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REFLECTIONS ON THE HISTORY OF GAMING REGULATION¹

Introduction

Gambling is as old as time itself. Cavemen, at the dawn of the human species, bet on who would be more successful in killing animals for meat.² Dice have been found in Egyptian tombs.³ The Chinese, Japanese, Greeks, and Romans played games of skill and chance for amusement as early as 2300 B.C.⁴ Lotteries date back to 100-40 B.C.⁵ Keno was created by the Han Dynasty around 100 B.C. to finance the construction of the Great Wall of China.⁶ In 1465, lotteries in Belgium built “chapels, almshouses, canals, and port facilities.”⁷ In 1539, King Francis I of France held a lottery to replenish the

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1. A special thank you to James Lau, William S. Boyd School of Law, University Nevada, Las Vegas for footnoting the article.

2. David D. Schwartz, *Roll the Bones: The History of Gambling* 1-2 (Svetlana Miller et al. eds., 2nd ed. 2013).

3. Leon Dănăilă & Marius Pantea, *Gambling; Brief History, Social Aspects and Legal Regulations*, 13 *J. Crim. Investigations* 7 (2018).

4. Schwartz, *supra* note 1, at 3-6.

5. George T. Naddra, *The Lottery and Educational Funding: A 50-State Comparison* 24 (2003) (unpublished Ph.D. dissertation, The University of Alabama).

6. *Id.*

7. *Id.*

royal treasury.⁸ In 1567, Queen Elizabeth established the first English state lottery.⁹

In the 1700s, lotteries were routinely used to finance war and public works.¹⁰ Between 1790 and America's Civil War, "300 schools" (including Harvard, Yale, Princeton, and Columbia),¹¹ "200 churches"¹² and "twenty-four of the 33 states financed civic improvements" ("courthouses, jails, hospitals, orphanages, and libraries") through lotteries.¹³ Between 1820 and 1878, private lotteries became rampant, which triggered prohibitions.¹⁴ As a result, all states except Louisiana prohibited lotteries either by statute or via state constitution.¹⁵ Thereafter, the United States Congress banned lottery materials from the mail (1890) and all lotteries from interstate commerce (1898).¹⁶

Meanwhile, in 1861, Nevada became a recognized Territory (the territorial legislature outlawed gambling, but local prosecutors never enforced the ban).¹⁷ Thereafter, in 1864, Nevada became a state before the more populous territories of Utah, New Mexico, Nebraska, and Colorado because it was anti-slavery and supported President Lincoln.¹⁸ In 1869, gambling, in the form of Fargo and 3 Card Monte, was legalized¹⁹ and around 1900, the Liberty Bell slot machine invented by Charles Fey in 1895 in San Francisco appeared in Nevada.²⁰ This was followed by the licensing of slot machines in 1905.²¹ This began the cycle of legalized gambling and gambling prohibition (1909, never fully implemented) in Nevada.²² Between 1915 and 1931, the Nevada legislature tinkered with gambling laws.²³

8. *Id.* at 25.

9. David Dean, *Elizabeth's Lottery: Political Culture and State Formation in Early Modern England*, 50 *J. Brit. Stud.* 587 at 589 (2011).

10. Naddra, *supra* note 4, at 25.

11. *Id.* at 26.

12. *Id.*

13. *Id.*

14. *Id.* at 18.

15. *Id.*

16. *Id.*

17. Schwartz, *supra* note 1, at 197.

18. *Id.*

19. *Id.* at 198.

20. *Id.* at 199.

21. Schwartz, *supra* note 1, at 199.

22. *Id.*

23. *Id.* at 199-201.

Casino gambling was legalized in 1931 with a minimal regulatory structure, with the authority to grant gaming licenses given to local sheriffs.²⁴ This was followed in 1945 by the creation of a state casino license and a tax structure enforced by the Nevada State Tax Commission.²⁵ In 1947, Nevada Attorney General Alan Bible issued an opinion declaring that the Nevada State Tax Commission had the authority to adopt regulations regarding state licenses and deny applications for casino licenses,²⁶ which was formalized by the legislature in 1949 when the state legislature moved casino licensing authority from local sheriffs to the Nevada State Tax Commission.²⁷ Thereafter, in 1955, the Nevada Legislature created the Nevada State Gaming Control Board.²⁸ The legislature then moved casino licensing authority from the Nevada State Tax Commission to the newly created Nevada Gaming Commission.²⁹ By 1959, Nevada's casino industry generated 21.9% of the state's tax revenues.³⁰

While New York crime families financed the construction of the Flamingo Casino,³¹ which opened in 1947, it was not until the late 1950s that the Teamsters Midstate Pension Fund began providing loans to finance Las Vegas casino construction by organized crime families using frontmen for licensing purposes.³² The impact of this financing became a focal point when in 1961, United States Attorney General Robert F. Kennedy commenced criminal proceedings against Teamsters President James "Jimmy" Hoffa, and joined efforts with Nevada authorities to eliminate casino ownership by organized crime families,³³ an effort which was completed by the 1980s.³⁴

