been successfully upheld in court as a lawful, effective tool for gaming regulators.¹³⁸ Although there are a few organized crime members who remain on the list from earlier days, recently added

¹³⁰ NGC Regulation 5.011.

¹³¹ *Id.* at 5.011(5).

¹³² See Nevada Gaming Commission and Nevada Gaming Control Board, Complaints/Stipulations/Orders, available at <http://gaming.nv.gov/index.aspx?page=107>.

¹³³ *Id.*

¹³⁴ Includes a reimbursement of costs and expenses for investigating the matter.

¹³⁵ See Nevada Gaming Control Board v. DRock Gaming LLC and Derek John Stevens, NGC 15-08, Complaint and Stipulation for Settlement and Order, accessible at <http://gaming.nv.gov/index.aspx?page=107>.

¹³⁶ See *supra* n. 132

¹³⁷ NRS 463.151.

¹³⁸ See *State v. Rosenthal*, 107 Nev. 772, 819 P.2d 1296 (1991); see also *Spilotro v. State*, 99 Nev. 187, 661 P.2d 467 (1983).

persons to the Black Book are primarily those with a history of cheating at slot machines or other games.¹³⁹

The exclusion process begins with the Gaming Control Board performing an investigation and gathering information about the person under consideration. The common triggers for this process are (1) convictions of felony crimes, crimes involving theft or fraud, or gaming crimes; (2) failing to disclose an ownership interest in a gaming business; (3) purposely failing to pay taxes or fees; and/or (4) having a notorious or unsavory reputation.¹⁴⁰ Then, two of three Gaming Control Board members must agree to nominate a person for placement in the Black Book.¹⁴¹ In accordance with due process protections, the nominated person is given notice of a hearing at which he or she is then given an opportunity to defend themselves.¹⁴² The Nevada Gaming Commission makes the final determination, but the decision can be appealed to a court of law.¹⁴³

Once a person is placed on a list, gaming licensees must take reasonable measures to prevent the excluded person from accessing the establishment. Failure to do so can be cause for disciplinary action.

There is a process to request removal from the list; however, the only successful method of removal so far has been by death of the person. Frank Rosenthal was once in the Black Book, but he was removed upon confirmation of his certificate of death on October 13, 2008.¹⁴⁴

Beyond Nevada – Broader Implications of the Regulatory System

Due to the perseverance of early state leaders and regulators in shaping our modern gaming regulatory system and the successful measures currently undertaken by the Nevada Gaming Control Board and industry, it is commonly agreed among industry experts that there is no longer an organized crime presence in regulated casino gaming operations. This was evidenced by a U.S. federal government-led assessment of the growing gaming industry performed by the National Gambling Impact Study Commission (NGISC) in 1999.¹⁴⁵ After a two-year study, the NGISC made the following conclusion within its final report:

All of the evidence presented to the Commission indicates that effective state regulation, coupled with the takeover of much of the industry by public corporations, has eliminated organized crime from the direct ownership and operation of casinos.¹⁴⁶

¹³⁹ See GCB Excluded Person List, accessible at <http://gaming.nv.gov/index.aspx?page=72>

¹⁴⁰ NRS 463.151.

¹⁴¹ NGC Regulation 28.030.

¹⁴² *Id.*

¹⁴³ NRS 463.153.

¹⁴⁴ Nevada Gaming Control Board, *Removal of Frank Rosenthal from List of Excluded Persons* (Jan. 27, 2009).

¹⁴⁵ Executive Summary, Introduction, National Gambling Impact Study Commission 2 (June 18, 1999), accessible at <http://govinfo.library.unt.edu/ngisc/reports/finrpt.html>

¹⁴⁶ Final Report, National Gambling Impact Study Commission, Ch. 3, 3-1 (June 18, 1999), accessible at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>

