

1 CHAIRPERSON JAMES: And, Mr. Gardner.

2 MR. GARDNER: Good afternoon, Chairman James --

3 CHAIRPERSON JAMES: Good afternoon.

4 MR. GARDNER: And members of the Commission. When I
5 was first asked to be on this panel I explained that I have no
6 expertise in the regulation of gambling. I then explained my
7 concerns about the industry. Executive director Tim Kelly
8 thought that these concerns are a sub-set of regulations of
9 gambling. After further reflection it appeared to me that they
10 are, that they could really be considered more of a larger
11 picture.

12 The gambling industry in my view needs to be
13 regulated not just by a Gaming Control Board and a Gaming
14 Commission, but by all branches and levels of government, not
15 just by a Gaming Board that licenses owners, watches them, sees
16 who comes in and out, and pastes pictures of slot sheets in a
17 book of undesirables. They, the board and Commission do a pretty
18 good job, I'm not here to really discuss the job that they do.
19 I'm here to discuss some, a bit of a larger picture.

20 The control board's role may be deep but it's
21 relatively narrow. The legislature, the governor, the attorney
22 general, the county Commission, the mayor and city counsel all
23 have a role to play in keeping this industry in check.

24 The question raised in my written report is whether
25 these other agencies of government are doing their part. I'm not
26 going to use this time to repeat all the examples that I laid out
27 in my 9,000 word report, I couldn't do it anyway in 15 minutes.
28 I will limit my remarks to just a few events.

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1 The Commission's decision to hold this meeting at the
2 MGM offers an opportunity to explain what is perhaps the best
3 example of the arrogance of power in the hands of organized
4 gambling and of the consequent dereliction of government, the
5 take over by the MGM of, over the sidewalk bordering the entrance
6 to this property.

7 An article in the Las Vegas Review Journal last
8 Saturday spoke of the cancellation of a rally by a casino dealers
9 association when the MGM was picked as the site for this meeting.
10 As strange as this may sound the MGM claims to own the sidewalk
11 bordering its property along Tropicana Avenue where it has
12 designed its main entrance.

13 Recalling that on May 27th, 1994, approximately 500
14 culinary union members were arrested for trespassing on this
15 stretch of sidewalk along side a federally funded state highway.
16 The dealers changed their plans.

17 Before I get into details I want to back up for a
18 minute to discuss the factors I laid out in my written testimony
19 that I said are critical to an analysis of the defects of
20 organized gambling on Las Vegas.

21 First Las Vegas is a company town and this is not the
22 first time you've heard that. Of the 25 largest employers in the
23 state, six are governments, two are hospitals, and 17 are
24 casinos. All 17 of those casinos are in Las Vegas. Eight are
25 larger than the state government. Of the largest 11 private
26 companies, all 11 are casinos. Of the largest 100 companies 70
27 are casinos and most of the remainder are utilities and
28 hospitals.

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1 The second factor is the history of organized
2 gambling with roots in organized crime. I'm not going to get
3 into that, I think the history is too well known. Perhaps the
4 most important factor is the nature of organized gambling. No
5 one in the history of mankind has ever built a casino out of a
6 desire to improve the lot of humanity. The enterprise taps a
7 rather limited set of human motivations.

8 This Congressionally appointed Commission meets here
9 today through no fault of its own under premises of Las Vegas
10 gambling operation which has assumed the power to dictate whom
11 may use the sidewalk along our federally funded state highway.

12 Consequently the right of the freedom of speech that
13 could be exercised in front of the Congress of the United States
14 is denied here in Las Vegas in front of the MGM. Toward what was
15 to become the end of seven years of public service as a deputy
16 attorney general for the state of Nevada, in early 1994 I was
17 asked to research the constitutional rights of citizens on public
18 sidewalks. There was -- concern over what are known as smut
19 peddlers who stand on the sidewalks in front of the casinos
20 handing out sexually graphic fliers for so called escort
21 agencies. I suggested that the stands that used to distribute
22 the fliers could probably all be eliminated and that an argument
23 could be made for controlling the commercial abuse of public
24 right-of-way. But the smut peddlers it turned were not the
25 object of this exercise.

26 The last question that my chief asked me to research
27 was this and I quote, "what would happen if we gave the sidewalks

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1 away to the casinos?" In ten words or less my answer was nothing
2 would happen. You can't deed away the constitution.