These joint efforts were bolstered by the Nevada legislature's enactment of the Corporate Gaming Act in 1967.³⁵ Nevada Gaming Commission Regulation 15 followed as did 1969 legislation permitting publicly traded corporations to own gaming subsidiaries without mandatory background investigations and licensing of all their shareholders.³⁶ Meanwhile, between 1967 and 1970, Howard Hughes sold Trans World Airlines, moved to the Desert Inn in Las Vegas, and engaged in a casino and land buying spree

24. Robert D. Faiss & Gregory R. Gemignani, Nevada Gaming Licensing Qualifications, Standards, and Procedures, in *Frontiers in Chance: Gaming Research Across the Disciplines* 126, 126 (David G. Schwartz ed., 2013).

25. *Id.* at 127.

26. *Id.*

27. *Id.* at 129.

28. *Id.*

29. *Id.* at 130.

30. *Id.*

31. Schwartz, *supra* note 1, at 222-24.

32. *Id.* at 285.

33. Faiss & Gemignani, *supra* note 23, at 130-31.

34. *Id.* at 131.

35. Faiss & Gemignani, *supra* note 23, at 131-32.

36. *Id.*

resulting in the purchase of six Las Vegas casinos.³⁷ These developments, in combination, created the first wave of Nevada casino ownership expansion.³⁸ This was followed by Steve Wynn's construction of the Mirage Hotel and Casino Resort in 1989, whose success spurred a massive new casino development boom on and near the Las Vegas Strip, followed by mega-acquisitions by major casino publicly traded companies.³⁹

While Nevada was reshaping its casino industry, Congress enacted the Wire Act in 1961.⁴⁰ Then, the New Hampshire legislature created a state lottery in 1964, followed by the creation of the New York and the New Jersey state lotteries.⁴¹ Congress' amendment of federal law allowing state lotteries to advertise on radio and television ultimately resulted in 45 of the 50 states plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands following suit and the resulting formation of the Powerball and Mega Millions multi-state lotteries.⁴²

Meanwhile, New Jersey amended its state constitution to allow the construction of casinos in Atlantic City.⁴³ Thereafter, several states legalized casino riverboats on waterways.⁴⁴ This activity in turn created a boom in the development of land-based casinos in many states, a trend that continues to this day.⁴⁵

The development of commercial casinos beyond Nevada was followed by the expansion of gambling activity on Tribal land, commencing with poker rooms.⁴⁶ Litigation over the legality of tribal gaming led to the Supreme Court's *Cabazon* decision⁴⁷ opening the door to the development of tribal-

37. Schwartz, *supra* note 1, at 246-47.

38. Faiss & Gemignani, *supra* note 23, at 131-32.

39. Schwartz, *supra* note 1, at 323-29.

40. Act of Sept. 13, 1961, Pub. L. No. 87-216, 75 Stat. 491 (codified as amended at 18 U.S.C. § 1084).

41. Naddra, *supra* note 4, at 26.

42. Stephen J. Leacock, *Some Reflections on the Past, Present and State-Dependent Future of Lotteries in American Gaming Law*, 18 Gaming Law Review and Economics 263, 269 (2014).

43. Schwartz, *supra* note 1, at 264-65.

44. *Id.* at 311-16.

45. *Id.* at 316-19.

46. *Id.* at 305-06.

47. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (holding that Pub. L. 280 did not authorize state enforcement of regulatory laws over tribal bingo, that the Organized Crime Control Act did not authorize application of state and county gambling laws to tribal bingo, and that state interests in preventing organized crime did not justify regulation of tribal bingo in light of federal and tribal interests).

owned casinos on tribal land and Congress' enactment of the Indian Gaming Regulatory Act (IGRA). A rapid expansion of casinos on tribal land followed.⁴⁸

At the end of 2023, over 1,400 casinos are operating in 45 U.S. states in multiple economic, social, and political environments.⁴⁹ The gambling industry continues to evolve at a record pace.⁵⁰ Gambling is a multi-billion-dollar industry in the United States, and there are multiple forms of gambling in many jurisdictions, including regulated markets and unregulated gray and black markets.⁵¹

Over time, the casino industry has grown from private companies with little transparency to multinational corporations, many traded on public stock exchanges worldwide. Publicly traded companies bring much-needed transparency to an industry with a checkered past. Historically, this cash-rich industry has attracted organized crime.⁵² Still, the opportunities to launder or wash money from criminal proceeds and/or evade taxes are abundant, although much more difficult in well-regulated gaming jurisdictions.⁵³

48. See Kathryn R.L. Rand, *There Are No Pequots on the Plains: Assessing the Success of Indian Gaming*, 5 Chap. L. Rev. 47, 52 (2002) (explaining that in the decade after the enactment of the Indian Gaming Regulatory Act over 146 Tribes operated Class III casinos, and that over eighty-five percent of tribes in the contiguous United States conduct some form of gaming activity).

