The meeting was called to order at 8:05 a.m. Senator Close was in the Chair.

SENATE MEMBERS PRESENT:	ASSEMBLY MEMBERS PRESENT:
Senator Close	Co-Chairman Hayes
Senator Hernstadt	Mr. Stewart
Senator Don Ashworth	Mr. Brady
Senator Dodge	Mr. Coulter
Senator Ford	Mr. Fielding
Senator Raggio	Mr. Horn
Senator Sloan	Mr. Malone
	Mr. Polish
	Mr. Prengaman
	Mr. Sena
SENATE MEMBERS ABSENT:	ASSEMBLY MEMBERS ABSENT:
None	Mr. Banner

Senator Close stated that the purpose of the joint hearing was to take further testimony on the following measures:

SB 122 Increases commission deducted and tax payable by licensee for certain pari-mutual betting.

SB 131 Increases penalties for violation of certain gaming laws.

SB 132 Requires licensing of persons selling tickets to shows in gaming establishments.

SB 165 Tightens certain provisions relating to gaming licensing and control.

SB 178 Transfers revenues received from casino entertainment tax to counties and incorporated cities in which it was collected.

SB 185 Permits interception of communications and use of evidence derived from such interceptions in certain circumstances involving gaming violations.

SB 236 Makes various changes to laws regulating gaming.

Senator Chic Hecht stated that he is here to testify on SB 185. Six years ago, when he was a member of the Senate, he initiated a bill that would outlaw wiretapping in the State of Nevada. This was not a spur of the moment thing. There were conversations with over 50 agents throughout the United States. At that time the bill died. His credentials are that he was an intelligence agent on the periphery of wiretapping inside the Continental U.S. and behind the iron curtain. He was the National President of the National Counter Intelligence Force. He also served on the National Military Intelligence Board in Washington, D.C. Wiretapping started in the late 1940's. The laws of America were so constituted, that before any agent could

wire tap, the security of the United States has to be threatened. Then when a person was so suspected, and evidence was absolute, only a Federal Judge could give an order for the wire tapping. The only time this was ever used, was when we had an American in a very sensitive position, and we knew without a measure of a doubt, that he was passing information to a foreign power. The security of America was threatened and we had to get the people that he was passing the information to. There are no guidelines in Nevada for this kind of wire tapping. He doesn't feel any state agency is justified to use it. This would not be the Board or the people at the top, it would be down at the staff level. This could lead to over zealous people going on fishing expeditions. Because of being on the other side of the fence, he felt there could be a tremendous amount of harassment to the people who hold gaming licenses in the State of Nevada.

Mr. Stewart stated that he did not see anywhere in the bill where a staff member could just wire tap. It had to be by court order.

Mr. Hecht stated that there is a big difference between an elected Judge and a Federal Judge.

Senator Hernstadt asked if he was then saying to amend this bill to exlude all wiretapping, even in cases of murder, kidnapping, and so on.

Senator Hecht stated that he felt that these particular crimes were covered by Federal Statutes.

Senator Hernstadt stated that murder is a State crime.

Senator Hecht stated that it could be. But he still felt that wire-tapping should not exist at the state level.

Mr. Malone stated that there had been testimony yesterday that this possibly could be an invasion of privacy. He asked him if he felt that were true.

Senator Hecht stated that there was no doubt. There are people in the gaming industry who are also very large in financial and banking circles. There is no question that if you tap certain individuals in this state, you can make a wonderful living just on the information you can gather.

Senator Dodge stated that even with federal wire tapping authority the job isn't getting done as far as cleaning up a lot of illegal activities in drug traffic and conspiracy. What would be your comment as far as invasion of privacy as balanced against the interests of the public?

Senator Hecht stated that federal wire tapping has far more buffers to protect the rights of the individual. 99% of the time the federal agent is far better trained and is a career man. Many times, at the State level, the agent works for a few years and then goes into private industry.

Senator Dodge stated that Larry Semenza testified yesterday that he felt we should give the gaming people this authority. Otherwise it would be the federal people coming in and doing more policing of Nevada gaming.

Senator Hecht stated that the whole concept of wire tapping has changed since the late 1940's. At that time, the case had to be proved, and then you wanted to know who the man's contact was. Now the person gets the wire tap and then begins to build the case. That was not the intent, and a good agent does not need that.

Mr. Sena asked if he didn't feel that with today's sophisticated equipment, it wouldn't make the agent's job easier.

Senator Hecht stated there was no question of that, but on the other hand you have to look at the rights of the individual. The real criminal element will, and probably does today, use pay phones.

Senator Raggio stated that it had been explained to the Committee that there would be built-in controls. There would have to be approval by two independent members of the Board and an affidavit submitted to a judge. He asked if there was ever, in his experience, a time when a Federal Judge turned down an application.

Senator Hecht stated that in his experience, it was just about impossible to get a Federal Judge to okay a wire tap.

Senator Dodge stated that he feels the statement that people would use this information in banking, and so on, was a little far fetched. As was testified by Mr. Trounday, what they want is mainly the hidden interest and bookmaking. These people that would be involved would be in Detroit or Chicago, and usually in the underworld. They would be communicating with operating people, and he couldn't see that exposure.

Senator Hecht stated that that may be true. But he still doesn't think it should be a tool for the investigative agent.

Roger Trounday, Chairman of the Gaming Control Board, stated he would like to testify at this time on SB 165. He stated this bill was requested by the Gaming Control Board. What this bill does is, on Page 2, Line 15, remove the phrase "except a bonafide entertainment contract." Recently we have had three individuals that have jumped through this loophole in the law. They have come in as entertainers or entertainment contract directors. We would like this done everywhere this language appears, and in its place insert, "without the prior approval of the Commission." That way it gives us a little bit of latitude of being able to determine if someone has a past that may not have been necessarily favorable, but that they are only going to appear in a certain capacity. It would be at the discretion of the Commission, to allow that individual to be a part of a contract. Right now, if they fit into an entertainment clause, we have no authority over those individuals. This deals only with individuals who have been denied a license, or who have had a license revoked.

Ray Pike, Deputy Attorney General, Chief of the Gaming Division, stated that the existing law is, that if an individual is called forward for licensure, given his key employee status, then found unsuitable for licensing, he may still remain but not as a key employee. For example in the case of Frank Rosenthal which dealt with bribery of basketball players in North Carolina. That rendered him unsuitable in Nevada to operate in the status as a key employee. However, under the present statute he can operate as a bonafide entertainer. This particular phrase has been widened by a lower court interpretation that is being appealed at the present to the Nevada Supreme Court. This would include individuals that have criminal backgrounds, who have come in as entertainment directors, with no background in that particular field. This is unacceptable in the eyes of the Control Board.

Senator Raggio stated that the language "is found unsuitable", has always raised a question in his mind. Can you not enter into a contract with someone who has already been found unsuitable, or do you have to submit every contract of any person for approval? What is your interpretation?

Mr. Pike stated that if there was a person who in the course of this law had been found unsuitable, the gaming licensee cannot enter into another contract with that individual. He feels the key is the language "who is found unsuitable."

Senator Raggio stated that was his point. Why not use "who has been found unsuitable?"

Mr. Pike stated that there are some situations where licensure is not required, but suitability finding is, and license is denied.

Senator Raggio asked if this would go beyond when the act became effective? Would that apply to someone who was found unsuitable before 1977?

Mr. Pike stated that as a personal opinion, a police statute can affect contract rights, when there is a compelling public interest. It could be applied that way, but there is argument for the other side. Right now it is being applied by the Board to individuals called forward after 1977.

Assemblyman Horn asked if a person might become a food and beverage manager after the entertainment director exception is repealed. Mr. Pike said this bill would take in all positions, not just key positions. Mr. Trounday said that any employee can be called in that the Gaming Control Board feels has a definite impact.

