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Attesting to Unique Attractions: The Significance of the President's Commission on Organized Crime (1984–1986) Gambling Hearings

David G. Schwartz

I want you to understand that we are not holding this hearing for the purpose of suggesting that gambling should be eliminated from the United States. It is impossible. It has been with us as long as we have been a nation. What we are looking for, however, is to prevent the infiltration by organized crime into gambling. And it seems to be a very fertile field.¹

Chairman Irving Kaufman, President's Commission on Organized Crime

INTRODUCTION

THE FEDERAL GOVERNMENT has had a curious relationship with gambling. For much of its history, the national public policy towards gambling was simple: prohibition, despite the audacity of a few laggard states in experimenting with legalization schemes. Towards the end of the twentieth century, however, the national policy shifted, at first to tolerance of legal gambling to endorsement of it. The five primary federal studies of gambling conducted in the twentieth century—the Kefauver Committee (1950–2), the President's Crime Commission (1967), the Commission to Review the National Policy on Gambling (1974–6), the President's Commission on Organized Crime (1984–6), and the National Gambling Impact Study Commission (1997–9)—illustrate the shifting federal perception of and approach to legalized gambling. Of these four studies, the Kefauver has received the most thorough scholarly inquiry, while the President's Commission has been largely overlooked. But the President's Commission represented an important moment in the national discourse on legal gambling. As the first national look at casino gam-

bling as it made the transition from a Nevada novelty to a widespread tool of economic development and revenue enhancement, it paved the way for the National Gambling Impact Study Commission's (NGISC) even-handed treatment of gambling at the end of the next decade, even as it represented the final bulwark of the receding prohibitionist approach to gambling legalization.

The previous obscurity of the President's Commission in the historical and popular literature reflects the subordinate role that gambling had within the larger scope of the Commission's proceedings, which were, in the words of Senator Charles E. Grassley, acting chairman of the Senate Judiciary Committee, "to investigate the nature of organized crime as it exists today and examine where it is headed in the future, its sources of power, and as well, to recommend ways to combat its influence on American life."² To illustrate the

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¹PRESIDENT'S COMMISSION ON ORGANIZED CRIME, RECORD OF HEARING VII, JUNE 24–26, 1985, NEW YORK, NEW YORK: ORGANIZED CRIME AND GAMBLING 37 (1985) [hereinafter COMMISSION HEARINGS].

²A Joint Resolution to Authorize the President's Commission on Organized Crime to Compel the Attendance and Testimony of Witnesses and the Production of Information: Hearing Before the Committee on the Judiciary, 98th Cong., 2d Session, or S.J. Res. 233, Serial No. J-98-120, 1 (May 9, 1984).

significant, but relatively minor, role gambling had in the overall investigations, the gambling hearings lasted three days out of a thirty-four month investigative process. What was the Commission's primary focus? According to criminologist Jay S. Albanese, the President's Commission was most notable for addressing the emergence of non-Italian organized crime and, in particular, "the overlapping problems of the drug trade and money laundering." This was in contrast to the emphasis that the 1967 President's Crime Commission placed on illegal gambling and Italian-American organized crime.³

Thus, even though the primary consideration of the President's Commission was how organized crime used its illegal gambling operations and its infiltration of legal gambling to profit, it held out the possibility of a regime of legal gambling free from organized crime. In doing so, it represented a retrenchment from the attitudes current at the time of the Kefauver Committee, which had concluded that gambling in America was inherently a criminal enterprise:

The legalization of gambling would not terminate the widespread predatory activities of criminal gangs and syndicates. The history of legalized gambling in Nevada...gives no assurance that mobsters and racketeers can be converted into responsible businessmen through the simple process of obtaining State and local licenses for their gambling enterprises. Gambling, moreover, historically has been associated with cheating and corruption.⁴

By abandoning once and for all the Kefauver imperative that "gamblers" (those who ran gambling operations, not those who enjoyed recreational gambling) were incorrigibly "mobsters and racketeers," the President's Commission reflected an ongoing federal rapprochement with gambling. This détente came as states increasingly turned to public interest gambling (state-run and privately run gambling operations licensed and taxed for the public benefit), as the spread of lotteries in the 1970s and 1980s accelerated a process that had begun as far back in the 1920s with pari-mutuel wagering on horse races.⁵ By the end of the decade, the federal government itself had embraced high-stakes bingo and casino gambling on Indian reservation lands as both a legal and a viable, even desirable, engine of tribal economic development.⁶

During the 1990s, states turned to previously taboo (outside of Nevada and, later, New Jersey)

casino gambling for both revenue and economic development. Had the federal government maintained its previous stance on gambling—that it was fundamentally a criminal business, and that its legalization was to be strongly discouraged—it is unlikely that states would have turned as enthusiastically towards casino gambling in the 1990s as they in fact did. From that perspective, the President's Commission's gambling hearings are a touchstone for the shifting federal understanding of gambling, which was informed by the states' escalating authorization of gambling and sanctioned present and future public-interest gambling regimes.

GENESIS AND DEVELOPMENT OF THE COMMISSION

Organized crime had been recognized as a significant national problem since the convening of the Kefauver Committee in 1950. It received renewed federal interest during the attorney generalship of Robert Kennedy, and, in the wake of a general rise in lawlessness, the President's Crime Commission, meeting in 1967, made an additional study of why Kennedy's anti-mob measures had not yielded success.

By the Reagan years, prosecutors had been using the Racketeer Influenced and Corrupt Organizations (RICO) statute to disrupt classic La Cosa Nostra (LCN) crime families for over a decade. But concerns remained, as Italian organized crime proved resilient, and as other ethnic groups proved just as eager to break the law.

Despite his avowed aim in cutting the federal budget, Ronald Reagan was bullish on beefing up federal anti-mob resources. In proposing a considerable escalation of the federal law enforcement budget, he argued that:

[This] was not at all inconsistent with my own long-held belief that when Government grows

³JAY S. ALBANESE. ORGANIZED CRIME IN OUR TIMES 198 (2011).

⁴THIRD INTERIM REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE [Kefauver Committee] 2 (1951).

⁵DAVID G. SCHWARTZ. ROLL THE BONES: THE HISTORY OF GAMBLING 369 (1st ed. 2006).

⁶*Id.* at 435–6.

big and bloated and gets into areas where it's neither competent nor wanted, it also tends to ignore its important Constitutional duties. Duties like providing for the national defense, and, in this case, protecting its citizens from criminal wrongdoing. The Federal Government's deficits were not due to too much money being spent for law-enforcement purposes; spending had been dramatically reduced in the 70s as a percentage of the Federal budget, so our plan would be a step toward redressing an imbalance.⁷

As part of his refocusing of federal dollars and law enforcement priorities, Reagan made the decision to authorize yet another federal study of gambling, in keeping with his decision to make the fight against organized crime a first-term priority.

On July 28, 1983, President Reagan signed Executive Order 12435, which created the President's Commission on Organized Crime. He charged the Commission to:

make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime's income, and the uses to which organized crime puts its income; develop in-depth [*sic*] information on the participants in organized crime networks; and evaluate Federal laws pertinent to the effort to combat organized crime. The Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice.⁸

After signing the order establishing the Commission, Reagan announced his 20 appointments as commissioners. They were:

- Irving R. Kaufman, Circuit Judge for the U.S. Court of Appeals for the Second Circuit since 1961 and a former judge on the Southern District Court of New York. Reagan also tabbed Kaufman as chair of the Commission.

- Phyllis Teresa Aranza (later Wunsche), a lieutenant with the homicide division of the Houston Police Department who was pursuing a masters degree in criminal justice at Sam Houston State University.
- Jesse A. Brewer, Jr., a member of the Los Angeles Police Department since 1947 and its deputy chief since 1981, with responsibility for supervision of numerous major crimes investigations.
- Carol Corrigan, a deputy district attorney assigned to the senior felony staff for Alameda County and an assistant professor of law at the University of California Hastings College of Law.
- Justin J. Dintino, executive officer of the New Jersey State Police Department and general chairman of the law enforcement intelligence unit. An expert on fighting the mob, he also served on the Organized Crime Committee of the International Association of Chiefs of Police and the policy board of the Middle Atlantic-Great Lakes State Organized Crime Law Enforcement Network.
- John F. Duffy, San Diego County sheriff since 1970.
- William J. Guste, Jr., attorney general of Louisiana.
- Judith Richards Hope, a partner in the DC law office of Paul, Hastings, Janofsky, and Walker.
- Phillip Manuel, the chief investigator of the Senate Subcommittee on Investigations from 1968 to 1979 and currently a private consultant assisting with the investigation of economic crimes.
- Thomas McBride, associate dean of the Stanford University Law School and an Associate Watergate Special Prosecutor.
- Eugene Methvin, a senior editor of *Readers Digest*, a specialist in organized crime who had contributed to the passage of the Organized Crime Control Act of 1970.
- Edwin L. Miller, Jr., district attorney for San Diego County and incoming president of the National Association for District Attorneys.

⁷Ronald Reagan, *Declaring War on Organized Crime*, N.Y. TIMES. Jan. 12, 1986.

⁸President's Commission on Organized Crime, Exec. Order No. 12435, 48 Fed. Reg. 34723 (July 28, 1983), available at <<http://www.presidency.ucsb.edu/ws/?pid=41647>>.