49. Nemanja Petkovic, *Facts and Statistics on Which US States Have Casinos in 2024*, PlayToday.co (Mar. 8, 2024), <https://playtoday.co/blog/stats/what-states-have-casinos/>.

50. See American Gaming Association, *State of the States 2023*, at 13-14 (2023), <https://www.americangaming.org/wp-content/uploads/2023/05/AGA-State-of-the-States-2023.pdf> (stating that in 2022, the amount of American adults who visited a casino increased by six percent, and that twenty-three out of twenty-seven states with traditional casinos reported an increase in revenue in 2022).

51. See *id.* at 8, 13-14 (showing that thirty-five jurisdictions with legal gaming operations generated more than \$60 billion in revenue in 2022, and showing the variety of legal gaming offerings on a state-by-state basis); see also American Gaming Association, *Sizing the Illegal and Unregulated Gaming Markets in the United States*, at 1 (2022) <https://www.americangaming.org/wp-content/uploads/2022/11/Sizing-the-Illegal-and-Unregulated-Gaming-Markets-in-the-US.pdf> (stating that research estimates Americans wager over \$500 billion annually with illegal or unregulated gaming entities).

52. See Schwartz, *supra* note 1, at 159 (explaining that the illegal gaming syndicates formed in the 1850's were the predicate for organized crime's influence in gaming for the next century).

53. See *e.g.*, Financial Crimes Enforcement Network, In the Matter of: CG Technology L.P. f/k/a Cantor G&W (Nevada) L.P. d/b/a Cantor Gaming, Assessment of Civil Money Penalty, No. 2016-05 (Oct. 3, 2016), available at https://www.fincen.gov/sites/default/files/enforcement_action/2023-04-

The massive expansion of the gaming industry has resulted from multiple factors including (1) federal and state legislation; (2) federal and state court decisions; (3) voter referendums; (4) legislative pursuit for additional sources of revenue; (5) aggressive assertion of rights by federally recognized Indian tribes; (6) the entry of publicly traded companies into the casino industry; (7) the entry of foreign gambling companies into the United States market; and (8) aggressive creative internet and land-based activity by gray and black market gambling operators.⁵⁴

The regulatory review process varies widely with very little consistency. There are many reasons for the inconsistencies, including tax revenues earmarked for special purposes such as education and commercial reasons such as employment and capital investment. In many cases, strict regulatory oversight is an afterthought, and the appearance of some feel-good legislation is sufficient. In other words, commerce over compliance.

The proliferation of gambling today has forced many state law enforcement agencies to wear multiple hats. A “gaming regulator” may at one moment be acting in the capacity of a police officer investigating a burglary

[05/20161003_Cantor_Assessment_Final.pdf](#) (assessing a \$6,000,000 civil penalty against CG Technology L.P. in Nevada for violations of federal anti-money laundering statutes); Financial Crimes Enforcement Network, In the Matter of: Desert Palace Inc. d/b/a Caesars Palace, Las Vegas, Nevada, Assessment of Civil Money Penalty, No. 2015-10 (Nov. 6, 2015), available at https://www.fincen.gov/sites/default/files/enforcement_action/2020-05-21/Caesars_Palace_ASSESSMENT.pdf (assessing a \$8,000,000 civil penalty against Desert Palace Inc. in Nevada for violations of federal anti-money laundering statutes); Financial Crimes Enforcement Network, In the Matter of: Greenville Riverboat LLC d/b/a Lighthouse Point Casino, Assessment of Civil Money Penalty, No. 2003-03 (May 23, 2003), available at https://www.fincen.gov/sites/default/files/enforcement_action/greenvilleassessmentfinal.pdf (assessing a \$350,000 civil penalty against Greenville Riverboat LLC in Missouri for violations of federal anti-money laundering statutes).

54. See generally David D. Schwartz, *Roll the Bones: The History of Gambling* (Svetlana Miller et al. eds., 2nd ed. 2013) (discussing the various factors which have contributed to the expansion of gaming in the United States, including state and federal legislation, numerous court decisions and their impacts on the gaming market, ballot and legislative initiatives, the rise of Indian gaming, regulatory expansion to allow publicly-traded companies engage in gaming activity, and investments from foreign companies in United States gaming); see also American Gaming Association, *Sizing the Illegal and Unregulated Gaming Markets in the United States*, at 3 (2022) <https://www.americangaming.org/wp-content/uploads/2022/11/Sizing-the-Illegal-and-Unregulated-Gaming-Markets-in-the-US.pdf> (discussing the differences between the illegal gaming market and the “gray” market, the prevalence of land-based illegal gambling, and the prevalence of online illegal gambling from unlicensed operators and operators licensed in their home country but not in the United States).

and the next moment sitting down with an applicant who is asking to be investigated and who is willingly providing information.⁵⁵ The question that should then be asked is whether the regulated gaming jurisdiction should have a separate independent gaming body to focus on gaming regulatory issues, including applicant gaming license investigation. If the underlying public policy objectives are understood, it might be easier to understand the respective regulatory environments.