Upon successful implementation of the modern gaming regulatory structure, the impact of “strict regulation” was not only a removal of the organized crime presence that had operated in Las Vegas casinos, but an economic transformation, as it “opened Las Vegas’ doors to a much larger market” which in turn led to unprecedented success in achieving greater tourism, tax, and revenue goals.¹⁴⁷ Without a balance between a healthy regulatory presence and a reliance on self-imposed compliance and monitoring programs, gaming would have remained “a relatively small-time, shunned industry.”¹⁴⁸ As of the writing of this report, commercial casino gaming is present and regulated in 24 of 50 states in the United States.¹⁴⁹ As of 2015, casino revenues from these commercial gaming jurisdictions exceeded USD \$40 billion.¹⁵⁰ Another 16 states have casinos operated and regulated by Native American tribes located within their borders.¹⁵¹ These tribal casinos represented another \$31.2 billion in gross gaming revenues in 2016.¹⁵²

Today, casinos are widely accepted across the United States and around the world as normal recreational forms of entertainment. How well has it worked? The former mayor of Las Vegas, Oscar Goodman, who as an attorney represented many of the former organized crime figures, including Frank Rosenthal, was asked whether regulators were successful in getting rid of organized crime in Nevada casinos. Goodman responded, “Who won?”¹⁵³ and immediately acknowledged that organized crime is no longer present in the operation of Nevada casinos.¹⁵⁴ That does not mean organized crime does not exist in gambling, but its presence has long been absent from government-regulated casinos in Nevada and elsewhere. Also worth noting: it is indeed the case that organized crime continues to have a presence in gambling environments, but almost entirely in the world of unregulated, illegal gambling.¹⁵⁵

Although the history of organized crime in early Las Vegas is frequently glamorized in film, there is little media attention paid to the success of modern casino gaming regulatory systems, rooted strongly in Nevada’s successes, in eliminating organized crime in multiple jurisdictions across the globe, including other United States markets – markets with diverse policy objectives such as New Jersey, the United Kingdom, and Singapore.

For the purposes of this report, New Jersey merits additional attention. For several decades, Nevada was the only state in the United States to have legalized casino gaming. In 1976, a referendum was put to New Jersey voters to amend the constitution of the state to authorize

¹⁴⁷ Bo Bernhard, Ph.D., *The Battered Gaming Industry: A Case Study for Our Times?* UNLV GAMING RESEARCH & REVIEW JOURNAL, Volume 13 No. 1

¹⁴⁸ *Id.*

¹⁴⁹ See American Gaming Association, 2016 State of the States, available at <https://www.americangaming.org/research/reports/2016-state-states>.

¹⁵⁰ UNLV Center for Gaming Research, *United States Commercial Casino Revenues 2* (June 2016), available at http://gaming.unlv.edu/reports/national_annual_revenues.pdf.

¹⁵¹ See *supra* n. 149.

¹⁵² National Indian Gaming Commission, *2016 Indian Gaming Revenues Increased 4.4%* (July 17, 2017), available at <https://www.nigc.gov/news/detail/2016-indian-gaming-revenues-increased-4.4>.

¹⁵³ See *supra* n. 35.

¹⁵⁴ See *id.*

¹⁵⁵ Associated Press, “Genovese family mobsters busted for offshore gambling ring” (Dec. 16, 2016)

casino gaming, but only in one small area of the state – Atlantic City.¹⁵⁶ The state’s intent in adding casino gaming to Atlantic City was to revitalize the economically-challenged area, which had been a popular tourist spot in the early 20th century, but had fallen on difficult economic times due to air travel limitations and competing tourist destinations.¹⁵⁷

One of the most important functions in creating a casino regulatory system in New Jersey was “to ensure that no organized crime ever became involved in casino gaming.”¹⁵⁸ It was well known that organized crime had a strong presence in adjacent New York, as well as in New Jersey, and, when it legalized casino gaming, New Jersey did not want any “organized crime infiltration,” such as ownership or operation of Atlantic City casinos similar to what had existed early on in Las Vegas casino history.¹⁵⁹ After observing attempts by organized crime to affiliate with casinos through construction subcontractors, New Jersey enacted laws and regulations that would require such companies to be subject to regulatory suitability standards.¹⁶⁰ In addition, any organized crime presence in union labor was also weeded out through the gaming registration and vetting process of such organizations and their leadership.¹⁶¹