Senator Hernstadt questioned what situation an individual is considered to be in while the process is taking place whereby he is thereafter found unsuitable. Mr. Pike referred to an individual who is presently in such a position. He said this person is on a month-to-month contract operating now as an entertainment director. If the present law was passed, he said this person would not be considered as "grandfathered in" and would have to discontinue in that position.

Senator Don Ashworth asked if it was true that the entertainment director exception was passed into law so that entertainers in the main show rooms who may have been deemed unsuitable by the Gaming Control Board could contract with casinos. Mr. Trounday said he understood that the law that was passed last session was geared directly toward Frank Sinatra. He said that the question regarding the law is in who the contract is with.

Senator Close said he felt that the phrase requested earlier by Mr. Trounday in Section 1, Subsection 5 of SB 165, was deliberately left out by the Legislature. He felt insertion of the phrase, "without prior approval of the commission," would weaken Paragraph 5. He asked why the Gaming Control Board was requesting that they could consent to the type of contract mentioned in Paragraph 5. Mr. Pike said that because the law was apparently passed addressing one individual in the last session, if an exception was desired and would be appropriate, it would require an authorization from the Gaming Commission.

Senator Close stated that because of an employee possibly being declared unsuitable, no contract should be made with a casino for employment without stating that employment could be terminated at the State's direction. Mr. Pike said that every contract has to include a statement to that effect.

Senator Don Ashworth addressed the concern previously raised by Senator Raggio in the wording, "who is found unsuitable." He said that if this was not changed to "has been" instead of "is", the courts might find that the law was not applicable to those who have been found unsuitable before the effective date of the bill.

In reference to SB 178, Bob Hadfield, Douglas County Manager, said he did not understand why this bill was being considered by the Judiciary Committees, but he wanted to offer his testimony while it was being considered.

Mr. Hadfield said the purpose of the bill was for legislators to consider a concept of returning revenues collected through the casino entertainment tax to the local jurisdictions from which they were derived. He said that local governments depend on taxes that are not elastic in nature, but State revenues were based on elastic revenues such as those that apply to gross revenues of casinos.

Mr. Hadfield said that gaming has a considerable impact on various areas in the State. In Douglas County, he said that the population increases from the local resident number of 18,000 to 20,000 to over 100,000 at peak periods in the summer. He said that there is an impact created, and he felt the people who come to the area should help to pay for this impact through this tax. He said he did not feel that tourists should have to pay for all of the County's services, however. If this bill was effected, he said that from 1977 figures, Douglas County would get $1.5 million. He said there was about $15 million in casino entertainment tax collected statewide.

Senator Dodge asked if Douglas County had exercised their option on the 1/2¢ sales tax. Mr. Hadfield said that this tax was in effect, but he felt there was not the "windfall" that might be expected because of the number of people that only gamble in Nevada, and take care of their other business across the state line in South Lake Tahoe.

Senator Dodge said that the casino entertainment tax was first enacted to support public education. He said if this money was redistributed back to the counties of origin from the present State revenues, it would reduce the ability of the State to help to relieve property taxes in Nevada out of the General Fund surplus.

Senator Ford questioned the dates on Page 1, Lines 8 and 9 of SB 178, noting that the tentative budgets of local entities are due with the Department of Taxation on February 20. Mr. Hadfield answered that most of the budget regulations in the State had similar language. He said that the tentative budget did not have to specifically relate to the final budget.

Senator Ford asked if Douglas County had a room tax. Mr. Hadfield answered that there was a room tax, but the revenues derived from that tax were specifically for the airport and park and recreation facilities in the county.

Senator Ford asked if changing the use of the revenues from the room tax had been considered. Mr. Hadfield answered that the law presently in force had been a compromise at the time it was passed. He said presently there is a bill that would change the percentage of the revenues that can be used in each area, but the uses themselves would still be the same.

Tom Susich, Deputy District Attorney from Douglas County, spoke to the Committees concerning the criminal impacts of the casinos at Lake Tahoe. He said that of the approximately 18,000 people living in the county, 70% live in the Carson Valley, and 30% live on the shore areas of Lake Tahoe.

Mr. Susich said there were 1600 criminal cases filed in the county in 1978, and 1300 of those took place in the Lake Tahoe area. Over 1000 of these were directly related to or occurred in the casinos. He said that if the Legislature was considering allowing counties to use the casino entertainment tax, a more proper distribution would be on the basis of origin of the tax rather than a population distribution.

William Morris of the Allied Arts Council in Las Vegas said that in Las Vegas there is a need for a centrally located cultural facility. His suggestion was that the casino entertainment tax be refunded to individual counties for their convention authorities or fair and recreation boards.

Mr. Morris proposed a complicated system of distribution of the entertainment tax. In his proposal, 2% of the tax collected statewide would go to each county. The remaining amount or 66% would

be distributed to the counties of origin. He proposed the following distribution of the tax when it reached the county of origin:

25% to convention authority or fair and recreation board.
25% divided equally among the entities in the county.
25% divided based upon population.
25% on prorata basis of percentage of the actual tax collected.

Marvin Leavitt, Director of Financial Management for Las Vegas, said that the whole tax package should be considered together to determine the overall effect in the State. He said he saw some administrative distribution problems with this bill, but he thought they were minor compared to the overall effect of the tax package.

Jack Stratton of the Gaming Control Board said that there were administrative problems with the bill.

Senator Close said that if the bill was processed rightly, it would be rereferred to the Taxation Committee anyway.

In reference to SB 236, Mr. Trounday said that this bill was written to try to clean up some loose ends regarding the overall structure of gaming control. On Page 1, Line 9 of the bill, he said "sic bo" should come out. He said that rather than having games listed in the statute, perhaps it would be better to insert, "or any other game or device approved by the Nevada Gaming Commission."

Mr. Trounday said that Section 2 of the bill was rewriting NRS 463.075 because the present language was causing problems due to the fact the Gaming Control Board felt they could not live with that structure any longer. He said that presently there are allowed only three divisions in gaming control. The Board would like to be able to organize itself, and he said the proposed divisions would be enforcement, investigation, audit, research, securities, administration and legal.

Senator Dodge asked if there was any particular qualifications they wanted for the members of the Control Board.

Mr. Trounday stated that they can't really have one of the board members strictly in charge of the fiscal or economic part. They have people in both Las Vegas and in Carson and they have to watch the whole office in that part of the state. So they can't really be watching both ends of the state at once.

Senator Dodge stated that he was sure the money committees would want to know exactly how they wanted it structured. He feels that they should tell the Judiciary Committees how they want it set up and perhaps have some legislative review between sessions.

Mr. Trounday stated that he could draw up a proposal of how they wanted it structured now and get it back to the Committees.

Senator Dodge stated he still had a problem with this blanket authority, as under this enabling legislation the legislature could

Senator Raggio asked if their files were exempt from the Federal Disclosure Law.

Mr. Pike stated that there are administrative subpoenas available to the FCC or the IRS. There are also Grand Jury subpoenas available to the FBI, that can be enforced to a court action. So we have a situation where they can obtain information through a court order. If is is subject to an ongoing investigation by the State of Nevada, and that is stamped on there, the information given to the FBI is not subject to discovery under the Freedom of Information Act. It would have to be returned to us.

Senator Hernstadt asked what kind of information the FCC could get from the Board that they can't get from the applicant for say a stock offer.

Mr. Pike stated that right now the FCC is requesting to come in and look at particular records concerning correspondence between the board and a particular licensee, as to what they intend to do that would affect the trading of their public stock. The FCC cannot just simply order that information be given to them. It could be financial data that we require, and our accounting records are much more extensive. It could be a particular licensee who had a misstatement of earnings, they would want to verify what our records contained, in an effort to protect the trading public.

Mr. Trounday stated that at the bottom of Page 3, horse book and sports book are being added to the list of licenses. They have never been in there before and properly should be.