- Manuel J. Reyes, a Miami attorney who had been active in fighting against drugs in Southern Florida.
- Democratic representative Peter W. Rodino, Jr., of New Jersey, chairman of the House Judiciary Committee; he is best known for having overseen the impeachment hearings of Richard Nixon.
- Charles H. Rogovin, a professor of law at Temple University, who had an extensive background in the study of organized crime.
- Barbara Ann Rowan, a lawyer in private practice and former assistant director with the Federal Trade Commission.
- Frances A. Sclafani, the first woman to serve as deputy chief of the major offense bureau of the Suffolk County District Attorney's Office and the associate director of the National District Attorney's Association.
- Samuel K. Skinner, an attorney in private practice and former chairman of the [Illinois] Governor's Fraud Prevention Commission and U.S. attorney for the Northern District of Illinois, where from 1968 to 1975, he oversaw major organized crime investigations.
- Retired associate justice of the Supreme Court (1958 to 1981) Potter Stewart.
- Republican Senator Strom Thurmond of South Carolina, current chairman of the Senate Judiciary Committee.⁹

Of the members, nearly half (five prosecutors and four law enforcement officers) were involved in the prosecution of organized crime. Three were private attorneys with former government experience at varying levels; two were judges (one a retired Supreme Court justice); two were law professors; three were not directly affiliated with law enforcement or government, but had professional specialization that qualified them; and two were members of Congress who represented the House and the Senate and the two major parties.

With its membership set (though Duffy did not subsequently serve), the Commission began hiring staff and filling out its calendar. With a mandate to create interim reports and to file its final report by March 1, 1986, it would have been a busy three years for the commissioners and staff, even if things ran smoothly—which they did not.

The body was split by discord before even meeting; its first executive director, longtime federal

prosecutor Peter Vaira, resigned after a dispute with Chairman Kaufman, and battles with the Justice Department over the Commission's independence—and the extent to which it would be auditing the department's reaction to organized crime, as opposed to merely beating the drum for greater legislative and financial resources for the department's organized crime efforts—delayed its implementation.¹⁰

By November 1983, the President's Commission was ready to begin eliciting testimony, and started its hearings with an overview of the changing nature of organized crime, with Attorney General William French Smith highlighting the growing internationalization of crime, and FBI director William Webster providing a catalog of his organization's current understanding of LCN's national size and scope.¹¹

From there, the President's Commission heard a variety of topics, including the growing issues presented by Asian organized crime and the international scourge of money laundering. In October 1984, it issued an interim report, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*, highlighting its most significant work to date in the area.¹²

Given the President's Commission's vast scope (tackling all of organized crime), compressed schedule, and the lack of anything specific to gambling in the group's initial charge, it would have been forgiven for not examining gambling. But, before the Commission filed its final report, it would find time to consider—at least in brief—the threat posed to gambling by organized crime, as well as the problems that both raised for society in general.

THE COMMISSION'S GAMBLING HEARINGS

The Commission approached gambling primarily through the lens of organized crime; while it

⁹Appointment of the Membership of the President's Commission on Organized Crime (July 28, 1983), <<http://www.reagan.utexas.edu/archives/speeches/1983/72883c.htm>>.

¹⁰Philip Shenon, *U.S. Crime Panel: Discord to the End*, N.Y. TIMES, Apr. 3, 1986.

¹¹Leslie Maitland, *New Crime Groups Assailed by Smith*, N.Y. TIMES, Nov. 30, 1983, at A27.

¹²*Excerpts from U.S. Report on Crime*, N.Y. TIMES, Oct. 31, 1984, at A24.

acknowledged the growth and success of legal gambling, it held that virtually all legal gambling had, to varying degrees, been corrupted by organized crime. As Chairman Kaufman said as a prologue to the first day's testimony, in a brief summary of the Commission's views that is a mission statement of sorts:

Gambling is as old as our nation's history, and the incestuous relationship between illegal activities and gambling has existed for almost as long. Periodically every form of commercial gambling has been infected by corruption, attesting to the unique attraction between organized crime groups and gambling's financial promise. Horse racing, casino operations, professional sports, state run lotteries—legal gambling of all kinds has been infiltrated in some form, at some time or other, by organized crime. Not only the traditional organized crime groups, but also numerous emerging groups, participate in the lucrative illegal gambling market.¹³

Thus, gambling wasn't itself the product of organized crime, but it was almost inherently a major attraction for organized crime groups. This seems like a semantic distinction, but it speaks to the growing size of the "legitimate" (i.e., state-sanctioned and taxed) gambling industry in the United States. Previous federal investigations into gambling considered it primarily as a criminal problem. Estes Kefauver, impressed by the vigor of anti-crime advocates nationwide, had log-rolled a Senate special committee into existence to investigate crime, with a particular emphasis on gambling. The Senate resolution approving the Committee, likely to assuage the fears of powerful Nevada senator Pat McCarran (who molded the resolution as finally approved by the body), specifically noted that the committee was not authorized to recommend "any change in the laws of...states relative to gambling," to effect any change in those laws, or to interfere in the slightest with the rights of states "to prohibit, legalize, or in any way regulate gambling within their borders."¹⁴ That McCarran needed to expend political capital to forestall federal action against gambling within the borders of states demonstrates the threat that, in his assessment, the Kefauver Committee potentially posed to Nevada gaming. Unfettered, this committee might try to dismantle Nevada's regime of state-regulated casino gambling.

The President's Commission, in contrast, while not blind to organized crime's ongoing entanglements in gambling—both legal and illegal—didn't share the Kefauver perspective that all gambling was inherently criminal. By contrast, the President's Commission was explicitly charged, in part, with determining "how law enforcement policies should be changed to accommodate the widespread acceptance of gambling."¹⁵

The gambling inquiry was the seventh set of hearings the Commission conducted.¹⁶ Each of the three days had its own focus, ranging from the general question of legalization vs. prohibition to sports betting to legal casino gaming. The Commission was to hear from a diverse array of witnesses, ranging from law enforcement officers to legal gambling entrepreneurs to recanted criminals, in search of the truth about the intersections between gambling, legal and illegal, and organized crime.

Day one

At 9:40 in the morning on Monday, June 24, 1985, at Federal Hall in New York City, President's Commission Chair Irving Kaufman took the rostrum and welcomed attendees to the hearing, where he started by proclaiming that, "If there is one common theme that emerged from our work so far, it is that money is the lifeblood of organized crime," and that, "a significant part of organized crime's income is derived from gambling." Indeed, he emphasized, "The importance of gambling as a continuing source of revenue for organized crime cannot be underestimated," citing studies that indicated \$1.5 billion was spent annually in the New York area alone on illegal wagering controlled by organized crime. Furthermore, a survey of state and local law enforcement authorities indicated that they, too, felt gambling was a large source of income for organized crime—in the northeastern United States, the largest single source of income. Though he admitted that these estimates must be viewed critically ("because it is difficult to determine precisely the total amount of money

¹³COMMISSION HEARINGS, *supra* note 1, at vi.

¹⁴S. Res. 202, 81st Cong. (2d Sess. 1950).

¹⁵COMMISSION HEARINGS, *supra* note 1, at v.

¹⁶Ronald Koziol, *Legalized Gambling Proposed, Expert Urges Cutting Crime Families' Income* CHICAGO TRIBUNE, June 25, 1985.

wagered”), he stated that it was “clear” that “gambling provides organized crime with the money it needs to flourish,” and was responsible for a host of other problems, like the “fixing” of sporting events.¹⁷

Finally, Kaufman reminded those present of the changing nature of gambling:

In recent years, jurisdictions throughout the country have expanded the availability of various forms of legalized gambling. This has, of course, occurred in the New York area with the establishment of legalized lotteries and with proposals for instituting other forms of legalized wagering in New York. The Commission will be concerned at this hearing and in its recommendations in alerting local governments to the ways in which organized crime is able to infiltrate, exploit, and profit from legalized gambling. Our goal must be to devise ways to prevent the criminals from sharing in the profits from gambling—legal or illegal.¹⁸

With that, he turned the rostrum over to investigator Ray Mollenhoff, who discussed the general outline of the proceedings—a series of specific case studies that would demonstrate how organized crime could control both legal and illegal gambling. He highlighted illegal sports gambling, the daily numbers lottery, and clandestine casinos as the chief money-makers for organized crime. Nationally, law enforcement authorities estimated gambling as second only to drug smuggling and sales as an organized-crime money-maker. Mollenhoff singled out sports betting, which remained illegal in every state but Nevada, as the top illegal gambling revenue-producer.¹⁹

Mollenhoff walked those present through the blueprint for the next three days of testimony, also offering in conclusion an editorial note about the law enforcement challenges unique to gambling:

... the public’s perception of gambling conjures up a benevolent image, unlike narcotics trafficking, extortion, prostitution, public corruption, and the many other faces of the mob. Unlike these enterprises, gambling generates “high profits,” but with “low risk” of apprehension, conviction, or incarceration.

Unlike narcotics and labor racketeering, gambling enjoyed a largely positive public image, despite

the danger posed by criminal elements enriching themselves by it. For that reason, it was difficult to rouse the public against gambling crime. This was to be considered a complication of enforcement efforts, and not necessarily a vindication of gambling.