As a result of this tough stance on organized crime, according to the former Director of the New Jersey Division of Gaming Enforcement, Thomas Auriemma, “organized crime has never, ever, been involved in the ownership, management or operation of a casino in New Jersey.”¹⁶² In addition, just as Nevada embraced a model of strict regulation and licensing, the approach in New Jersey similarly led to casinos gaining “the confidence of Wall Street and the financial community” so that investments could be made in integrated resorts, tourism, and the community.¹⁶³ As a result, casinos were no longer considered a pariah industry, but a legitimate, tax-paying entertainment business to which loans and credit lines could be issued and in which private and public investment could be generated.

With the success that Nevada and New Jersey had in keeping organized crime out of gaming operations, many new jurisdictions contemplating the legalization of casino gaming use these regulatory systems as guidance. For example, when Singapore looked to permit integrated resorts in 2005, it analyzed both models. Although there are clear differences between Singapore and the two U.S. states (most significantly the two-license limitation and entry levies for residents), Singapore realized the importance of keeping criminal elements out of the casinos. In its public policy statement for casino gaming, authority for gaming rests upon the maintenance and administration of “licensing, supervision and control of casinos” in a manner that ensures “that the management and operation of a casino is and remains free from criminal influence or

¹⁵⁶ *The Oral History of Thomas Auriemma*, 7 UNLV GAMING L.J. 33 at 34-35 (Spr. 2017).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 36.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 37.

¹⁶¹ *Id.*

¹⁶² *Id.* at 36.

¹⁶³ *Id.* at 39.

exploitation.”¹⁶⁴ To assist with this public obligation, Singapore established a Casino Crime Investigation Branch within the Singapore Police Force to help combat forgery, counterfeiting, and cheating at gambling.¹⁶⁵

The experience in building up the current regulatory system and getting rid of organized crime from casino operations was an extensive process, but it provides a solid foundation for shaping modern approaches to gambling so that it continues to flourish as a legitimate, regulated industry that has become destigmatized – and indeed, widely embraced not only by the general public, but by the financial and business sectors.

Conclusions and Recommendations

Nevada’s historical accomplishment in removing organized crime from casino operations, as well as its ongoing success in keeping organized crime out, stands as a lesson that can be readily applied to Japan as it establishes the regulatory parameters for its integrated resorts. We conclude that embracing this regulatory approach to prevention and/or elimination of organized crime will be especially crucial for a number of reasons. First, the global gaming industry (as well as the general public) is well aware that the Yakuza have been active in gambling activities in Japan,¹⁶⁶ which mandates an aggressive approach. Second, for Japan to attract the desired and desirable kind of globally-competitive capital investment in its integrated resorts, which will in turn allow for the desired and desirable kinds of globally-competitive integrated resort destinations to be constructed, there can be no association with organized crime at all – the banks, the investment community, and the most respected casino operators simply will not (indeed, cannot) participate. If this happens, of course, Japan will not achieve the tourism metrics it seeks, as it will not have the “must-see” attractions that bring international tourists to its shores. Third, at present, Japan’s gaming industry (and its potential future integrated resorts industry) suffers from a severe perception problem, and the best way to ensure trust in safe, legal, and strictly monitored operations is to embrace modern gaming regulation. Finally, given the strong emphasis on responsible gaming in Japan, once more the best way to achieve the most positive outcomes on this challenging issue is via a regulated industry. Indeed, many case studies of various jurisdictions (including the U.S., Singapore, and even Macao) actually reveal that under a regulated system there are drops in problem gambling prevalence, and sharp increases in problem gambling program development.

When new jurisdictions introduce legalized gambling, it is commonly recognized that the regulatory model that the jurisdiction adopts should not just be a “cut and paste” from an existing jurisdiction because there are cultural issues, political systems, economics, and population concerns that will vary. Put simply, the policy goals of the jurisdiction will dictate the nuances of its proper regulation. That said, the regulatory components within Nevada’s system that have

¹⁶⁴ Singapore Casino Control Act, Ch. 33A, Part II, Div. 1, Section 5.