The Early Days of Casino-Style Gaming Regulation in the United States

The early days of gambling in Nevada were an evolving process with starts and stops depending upon the social and political environment existing at any particular time. In the 1940s, organized crime became entrenched in the gambling industry in Nevada.⁵⁶ There was very little regulatory oversight as politicians struggled to get a grip on the growing gambling industry and the organized crime that controlled it. In the late 1940s, Nevada moved towards stricter gaming regulation and allowed the Tax Commission to further regulate gaming.⁵⁷ For example, fingerprints and other information were required. In 1955, the Nevada Gaming Control Board was formed and became the enforcement and investigative body within the Nevada Tax Commission.⁵⁸ In 1959, the Nevada Gaming Commission was formed and the Nevada Gaming Control Board became a separate agency, no longer associated with the Nevada Tax Commission.⁵⁹ This then created the start of a legitimate gaming regulatory structure in Nevada. The Nevada Gaming Control Board today is the investigative body tasked with maintaining the integrity of gaming in Nevada.⁶⁰ This includes investigating applicants for gaming licenses and ensuring that the gaming infrastructure is free from criminal elements and that the highest standards are maintained at all gaming locations in Nevada.⁶¹

55. See Anthony N. Cabot & Keith C. Miller, *The Law of Gambling and Regulated Gaming* 61, 80 (Carolina Academic Press, 3rd ed. 2021) (explaining that most United States jurisdictions grant police powers and other investigative authority to gaming regulators); see also Nev. Rev. Stat. § 289.360 (delegating certain authority of a peace officer to members of the Nevada Gaming Control Board and the Nevada Gaming Commission, as well as the Board and Commission's agents).

56. See Schwartz, *supra* note 1, at 214-15 (explaining the influx of organized crime into Nevada in the 1940's).

57. *Id.* at 251.

58. Nevada Gaming Commission & Nevada Gaming Control Board, Board Information Packet 6 (Jennifer Togliatti & Kirk Hendrick eds., 2024).

59. *Id.* at 7; see also Schwartz, *supra* note 1, at 233 (explaining the separation of the Gaming Control Board from the Nevada Tax Commission)..

60. Nevada Gaming Commission et al., *supra* note 58, at 6-7.

61. *Id.*

New Jersey approved casino-style gambling in the late 1970s and became the second state to legalize casino-style gambling.⁶² The Casino Control Commission and the Division of Gaming Enforcement were established in 1977 under the Casino Control Act.⁶³ The Division of Gaming Enforcement is the investigative body responsible for investigating applicants for gaming licenses and ensuring the transparency of gaming in New Jersey.⁶⁴

Mississippi approved casino-style gambling in June 1990 with the enactment of the Mississippi Gaming Control Act.⁶⁵ The Mississippi Gaming Commission was then established to regulate dockside casinos.⁶⁶ The first dockside casino opened in August 1993 in Biloxi and Mississippi became the third state to approve casino-style gaming.⁶⁷ Louisiana legalized casino gambling in 1991 but the licenses were limited to riverboats.⁶⁸

Colorado followed Mississippi in 1990 with a Limited Gaming Initiative.⁶⁹ Unlike Nevada, New Jersey, and Mississippi, the bets were limited to \$5.00, and locations could not operate 24 hours a day.⁷⁰ Similar to New Jersey, casino-style gaming could only operate in certain locations in Colorado.⁷¹ Expansion of the gaming industry continues to the present day.

62. Anthony N. Cabot & Keith C. Miller, *The Law of Gambling and Regulated Gaming* 37 (Carolina Academic Press, 3rd ed. 2021).

63. State of New Jersey Casino Control Commission, *Casino Gaming in New Jersey*, <https://www.nj.gov/casinos/law/gamingnj/index.html> (last visited Feb. 19, 2024).

64. See State of New Jersey Division of Gaming Enforcement, *About DGE*, <https://www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home/about-dge/> (last visited Feb. 19, 2024).

65. Mississippi Gaming Commission, *History*, <https://www.msgamingcommission.com/about/history#:~:text=The%20Mississippi%20Legislature%20legalized%20dockside,adoption%20on%20June%2029%2C%201990.> (last visited Feb. 19, 2024).