In any event, the first witness then took the stand: professor of law (jurisprudence and social policy) at the University of California, Berkeley, Jerome H. Skolnick, widely regarded as one of the leading academic experts on organized crime. In his introduction, deputy chief counsel Stanley Hunterton ticked off Skolnick’s qualifications, which started with his “less formal” study of gambling at the age of nine, when his father took him to the Belmont race course in Long Island, New York, and taught him how to read a racing form.²⁰ His academic study of gambling had culminated in the 1978 monograph *House of Cards: Legalization and Control of Casino Gambling*, which, through academic analysis and participant observation, dissected the system of Nevada casino regulation as it was in the 1970s.²¹

Skolnick was an affable witness, sure of his testimony despite the reservations he must have known his audience would have with it. “My problem,” he warned Commission members, “is going to be how to tell you everything you always wanted to know about gambling but were afraid to ask—in what Stan Hunterton tells me is only twenty minutes.”²²

After hazarding a few casual theories for the popularity of gambling as an activity, Skolnick noted that gambling had become “even more popular” in the decade since the Commission on the Review of the National Policy toward Gambling had met, with the legalization of lotteries in many states—in the case of California, over the opposition of the state’s governor and law enforcement authorities. This was evidence of the good public image gambling enjoyed, which Mollenhoff had alluded to. “Clearly,” Skolnick said, “gambling is not perceived as a deplorable evil by an overwhelming majority of Americans.”²³

¹⁷COMMISSION HEARINGS, *supra* note 1, at 3–4.

¹⁸*Id.* at 5.

¹⁹*Id.* at 7–8.

²⁰*Id.* at 11.

²¹JEROME H. SKOLNICK, *HOUSE OF CARDS: LEGALIZATION AND CONTROL OF CASINO GAMBLING* (1978).

²²COMMISSION HEARINGS, *supra* note 1, at 12.

²³COMMISSION HEARINGS, *supra* note 1, at 13.

Sklonick argued against a monolithic view of gambling, positing that lotteries, as “shallow play,” were substantially different from gambling that was “deep play,” which, following Jeremy Bentham, he defined as gambling in which the pain of losing the sum wagered was greater than the pleasure of potentially winning it.²⁴ Lotteries, by contrast, featured small betting amounts, and were in essence “the mirror image of insurance,” in which a pool of bettors kicked in a small amount, to which a winner was selected by chance as the beneficiary. In addition, they were an alternative to taxation for “useful public works.” Finally, the lottery had only “remote” connections to organized crime, and Skolnick believed that legal lotteries could replace the illegal “numbers” rackets run by organized crime.²⁵

After briefly discussing the morality of deep play, Skolnick moved on to the inconsistency of public policy on gambling. “It is difficult to control illegal sports betting, for example,” he said, “in an environment and a society that permits casino gambling, horseracing, and lotteries.”²⁶ And he impressed upon the Commission the importance of asking the correct questions:

... regarding each gambling form, we should ask the following questions: What is the goal of government policy? What are we trying to achieve by our three main governmental options—prohibition, permission, and promotion? Do we approve the situation we’ve created? And, finally, what can be done about it if we don’t approve?²⁷

The goals of legalization, according to Skolnick, were of paramount importance. Nevada, for example, had legalized casino gambling to generate revenue and, in his estimation, only turned to serious regulation of the industry after the threat of federal involvement in the 1960s. Indeed, when he began studying Nevada gaming in 1974, Sklonick had been told that organized crime “was out” of the state. Over the next few years, however, revelations about the continuing presence of organized crime groups in Nevada casinos made it clear that wasn’t the case.²⁸

New Jersey, on the other hand, had legalized casinos not for general revenue purposes, but to promote economic development of Atlantic City, which should have meant stricter regulatory

controls, though the reality of political imperatives meant some shortcuts in the process, including the granting of a temporary license for Resorts International, the state’s first legal casino, in 1978.²⁹ Skolnick recommended that states looking to legalize casinos first made that they knew what they wanted from legalization; and second, maximized control of the industry as a reality.³⁰

Finally, Skolnick discussed the option of legalizing gambling not for revenue, and not for resort renewal, but primarily to “control the purveyors of gambling.”³¹ If accepted by the Commission, this would represent a stark reversal of the federal attitude towards gambling. Given, Skolnick said, “the frank recognition that the activity is socially acceptable,” legalizing gambling to better control it was the government’s best option. England, for example, legalized casinos not for revenue, but to keep organized crime away from the industry. Similarly, sports betting could be legalized in the United States as a control measure.³² The biggest problem, Skolnick felt, was that governments addressed the wrong question. They shouldn’t ask whether to legalize, but, instead, what the goals of legalization should be. In his estimation, suppression of organized criminal control of and benefit from gambling was a primary goal.³³

Chairman Kaufman took issue with Skolnick’s thesis, pointing out that legalizing the lottery in New York hadn’t eliminated the illegal numbers racket. Skolnick countered that legalization wasn’t a panacea, but merely one of several options.³⁴ Commissioner Dintino followed up with his observation that legalizing casinos in New Jersey had created new gamblers, which he thought might actually increase the volume of illegal gambling.³⁵ Skolnick responded that he wasn’t for blanket legalization, but that in some cases, it made sense. Legalizing sports betting, for example, wouldn’t increase the

²⁴COMMISSION HEARINGS, *supra* note 1, at 17.

²⁵COMMISSION HEARINGS, *supra* note 1, at 14–5.

²⁶COMMISSION HEARINGS, *supra* note 1, at 18.

²⁷COMMISSION HEARINGS, *supra* note 1, at 19.

²⁸COMMISSION HEARINGS, *supra* note 1, at 20.

²⁹COMMISSION HEARINGS, *supra* note 1, at 23.

³⁰COMMISSION HEARINGS, *supra* note 1, at 23–5.

³¹COMMISSION HEARINGS, *supra* note 1, at 26.

³²COMMISSION HEARINGS, *supra* note 1, at 26–7.

³³COMMISSION HEARINGS, *supra* note 1, at 28.

³⁴COMMISSION HEARINGS, *supra* note 1, at 30.

³⁵COMMISSION HEARINGS, *supra* note 1, at 34.

number of sports bettors, because, “anybody who wants to bet on the Super Bowl, who can’t find a bookmaker in this society, has to be regarded as mentally deficient.”³⁶

Sensing that the testimony was losing focus, Kaufman then reiterated that the Commission did not come to ban gambling, but only to prevent organized crime from infiltrating it, to which Skolnick whole-heartedly assented. After more questions about the nature of the Central States Pension Fund of the Teamsters in the organized crime infiltration of Nevada casinos, casino skimming, the history of organized crime in gambling, the legalization of sports betting, and the nature of college athletics (Skolnick felt that they were not as legitimately amateur as they purported to be), Chairman Kaufman thanked Skolnick for his testimony and excused him.³⁷

Next, three law enforcement officials testified: Frank J. Storey, Jr., then assistant special agent in charge (ASAC) of the Organized Crime Branch, Criminal Division, of the New York Office of the FBI, who had just been assigned to become the section chief of the Organized Crime Section at the FBI’s Washington headquarters; Joseph DiPierro, a 29-year NYPD veteran and current deputy inspector assigned to the Public Morals Division, under the supervision of the Organized Crime Control Bureau; and Lieutenant Robert Gaugler, a 23-year New Jersey State Police veteran, who was assigned to the Organized Crime Bureau.³⁸

Storey provided an overview of how the FBI investigated illegal gambling, the extent to which La Cosa Nostra and nontraditional organized crime groups were active in illegal gambling, and the official FBI policy on illegal gambling investigations. Using three major investigative techniques—informants, undercover operations, and Title III wiretaps—the FBI and state police had indicted and/or convicted members in LCN families across the country.³⁹ Storey spoke of the important role that illegal gambling investigations played in the FBI’s larger anti-LCN strategy, with gambling serving as a window to develop evidence to use in larger prosecutions of mob families, and for using gambling and the collection of unlawful debts “as excellent predicate offenses in obtaining significant RICO prosecutions.”⁴⁰ As Deputy Counsel Hunterton played a videotape of an in-progress illegal sports bookmaking operation, Storey provided explanatory narration for the Commission.⁴¹

Following an extended discussion of FBI efforts to stifle illegal sports betting and to work with leagues in encouraging players to avoid compromising situations involving those connected to organized crime, Storey turned to Atlantic City where, he said, eight regional LCN families had ramped up their activities since the legalization of casinos:

The LCN’s influence extends to the construction of casinos, hotel service businesses, which the Chairman had mentioned earlier, junket operations, restaurant employees, dealers, maids, and other ancillary services. The common thread in controlling these businesses is the LCN’s influence in the service-related industries and unions.⁴²

The complications of casino legalization in Atlantic City became a theme that the Commission would hear about extensively over the next two days.

Finally, Storey touted the FBI’s successful record of 1,200 organized crime convictions in the previous two years, and avowed the FBI’s resolve to continue fighting the good fight against organized crime and illegal gambling.⁴³ After some questions—in whose answers Storey lamented the minimal sentences frequently handed out to those convicted of gambling offenses—Storey yielded the floor to Joseph DiPierro.⁴⁴

DiPierro provided a narrower case study of organized crime control of illegal gambling in New York City, using a series of photographs to show commissioners the size and nature of illegal casinos in the Gotham area. Essentially scaled-down casinos of the type found in Las Vegas and Atlantic City, they offered not only all of the usual table games, but complementary food and drink, and even credit, courtesy of a loanshark.⁴⁵ He also highlighted the growing presence of other ethnic groups, particularly Cubans, in illegal gambling, especially policy (illegal lottery games). Rather than representing the

³⁶COMMISSION HEARINGS, *supra* note 1, at 36.