Mr. Trounday stated he would now like to speak on SB 132. He stated the purpose of this bill is to give us the authority to investigate ticket sellers. It would not make it mandatory, but we would be able to find them suitable to work with a licensee. This new language would cover the area in which a specific ticket seller was causing a problem or where that specific individual may be suspect of being involved with money leaving that establishment through him. We would then be able to call that individual ticket seller in for review.

Senator Close stated that at the present time under NRS 463 there is language that reads "The board may require the licensee to present for the application of any business or person doing business on the premises." Your proposed language now goes far beyond the status of ticket sellers. This would give you the power to require a license of anyone doing business with the licensee.

Mr. Pike stated it would be discretionary. It is the jurisdictional base for calling in an individual for a filing of suitability, which if found unsuitable would render the licensee unable to do business with that person. There have been serious problems in the past with the

adjourn and then the Board could reorganize the whole structure.

Mr. Trounday stated that the reason they are asking for this legislation is because it makes it difficult for the person that is trying to run an agency to have to consult a law book to see if they are breaking the law.

Senator Close stated he would suggest that Mr. Trounday make up a structure for the Board and then they can see later how they wish to proceed with the bill.

Mr. Trounday stated there was another change they would like to make, on Page 2 where it has the definition of executive secretary. It spells out in the law that the person serving in this capacity must have at least 5 years of responsible administrative experience, that is very difficult for us to live with. We have a fine individual who is functioning in that capacity now, but it is basically a full time job just being an executive secretary, with no administrative responsibility. There is also a problem with the language, "public notice of the time and place shall be given at least 7 days prior to each meeting." We have had a problem with an agenda already being posted, and not being able to add things that should properly be posted. We would like to have the 3 day notice to comply with the open meeting law. Also, on Page 3, lines 18 thru 21, we would like to amend this. There was a problem that is currently before us that brought this about. We would like this to read "to a duly authorized agent of a federal or state agency, including but not limited to, agents of the Federal Bureau of Investigation, United States Treasury Department, the Commissioner of the Internal Revenue Service, or the Securities and Exchange Commission of the United States, pursuant to regulations adopted by the Commission." We are finding ourselves more and more in the position of having to share information with other state and federal agencies. This would give us more flexibility of working with them.

Mr. Pike stated that in dealing with the Securities and Exchange Commission, for example, our hands are tied to a great extent specifically in the financial area.

Senator Raggio asked, what about adding in the law the requirement that if you furnish information concerning a licensee to an agency, that a copy of the information be furnished to the applicant.

Mr. Pike stated that there would be no problem with information furnished to us. It is the information aquired from other law enforcement agencies regarding that individual that we could not share.

Mr. Trounday stated there could be a problem with timing, if it is a criminal investigation. He doesn't feel they would want to assist in announcing that to the subject of the investigation.

junketeers. It is my personal opinion that this would make our approach stronger toward the junketeer.

Mr. Trounday stated that what they are trying to do is get to the ticket seller that is operating off the premises. This was the thrust of our original proposal for this bill. This way we could follow any money that is going out from a licensed establishment to a sub-entity.

Mr. Pike stated that money now goes to an outside vendor and sometimes at prices that we feel are exorbitant. It is an easy way to get money out of an establishment and we have no legal right to go after the purveyor. We cannot call him in unless we have a Statute to deal with this.

Mr. Trounday stated that someone who has never done business on the premises cannot be called in. We cannot even look at his books unless he agrees.

Mr. Stratton stated there are cases where there have been kick-backs on ticket sales. We had one recently in Las Vegas where a certain ticket company was allowed more of a discount than the others. As a result the money was siphoned off by the Casino to that particular individual. We had no way of examining the records, or any way to call him in for suitability.

Senator Raggio stated that what concerns him would be that with this new language you would have the right to require the findings of suitability and application for a shoe shine boy. "You certainly are not getting my vote on that."

Mr. Stratton stated that the only way he could respond would be that if our audit shows there is considerable sums of money leaving an establishment, this bill would allow us to follow it. Right now there are cases we are aware of but cannot pursue. We could go along with it if you want to limit this piece of legislation to only the ticket sellers.

Mr. Trounday said he would just like to mention that in New Jersey every business that does business with a licensed gaming establishment is required to have a license.

Mr. Pike stated that another thing he would like to bring up is that currently there is $30,000 available for use in buying information for some informants and to give to agents to go into an establishment to get into a game to see that it is being played properly. At this time they are limited by statute to dispersing $3,000. They would like that raised to a $10,000 draw. This would not affect the total figure, only the draw.

There was further discussion regarding the revolving fund used in gaming and the purposes for which it was used. Mr. Trounday said that it would be requested that statutory authority be given to expend up to $40,000 annually from this fund. He said the present amount in the budget is $30,000 anyway, but he felt the extra flexibility was needed. He said that some time in the future, the amount will have to be changed, and he said that perhaps it could be left to the discretion of the money committees.

Mr. Trounday proposed the addition of the wording "but not limited to" on Page 10, Line 23 of the bill. On Line 40 of the same page, he proposed changing "Junket representatives" to "Count room personnel." He said that junket representatives should not be on the list.

Mr. Trounday said that Page 10, Line 47, was changing the amount of time to object to a work card from 30 days to 90 days. He said the present time limit is not enough time to get any type of investigation done. The individual against whom an objection might be raised would have 20 days to appeal the objection or denial of his work card.

Mr. Trounday said that a proposed amendment for Page 12, Line 38 had been distributed to the members of the Committees. He said this amendment was addressed to AB 361. He said that Section 13 of the bill broadens the applicability of the 21-year old statute.

Senator Close asked what was being repealed by Section 14 of the bill. Mr. Pike said this section was the definition in the statutes of executive secretary of the gaming commission.

Ed Bowers, Executive Director of the Gaming Industry Association, suggested the amendment on Page 2, Line 35 of deleting "Carson City" to allow the Gaming Control Board to have flexibility in its meeting schedule.

Marty Kravits of Goodman, Oshins, Brown & Singer, said he was not appearing concerning any particular bill. He spoke concerning the provisions of the gaming "black book." He said these provisions are unconstitutional and would soon be declared so in court. He distributed what he referred to as "points and authorities" (Exhibit A) that detailed a variety of constitutional arguments against present black book statutes. He discussed these points at length. He also suggested a hypothetical situation whereby a person could be placed in the black book. He said that the language must be stricken from the Gaming Control Act that a man can be blacklisted because he has an unsavory reputation, or in the opinion of the Gaming Control Board, he has a bad reputation.

Also attached to the minutes are proposed amendments submitted by the Gaming Control Board for SB 131 (Exhibit B), SB 165 (Exhibit C), and SB 236 (Exhibit D).

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Virginia Letts

Virginia Letts, Senate Secretary

Carl R. Ruthstrom, Jr.

Carl R. Ruthstrom, Jr., Assembly Secretary

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MEMORANDUM SUPPORTING JUDICIAL REVIEW

I.

CHALLENGED STATUTES AND REGULATIONS

Nevada Revised Statutes:

"463.151 Regulations requiring exclusion, ejection of certain persons from licensed establishments: Persons included.

1. The commission may by regulation provide for the establishment of a list of persons who are to be excluded or ejected from any establishment which is licensed to operate any gambling game or conduct parimutuel wagering. This list may include any person:

(a) Who is of notorious or unsavory reputation;

(b) Who has been convicted of a crime which is a felony in the State of Nevada or under the laws of the United States, a crime involving moral turpitude or a violation of a provision of this chapter; or

(c) Whose presence in a licensed gaming establishment would, in the opinion of the board and commission, be inimical to the interests of the State of Nevada, or of licensed gambling, or both.

2. Race, color, creed, national origin or ancestry, or sex shall not be grounds for placing the name of a person upon the list."