66. *Id.*

67. Schwartz, *supra* note 1, at 313.

68. RIVERBOAT GAMBLING, 1991 La. Sess. Law Serv. Act 753 (H.B. 1999) (WEST).

69. See Richard Sweetman, *A Brief Timeline of Colorado Gaming Law*, Colorado LegiSource (Feb. 8, 2024), <https://legisource.net/2024/02/08/a-brief-timeline-of-colorado-gaming-law/> (explaining the passage of the Amendment 4 on the 1990 general election ballot of Colorado, which amended the state constitution to authorize “limited gaming”).

70. See *id.* (explaining the amendment allowed a maximum bet limit of \$5 and limited the hours of operation for gaming).

71. See *id.* (stating that gaming could only occur in the towns of Black Hawk, Central City, and Cripple Creek).

Modern Regulation of Casino Gaming

Some form of regulated casino-style gambling has now spread to 45 states, and this includes both tribal and commercial casinos.⁷² It can be argued that after Nevada, both New Jersey and Mississippi took a very methodical approach through the establishment of gaming regulatory agencies to oversee regulated gaming. Separate agencies were set up which focus specifically on regulating the gaming industry to ensure transparency, accountability, and integrity. The review process ensures that applicants for gaming approvals have to go through rigorous background and suitability investigation, including both background and financial reviews. Nevada, New Jersey, and Mississippi set a high bar for other states and tribal regulatory bodies yet to enter the regulated casino market.

From 1959 when the Nevada Gaming Commission was formed until the 1980s organized crime still had a foothold in Nevada casinos.⁷³ Despite taking decades to completely rid the casino industry of organized crime, the experience obtained, and the efforts undertaken by the Nevada gaming authorities ultimately resulted in the creation of a model for the effective oversight and regulation of the gambling industry. Today, the Nevada Gaming Control Board is one of the best gaming regulatory agencies in the world.⁷⁴ New Jersey also had challenges with organized crime after the casino industry became legal in Atlantic City.⁷⁵ As was the case with Nevada, New Jersey also developed an effective oversight and regulatory system for its gambling industry.

Over the decades, many of the regulatory agencies in gaming have perfected their trade. With 45 states involved in some sort of regulatory review, there is a lot of cross-reference of information among gaming regulatory agencies. When information was not as accessible and only three primary state regulatory agencies were conducting regulatory investigations, it was much easier to hide information. The licensing investigations today are less focused on the smoking gun “rap sheets” that were such a big part of the early-day investigations. The days of having to physically visit the courthouse to review records are over because most everything is online. Further to that point, accessing information from separate state and federal law enforcement

72. American Gaming Association, *Gaming Industry Delivers \$329 Billion Annual Economic Impact to U.S. Economy, New AGA Study Finds*, Oct. 9, 2023, <https://www.americangaming.org/new/gaming-industry-delivers-329-billion-annual-economic-impact-to-u-s-economy-new-aga-study-finds/>.

73. See Schwartz, *supra* note 1, at 257 (explaining that casino ties to organized crime in Nevada were declining by the early 1980's).

74. See Erica Adler, Nevada Regulators' Vital Role Through the Growth of Gaming, 26 *Gaming L. Rev.* 165, 166, 175-76 (Apr. 2022) (calling Nevada's gaming regulatory structure the “gold standard” and stating that it has been used as a model for other jurisdictions).

75. See Schwartz, *supra* note 1, at 269-71 (discussing connections to organized crime related to the opening of the Ceasars World resort in Atlantic City, New Jersey shortly after the state legalized commercial gaming).

agencies on *regulatory investigations* was restricted. If it was not a criminal investigation, many law enforcement agencies were reluctant or even forbidden from sharing information that pertained to a gaming regulatory investigation. Access to the National Crime Information Center ("NCIC") was also difficult when matters pertained to a regulatory investigation.

Gaming regulators in Nevada and New Jersey are widely respected for the regulatory infrastructures each has developed. Many state gambling regulatory bodies, as well as foreign regulatory bodies, have actively sought the advice and expertise of these two regulatory bodies in developing their own gambling regulatory and oversight structures. Decades of hard lessons have created much institutional knowledge within the two respective agencies. This knowledge is not something that can be imparted in crash course seminars lasting only a couple of days. Gaming investigations cannot effectively be taught in a course. Instead, this process also must include being taught and mentored by gaming regulators who have spent years conducting every type of investigation who can then impart that knowledge to new gaming agents. Yes, it is imperative that if a gaming agent is conducting a financial review a basic skill set is in place, for example, an accounting or finance degree. However, it also takes a unique skill set to be able to ask the right questions. The gaming regulatory investigations today can be very expensive and time-consuming because a lot of the investigative time is spent reviewing complex organizational charts and understanding how money moves. The applicants with nefarious intentions have become very sophisticated and this has forced regulatory agencies to update the legal and regulatory review process and maintain staff with the expertise to conduct complex domestic and international investigations.