³⁷COMMISSION HEARINGS, *supra* note 1, at 37–51.

³⁸COMMISSION HEARINGS, *supra* note 1, at 52–3.

³⁹COMMISSION HEARINGS, *supra* note 1, at 53–4.

⁴⁰COMMISSION HEARINGS, *supra* note 1, at 56.

⁴¹COMMISSION HEARINGS, *supra* note 1, at 57–60.

⁴²COMMISSION HEARINGS, *supra* note 1, at 62.

⁴³COMMISSION HEARINGS, *supra* note 1, at 63.

⁴⁴COMMISSION HEARINGS, *supra* note 1, at 66.

⁴⁵COMMISSION HEARINGS, *supra* note 1, at 68–9.

triumph of armed conflict, DiPierro believed that “some kind of monetary agreement” had been reached between LCN and the ethnic upstarts.⁴⁶

Under questioning from executive director and chief counsel James D. Harmon, Jr., DiPierro disclosed that, in the first quarter of 1985, the NYPD had made 1,626 policy-related arrests in 1,072 separate locations.⁴⁷ But without access to the RICO statute that federal prosecutors could use, New York City district attorneys had an abysmal track record of gaining convictions for gambling offenses; DiPierro estimated that “there may be one or two” incarcerations for gambling-related crimes, though there were none of which he was personally aware.⁴⁸

After Harmon got DiPierro to discuss the difficulties new technologies posed for investigations (Cuban policy operators, in particular, were using audio cassette tapes and computers to record and tally bets), he shifted questioning to Lieutenant Gaugler, who started by demonstrating a seized video poker machine for the Commission. Gaugler spoke at length about “dual mode” “Joker-Poker” machines that had both amusement and illegal gambling modes, the latter of which was accessed by pressing certain buttons and, when activated, revealed a hidden bookkeeping program that could track the total credits earned and “knocked off,” letting the owner verify payouts.⁴⁹ Such games could generate “enormous” sums of money; one investigation revealed that a mere five machines had generated \$500,000 in profit (not revenues) for their owner over a 15-month period.⁵⁰

Following ASAC Storey’s avowal that “Joker-Poker” machines were a growing problem nationwide, Deputy Counsel Hunterton opened the floor to questions. DiPierro offered a few theories about why illegal lotteries continued in New York City despite the state having a legal lottery: namely, the lack of taxes assessed on winners, and the ease of play.⁵¹ Storey clarified the FBI’s policy in using gambling to support RICO prosecutions, rather than trying discrete gambling cases, and spoke about the potential impact that sentencing changes by the federal judiciary might have on FBI investigative priorities. The commissioners, Storey and DiPierro, discussed the merits of Professor Skolnick’s legalization-as-control schema; the law enforcement officers were leery of the concept.⁵²

Following that trio of law enforcement testimony, the Commission, pursuant to its charge to “define

the nature of emerging organized crime groups,” heard extended testimony from Commission investigator Anthony Lombardi, a former Internal Revenue Service special agent, about “The Corporation,” a Cuban organized crime group.⁵³ According to Lombardi, The Corporation’s existence was due to a confluence of geo-political factors. He testified that a comprehensive review of all available investigations had revealed:

the existence of a tightly knit, well-financed, armed, and powerful group of Cuban racketeers known as “The Corporation.” These individuals are sometimes CIA trained and anti-Castro sympathizers that had taken part in the Bay of Pigs invasion.

As has been the case with other criminal groups, including the Mafia, the Japanese Yakuza, the Chinese Triad Societies, and Vietnamese gangs, The Corporation traces its roots to violent, political upheaval in other countries. When these countergovernment movements were no longer able to influence decisively political events in their countries, some of their members turned to crime as a way of life, capitalizing on longstanding organizational ties and methods of operation. Many continue to fly the “false flag” of liberation as a means to mask their purely criminal activities and to attract new recruits. The Mafia no longer uses this pretext upon which to operate, having become so completely assimilated as to be considered the preeminent “All-American” crime group.⁵⁴

This group began to coalesce shortly after the failed Bay of Pigs invasion, and had grown by the mid-1980s to become a juggernaut, with an estimated weekly gross take of \$2 million for illegal lottery games alone.⁵⁵ At its helm sat a “chairman of the board,” Jose Miguel Battle, Jr., who expanded into

⁴⁶COMMISSION HEARINGS, *supra* note 1, at 71.

⁴⁷COMMISSION HEARINGS, *supra* note 1, at 72.

⁴⁸COMMISSION HEARINGS, *supra* note 1, at 73.

⁴⁹COMMISSION HEARINGS, *supra* note 1, at 78–9.

⁵⁰COMMISSION HEARINGS, *supra* note 1, at 84.

⁵¹COMMISSION HEARINGS, *supra* note 1, at 88.

⁵²COMMISSION HEARINGS, *supra* note 1, at 90–5.

⁵³COMMISSION HEARINGS, *supra* note 1, at 100–1.

⁵⁴COMMISSION HEARINGS, *supra* note 1, at 102.

⁵⁵COMMISSION HEARINGS, *supra* note 1, at 103.

new criminal areas using violence as well as accommodation with traditional LCN elements. Battle was at one point a vice officer in Havana who had served both in Batista's army and the failed Bay of Pigs landing group. Following the failure of that invasion, he was declared a lieutenant in the U.S. Army by a special congressional act and moved to the Miami area, where he helped establish the United States' first Cuban-controlled gambling operation. In the late 1960s, he moved to Union City, New Jersey, and carved a name for himself as "the Cuban Godfather" through relentless use of murder and arson.⁵⁶

Battle's life story, and the relationships between his Cuban-manned operations and traditional LCN families in the New York City area, underscored the Commission's growing realization that organized crime was changing. This was big business; Lombardi estimated that The Corporation was "conservatively valued at an estimated several hundred million dollars, with an endless, substantial cash inflow."⁵⁷ The Corporation had also laundered millions of dollars in illegal proceeds through financial institutions it controlled and the Puerto Rico Lottery.⁵⁸ To underscore The Corporation's international reach, New York Port Authority police officer Joseph Pellicone testified as to the seizure of \$439,540 from Battle associates boarding a flight to Miami, and Metro Dade police officer James Leggett related a seizure of cash and Puerto Rico Lottery tickets at Miami International Airport.⁵⁹

Following a lunch break, the Commission heard from a witness whose identity, for security purposes, was kept secret, but whose bona fides were vouched for in an affidavit by NYPD homicide detective Richard Califas.⁶⁰ A former member of The Corporation, the witness testified about the organization's structure, operating methods, and disciplinary culture, which included arson and murders subcontracted out to the Marielitos, hardened Cuban criminals who were among the 125,000 refugees absorbed into the U.S. following the Mariel boatlift.⁶¹ To make sure there was no confusion, the witness testified that The Corporation was able to operate in an LCN-dominated city like New York by "sending envelopes [of cash] every week."⁶²

The next trio of witnesses were Sergeant Donald Herlon, of the Chicago Police Department's Organized Crime Vice Control Section, Gambling Unit; Mark Vogel, a special attorney with the Organized

Crime Strike Force, Chicago, office, who had prosecuted International Brotherhood of Teamsters president Roy Williams, reputed Chicago mobster Joey "The Clown" Lombardo, and Teamsters pension fund magnate Allen Dorfman; and Judith Dobkin, another Chicago Strike Force prosecutor. Their testimony had two purposes: to prove that illegal gambling was not "an entirely victimless and nonviolent crime," and to show that "while this is a crime which generally receives very short prison terms, there can, with the effective investigation and prosecution of well-targeted cases, result lengthy prison terms."⁶³

Herion described how "The Outfit," as Chicago's organized crime was known, controlled all illegal gambling in Chicago through means of a street tax, which made The Outfit fifty-fifty partners with any bookmakers who wanted to stay in business.⁶⁴ He described in great detail the business of sports bookmaking, drawing on case studies of successful investigations and arrests. As in New York City, new technologies—in this case, call-forwarding services and beepers—were frustrating bookmaking investigations.⁶⁵ Though a series of photographs, he demonstrated to the Commission exactly what sports betting locations and wire rooms looked like, and the difficulties that police faced in retrieving useful evidence from them. In addition, more than five thousand video poker machines, he testified, were in operation in the Chicago region.⁶⁶

After Vogel and Dobkin walked the Commission through two representative prosecutions (that of Frank P. Ballistrieri and Joseph "Caesar" Divarco, respectively), the Commission heard from its last witness of the day, Michael A. DePeo, the deputy chief in the Organized Crime and Racketeering Section, Criminal Division, United States Department of Justice, and 22-year veteran of the department's Los Angeles, Las Vegas, and Kansas City field

⁵⁶COMMISSION HEARINGS, *supra* note 1, at 104–5.

⁵⁷COMMISSION HEARINGS, *supra* note 1, at 109.