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Nevada Revised Statutes (Cont'd):

"463.152 Regulations requiring exclusion, ejection of certain persons from licensed establishments: Notice to person whose name is placed on list. Whenever the name and description of any person is placed on a list pursuant to NRS 463.151, the board shall serve notice of such fact to such person:

1. By personal service;

2. By certified mail to the last-known address of such person; or

3. By publication daily for 1 week in one of the principal newspapers published in the city of Reno and in one of the principal newspapers published in the city of Las Vegas, Nevada."

"463.153 Regulations requiring exclusion, ejection of certain persons from licensed establishments: Hearings.

1. Within 30 days after service by mail or in person or 60 days from the time of the last publication, as provided in NRS 463.152, the person named may demand a hearing before the commission and show cause why he should have his name taken from such a list. Failure to demand such a hearing within the time allotted in this section shall preclude such person from having an administrative hearing, but shall in no way affect his right to petition for judicial review as provided in paragraph (b) of subsection 3.

2. Upon receipt of a demand for hearing, the commission shall set a time and place for the

hearing, which shall be held in the offices of the board at Carson City or Las Vegas, Nevada. Such hearing shall not be later than 30 days after receipt of the demand for such a hearing, unless the time and place of the hearing are changed by agreement of the commission and the person demanding the hearing.

3. If, upon completion of the hearing, the commission determines that:

(a) The regulation does not or should not apply to the person so listed, the commission shall notify all persons licensed under NRS 463.220 of such determination.

(b) Placing the person on the exclusion or ejection list was proper, the commission shall make and enter in its minutes an order to that effect. Such order shall be subject to review by any court of competent jurisdiction in accordance with the provisions of NRS 463.315."

"463.154 Regulations requiring exclusion, ejection of certain persons from licensed establishments: Penalties for failure to exclude, eject. The commission may revoke, limit, condition, suspend or fine an individual licensee or an establishment licensed to conduct any gambling game or pari-mutuel wagering, in accordance with the laws of the State of Nevada and the regulations of the commission, if that establishment or any individual licensee affiliated therewith fails to exclude or eject from the premises of the licensed establishment any person placed on the list of persons to be excluded or ejected."

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Nevada Revised Statutes (Cont'd):

"463.155 Regulations requiring exclusion, ejection of certain persons from licensed establishments: Unlawful entry by person whose name has been placed on list; penalty. Any person who has been placed on the list of persons to be excluded or ejected from any licensed gaming establishment pursuant to NRS 463.151 is guilty of a gross misdemeanor if he thereafter enters the premises of an establishment which is licensed to operate any gambling game or to conduct pari-mutuel wagering without first having obtained a determination by the commission that he should not have been placed on the list of persons to be excluded or ejected."

Gaming Control Regulations - Regulation 28:

"28.010 List of exclusion and ejectment. Pursuant to NRS 463.151 through 463.155, the Nevada gaming commission hereby provides for the establishment of a list of persons who are to be excluded or ejected from any establishment licensed to operate any gambling game or conduct pari-mutuel wagering. Such list may include any person:

1. Who has been convicted of a crime which is a felony in the State of Nevada or under the laws of the United States, a crime involving moral turpitude, or a violation of a provision of NRS Chapter 463; or

2. Whose presence in establishments licensed to operate any gambling game or conduct pari-mutuel wagering would, in the opinion of the board or

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Gaming Control Regulations - Regulation 28 (Cont'd):

commission, be inimical to the interests of the State of Nevada, or of licensed gambling, or both; or

3. Who has been determined by the board or commission to be of notorious or unsavory reputation. Evidence of notorious or unsavory reputation may be established by identification of a person's criminal activities in published reports of various federal and state legislative and executive bodies which have inquired into various aspects of criminal activities including, but not limited to the following:

(a) McClellan Committee (Senate Subcommittee on Investigation);

(b) Chicago Crime Commission;

(c) New York Waterfront Commission;

(d) California Crime Commission."

"28.040 Distribution and contents of the list.

1. The list shall be open to public inspection and shall be distributed to:

(a) Every establishment licensed to operate any gambling game or conduct pari-mutuel wagering within the state;

(b) Law enforcement agencies situate in the State of Nevada.

2. The following information and data shall be provided for each excluded person:

(a) The full name and all aliases the person is believed to have used;

(b) Description of the person's physical appearance

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Gaming Control Regulations - Regulation 28 (Cont'd):

including height, weight, type of build, color of hair and eyes, and any other physical characteristics which may assist in the identification of the person;

(c) Date of birth;

(d) The effective date the person's name was placed on the list;

(e) A photograph and the date thereof.

3. The list shall contain the names of those persons now living who have been previously listed in that certain list promulgated on the 13th day of June, 1960, by the Nevada gaming commission; such inclusion shall be made without the necessity of notice and hearing as provided for in sections 28.060 and 28.070 of these regulations."

"28.090 Duty of licensee to exclude.

1. The area within an establishment licensed to operate any gambling game or conduct pari-mutuel wagering from which an excluded person is to be excluded is every portion of said gaming establishment including but not limited to the casino, rooms, theater, bar, pool, lounge, showroom and all other related facilities of said gaming establishment.

2. Whenever an excluded person enters or attempts to enter or is upon the premises of an establishment licensed to operate any gambling game or conduct pari-mutuel wagering and is recognized by the licensee, its agents or employees, then the

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Gaming Control Regulations - Regulation 22 (Cont'd)

licensee and its agents or employees must do the following:

(a) Immediately notify the board of the presence of the excluded person in any area of the gaming establishment;

(b) Request such excluded person to not enter or if on the premises to immediately leave;

(c) Notify the appropriate local law enforcement agency and the board if such excluded person fails to comply with the request of the licensee, its agents or employees.

3. Failure to request such excluded person to leave or to prohibit entry of such person upon its premises in a timely fashion or failure to properly notify the board of the presence of such excluded person is an unsuitable method of operation.

4. Catering to any excluded person, including the granting of complimentary room, food or beverage or the issuance of credit to any such person, or permitting the use by any such person of the facilities of any licensed establishment is an unsuitable method of operation."

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VI.

LACK OF CONSTITUTIONALITY

City of Reno v. District Court, 83 Nev. 201, 427 P.2d 4 (1967) is an appropriate place to begin the examination of the unconstitutionality of the challenged statutes and regulations. A city ordinance dealt with "disorderly conduct" and provided, in part, that persons of evil reputation were prohibited from consorting for an unlawful purpose. A person of "evil reputation" was defined to include one who had been convicted of any felony, misdemeanor or gross misdemeanor involving moral turpitude, or one who had the general reputation in the community of a prostitute, panderer, narcotics user, burglar or thief. Proof that the accused had an "evil reputation", and that he had been found consorting with another person of "evil reputation" was prima facie evidence "that such consorting was for an unlawful purpose".

This opinion contains a concise but masterful review of decisions (principally of the United States Supreme Court) holding:

(1) that due process is denied where the effect of the law makes status a crime -- as distinguished from conduct or attempted action;

(2) that due process is violated when punitive consequences are attached to the violation of a statute containing vague and uncertain terms; and

(3) that the fact that persons of evil reputation are found in association with each other, is not a fact which rationally supports a conclusion that the association is for an unlawful purpose, and a presumption to that effect does violence to the presumption of innocence and the burden cast upon the State to prove guilt beyond a reasonable doubt.

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The Court in City of Reno pointed out that a crime is defined as "an act or omission forbidden by law" (N.R.S. 193.120); and that an attempt to commit a crime requires the doing of an act with requisite criminal intent (N.R.S. 203.070). The Court commented that "[t]o punish for reputation offends one's sense of fundamental fairness and does not square with the constitutional safeguards of life, liberty and property."