Many other states, such as Illinois,⁷⁶ Indiana,⁷⁷ Michigan,⁷⁸ Iowa,⁷⁹ and Pennsylvania⁸⁰ entered the casino market after Nevada, Mississippi, and New Jersey. These regulated gaming jurisdictions had the benefit of learning from the early pioneers in the regulation of casino-style gaming. There is a rich history of hard lessons, how to avoid mistakes, the ability to understand which regulatory structure works best, and which mix of new hires should have law enforcement or accounting/finance degrees or both. Many of the later entry gaming regulatory agencies have become very respectable, similar to Nevada and New Jersey. Still, other gaming regulatory jurisdictions, due to structural, personnel, funding issues, and/or political issues, continue to struggle with the concept of a well-established gaming regulatory framework.

76. *Id.* at 313 (Illinois legalized riverboat gaming in January 1990).

77. *Id.* at 315 (Indiana legalized riverboat casinos in 1993).

78. *See* 1997 Mich. Legis. Serv. P.A. 69 (S.B. 569) (WEST) (1997 legislation implementing and modifying an Initiated Law approved by voters 1996 to legalize gaming).

79. *See* Schwartz, *supra* note 1, at 311 (Iowa legalized riverboat gaming in 1989).

80. *Id.* at 319 (explaining Pennsylvania's legalization of casinos).

Deficiencies and Shortcomings in the Gaming Regulatory Review Process

There are hundreds of gaming regulatory agencies in the United States. Many of them, following the lead of Nevada and New Jersey, have established excellent regulatory structures staffed with highly competent investigators and regulators. However, not all regulatory agencies are alike. There are agencies that, for a variety of reasons, do not have the skill sets, depth, access to resources, funding, or focus to conduct well-structured regulatory investigations. The reasons and excuses for the lack of a robust regulatory review process are many.

In Nevada, the opportunity to hire gaming agents with specific talents and abilities such as extensive law enforcement backgrounds or financial investigative backgrounds is done whenever more agents need to be hired. The Nevada Gaming Control Board is *not* bound by hiring from a state pool of individuals who may not meet the specific qualifications of the job. This allows for a national and industry-wide applicant pool possessing unique talents and abilities. Essential skill sets include the ability to speak foreign languages, a background in law enforcement, law degrees, established international associations, and advanced finance degrees. This is critical because as was noted earlier, *regulatory investigations* are sometimes difficult to conduct, especially if certain law enforcement agencies do not understand or respect that process.

Gaming investigations have become increasingly intricate and who and what to review and how to do that is complicated and, as a result, very difficult. The focus of the gaming regulator today should move away from the form over substance and “gotcha” issues and move into a more streamlined, substantive review.

Unfortunately, many of the gaming agencies rely on renewal fees to finance staff so the suggestion that one agency can rely on another, more experienced and sophisticated gaming agency has not worked very well. Compliance departments for many gaming operators and vendors have grown exponentially over time. It is a full-time operation to churn out the same or similar applications, the only difference being the name of the jurisdiction on the application. For many gaming agencies, there is a focused effort in collecting applications that will probably never be reviewed but that box must be checked. Many gaming agencies do not interview applicants, do not travel to foreign jurisdictions, do not have law enforcement contacts in the respective jurisdictions, and do not have the language capabilities or other skills required to conduct an investigation but *pretend* the job is being accomplished.

There are also inherent conflicts in the regulatory review process. The more profitable the casinos, the more taxes that are collected. It is very difficult to *self-regulate* and therefore there should always be a clear separation between those regulating and those being regulated. There are of course commercial considerations, and it can be tempting to place the due diligence process in a secondary position to the *monetary* considerations. This should never be the case. One sour apple can ruin the whole barrel and expose a casino operation and a regulatory body to very unfortunate and unfavorable situations. There are too many opportunities for casino gaming vendors today to enter a gaming market without a full gaming regulatory review and depart

that gaming market before any comprehensive investigative review by the respective gaming agency. Why would certain gaming vendors or operators want to enter the Nevada or New Jersey gaming markets if there is low-hanging fruit elsewhere, where the return on investment is greater?

Every gaming jurisdiction must attract capital investment to be successful. The Las Vegas strip was not built on the premise that casino gambling is going to disappear tomorrow, but instead, it is understood that casino gambling is embedded in the fabric of the economy of Nevada. A successful gaming industry in Nevada provides much-needed tax revenues and brings real-wage employment to thousands. The casino industry in Nevada attracts tens of millions of visitors to the Las Vegas Strip each year. There is zero *political risk* that the Las Vegas strip will suddenly be outlawed in Nevada. The notion of zero political risk attracts much-needed capital to build multi-billion-dollar casinos.