⁵⁸COMMISSION HEARINGS, *supra* note 1, at 111.

⁵⁹COMMISSION HEARINGS, *supra* note 1, at 115–22.

⁶⁰COMMISSION HEARINGS, *supra* note 1, at 127.

⁶¹COMMISSION HEARINGS, *supra* note 1, at 143.

⁶²COMMISSION HEARINGS, *supra* note 1, at 144.

⁶³COMMISSION HEARINGS, *supra* note 1, at 148.

⁶⁴COMMISSION HEARINGS, *supra* note 1, at 149.

⁶⁵COMMISSION HEARINGS, *supra* note 1, at 156.

⁶⁶COMMISSION HEARINGS, *supra* note 1, at 161.

offices. DePeo clarified the Justice Department's policy of reserving "electronic surveillance, extensive grand jury inquiries, and other intensive techniques" for cases involving a direct link to LCN or situations involving law enforcement or political corruption.⁶⁷ DePeo described how, over the past 10 years, the department had reduced its commitment to gambling enforcement from 50 percent to a maximum of 25 percent, freeing resources to be used for more pressing racketeering and narcotics investigations.⁶⁸

Following an extended conversation with DePeo about the reality and potential of federal anti-gambling action, the Commission adjourned for the day.

Day two

On Tuesday, the Commission focused on two major topics: first, organized crime's role in fixing college and professional sports events; and second, how organized crime was able to profit from legalized casino gambling in Atlantic City.

Starting the day, to get a perspective from a local police official, the Commission heard from Los Angeles Police Department (LAPD) chief Daryl Gates. Gates boasted that he didn't have much to say, since "in Los Angeles and in the Southern California area we are relatively free of major problems in the area of organized crime in gambling," but nevertheless discussed how, since 1972, an expansion of legal gambling had caused an increase in illegal gambling.⁶⁹ He also related how a recent LAPD crackdown on Chicago-area organized crime looking to muscle in on disorganized local bookmakers, dubbed "Operation Lightweight," had been successful.⁷⁰

Despite his city's good track record with controlling illegal gambling, Gates admitted that Los Angeles was vulnerable to a potential organized crime influx, and spoke of the need for new tools—like a wiretapping statute—to combat the potential problem. He also spoke about how legal card clubs in Commerce and Bell had led to corruption cases involving local politicians, and closed his testimony by warning of the social ills that the California lottery—which had been approved but had yet to sell a ticket—would surely unleash on the Golden State.⁷¹

Clinton Pagano, the superintendent of the New Jersey State Police, followed Gates to give a statewide perspective. He described the difficulties of

pursuing anti-gambling prosecutions in "one of the most wagering states in the nation," and sought to provide "a historical contrast of the effects of legalized gambling on illegal gambling, and the impact of law enforcement policy and practices on both legal and illegal gambling."⁷² In doing so, he attacked three main points. First, he sought to "dispel the myth, the ever-popular myth" that legalizing gambling diminished sources of revenue for organized crime.⁷³ In fact, he said, since the legalization of the New Jersey Lottery, his force had continued to make arrests for illegal lotteries, totaling 35 percent of all gambling-related arrests.⁷⁴ Legalizing casinos had similarly not decreased, in his estimation, illegal casino-style gambling.

Second (and he was not aware that this point tended to undercut his first), Pagano stated that sports bookmaking was "by far the most lucrative form of illegal gambling" in New Jersey. He recognized that the state had a problem with illegal sports bookmaking, and pointed with pride to the tremendous resources, including electronic surveillance, it had dedicated to solving the problem.⁷⁵ Pagano's third point, that traditional elements of organized crime remained deeply entrenched in gambling, underscored the need for "law enforcement to consider an aggressive posture toward illegal gambling—a policy that has all but disappeared in most jurisdictions because it is seen as a victimless crime."⁷⁶ He further stated that the state made no claim to "eliminate" illegal gambling, but only sought to control it—effectively undermining Professor Skolnick's assertion that legalization was the surest path to state control of gambling.

Responding to a question from Chairman Kaufman, Pagano hypothesized that bookmakers had been leaving New Jersey for New York and Philadelphia because of Garden State law enforcement's stronger track record of investigation and prosecution. And, responding to Kaufman's request that

⁶⁷COMMISSION HEARINGS, *supra* note 1, at 185.

⁶⁸COMMISSION HEARINGS, *supra* note 1, at 190.

⁶⁹COMMISSION HEARINGS, *supra* note 1, at 203.

⁷⁰COMMISSION HEARINGS, *supra* note 1, at 205.

⁷¹COMMISSION HEARINGS, *supra* note 1, at 208.

⁷²COMMISSION HEARINGS, *supra* note 1, at 210–11.

⁷³COMMISSION HEARINGS, *supra* note 1, at 211.

⁷⁴COMMISSION HEARINGS, *supra* note 1, at 211.

⁷⁵COMMISSION HEARINGS, *supra* note 1, at 214.

⁷⁶COMMISSION HEARINGS, *supra* note 1, at 215.

either official comment on Skolnick's legalization hypothesis, Gates warned against the state becoming a "shill" that produced more gambling, leading to the proliferation of illegal gambling.⁷⁷ Pagano was similarly opposed to the legalization, though he noted his responsibility to be attentive to the will of voters who felt otherwise.⁷⁸

Next the Commission heard from Ronald D. Chance, supervisor of the Camden and Pomona, New Jersey, Offices of the United States Department of Labor, Office of Labor Racketeering, and the supervisor of the Labor Department agents assigned to the Camden Field Office for the Justice Department's Organized Crime Strike Force, who spoke about LCN corruption of Local 54, the hotel and restaurant union which represented workers in Atlantic City casino hotels. He described the control which reputed South Jersey underworld boss Nicky Scarfo had established over the city, which centered on his influence over the union, which was an outstanding exemplar of labor racketeering:

Local 54, in Atlantic City, is a classic case study in organized crime and labor racketeering. Several of the officers of this union and its predecessor unions boast convictions for murder, arson, extortion, drugs, bribes, kickbacks and racketeering. Next to the ownership of the casino itself, the control of Local 54 is the most important prize in the Atlantic City sweepstakes....The history of corruption in this union predates the casinos, but the arrival of casino gambling signaled the start of a new quest for control of the local.⁷⁹

Because of the massive amounts of cash flowing through union pension funds, the funds' exemption from the Sherman Antitrust Act, and the political influence many unions enjoyed, there were in general lush targets for mob takeovers. Local 54, because of the burgeoning casino industry, was an even greater prize.

Following on Chance's testimony, Peter Bennett, the Executive Assistant United States Attorney for the District of New Jersey and the lead prosecutor in the case of *United States v. Matthews* (this was the trial that put former Atlantic City mayor Mike Matthews behind bars), and Drug Enforcement Agency Special Agent Jim Bannister testified about the investigation of Matthews and Frank Lentino, an organizer for Local 54 and an associate of

Nicky Scarfo. As part of Operation Wild Bond, Matthews had facilitated the sale of city-owned land to a front group in exchange for a cash bribe totaling \$20,000 and a continuing hidden interest in the casino that was to be built on the property.⁸⁰ Agent Bannister, who had played a key role in the investigation in his undercover guise as the group's front man, Jim Biacco, narrated a series of taped conversations, explaining to the Commission the key points of the investigation. All in all, it was a gripping tale of how high the links between organized crime and politicians could go.

The next set of witnesses testified directly about the corruption of sports by gambling interests. They included Edmundo Guevara, a former FBI special agent and current President's Commission investigator; Edward McDonald, a former basketball player for Boston College and current chief of the Justice Department's Organized Crime Strike Force in Brooklyn, New York; and Rick Kuhn, the disgraced former Boston College basketball star who had been convicted in 1981 of bribery for his role in a point-shaving scheme.⁸¹

Guevara related the history of college sports corruption linked to betting—since 1951, 31 institutions and a total of 77 players had been caught in scandals, typically involving point shaving. In describing the backdrop to the Boston College case—in which former mobster Henry Hill testified for the government—he mentioned several names familiar to those who know the story behind Martin Scorsese's *Goodfellas*. This highlighted the high stakes of amateur athletic corruption. McDonald then narrated the nuts and bolts of the case, and Kuhn offered the personal story of his involvement. The Commission was so riveted by Kuhn's testimony that it kept him over through the lunch break, finishing its discussion of the Boston College case later that afternoon.⁸²

Then another trio of witnesses came forward: John Davis, president of the National Collegiate Athletic Association (NCAA); Lou Carnesecca, St. John's basketball coach; and *Boston Globe* sports editor Vincent Doria. Davis, accompanied

⁷⁷COMMISSION HEARINGS, *supra* note 1, at 222.

⁷⁸COMMISSION HEARINGS, *supra* note 1, at 225.

⁷⁹COMMISSION HEARINGS, *supra* note 1, at 243–4.

⁸⁰COMMISSION HEARINGS, *supra* note 1, at 261.

⁸¹COMMISSION HEARINGS, *supra* note 1, at 281.