While the manifest purpose of the Reno ordinance was to prevent crime and to bestow authority on police officers to harass a reputed criminal and, perhaps, even force him to leave town, the Court held that such assertion of police power must yield to the doctrine that a person may not be deprived of his liberty or property without due process of law. The Court ruled:

> "This type of law is not needed to grant an officer the right to stop persons and make some inquiries incident to a legitimate investigation. A citizen's freedom may be temporarily interrupted for that purpose . . . (citing cases) The vice of the ordinance before us is that it allows the forceful detention of persons belonging to the class described without any showing of probable cause -- not a mere temporary interruption to answer questions. One possessing an evil reputation may be arrested, booked, arraigned, put to the expense of bail and counsel, or, if indigent, he must languish in jail awaiting trial -- all because of the officer's subjective, on the spot evaluation, aided, of course, by the presumption that the defendant had some unlawful purpose in mind. In our judgment the interests of a free society are

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not promoted by such an ordinance. We share the view of the district court that the ordinance is unconstitutional on its face since its effect is to make status a crime thereby violating due process."

A statute which is the product of legislative excess may be unconstitutional in several different ways, offending at once a particular constitutional prohibition, the concepts of separation of powers, due process and equal protection, as well as trenching upon fundamental freedoms.

The presently challenged statutes and regulations offend in all these multiple ways. City of Reno v. District Court, supra, establishes eloquently that status is not an acceptable basis on which to impose punitive consequences. The police power of a State, broad though it is, must nevertheless yield when that power is used to deprive a person of his liberty without due process of law.

In such case, due process of law takes it content from the Bill of Rights, guaranteeing that punishment will not be exacted without a prior criminal trial, together with all its incidents -- a statute clearly defining the offense; a sufficient indictment or information; a trial by an impartial jury, the right of confrontation and cross-examination of witnesses, compulsory process for obtaining witnesses, and assistance of counsel. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 9 L.Ed.2d 644, 660, 83 S.Ct. 556.

In the instant case the legislature has authorized a procedure whereby a man's status will be administratively determined, with power in the administrative agency to penalize him by reason of this status. Here, the Petitioner has been stripped of his liberty to enjoy the explicit and the necessarily

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attendent freedoms conferred on him under the First Amendment of the United States Constitution. If at any time in the future the Petitioner should attempt to exercise these rights upon the premises of any establishment where gaming is conducted, he will be subject to prosecution for a gross misdemeanor and the only elements required to establish his guilt will be (1) his status (previously administratively determined) as a person included in the Black Book; and (2) entering the premises of a licensed gaming establishment.

Legalized gambling is the principle industry of Nevada. Related components of this industry are those multiform, publicly available services, accomodations and commodities which exist in other states, in the vast majority of cases, on premises where legalized gambling does not exist -- places to dine, to dance, to sleep, to view actors and entertainers, to shop, and to socialize with family, friends, and the community at large. The freedom to participate in all these activities is necessarily supportive of freedom of speech, association and movement guaranteed to all by the First Amendment. Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 81 S.Ct. 247 (1960); Schneider v. Smith, 390 U.S. 17, 19 L.Ed.2d 799, 83 S.Ct. 682 (1968); Elfbrandt v. Russell, 384 U.S. 11, 16 L.Ed.2d 321, 86 S.Ct. 1238 (1966); Coates v. Cincinnati, 402 U.S. 611, 29 L.Ed.2d 214, 91 S.Ct. 1686 (1971); United States v. Robel, 389 U.S. 248, 19 L.Ed.2d 408, 88 S.Ct. 419 (1967). These First Amendment rights are also subject to exercise in privately owned facilities, in a manner and consonant with the use to which the property is actually put. Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, 391 U.S. 308, 20 L.Ed.2d 603, 88 S.Ct. 1601 (1968); Marsh v. Alabama, 326 U.S. 501, 90 L.Ed. 265, 66 S.Ct. 276 (1946).

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The Nevada Gaming Commission has promulgated a regulation pursuant to N.R.S. 463.151, that a person listed in the Black Book is required to be expelled and excluded from every portion of a gaming establishment, including not only the casino, but "rooms, theater, bar pool, lounge, showroom and all other related facilities of said gaming establishment." (Regulation 28.090). In addition to this direct restraint on First Amendment rights, a person listed in the Black Book suffers under a general, statewide social stigma by having publicly been branded as a member of what the Commission's prosecutor described as an "infamous club." In short, a person named in the Black Book has been "outlawed."

This outlawry has been accomplished against Petitioner, not judicially, but by a legislative act designating a class of readily identifiable persons (on the basis of historical considerations), and empowering an administrative body, in its unguided and unlimited discretion, to single out any person it chooses for imposition of the punitive consequences of the act. This procedure violates the prohibition against enactment of bills of attainder, denies due process of law and equal protection of the laws, and imposes cruel and unusual punishment.

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CRUEL AND UNUSUAL PUNISHMENT

In Early England, outlawry was imposed against a person who did not appear in response to an indictment, and could not be taken by arrest. He was adjudged to be "outlawed," -- put outside the protection of the law. He was rendered incapable of asserting any right under law, by bringing actions or otherwise. His property was forfeit. Anciently, an outlawed person was said to be caput lupinum, to be knocked on the head like a wolf, by anyone that should meet him. The law was ameliorated to some degree when it was recognized that the

wanton and wilfull killing of an outlaw constituted murder unless the killing happened in an endeavor to apprehend him. 4 Stephens Commentaries 317-319; 2 Pollock & Maitland 581.

One of the provisions of Magna Carta is as follows:

> "No freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him except by lawful judgment of his peers or the law of the land. To no one will We sell, to none will We deny or defer, right or justice." (Translation into English published by the British Museum.[1])

Roscoe Pound assessed the significance of Magna Carta in the following language:

> "As we look back at the work of these creative eras, as it stands fast in our institutions to-day, we cannot but see that the ground plan, to which we have built ever since, was given by the Great Charter. It was not merely the first attempt to put in legal terms what became the leading ideas of constitutional government. It put them in the form of limitations of the exercise of authority, not of concessions to free human action from authority. It put them as legal propositions, so that they could and did come to be a part of the ordinary law of the land invoked like any other legal precepts in the ordinary course of orderly litigation."[2]

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1 Published as an appendix to Magna Carta, A Pageant Drama, Thomas Wood Stevens, The American Bar Association, Chicago, 1930.

2 Ibid, n 1- Foreword by Roscoe Pound, pp. 14-15.

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In Trop v. Dulles, 356 U.S. 86, 2 L.Ed.2d 630, 78 S.Ct. 590 (1958), a man was denied a passport on the ground he had lost his citizenship by reason of a court-martial conviction and dishonorable discharge for wartime desertion, under a provision of the Nationality Act of 1940. The refusal of a lower court to give judgment that he was a citizen was reversed. Four members of the Court rested the decision on the ground that use of denationalization as a punishment is barred by the Eighth Amendment. Two members of the Court viewed the statute as additionally offensive as giving the military discretion to choose which soldiers convicted of desertion should be allowed to retain citizenship. Another member of the Court considered that expatriation had no relevant connection with the war power or any other power of Congress. The principal opinion of the Court phrased the test of determining whether or not a statute is a penal law in the following language:

> ". . . If the statute imposes a disability for the purposes of punishment -- that is, to reprimand the wrongdoer, to deter others, etc., it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish but to accomplish some other legitimate governmental purpose . . ." (2 L.Ed.2d 639-640).

Having determined that the statute imposed a penalty, the Court held the penalty constituted cruel and unusual punishment in violation of the Eighth Amendment. The expression "cruel and unusual punishment" was derived from the English Declaration of Rights of 1688 on the principles laid down in Magna Carta:

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" . . . The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect . . . the words of the Amendment are not precise, and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.

"We believe . . . that use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development . . ."

The administrative adjudication of Petitioner as a person to be included in the Black Book does not render him wholly stateless, but it does strip of his rights as a free man, and his rights under the First Amendment in vital and far-reaching areas and particulars. What the City of Reno attempted to do through the courts in City of Reno v. District Court, supra, has been authorized to be done administratively. A cruel and

unusual punishment has been imposed upon Petitioner in violence to the law of the land as expressed in the Due Process Clause and the Fifth and Sixth Amendments.