It is perhaps understandable that something of a love-hate relationship exists between the casino gaming industry and their regulators. The industry sees regulation taking regulatory fees going to pet projects for officials who may see gaming as a cash cow to be “milked” without consideration for the consequences, taxing the gaming industry into submission when there is little left for capital investment. Going back to the Las Vegas Strip, would it have been possible if a tax structure was in place that bled off the profits of the casino operators, making capital investment difficult? The multi-billion-dollar casinos on the Las Vegas strip are there because of a well thought out political structure, gaming regulatory infrastructure, and 6.75% tax rate.⁸¹

Interagency Cooperation

The good news about the gaming industry is the ability to access so much information that might not otherwise be readily available. For example, if a casino operator, casino vendor, and/or casino executive has gone through a very detailed background and financial investigation in Nevada (better known in Nevada as a non-restricted licensing investigation) there is 100% assurance it was an expensive, detailed, and time-consuming investigative process. The result, if the applicants are successful, is a *recommendation* for approval for a gaming license from the Nevada Gaming Control Board and approval from the Nevada Gaming Commission. The meetings before the Nevada Gaming Control Board and Nevada Gaming Commission delve into questions and issues that arise during the investigative review. These meetings can go on for hours, are public, and a court reporter is present creating a written record. This information is *available* for review by any jurisdiction that might be reviewing the same entities and/or individuals for

81. See Nev. Rev. Stat. § 463.370 (Nevada’s gross revenue fee on gaming licensees is applied as a percentage, based on the amount of licensee’s gross monthly revenues in three tiers); see also Nev. Rev. Stat. § 463.370(1)(a) (applying a 3.5% fee to licensees with less than \$50,000 of gross revenue in a calendar month); Nev. Rev. Stat. § 463.370(1)(b) (applying a 4.5% fee to licensees with at least \$50,000, but less than \$134,000 of gross revenue in a calendar month); Nev. Rev. Stat. § 463.370(1)(c) (applying a 7.5% fee to licensees whose gross revenue in a calendar month is \$134,000 or greater).

licensure or a finding of suitability. The public records created at the meetings in Nevada are very detailed and are the result, in some cases, of an investigative review process that can go on for over a year. Gaming agents do not sit at their desks and solely rely on open-source documents and information supplied with the applications. The gaming agents meet with officials in foreign jurisdictions, from regulatory to law enforcement. The gaming agents meet with bankers, lawyers, CPAs, and other professionals working with or on behalf of the applicants. The point is any record created at the Board and Commission meetings in Nevada is a direct result of the very *intrusive but necessary* investigation that was conducted.

Nevada is just an example of what so many other sophisticated, experienced gaming jurisdictions are doing. Gaming regulatory personnel should review issues with personnel in other gaming regulatory agencies, cross checking their respective data. There is a wealth of public information (transcripts, minutes) that would not otherwise be available, for those jurisdictions that do not have a regulatory infrastructure to carry out such investigations. For example, the State of New Jersey Casino Control Commission's transcripts of Commission meetings are available from 2017 through the present day.

Optimally, gaming regulators across jurisdictions would have the same skill sets and experience and thus the ability to conduct a thorough investigation of each gaming applicant. However, this is not the case. The danger then is what happens to those applicants applying for a gaming license who are not successful due to the inability of the respective gaming jurisdiction to separate fact from fiction, to separate old, debunked intelligence information. A denial in any gaming jurisdiction will have wide ranging impact especially if the operator or vendor is operating in multiple jurisdictions. The livelihoods of people are put in *jeopardy* if gaming regulators are not able to do their job. There are simply no excuses if there is available information based on credible investigations carried out by reputable gaming agencies to dispel falsehoods. On the other hand, the same goes for those applicants who slip through the process by taking advantage of less sophisticated jurisdictions without the ability, expertise, or motivation to conduct a thorough regulatory review.

If the motive is to collect a licensing fee to support staff, this might be referred to as the cost of doing business in that gaming jurisdiction. Can the application process be streamlined for those applicants already approved in reputable gaming jurisdictions, where transcripts and minutes are available for review, the direct result of a *final* investigative review? If an individual applicant for a gaming license has already been licensed in multiple jurisdictions like Nevada or New Jersey, can the investigative review be based on updating relevant information since the last review? This reliance on another jurisdiction's investigation would depend on the type of investigative review that occurred, but that is easy to determine. This would mean a more streamlined application process and quicker access to the gaming market.

There are certain public policy concerns unique to particular jurisdictions, even if qualified jurisdictions have approved an applicant. For example, an applicant's involvement with marijuana businesses or felony convictions may preclude licensure and so a supplemental application may be required.

There is also information available from casino vendors and operators who have *compliance programs*. The compliance program in some cases require

regular reporting to regulatory agencies which go into specific details on employees, business associates, vendors, financing, etc. Many of the large, regulated companies conduct very in-depth background checks and spend millions of dollars on such programs. These companies must do it right or existing licensing approvals are put in jeopardy. It might be inferred that if a reputable gaming company is *conducting* business with a certain vendor or individual, there is a high likelihood that a background review has been conducted. A review is not the same as an approval from Nevada or New Jersey but a tool that can be used in the vendor licensing review process.