⁸²COMMISSION HEARINGS, *supra* note 1, at 290–330.

by NCAA counsel Michael Scott, spoke of the twin plagues of drugs and gambling on college campuses, decrying the “tragic social problem” of the availability of drugs to young people and expressing the NCAA’s vehement opposition to any form of gambling on college sports.⁸³ Davis pressed for a national prohibition on gambling on college athletics, which would destroy it in Nevada, the only state in which it was legal, and also for banning the transmission of odds and point spread information about college contests across state lines.⁸⁴ He even lamented the “apparent constitutional limitations” that prevented Congress from outlawing the publication of any sort of gambling information related to college athletics by newspapers.⁸⁵ Coach Carnesecca spoke about his efforts to keep the St. John’s program clean and expressed unconditional support for Davis’s proposals.⁸⁶

Doria, however, struck a discordant note. He defended the publication of betting information in newspapers with the rational that gamblers were “very avid readers” who deserved to be “served.” What’s more, he didn’t believe that gambling was as pernicious as the other witnesses:

My personal point of view is that I don’t think gambling is going to go away. You can arrest neighborhood bookies and crack down on major gambling rings but the guy who wants to place a bet on a game is going to find a place to do it. I think the only way is to take it away from organized crime by making it legal and letting the government regulate it. I don’t think there is anything inherently wrong with gambling. Like drinking, smoking, eating, it can be abused. We have heard a lot of sad stories about the down and out gambler who loss[es] his business, his home, his family. They make very compelling reading. But with all those stories, there are thousands of people who derive great enjoyment from making modest bets.⁸⁷

This was as close to an “industry” perspective that the Commission was going to hear on sports betting, and with the law enforcement/prosecutorial orientation of the Commission, it was not greeted as warmly as Davis and Carnesecca’s calls for enhanced prohibition and prosecution. He argued that the legalization of sports gambling would prevent point-shaving scandals, as government

monitoring of betting would eliminate the possibility of large bets being surreptitiously placed on suspicious contests, but was battered by pointed questions from a number of commissioners citing what they believed to be the predominant law enforcement view that legalized gambling would only beget more illegal gambling.⁸⁸

Howard Cosell, the eminent sportscaster and commentator, followed that trio, speaking of boxing, but not before a wordy aside about the rising need of “big time college sports” as a “Camelot to the daily travail of human existence,” a dangerous trend he tied to fan violence.⁸⁹ He also decried the “mobocracy” of Doria’s assertion that he was only giving readers what they wanted.⁹⁰ Cosell then spoke about his turn against professional boxing, and the history and potential current reality of organized crime penetration of boxing. After serious soul searching, he had come to the conclusion that “boxing’s ills are now so deep, so widespread...that here in the United States we should also abolish boxing.”⁹¹ After Cosell’s emotional and eloquent testimony, the appearance of James Morley, the executive director of the New Jersey Commission on Investigation, was almost an anticlimax, though he shared in-depth information about his commission’s investigations of the problems that he been plaguing boxing in the Garden State. He felt that a stricter federal oversight of boxing was the only truly appropriate regulation of the sport, and the only anodyne to rampant connections with organized crime in boxing.⁹²

Following Morley’s testimony, the Commission adjourned until the following morning.

Day three

The final day of hearings was to focus the sharpest attention on casino gambling, with a particular focus on Atlantic City. In introducing the day’s testimony, Acting Chair Hope declared that “the mob

⁸³COMMISSION HEARINGS, *supra* note 1, at 333.

⁸⁴COMMISSION HEARINGS, *supra* note 1, at 338–9.

⁸⁵COMMISSION HEARINGS, *supra* note 1, at 339.

⁸⁶COMMISSION HEARINGS, *supra* note 1, at 347.

⁸⁷COMMISSION HEARINGS, *supra* note 1, at 350.

⁸⁸COMMISSION HEARINGS, *supra* note 1, at 351, 364.

⁸⁹COMMISSION HEARINGS, *supra* note 1, at 367.

⁹⁰COMMISSION HEARINGS, *supra* note 1, at 370.

⁹¹COMMISSION HEARINGS, *supra* note 1, at 380.

⁹²COMMISSION HEARINGS, *supra* note 1, at 392.

is inexorably drawn to [legal casino] money as an addict is drawn to drugs.”⁹³ The first witness was Special Agent Ryan Corrigan, the IRS’s in-house expert on casino skimming. Corrigan delivered a brief, focused seminar on the diverse and treacherous channels of skimming, theft, and embezzlement of legal casino revenues derived from slot machines and table games, as well as redit skims, fill slip skims, kickbacks, and fraudulent expense claims.⁹⁴ Corrigan included a call for “more resources, more prosecutors,” as the best way to crack down on skimming and related crimes.⁹⁵ And commissioners asked him several questions about junket-related crimes, segueing into the next pair of witnesses.

William Kisby and Gregory Seitz were a pair of New Jersey State Police detectives from the Casino Intelligence Unit, who had been invited to testify by Commissioner Dintino about an on-going investigation in the use by organized crime of junkets to skim money from Atlantic City casinos. Kisby explained how casino junkets, “legitimate marketing to entice gamblers to visit gaming establishments,” were regulated by the state. Typical junkets offered pre-qualified gamblers free transportation, food, lodging, and entertainment in exchange for play.⁹⁶ As “the lifeblood of a successful casino,” junkets couldn’t be outlawed, but several problems inherent in them—including the farming out of player development to agents not working directly for the casino—raised a host of problems that had allowed the mob to elbow into Atlantic City casinos.

Kisby presented charts outlining an 89-count racketeering indictment that had been secured against 11 individuals and three corporations in September, 1984, as well as entities and individuals still under investigation—even as he testified, a grand jury was reviewing evidence. The detective explained that the investigation had uncovered a centralized network of unlicensed (and, indeed, unlicensable) individuals who controlled junket activity across 65 cities in 25 states.⁹⁷ Clever fiscal analysis revealed that there was, undoubtedly, money being skimmed off by organized crime, funneled through bogus marketing and junket charges; four casinos under investigation, which had affiliated themselves with an unlicensed operator connected to the Bonnano crime family, had marketing costs that, statistically, could not be justified by their win-ratio statistics. Kisby related that millions of dollars had been siphoned from casinos per year.⁹⁸ Up to 45 percent of licensed junket

operators, the investigation had determined, were associated with “the network.”⁹⁹

Following Kisby’s testimony, Detective Seitz walked the President’s Commission through his undercover role in the investigation, including his inside view of a \$10,000 payment by an cooperating businessman to an associate of the DeCavalante crime family, who had demanded the tribute in exchange for using his influence to secure junket business for the businessman from an Atlantic City casino.¹⁰⁰ He additionally explained the context of a tape in which a DeCavalante associate remarked that “the days of James Cagney and George Raft are over,” and that organized crime families now settled disputes through negotiations and compensation rather than out-and-out violence; this gave everyone an idea of the size and scope of the “network” that throttled Atlantic City junket play.¹⁰¹

The following pair of witnesses also presented a law enforcement story: Charlie Parsons, assistant special agent in charge of the FBI’s Kansas City office (and formerly organized crime supervisor of the Las Vegas office), and Richard C. Wassenaar, assistant commissioner for criminal investigations of the Internal Revenue Service, the Commissioner’s principal adviser for all investigative activity. Parsons explained how, since 1971, ten different casinos had been involved in 20 cases involving up to 70 defendants, which demonstrated the degree of organized crime influence in Nevada’s industry.¹⁰² He traced organized crime’s influence from the “Founding Fathers” of the 1940s to the more recent influx of Teamsters Central States Pension Fund money. Parsons explained that, acting as middlemen between casino owners and Jimmy Hoffa, who stood astride the fund’s coffers, LCN families were able to gain influence in the next generation of Las Vegas casinos.¹⁰³

More specifically, Parsons walked the Commission through the Strawman investigation, which

⁹³ COMMISSION HEARINGS, *supra* note 1, at 417.

⁹⁴ COMMISSION HEARINGS, *supra* note 1, at 420–9.

⁹⁵ COMMISSION HEARINGS, *supra* note 1, at 436.

⁹⁶ COMMISSION HEARINGS, *supra* note 1, at 450.

⁹⁷ COMMISSION HEARINGS, *supra* note 1, at 453.

⁹⁸ COMMISSION HEARINGS, *supra* note 1, at 454.

⁹⁹ COMMISSION HEARINGS, *supra* note 1, at 460.

¹⁰⁰ COMMISSION HEARINGS, *supra* note 1, at 465.

¹⁰¹ COMMISSION HEARINGS, *supra* note 1, at 466–7.

¹⁰² COMMISSION HEARINGS, *supra* note 1, at 471.

¹⁰³ COMMISSION HEARINGS, *supra* note 1, at 477.

had captured conversations between Kansas City underworld leaders and Joe Agosto and Carl Thomas of the Tropicana Hotel in Las Vegas, who explained to his friends from the Paris of the Plains the ins and outs of casino skimming. “One of the best tapes in my experience in law enforcement,” Parsons called it before playing a portion of the tape and summarizing from the transcript when members of the Commission objected to its poor sound quality.¹⁰⁴ He then answered Hunterton’s questions about the Argent skimming case, which was the basis for Martin Scorsese’s film *Casino*. Wassemar followed Parsons with specific testimony about the tax evasion aspects of the cases the FBI agent had discussed. Parsons closed by reiterating that not all was rotten in the state of Nevada: “there are more legitimate operators,” he reminded the Commission, alluding to a witness who would be appearing that afternoon.¹⁰⁵

The next witness, however, was Frank Cullotta, then in federal witness protection (he testified from behind a screen and with television cameras removed from the room), who shared his story of rising through the ranks of Chicago’s underworld to become a trusted lieutenant of notorious mobster Tony Spilotro in Las Vegas.¹⁰⁶ It was vivid, lurid testimony, with Culotta freely sharing tales of burglary, murder, extortion, drug trafficking, and casino skimming. Culotta was brief, but colorful, giving LCN influence in Las Vegas casinos the kind of personal color that Rick Kuhn had given sports corruption.