The impact of these latter rights is explicated in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 9 L.Ed.2d 644, 83 S.Ct. 554 (1963), again considering the imposition of denationalization. The Court held that this penalty could not be imposed upon draft evaders without affording them, prior to the imposition, the procedural safeguards of the Fifth and Sixth Amendments. The Court said at 9 L.Ed.2d, 671:

> " . . . We recognize that draft evasion, particularly in time of war, is a heinous offense and should and can be properly punished. Dating back to Magna Carta, however, it has been an abiding principle governing the lives of civilized men that 'no freeman shall be taken or imprisoned or disseised or outlawed or exiled . . . without the judgment of his peers or by the law of the land . . .' What we hold is only that, in keeping with this cherished tradition, punishment cannot be imposed 'without due process of law.' Any lesser holding would ignore the constitutional mandate upon which our essential liberties depend. . ."

It was argued in Mendoza-Martinez that the availability, after the fact, of administrative and judicial machinery to contest the validity of the sanction met the measure of due process. But the Court held that since forfeiture of citizenship was a penalty, the Fifth and Sixth Amendments mandated that the punishment could not be imposed without a prior criminal trial

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and all its incidents, including indictment, notice, confrontation, jury trial, assistance of counsel and compulsory process for obtaining witnesses.

In the instant case, the challenged statutes and regulations authorize the imposition of punishment for status -- a matter which would violate due process of law, even if done judicially with all the safeguards attending a criminal trial -- those expressed in Mendoza-Martinez, and also the presumption of innocence and the obligation of the State to prove its case beyond a reasonable doubt.

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BILL OF ATTAINDER

Legislative acts, however they may be worded, that apply to specifically named persons, or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder, and prohibited by both the State and the Federal Constitution.

United States v. Brown, 381 U.S. 437, 14 L.Ed.2d 484, 85 S.Ct. 1707 (1965), concerned the conviction of a man under a provision of the Labor-Management Reporting and Disclosure Act of 1959, which made it a crime for a Communist Party member to serve as a union officer or employee. The Court of Appeals for the Ninth Circuit held that the Act violated the First and Fifth Amendments (334 F.2d 488). The Supreme Court of the United States affirmed on the ground that the Act was a bill of attainder. This decision reviews the history of use of bills of attainder in England and in this country. There were wide variations in the form, purpose and effect of these enactments. The constitutional prohibition of bills of attainder, both against the Congress (Art. I, §9) and the States (Art. I, §10), was intended to stand, not only as a narrow, technical prohibition, but to implement the doctrine of separation of powers and stand as a general safeguard against legislative exercise of the judicial function. Trial by legislature was prohibited. Brown quotes the following language from Alexander Hamilton:

> "Nothing is more common than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment by acts of the

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legislature. The dangerous consequences of this power are manifest. If the legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partisans, and establish an aristocry or an oligarchy; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense."

The prohibition against bills of attainder therefore represents the constitutional judgment that the Legislative Branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons.

Brown further held that the legislative act inflicted punishment. The Court stated:

" . . . It would be archaic to limit the definition of 'punishment' to 'retribution.' Punishment serves several purposes: retributive, rehabilitative, deterrent -- and preventive. One of the reasons society imprisons those convicted of crimes is to keep them from inflicting future harm, but that does not make imprisonment any the less punishment.

"Historial considerations by no means compel restriction of the bill of attainder ban to instances of retribution. A number of

English bills of attainder were enacted for preventive purposes -- that is, the legislature made a judgment, undoubtedly based largely on past acts and associations . . . that a given person or group was likely to cause trouble (usually overthrow the government) and therefore inflicted deprivations upon that person or group in order to keep it from bringing about the feared event . . .".

Brown also held that a bill of attainder need not identify its targets by individual names:

" . . . It is of course true that §504 does not contain the words "Archie Brown," and that it inflicts its deprivation upon more than three people. However, the decisions of this Court, as well as the historical background of the Bill of Attainder Clause make it crystal clear that these are distinctions without a difference. It was not uncommon for English acts of attainder to inflict their deprivations upon relatively large groups of people, sometimes by description rather than name. Moreover, the statutes voided in Cummings (Cummings v. Missouri, 71 US 277, 4 Wall 277, 18 Led 356) and Garland (Ex parte Garland, 71 US 333, 4 Wall 333, 18 Led 366) were of this nature. We cannot agree that the fact that §504 inflicts its deprivation upon the membership of the Communist Party rather than upon a list of named individuals takes it out of the category of bills of attainder."

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In United States v. Lovett, 328 U.S. 303, 90 L.Ed 1252, 66 S.Ct. 1073 (1946), the Court invalidated a provision in a federal appropriation act which prohibited payment of further salary to three named federal employees, as constituting a bill of attainder. The Court cut through the barriers of technical argument that the form of an enactment could save its constitutional validity:

> " . . . No one would think that Congress could have passed a valid law, stating that after investigation it had found Lovett, Dodd and Watson 'guilty' of the crime of engaging in 'subversive activities,' defined that term for the first time, and sentenced them to perpetual exclusion from any government employment. Section 304, while it does not use that language, accomplishes that result."

In the instant case, the Nevada Legislature has provided for the infliction of punishment on members of a class: (a) those who are notorious and unsavory of reputation; (b) ex-felons and (c) people who are inimical to the State of Nevada or licensed gambling. The Legislature did not hold hearings and name the people to be included on the exclusion list, but it entrusted that activity to an administrative agency. Immediately upon being named on the Black Book list, a person suffers the punishment of loss of his liberty and First Amendment freedoms. Thereafter if he should be found on any portion of widely defined premises of gaming establishments, he is guilty of a misdemeanor, on the basis of a legislatively determined status. This constitutes a prohibited bill of attainder.

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EQUAL PROTECTION AND DUE PROCESS

The Nevada Legislature could, presumably, prohibit gambling and exclude all persons from such activity. But that is not to say that the Legislature has unrestrained power to exclude certain groups or persons from that activity. For example, the Twenty-first Amendment convers clear power on the States to regulate all necessary aspects of liquor trade. But when that regulation involves "a badge of infamy" to a citizen, due process is involved. In Wisconsin v. Constantineau, 400 U.S. 433, 27 L.Ed.2d 515, 91 S.Ct. 507 (1971) a statute provided that designated persons could, in writing, forbid the sale or gift of intoxicating liquors to one who "by excessive drinking" produced described conditions or exhibits specified traits, such as exposing himself or family "to want" or become dangerous to the peace of the community. A city chief of police, without notice of hearing caused a notice to be posted in all local retail liquor outlets that the sales or gifts of liquor to Ms. Constantineau for a period of one year. The Court held the statute violated due process by stigmatizing an individual without notice and a hearing. The Court pointed out that this woman had no opportunity to defend herself; that she might have been the victim of an official's caprice. "Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented."

Similarly, in Jenkins v. McKeithen, 395 U.S. 411, 23 L.Ed.2d 404, 89 S.Ct. 1843 (1969), a Louisiana statute created a Commission of Inquiry to investigate and find facts related to violations or possible violations of criminal laws in the field of labor-management relations. A member of a labor union sought federal declaratory and injunctive relief. The Court held that the allegations of the complaint stated a cause of action, and that the trial court should make the initial determination as to

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what procedural protections were required to be afforded the whole panoply of rights attendant on a criminal trial, or less broad measures. A separate opinion of three of the justices held that where a government agency has as its sole or predominant function the exposing and publicizing of names of persons that it finds guilty of wrongdoing, if the determination, whether labeled a "finding" or an "adjudication" finally and directly affects the substantial personal interests, the due process clause may require that it be accompanied by many of the traditional adjudicatory procedural safeguards.