The presence of so many gaming agencies requiring vendors and casino operators to repeat the same or similar duplicative licensing processes is an indictment of a bureaucratic process that diverts staff and resources from the oversight of daily compliance by licensees with regulatory requirements and, as such, constitutes a substantive waste of regulatory agency staff time and public resources. Moreover, the many millions of dollars spent by gaming companies in the repetitive multi-jurisdictional regulatory application process can be better spent on programs like problem gambling, strengthening compliance programs, AML, and KYC infrastructure instead of pushing paper to check the boxes to satisfy a bureaucratic process that is blind to a process filled with repetition.

Suggestions Going Forward

Jurisdictions that conduct regulatory reviews or are looking to modernize their regulatory structures could benefit from contemplating and addressing the following questions:

✓	Suggestions Going Forward
	Why do some jurisdictions regulate better than others? Is it a result of hard lessons learned or an internal review suggesting there are more efficient regulatory processes that can bypass mistakes made in the past?
	Do regulators understand the purpose of the gaming regulatory review process? Have they lost focus on the purpose of the gaming regulatory review process?
	Is it possible to conduct a serious regulatory review in a limited time frame on a multinational corporation where there might be language barriers, different accounting standards, cultural issues, limited access to law enforcement resources, and limited access to the judicial system?
	How many times do regulators across gaming jurisdictions have to ask the same questions on the same applications?

	How many times do gaming employees/executives have to be fingerprinted?
	What is the sophistication level of the personnel of each gaming agency and their ability to review complicated multinational corporations relying on, for the most part, an application submitted by the applicant and open-source documents?
	Is it possible to conduct a gaming regulatory review in a few short weeks sitting at a desk and relying on open-source documents and long-winded applications that ask for so much peripheral information that it may never be reviewed or verified?
	Can such a regulatory review be conducted without an in-depth interview of the applicant which allows that applicant to correct minor errors on applications and verify information on the applications?
	Is there procedural due process if an applicant is not allowed to provide context or clarify information obtained during an interview that appears to contradict an applicant's own statements?
	Does the gaming regulatory agency wear multiple hats? If so, what are the agency's priorities?
	How do gaming regulators remain impartial to gaming applicants when at the same time agents are involved with prosecuting criminal cases?
	Could regulators and its law enforcement agency have differing points of view?
	Can a gaming regulator conduct an impartial review of an applicant when the regulator's primary expertise is in conducting a police investigation?
	Should decades-old intelligence information from unreliable sources that has never been acted upon impede the licensing review of an applicant with an otherwise clean criminal history?

	Is time better spent reviewing substantive issues by contacting reputable, respected gaming agencies, relying on irreplaceable institutional knowledge and in many cases, <i>public</i> documents produced based on such knowledge?
	Is it better to keep going through the checklist that requires applications to be collected from vendors that in many cases are already licensed in numerous jurisdictions like Nevada or New Jersey?
	Is it possible for some jurisdictions to rethink or redo the regulatory review process, skip the mundane steps, stop pretending there is some sort of regulatory review taking place, and instead consolidate the review process to include review and reliance on those jurisdictions that simply do it better?

Conclusion

The technology available to the regulated and the unregulated elements in the gaming industry and to criminals seeking to access the massive amounts of money handled within the gaming industry has grown quickly and dramatically in the past forty years. As a result, the practical challenges faced by both the regulators and the regulated, and the costs incurred in addressing the challenges they all face, have grown exponentially. Accordingly, it is imperative that staff and resources be focused on the substantive issues and challenges of preserving and protecting the integrity of the gaming industry.

Through their respective national and international associations, the regulators, and the regulated need to continue to expand the interconnectivity of their associations to maximize efficiency and minimize the cost of regulatory oversight and compliance. Many individual gaming agencies have done a stellar job of regulating their respective jurisdictions. Their experience is a source that should be utilized on an ongoing basis. There is much room for improvement within the industry, and this can be achieved through focused efforts and well thought out processes. Maintaining and enhancing the integrity of the gaming industry is an ongoing challenge that is best met by constant substantive dialogue and transparency between the regulators and the regulated. For the gaming industry to continue to thrive and provide meaningful economic benefits on a widespread basis, the incorruptibility of the industry must be maintained, and the public must be confident in that fact. To continue to achieve this result, the regulators and the regulated must all be focused on streamlining the regulatory process without compromising the same. A good start is to minimize regulatory duplication which may free up capital for gaming operators and gaming-related suppliers to reinvest in infrastructure, employees, and technology. This will also allow the regulators to be more efficient, encourage interaction and communication among gaming agencies, and increase their focus on relevant issues.