From here, the Commission pivoted to the topic of money laundering, hearing from its own investigator, Thomas Sheehan, a 20-year Drug Enforcement Administration (DEA) veteran who spoke about how “organized crime has used casinos like private banks to launder the proceeds of narcotic trafficking.”¹⁰⁷ Atlantic City’s proximity to two major heroin markets made it particularly vulnerable to use as a laundering center, but this was a potential problem at all casinos.

Sheehan outlined three primary money laundering techniques: first, using casinos to exchange small bills for large ones; second, using casinos to wire money to offshore accounts, or to loan back to a client; and third, transferring money from a casino in the United States to another outside the U.S., where it could be issued as credit to anyone.¹⁰⁸ Let anyone think that this was merely theoretical, Sheehan told the tale of Anthony “Tony Cakes” Castel-

buono, who had deposited \$2.5 million, allegedly in heroin cash, at the Golden Nugget Atlantic City, in late 1982.¹⁰⁹ To that end Stephen Wynn, Chairman of the Golden Nugget, was slated as the next witness. In Sheehan’s words, he was “to explain what measures casino operators can take to make it more difficult for organized crime to profit from casinos.”¹¹⁰

Wynn didn’t come alone; he brought three executives who just happened to have immaculate anti-crime pedigrees: Alfred Luciani, a former deputy attorney general; Marilou Marshall, former staff attorney for the Commission on the Review of the National Policy toward Gambling and his in-house counsel; and Shannon Bybee, vice president of community affairs and a former member of the Nevada Gaming Control Board.

The youthful casino owner was diplomatic, but prickly about the nature of the proceedings:

I came here today at the invitation of Counsel Hunterton because first of all I had prior knowledge of Mr. Hunterton’s work with the Organized Crime Strike Force in Las Vegas and, like a lot of people in the gambling industry, a good deal of respect for Mr. Hunterton’s accomplishments. It’s when he explained to me what the Commission’s purpose was, it was easy to anticipate that the course of events would involve the presentation of witnesses such as Mr. Cullotta that was here earlier.

I was not particularly delighted to find myself or any of my colleagues present during a colloquy involving people of this caliber. Nevertheless, the purpose of the Commission in our view was valid and admirable and afforded us an opportunity to participate in a process that could result in an improvement of the situation and could lead to progress.

Earlier this week you have had some very, very distinguished people here. I watched on CNN as Professor Skolnick helped open the

¹⁰⁴ COMMISSION HEARINGS, *supra* note 1, at 480.

¹⁰⁵ COMMISSION HEARINGS, *supra* note 1, at 513.

¹⁰⁶ COMMISSION HEARINGS, *supra* note 1, at 516.

¹⁰⁷ COMMISSION HEARINGS, *supra* note 1, at 526.

¹⁰⁸ COMMISSION HEARINGS, *supra* note 1, at 528–9.

¹⁰⁹ COMMISSION HEARINGS, *supra* note 1, at 530.

¹¹⁰ COMMISSION HEARINGS, *supra* note 1, at 533.

proceedings here in New York. He is, I am proud to say, a very good friend of mine.¹¹¹

Wynn went on to restate Skolnick's arguments about the lengthy nature of "legitimization," or gaining of respect and credibility, from a former pariah industry, and his commitment to that process. Chairman Kaufman acknowledged Wynn's efforts in that respect, quipping about whether he was giving his guests more towels, a reference to a television commercial starring the casino owner and Frank Sinatra.

Substantively, Wynn focused on three areas in which he thought offered "room for improvement and progress" in the fight against organized crime. The first was "the dialogue between law enforcement and the gaming industry"; the second was labor racketeering, where although Wynn had no personal knowledge of mob infiltration of casino-related unions, he was eager to see the federal government increase its jurisdiction over unions; finally, in the area of "information," which raised a fundamental philosophical split with the Commission. "We are not a law enforcement agency," Wynn said, "and we cannot be presumed to have knowledge of people that the FBI possesses. To assume so is unfair."¹¹²

In particular, Wynn promised to tell "a very different story" about the saga of Tony Cakes. He spoke of six hours of surveillance videotape recorded by the casino, documenting Mr. Castelbuono from the time he set foot on the property; how Castelbuono's deposits had triggered "every alarm and buzzer and bell" and set the Golden Nugget's compliance system into action; how executives were immediately notified that something unusual was taking place; how this was a higher standard of care than one would find in a New York bank; how the money was isolated and Castelbuono told it would remain inert until he had shown that he had come to play, not merely make change.¹¹³ Up until this point, they were unsure what to make of Castelbuono. This was the first time they'd seen him. Was he a "crazy person" who wanted to turn small bills into big ones, or "an eccentric gambler, which is not unusual in our environment?"¹¹⁴

When Castelbuono began betting ten- to twenty-thousand dollars per hand at baccarat, losing \$360,000 in approximately six hours, with \$800,000 still on deposit, it was clear that he was a gambler. But he was warned not to bring small

bills in again. Despite his agreeing not to, the casino instituted its own investigation, which was covered in a memorandum Wynn entered into evidence.¹¹⁵

Wynn claimed the system worked; but Harmon pressed him, wanting to know who gave a money launderer permission to gamble such large sums of small bills at his casino. As the chairman of the parent company, Wynn assured him that he was not that person, but was adamant that his system had worked. Harmon tried to get him to admit that a casino owner had a "moral responsibility" to halt the laundering of narcotics cash, but Wynn parried that blow, admitting to only a "very legal" responsibility to run his business properly.¹¹⁶ He insisted that no one had been allowed to change small bills for large ones. When confronted with the testimony of the Chairman of the Bank of Boston, who had accepted a moral responsibility for compliance, Wynn again wriggled out, instead choosing to continue the Castelbuono story. His company's investigation revealed that Castelbuono was a graduate of Fordham and Harvard Law School, that he had no arrest record, and that he appeared to be not a money launderer, but "an attorney who is a very heavy gambler."¹¹⁷ With this due diligence conducted, he was allowed to continue gambling, losing a total of \$1,150,000—not the modus operandi of a successful money launderer.¹¹⁸

Wynn then embraced the "moral responsibility" of assuring compliance, stressing this was why he hired executives with impeccable law enforcement credentials. He even related that Frank Storey, the career FBI man, had interviewed for a job with him before deciding to take his current post in Washington. He lamented the double standard to which his industry was subjected ("we don't investigate Tiffany's and Saks Fifth Avenue and Van Cleef & Arpels"). "It is painful," he said, "because my company is 5,500 fine people. We have nothing in common with Culotta or heroin importers."¹¹⁹

¹¹¹COMMISSION HEARINGS, *supra* note 1, at 536–7.

¹¹²COMMISSION HEARINGS, *supra* note 1, at 541.

¹¹³COMMISSION HEARINGS, *supra* note 1, at 544–5.

¹¹⁴COMMISSION HEARINGS, *supra* note 1, at 546.

¹¹⁵COMMISSION HEARINGS, *supra* note 1, at 548.

¹¹⁶COMMISSION HEARINGS, *supra* note 1, at 551.

¹¹⁷COMMISSION HEARINGS, *supra* note 1, at 554.

¹¹⁸COMMISSION HEARINGS, *supra* note 1, at 555.

¹¹⁹COMMISSION HEARINGS, *supra* note 1, at 558.

Wynn then strongly objected to Harmon's leading questions about credit and chip control procedures, which suggested that, "there are really no records in the casino by which a person can look" to see whether the credit player had won, lost, or given his chips to someone else.¹²⁰ "Wrong," he insisted:

If he doesn't start gambling and walks away from the table an alarm bell goes off and we call the cage and a shift boss and a floor supervisor and we watch the man move back to the cage and when he tries to do that, and we do this all the time, we say hello, whoa, sir. We have better things to do than to play hide the weenie with the credit documents. What is your intention here? We stop this sort of activity from taking place. It has never been a problem for us once we understood it years ago, any more than money laundering is a problem for us. So we don't let that happen in reality.¹²¹

Wynn, answering continued questions about why Castelbuono's friend was allowed to withdraw the money Castelbuono had deposited, reiterated that his casino would not abide money laundering, but that, "once a man comes with his money as a gambler, we allow him freedom to move within our premises."¹²² Backpedaling now, Wynn said that "they are all one large group," and admitted that he gambled not under his birth name, but as "Tony Cakes," and admitted he was unsure as to whether customers could deposit money under aliases as a matter of policy in his casino, though after conferring with his executives, he clarified that a social security number and proper identification was necessary, though an additional pseudonym could be attached to the account.¹²³ When asked if he knew him as "Tony Cakes," Wynn was indignant. "I wouldn't call anybody Tony Cakes. I couldn't stand to call anybody something as silly as that It's laughable."¹²⁴