In Goldsworthy v. Hannifin, 86 Nev. 252, 468 P.2d 350, the Court declared that if the Legislature undertakes to enact laws granting parole, when it need not constitutionally have done so, still those rights granted must be administered in accordance with concepts of due process and without arbitrary discrimination. The "hearing" which was held in this case did not afford the petitioner either procedural or substantive due process. The Commission received printed materials which contained rumor and speculation, which did not specify the sources of information, and which purported to link the petitioner with membership in an organized crime "family", characterized as such by police officials and newspaper reporters. The Commission also received self-serving statements made by Strike Force Attorneys and unnamed members of the Federal Bureau of Investigation, to the effect that the petitioner was under investigation for suspected offenses. The Commission received in evidence an F.B.I. rap sheet (record of arrests), but when it was brought out on cross-examination that the Defendant had been acquitted of certain offenses, and that numerous other charges had been dropped, or dismissed for lack of prosecution (as Judge Legakes testified at the hearing) the attorney for the Commission actually objected that the acquittals of the petitioner were not relevant in light of the statute that

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made his convictions relevant!

In Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L.Ed.2d 796, 77 S.Ct. 752, the Court held that the mere fact that a man has been arrested has very little, if any probative value in showing that he has engaged in any misconduct, and whatever probative force the arrest may have is normally dissipated when formal charges are not filed against the arrested person and he is released without trial.

Obviously, when there is an issue of "notorious and unsavory reputation" and this reputation is established by newspaper publicity, the statute, and the Commission, have been satisfied, whether or not there is one work of truth in the entire litter.

In Speiser v. Randall, 357 U.S. 513, 2 L.Ed.2d 1460, 78 S.Ct. 1332 (1958), the Court considered a California law that required a veteran to sign a statement on his tax return that he did not advocate the unlawful overthrow of the Government or the support of a foreign Government engaged in hostilities with the United States. When the veteran refused to sign this statement, he was denied a tax-exemption accorded veterans. The Court held that this statute violated the due process clause because the statute denied the veterans freedom of speech without the procedural safeguards required by the due process clause under the procedure which placed the burden of proof and persuasion of nonengagement in the proscribed advocacy on the taxpayer. The Court said:

> "It is of course within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, 'unless in so doing it offends some principle of justice so rooted in the traditions and

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conscience of our people to be ranked as fundamental.' Snyder v. Massachusetts, 291 U.S. 97, 105, 78 L.Ed. 674, 677, 54 S.Ct. 330, 90 ALR 575. 'Of course the legislature may go a good way in raising...[presumptions] or in changing the burden of proof, but there are limits...It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime. McFarland v. American Sugar REF. Co., 241 U.S. 79, 96, 60 L.Ed. 899, 36 S.Ct. 498. The legislature cannot 'place upon all defendants in criminal cases the burden of going forward with the evidence...It cannot validly command that the finding of an indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible.' Tot v. United States, 319 U.S. 463, 469, 87 L.Ed. 1519, 1525, 63 S.Ct. 1241."

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The Court also pointed to the practical dilemma of the veteran. If his declaration was rejected on the basis of the prohibited advocacy (catching lawful as well as unlawful conduct and speech), how could he possibly bear the burden of proving the negative? The answer is, he cannot do it, so the State obtains a result by indirection--restraint of free speech--which it is forbidden to achieve directly. The power to create presumptions cannot be used as a means to evade constitutional restrictions.

In the instant case, it was impossible for the petitioner to bear the burden of disproving the journalistic evidence received against him. Had he even attempted to do so, he would

have been met with the objection that the truth was not relevant since the issue under the statute was merely the existence of the "reputation".

The Commission also received evidence that the petitioner had been seen in association several years ago with persons who are also deemed by the Commission to suffer from bad reputations. In Keyishian v. Board of Regents, 385 U.S. 589, 17 L.Ed.2d 629, 87 S.Ct. 675 (1967) the Court reaffirmed its holding in Elfbrandt v. Russell, 384 U.S. 11, 16 L.Ed.2d 321, 86 S.Ct. 1238 in the following language:

> "'A law which applies to membership [in the Communist Party] without the 'specified intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here.'"

Without in any way minimizing the quality of the due process violations set out above, the issue of the "faceless informant" carries great overtones of tyranny and terror. At the time when the country was reeling under "McCarthyism" one scholar addressed a Columbia Law Review dinner in 1954 in the following language:

> "What is perfectly clear is that hate, fear and prejudice play the same role today, in the destruction of human rights in America that they did in England when a frenzied mob of lords, judges, bishops and shoemakers turned the Titus Oates

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blacklist into a hangman's record."[3]

Titus Oates and a man named Tonge invented an account of a vast conspiracy to assassinate King Charles II and place his Roman Catholic brother James, Duke of York on the throne. They publicized this tale through a prominent Justice of the Peace, and their revelations seemed even more plausible after the Justice of the Peace was found murdered. A wave of terror swept London, and Oates testimony resulted in the execution of 35 innocent persons. After the wave of killing subsided, inconsistencies in Oates' story were noticed and the Duke of York was awarded massive money damages in his libel suit against Oates. After the Duke of York did ascend the throne as King James II in 1685, Oates was convicted of perjury.[4]

Surely Titus Oates would never have been exposed if he could have spread his false accusations through police agents, prosecutors and journalists. By that device, he could have remained concealed as an informant whose identity could not be revealed under governmental and journalistic guarantees of nondisclosure of his identity. And he need never have appeared in Court and testified under the procedures employed by the Nevada Gaming Commission, because the mere existence of the reported stories would be sufficient to stigmatize the target of the prosecution and strip him of his First Amendment freedoms.

In Peters v. Hobby, 349 U.S. 331, 75 S.Ct. 790 (1955) a federal employee, who had twice been cleared by the Loyalty Review Board, was removed from his job and debarred from further federal employment when the Loyalty Review Board, on its own

3. Published in 1959 by Emergency Civil Liberties Committee, under the title Congressional Investigations and Bills of Attainder.

4. As related in Encyclopedia Brittanica.

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motion, held a third hearing and ordered his removal. The Court held that the third hearing was not authorized by the executive order creating the board. The opinion points out, however, that at the hearing the sources of the information as to the facts bearing on the charges were not identified or made available for cross-examination; nor had the information from the informants been given under oath. Justice Douglas' concurring opinion is eloquent of this abuse:

> "Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him.
>
> Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor faculties of observation and memory.
>
> Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work-things more precious than property itself. We have here a system

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where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government. It has touched countless hundreds of men and women and ruined many. It is an un-American practice which we should condemn. It deprives men of "liberty" within the meaning of the Fifth Amendment, for one of man's most precious liberties is his right to work. When a man is deprived of that "liberty" without a fair trial, he is denied due process. If he were condemned by Congress and made ineligible for government employment, he would suffer a bill of attainder, outlawed by the Constitution. See United States v. Lovett, 328 U.S. 303, 66 S.Ct. 1073, 90 L.Ed. 1252. An administrative agency-the creature of Congress-certainly cannot exercise powers that Congress itself is barred from asserting. See the opinion of Mr. Justice Black in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 144-146, 71 S.Ct. 624,634-635, 95 L.Ed. 817.

Those who see the force of this position counter by saying that the Government's

sources of information must be protected, if the campaign against subversives is to be successful. The answer is plain. If the sources of information need protection, they should be kept secret. But once they are used to destroy a man's reputation and deprive him of his "liberty", they must be put to the test of due process of law. The use of faceless informers is wholly at war with that concept. When we relax our standards to accommodate the faceless informer, we violate our basic constitutional guarantees and ape the tactics of those whom we despise."