¹⁶⁵ See *Managing the Sin in Singapore’s Casinos*, Lee Kuan Yew School of Public Policy, National University of Singapore (2014) at Annex 5.

¹⁶⁶ David E. Kaplan & Alec Dubro, *YAKUZA: JAPAN’S CRIMINAL UNDERWORLD* (25th Anniversary Ed. 2012)

helped shape the gaming industry worldwide would serve Japan well, especially as it pertains to countering and eliminating organized crime elements from casino operations.

Given these observations, we provide the following recommendations:

1. Before licenses are issued, Japan should consider implementing a stringent pre-licensing review, but one that continues to encourage lending by banks and investment by mutual funds, private equity groups, and public companies so that there are legitimate sources of funding and capital for casinos. To this end, some level of personal and financial background investigations on controlling owners and executives can help ensure that they do not have any unsuitable associations or affiliations, such as relationships with known or suspected Yakuza members, that would make them vulnerable to organized crime influence or endanger their companies' and personal reputations in any way.
2. After licenses are issued, and because the Yakuza has traditionally played a more visible role in the business world and society¹⁶⁷, Japan should have a regulatory system with a strong enforcement structure that can help perform police-level overt and covert criminal investigations. Like Nevada, the enforcement division can assist in a wide array of tasks, ranging from checks on gaming employees and tracking suspected game cheats. The cooperation between regulatory enforcement and casino security and surveillance is also crucial to help thwart criminal activities.
3. During the application process as well as after license issuance, Japan should encourage strong self-regulation among casinos, supported by the regulatory system. For the businesses that are licensed to operate the integrated resorts, Japan should consider imposing requirements for gaming and AML compliance programs that are subject to periodic audit and review by the regulators. Strong compliance programs and AML measures will help protect against infiltration and operation of organized crime in the casinos. Japan would also need to consider whether a system where the licensee would be required to perform due diligence on vendors and related parties is sufficient to a system where regulators also undertake licensing and review of such persons.
4. Japan should grant the proper amount of authority and power to gaming regulators to impose sanctions against operators that willfully or negligently violate laws and regulations, as well as to exclude persons deemed to have organized crime associations from entering into licensed establishments.

Japan is in the position to become the world's most successful gaming market, but only if it joins the world's most well-regulated gaming markets. A deep and thoughtful study of Nevada's history provides us with many strong lessons here; specifically, a strong regulatory structure with a vigilant focus on keeping criminal and corruptive elements out of gambling operations is vital, and Nevada's regulators, alongside many others in the modern gaming industry, boast many effective tools to sustain this mission. The effects of this developed regulatory system are made clear when one walks down Las Vegas Boulevard – the Strip – and witnesses large-scale resort

¹⁶⁷ *Id.*

attractions with billions of dollars in investment, rather than small casino resorts with limited capital, and sees the customer playing games with the comfort and trust that the casino is operated fairly and with integrity because of the durable regulations that govern it.

Research Team Profiles

Jennifer Roberts, J.D.

Jennifer Roberts is the Associate Director of the UNLV International Center for Gaming Regulation. Before joining the ICGR, Ms. Roberts practiced gaming law in Nevada for 13 years and was previously a partner in the law firm of Duane Morris LLP. Prior to that, she was a shareholder in the Gaming & Regulatory Department of the Nevada-based law firm of Lionel Sawyer & Collins. Her legal practice included representation of clients in gaming law, including gaming licensing, gaming compliance, and gaming law development. She served as a member of a Gaming Compliance Committee for an international gaming company and was counsel to several gaming compliance committees.

Ms. Roberts has represented several companies based in Japan on both gaming and non-gaming matters in the United States. She has traveled to Japan several times for business and recently co-authored an article published in the UNLV Gaming Law Journal titled “Problem Gambling: How Japan Could Actually Become the Next Las Vegas.” She has authored several other articles on gaming law and regulation. In her legal practice, she has also represented major hotel chains, nightclubs, restaurants, and bars, and served as an expert witness on Nevada alcohol laws.