Things then got even more disagreeable, with Wynn "taking some issue" with the Commission's perception that the Golden Nugget's internal investigative report was slipshod.¹²⁵ He further argued about the point of the Treasury Department's recently enacted currency transaction reporting guidelines, which he said were not bona fide anti-money laundering tools, but instead a method of collecting more taxes. "It is doomed to failure," he said.¹²⁶

Additionally, he brushed aside Harmon's claim that 14 Golden Nugget customers had not complied with currency transaction report (CTR) reporting requirements as "misleading," before finishing his testimony and thanking Chairman Kaufman for the opportunity to testify.¹²⁷

Thomas Sheehan then returned to the witness table after the lunch break and briefly recapitulated his testimony about the Tony Cakes case before IRS revenue agent Martin Molod, who had previously testified before the Commission about money laundering, spoke about his examination of the records of the Golden Nugget relative to Tony Cakes. He laboriously reconstructed the nature of the cash deposit, down to estimating its total net weight of 280 pounds and size of 5.75 cubic feet.¹²⁸

Then the final two witnesses appeared. They were Thomas R. O'Brien, the director of New Jersey's Division of Gaming Enforcement, and Jeffery Silver, a former Nevada Gaming Control Board member who was currently an attorney in private practice. O'Brien spoke of the larger gains that legal casino gaming had netted New Jersey: 45,000 jobs, \$500 million in annual tax revenue, and \$1.5 billion in capital investment in Atlantic City.¹²⁹ While admitting there were problems—namely compulsive gambling and the attraction of criminal elements—O'Brien insisted that casino gaming was worth it.

Silver, expressing his macabre sense of humor, started his testimony by wondering if he should have worn a "black hood, having been an avowed resident of the State of Nevada," feeling that he was "playing on a baseball team as a cleanup hitter...not necessarily the home team here." He further stated that he believed a resident of Nevada would have brought more balance to the panel.¹³⁰ Like Wynn and O'Brien, he admitted that the industry could do more to clean up some of the problems associated with it, and stressed the steps casinos had

¹²⁰COMMISSION HEARINGS, *supra* note 1, at 560.

¹²¹COMMISSION HEARINGS, *supra* note 1, at 562.

¹²²COMMISSION HEARINGS, *supra* note 1, at 562.

¹²³COMMISSION HEARINGS, *supra* note 1, at 565.

¹²⁴COMMISSION HEARINGS, *supra* note 1, at 566.

¹²⁵COMMISSION HEARINGS, *supra* note 1, at 568.

¹²⁶COMMISSION HEARINGS, *supra* note 1, at 578.

¹²⁷COMMISSION HEARINGS, *supra* note 1, at 581.

¹²⁸COMMISSION HEARINGS, *supra* note 1, at 593.

¹²⁹COMMISSION HEARINGS, *supra* note 1, at 598–9.

¹³⁰COMMISSION HEARINGS, *supra* note 1, at 601.

taken to create large, proactive security departments that investigated vendors and even customers. He also pointed out that even informal help—such as ASAC Parsons walking the floor of the Riviera with him after he became the property’s president—could go a long way.

More importantly, he launched into a vigorous defense of Las Vegas and Nevada:

Las Vegas is not the 50,000 population that we once had. It is 500,000. And there aren’t 500,000 members of organized crime in Nevada. There are a lot of good people in Nevada that depend upon this industry for their lifeblood. I feel that if we take a look and see what we have done to correct the situation, the large companies coming through, the auditing controls that have been placed upon some of these organizations, the audits by reputable Big 8 CPA firms, the expansion of the regulatory system—when I was there, there were 76 agents, now there are 350 agents, on the Gaming Control Board; the sophistication of the investigative process—all of these things lend credence to the fact that there is an active effort to remove organized crime’s influence. And the ten or twelve cases that are shown on the board from 1971 to the present represent an insignificant portion of what the actual activities of the gaming industry are.¹³¹

Further, Silver took personal umbrage at Kaufman’s statements that he didn’t want to even visit Las Vegas, saying that it was “a cross section of America” with a great deal of “pizazz” but also churches and schools.¹³²

Questioning then whipsawed back to O’Brien, who spoke in greater detail about the benefits legal casino gaming had brought New Jersey, including, according to one study, an improvement in the state’s self-image.¹³³ He also expressed pride that the Casino Control Act had built in several safeguards that would prevent the industry from ever exercising undue political influence. And, when questioned about the Mike Matthews case, he was quick to point out that there was no connection between that case and any casino licensee. While admitting that the industry had been victimized by organized crime, he was adamant that good regulation could keep mob presence to a

minimum.¹³⁴ After more questioning about the differences in regulatory stringency between Nevada and New Jersey, the hearings were over.

THE COMMISSION’S LEGACY

After hearing from 36 witnesses over three days, the President’s Commission drew two paragraphs worth of conclusions:

The record of this hearing demonstrates that there is a continuing and self-perpetuating relationship between gambling and organized crime. Unlike illegal drugs, for example, which are in large part controlled by some form of organized crime and which are universally condemned, gambling is not an activity which is thought to be a harmful practice in and of itself, notwithstanding organized crime’s persistent involvement. Much of what we have saw and heard in the three days of hearings lends credence to the view that gambling, legal or illegal, is considered to be a relatively harmless pursuit, with no serious negative effects on society or the individual.

The result has obviously been to make illegal gambling the “highest profit-lowest risk” business in which organized crime groups can involve themselves. No other form of illegal activity has a “profit vs. risk” ratio as attractive as gambling. Thus, so long as this situation exists, involvement of organized crime in gambling will continue, and law enforcement efforts in this regard will continue to have only limited success. The extent to which illegal gambling should be targeted, either as unacceptable or as a revenue source for other...organized criminal activities, and the priority to be given to any such targeting, is one of the more challenging subjects facing policy makers and law enforcement officials in the near future.¹³⁵

¹³¹COMMISSION HEARINGS, *supra* note 1, at 608.

¹³²COMMISSION HEARINGS, *supra* note 1, at 608.

¹³³COMMISSION HEARINGS, *supra* note 1, at 610.

¹³⁴COMMISSION HEARINGS, *supra* note 1, at 623.

¹³⁵COMMISSION HEARINGS, *supra* note 1, at 637.

Those conclusions were, for some Commission members, frustratingly vague, merely stating that a problem existed and that it would continue to be a problem, no matter what tactics law enforcement used to weed organized crime out of gambling.

This was emblematic of the larger issues the President's Commission on Organized Crime faced. Indeed, in an appendix attached to its final report, nine of the Commission's members characterized their work as "a saga of a missed opportunity," citing poor time management and a failure to confront major issues in the Commission's charge.¹³⁶ Those who made the charges included representatives of both the law enforcement and private practice camps, showing that this wasn't an ideological split, but rather a disagreement about the Commission's fundamental role. Allowing the Justice Department to focus on case-by-case enforcement efforts, they felt, didn't do much to address the bigger problem of organized crime in society. Notably, no major piece of legislation, like 1970s RICO, emerged from this panel.

In the end, the President's Commission was better known for its work on Asian gangs, money laundering, and a controversial proposal to begin widespread, nationwide testing of American workers for drug abuse. A *New York Times* editorial summarized the views of Commission skeptics when it said that the group's "final report marks some advance in public understanding, but the book on the mob remains to be written."¹³⁷

In the smaller field of gambling, however, the President's Commission hearings were an interesting halfway point. By beginning with the understanding that gambling would not go away, despite the most draconian efforts at prohibition, it accepted the new reality that many states and the federal government had woken up to. Yet its fundamental

conclusion, that gambling would continue to be plagued by organized crime, seems misplaced. Barely a decade later, the National Gambling Impact Study Commission concluded that, "effective state regulation, coupled with the takeover of much of the industry by public corporations, has eliminated organized crime from the direct ownership and operation of casinos."¹³⁸

The NGISC raised entirely different questions than were asked at the 1985 hearings, and arrived at a far more positive depiction of the industry. It's worth noting the late-1990s group had a far more balanced membership, with representatives from the fields of gaming regulation, management, and labor.

Yet the President's Commission on Organized Crime should be known as more than a missed opportunity. It was, in a sense, the last gasp of a strictly law-enforcement approach to gambling. Just a decade later, Professor Skolnick's views on the beneficial nature of legalization would receive far less opprobrium than they had in 1985; indeed, he might be considered a bit puritanical for his insistence that gambling legalization shouldn't be driven primarily by revenue concerns but rather for its role in promoting greater government oversight of a difficult business.

From the distance of a generation, it is clear that the President's Commission, though its work on gambling was criticized as incomplete, and though it did not change the government's fundamental approach to gambling, stands as a division point in the history of the legal casino gaming industry. Before the hearings, it was on the defensive because of its associations with organized crime. After them, it still suffered occasional public relations and legislative roadblocks, but it was well on its way to taking its place, in Skolnick's words, as a thoroughly "legitimized" and not merely "legalized" business.

¹³⁶Ronald J. Ostrow, *Key Issues Not Dealt With, Half of Crime Panel Says*, L.A. TIMES, Apr. 2, 1986.

¹³⁷*Writing the Book on the Mob*, N.Y. TIMES, Apr. 5, 1986.

¹³⁸NATIONAL GAMBLING IMPACT STUDY COMMISSION, FINAL REPORT 3-1 (1999).