In Schneider v. Smith, 390 U.S. 17, 19 L.Ed.2d 799, 88 S.Ct. 682 (1968), a presidential directive authorized the Coast Guard Commandant to grant or withhold validation of any permit or license of a seaman serving on a United States merchant vessel according to his determination whether the presence of the individual on ship board would be "inimincal" to the security of the United States. The commandant required seamen to fill out questionnaires about communist and communist front organization activity. The Court held that the Magnuson Act under which the presidential directive was issued had not empowered the president to issue such a directive. The opinion states:

"The purpose of the Constitution and Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people. The First Amendment's ban against Congress, 'abridging'

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freedom of speech, the right peaceably to assemble and to petition, and the 'associational freedom' (Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 238, 81 S.Ct. 247) that goes with those rights create a preserve where the views of the individual are made inviolate. This is the philosophy of Jefferson that 'the opinions of man are not the object of civil government, nor under its jurisdiction...It is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order. . ."

In Tinker v. Des Moines Community School Dist., 393 U.S. 503, 21 L.Ed.2d 731, 89 S.Ct. 733 (1969), three students wore black armbands to school to publicize their objections to the war in Vietnam and their support for a truce. A few days earlier, the school authorities had adopted a regulation that students who wore armbands to school would be asked to remove them, and if they refused, they would be suspended. The students were sent home from school suspended. The Court noted that there was no showing that the wearing of the armbands would "materially and substantially interfere with the operations of the school. The Court said:

"The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system,

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undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 U.S. 1, 93 L. Ed. 1131, 69 S.Ct. 894 (1949); and our history says that it is this sort of hazardous freedom--this kind of openness--that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society."

In Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729 (1975) due process was violated by suspensions of school accomplished without notice or hearing--before or after the suspension. The Court held that the due process clause forbids arbitrary deprivations of liberty; where a person's good name, reputation, honor, or integrity is at stake because of what the Government is doing to him, minimal requirements of due process must be satisfied.

These final considerations close the circle at the point of beginning: City of Reno v. District Court, supra. Whenever mere status is offered as a basis for the infliction

EXHIBIT A

of judicial or administrative punishment and stigmatization, and the deprivation of First Amendment freedoms, all constitutional guarantees and requirements are knocked askew. Such procedure is not compatible with a free society.

EXHIBIT B

S.B. 131

Provides for automatic revocation of a gaming license for attempts and conspiracies to violation NRS Chapter 463, 464 or 465, and provides felony penalties and forfeiture of property in cases involving violation of the licensing statutes.

Suggested changes to the bill to alleviate industry's problem with this bill:

Page 1, line 19, section 1, paragraph 3: Amend to read as follows: "... to violate any of the provisions of NRS 463.160 , except subsection 6 thereof, shall be punished by ...."

Page 2, line 1, section 1, paragraph 3: Amend to read as follows: "... has acquired or maintained in violation of NRS 463.160 , except subsection 6 thereof, and its related ...."

Page 2, line 6, section 1, paragraph 3: Amend to read as follows: "... participated in the conduct of in violation of NRS 463.160 , except subsection 6 thereof, and its related provisions."

Suggested changes to alleviate discrepencies in sanctions:

Add a new section 2: Amend NRS 464.080 to read as follows:

"(1) No amendment.

"(2) No license shall be revoked or suspended , except as otherwise provided in NRS 463.360, until after a hearing had by the Nevada gaming commission. Such hearing shall be initiated by the filing of a complaint by the state gaming control board and shall be conducted in accordance with the provisions of NRS 463.312.

"(3) No amendment."

EXHIBIT B

Add a new section 3: NRS 465.010 is hereby amended to read as follows:

"(1) No amendment.

"(2) No amendment.

"(3) No amendment.

"(4) No amendment.

"(5) No amendment.

"(6) Any person, firm, association or corporation violating any of the provisions of this section [is guilty of a gross misdemeanor.] is subject to the penalties applicable to a violation of NRS 463.160.

Add a new section 4: NRS 465.020 is hereby amended to read as follows:

"Every person who knowingly permits any of the games or slot machines mentioned in NRS 465.010 to be played, conducted, dealt or maintained in any house, building or part thereof owned or rented by such person, shall be [guilty of a gross misdemeanor.] subject to the penalties applicable to a violation of NRS 463.160.

EXHIBIT C

S.B. 165 (our bill)

This is the "bona fide entertainer" section. It is being amended to remove reference to entertainer and entertainment contracts.

Suggested changes to the bill to alleviate industry's problem with this bill:

Page 2, lines 15-16, paragraph 5: "... any contract or agreement [, except a bona fide entertainment contract,] without prior approval of the commission, with a person who is found unsuitable or is denied a license because...."

Page 2, lines 47-48, paragraph 1: "... a licensed gaming establishment [, except a bona fide entertainment contract,] without prior approval of the commission, between a former employee whose employment was terminated...."

Page 3, lines 12-13, paragraph 2: "... organization under his control which involves the operations of a corporate licensee [, except a bona fide entertainment contract.] without prior approval of the commission.

EXHIBIT D

S.B. 236 (our bill)

This is the main housekeeping bill. It amends various sections of the act.

Page 1, line 9, section 1, paragraph 1: Eliminate the reference to "sic bo", and change to read as follows: "...baccarat, pai gow, beat the banker, panguingui or slot machine, or any other game or device approved by the Nevada gaming commission, but [shall] does not include social games played solely for drinks, or ...."

Page 3, lines 18-21, section 5, paragraph 4(c): This section should be amended to read as follows: "(c) To a duly authorized agent of a federal or state agency, including but not limited to agents of the Federal Bureau of Investigation, the United States Treasury Department , [or] the Commissioner of the Internal Revenue Service of the United States , or the Securities and Exchange Commission of the United States pursuant to [rules and] regulations adopted by the commission.

Page 6, line 1, section 8, paragraph 9(a)(3): Eliminate the word "willful", so that that line reads: "(3) There has been a violation of NRS 463.160; or"

Page 10, line 23, section 10, paragraph 1(a): That line should be amended to read as follows: "... including, but not limited to: ...."

EXHIBIT D

Section 10, paragraph 1(a) should also be amended at lines 39-40, to include count room personnel in the definition. Those lines should, therefore, read as follows:

"(15) Ticket writers;

"(16) Junket representatives ; and

"(17) Count room personnel."

Page 12, line 38, section 10, paragraph 9: This section should be amended to add the language of A.B. 361. That line should then read: "... enforcement agency. Any record of the board or commission which shows a conviction of an applicant for a crime committed in a state other than the State of Nevada must show the classification of the crime, as a misdemeanor, gross misdemeanor, felony, or other class of crime, under the law of the state of conviction, and in any disclosure of such a conviction a reference to the classification of the crime may be made only to the classification in the state where the crime was committed.

EXHIBIT D

Add a new section to amend NRS 463.160: NRS 463.160 is hereby amended to read as follows:

463.160 License required.

1. No amendment.

2. No amendment.

3. No amendment.

4. No amendment.

5. No amendment.

6. No amendment.

7. No amendment.

8. No amendment.

9. If the premises of a licensed gaming establishment are directly or indirectly owned or under the control of the licensee therein, or of any person controlling, controlled by, or under common control with such licensee, the commission may, upon recommendation of the board, require the licensee to present the application of any business or person doing business on the premises or with the licensed gaming establishment for a determination of suitability to be associated with a gaming enterprise in accordance with the procedures set forth in this chapter. If the commission determines that such business or person is unsuitable to be associated with a gaming enterprise, such association shall be terminated. Any agreement which entitles a business other than gaming to be conducted on such premises or with the licensed gaming establishment is subject to termination upon a finding of unsuitability of the business or of any person associated therewith. Every such agreement shall be deemed to include a provision for its termination

EXHIBIT D

without liability on the part of the licensee upon a finding by the commission that the business or any person associated therewith is unsuitable to be associated with a gaming enterprise. Failure expressly to include such a condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement. If the application is not presented to the board within 30 days following demand or the unsuitable association is not terminated, the commission may pursue any remedy or combination of remedies provided in this chapter.