Since 2008, Ms. Roberts has been adjunct professor of gaming law at the William S. Boyd School of Law. She has taught courses on introduction to gaming law, gaming law policy, fundamentals of casino operations and management, and resort hotel casino law. She is also an adjunct professor in gaming law at the S.J. Quinney College of Law at the University of Utah.

Brett Abarbanel, Ph.D.

Brett Abarbanel, Ph.D., is Director of Research at the University of Nevada, Las Vegas, International Gaming Institute, with an affiliate position at the University of California, Los Angeles’s Gambling Studies Program. Dr. Abarbanel has expertise in global gambling and social science applications, and her research covers Internet gambling policy and behavior, esports and gambling, operations and technology use, and responsible gambling and community relations. Dr. Abarbanel serves as co-executive editor of the *UNLV Gaming Research & Review Journal*, which publishes internationally-relevant gambling research articles representing a broad array of academic disciplines, and an editorial board member for *International Gambling Studies*. She has been interviewed as a gambling expert for the New York Times, Wall Street Journal, and the Discovery Channel and served as a consultant for multiple industry and government entities around the world.

Dr. Abarbanel serves on the International Advisory Panel for Singapore’s National Addiction Management Service and National Council on Problem Gambling, and sits on the advisory boards for Leet LLC and the Global iGaming Summit and Expo. She is a founding director of the Nevada Esports Alliance, a non-profit organization comprised of stakeholders in Nevada’s

esports ecosystem that promotes the development of best practices at the intersection of the esports and regulated gambling industries.

She was recently honored by the Global Gaming Expo and The Innovation Group with their 2015 Emerging Leader Award, and was named to the 2016 Global Gaming Business 40 Under 40 list. Dr. Abarbanel completed her B.S. in Statistics at Brown University and her M.S. and Ph.D. at University of Nevada, Las Vegas.

Bo Bernhard, Ph.D.

Dr. Bo Bernhard calls Las Vegas home, but he works frequently in jurisdictions as diverse as South Africa, Australia, Singapore, South Korea, Macao, Mexico, Vietnam, Japan, Taiwan, Argentina, Brazil, Russia, Portugal, Austria, Greece, England, and Canada – as well as dozens of states in the U.S. Dr. Bernhard began his research career at Harvard University, where as an undergraduate he completed a double major (sociology and psychology) magna cum laude thesis on the community impacts of the gaming and industry in Nevada. The foundations of this analysis have since been extended worldwide, and by the age of 30, Dr. Bernhard had lectured on his research on six continents.

After earning his Ph.D. in 2002, Dr. Bernhard was named the inaugural Research Director at the UNLV International Gaming Institute, and he was awarded a dual professorship in hotel management and sociology. In 2011, he was named Executive Director at the IGI, where he now oversees all research and academic functions. Representing the university in these roles, Dr. Bernhard has delivered over 200 keynote addresses in clinical, regulatory, government, and policy settings. He has published in the top journals in both the business sciences (including Cornell Quarterly) and the social sciences (including a guest edited special volume of American Behavioral Scientist), and currently serves as executive editor for a leading peer-reviewed academic journal, Gaming Research and Review.

Dr. Bernhard's projects have been prominently featured in local and national media outlets (including CNN, PBS, NPR, The New York Times, The Australian Broadcasting Channel, and The History Channel). Overall, he has directed over \$4 million in grant-funded projects, on subjects ranging from problem gambling to the social impacts of casino industries to gaming regulation and policy features to internet gambling. These efforts have earned him several awards of late: in 2007, his focus on globalization earned him the World Affairs Council's International Educator of the Year award; in 2008, he was given the UNLV Hotel College's Boyd Award for Research; in 2009, he was given the Hotel College's top teaching award and the university-wide Spanos Teaching Award; in 2010, he was named a Lincy Fellow at Brookings Mountain West; and more recently he was given the university-wide Barrick Scholar Award, a CoRE (Collaborative Research and Education) Fellow Award, and the hotel college's Denken Award for research.



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