3 He didn't tell me and I did not know at the time that
4 it had already been done. County and state officials decided
5 that the public sidewalk right-of-way which ceased to exist in
6 favor of ownership and control by the MGM Grand Casino Hotel.
7 County and state public records, however, require that this
8 ownership and control was to be limited by a grant of a
9 right-of-way easement for public use.

10 The so called public right-of-way easement that the
11 MGM recorded, states that the sidewalk is the private property of
12 the MGM and that the MGM, quote, "may evict or expel," quote, any
13 person for any reason and that the sidewalk, quote, "shall not be
14 used as a public forum for the organized dissemination of
15 information of a political, commercial, economic, or sectarian
16 nature." It states further, quote, "no solicitation, picking, or
17 hand billing activity for any purpose whatsoever may be conducted
18 on the sidewalk."

19 Finally the document contains these words, the
20 sidewalk, quote, "remains the private property of the MGM and is
21 not dedicated to public use".

22 When a member of the Clark County district attorney's
23 office saw what the MGM recorded he wrote a letter to MGM's
24 attorney telling him that the MGM breached its agreement to
25 provide a public sidewalk. However, the attorney general, facing
26 election in 1994, issued this directive to her staff, quote,
27 "keep me out of this until November," end quote.

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1 Our governor who along with the attorney general is a
2 member of the board of directors of the Nevada Department of
3 Transportation that formally owned this stretch of sidewalk along
4 Tropicana Avenue publically declared it was not his problem.

5 Today casino dealers who stand in front of this
6 property on the sidewalk along Tropicana Avenue and speak to
7 passerbys about their concerns stand to be thrown in jail.

8 Had the MGM asked the Gaming Control Board for
9 permission to own and control the sidewalk, the Board probably
10 wouldn't have granted it. The MGM didn't ask. It did not need
11 to. Later Mirage Incorporated decided it would own the sidewalk
12 in front of its new Treasure Island Hotel. The county Commission
13 fell right in line. With its ownership the casino built its
14 outdoor private theater all the way out to the curb, forcing
15 pedestrians to walk in the gutter whenever the show was in
16 progress.

17 I stood across the street one night and watch baby
18 carriages, passing baby carriages in the gutter squeezed between
19 the buses and the high walls of the theater bleachers. When the
20 Nevada attorney general was reminded that the state owned this
21 right- of-way her response to quickly claim it to the Mirage.
22 There was no public hearing and there was no authorization by the
23 Board of Transportation as required by law, the property was
24 simply embezzled away.

25 Had the Gaming Board been asked for ownership of the
26 sidewalk with the result that people would end up walking in the
27 gutter, it probably would have said no. It wasn't asked.

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1 Three months ago five pastors were handing out
2 religious literature on Fremont Street just east of the casinos
3 when they were arrested, handcuffed, taken to the city jail, and
4 strip searched. One of the officers said to them in jail, "Where
5 is your god now?" The charge blocking the sidewalk.

6 The Las Vegas city council stepped right in line when
7 it gave the town down the city's community redevelopment money to
8 refurbish their store fronts and create a light and sound show.
9 This money was taxed from the poorer neighborhood, the blighted
10 areas and just turned over to the casinos.

11 The city also executed a contract that allows the
12 casinos to provide, quote, "security," end quote, for the
13 downtown streets. The term security is not defined and no one
14 knows the extent of authority of the private security patrols on
15 these public streets.

16 The city then banned all leaf letting and soliciting
17 because the casinos as they themselves have said to a federal
18 judge, believe that bums are bad for business. Among the bums
19 that they have kicked off the street as bad for business are the
20 volunteers for the Salvation Army. They will not be there this
21 Christmas with their pots and bells just as they were not there
22 last Christmas. In the casinos' view of the world the only
23 rightful place for your coins is their slot machines.

24 The city and county officials gave the down town
25 casinos our public park money after declaring the down town
26 casino block to be a public park. When residents who suffer one
27 of the lowest park acreage ration in the nation protested by

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1 gathering on the street with their frisbees and picnic baskets
2 they were immediately surrounded by the metropolitan police.

3 Had the Gaming Board been asked for our parks money
4 and our community redevelopment money and permission to post
5 private security on our down town streets I'm sure it would have
6 said no.

7 Other industries exert influence on government but I
8 am unaware of any industry in this country other than organized
9 gambling that has asked for no constitution zone around its
10 operations because it has no tolerance for bums and the freedom
11 of speech, and received it with no questions asked.

12 The Gaming Control Board does play a role in
13 regulating activities of children in casinos. Children play an
14 every increasing role in the economy of Las Vegas. Casino hotels
15 such as the MGM Grand centered around a children oriented theme
16 park; the Excalibur a hop scotch away and modeled around story
17 book themes inside and out; Treasure Island with its pirate show,
18 and Circus Circus with clowns and big top are architecturally and
19 thematically designed to attract the married with children crowd.

20 Now that Las Vegas is no longer just an adult
21 Disneyland, but caters to children of all ages, we might want to
22 know what the younger ones do while their elders drink and
23 gamble.

24 One place to look is the casino arcade.
25 Unfortunately many of the games in casino arcades are gambling
26 devices. While casinos' arcades are for adults the arcades are
27 nursery casinos. The arcades perform three functions. The first
28 and most obvious is to free the parents to gamble. The second is

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1 to free the kids of their money. The third is to train the next
2 generation of gamblers.

3 The MGM arcades since we're here has a game called
4 Jungle John a replica of a game in its casino where coins are
5 piled on a ledge and the player tries to knock them into the pale
6 off the tray by inserting more coins. A game appropriately
7 called Pirates Revenge is a roulette wheel. Two machines, Rock
8 and Bowl and Aftershock, are literal slot machines.

9 The child places a 25 cent token into a slot and the
10 coin rolls down the plank and either falls off the edge or into a
11 hole in less two seconds. The play takes less time than a slot
12 machine in a casino. With \$10.00 a child buys 40 tokens each the
13 size, shape, and value of a quarter that will last about 10
14 minutes. These are not pinball machines or video games designed
15 to afford entertainment time for the money. They are virtual
16 slot machines designed to turn money over quickly.

17 Some of the arcades treat children better than this,
18 some worse. And I must say that the Game Works right next to
19 here and a part of the MGM is one of the best arcades I have
20 seen. But these are more sophisticated machines for the older
21 kids.

22 Some of the casinos, and you'll find this mostly in
23 the neighborhood casinos, offer a game called 21 For Fun and form
24 of speed video poker that where the child is enticed with extra
25 rewards for playing fast.

26 When I discovered that this Commission has come this
27 far without defining gambling I was at first surprised. Upon
28 further reflection it really ought to be defined at the end of

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1 this process because it involves value judgements more than
2 dictionary exercises.

3 I have looked at the definitions of about half of the
4 states, they are all over the map. The Nevada statutory
5 definition is short and concise, placing a wager for any
6 representative of value in exchange in gambling. Many of the
7 games in arcades are illegal under this definition. But they are
8 there.

9 Some states like California talk about an element of
10 chance versus an element of skill. This misses the point. Poker
11 and 21 are games of skill so are football, horse racing, and many
12 other activities that people gamble on. It's not what's in the
13 game but what's on the game that constitutes gambling.

14 You've heard testimony about South Carolina where
15 everyone can play video poker but that children are paid in toys.
16 Texas has also tried this. In 1995 Texas passed what is known as
17 the Fuzzy Animal Act which accepts games from the definition of
18 gambling where the player is paid with an item worth \$5.00 or
19 less.

20 It did not take long before it was discovered that
21 this loophole could be used to designed a game of gambling for
22 adults called 8 Liner and Texas still hasn't heard the end of
23 this. The real Fuzzy Animal is this thing we call gambling.

24 What difference it makes is after the game is played
25 and you turned your representative of value into the cashier's
26 cage for a toy rather than U.S. currency is hard to discern. You
27 might as well allow children to sit next to the adults at the

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1 tables in the casinos so long as they are paid with a different
2 color of chip.

3 Only a few states have toyed with this disintention,
4 both the South Carolina and Texas experience demonstrate that
5 it's a mistake. The problem is as both states have learned once
6 you let this thing called gambling out of the box it is very
7 difficult to stuff it back in.

8 The reason for this is that you quickly create an
9 interest group with a lot of money and a lot of power. We know
10 all about it in Las Vegas.

11 And I thank you very much for listening.

12 CHAIRPERSON JAMES: Thank you, Mr. Gardner.

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