

## THE ORAL HISTORY OF JOHN R. BAILEY

John R. Bailey is a former Director of SHFL Entertainment, Inc.; has served as Chairman of the Nevada State Athletic Commission; and was recommended to the Bush Administration for a Judgeship on the U.S. Court of Appeals for the Ninth Circuit by Senators John Ensign and Harry Reid. Today, John R. Bailey sits on the Board of Directors of Boyd Gaming Corporation; is the Managing Partner of Bailey Kennedy, LLP; and serves as Chairman of the Character and Fitness Committee of the Nevada State Bar.

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*For individuals not familiar with your career path, can you give us some background on your legal career and how you became involved in the gaming industry, and how your career relates to gaming law?*

I started practicing law in 1985. And I started practicing at what was then the largest law firm in the state of Nevada, Lionel Sawyer & Collins. The firm was divided into essentially four departments: a commercial department, a transactional department, an administrative gaming department, and a litigation department. I was a member of both the litigation department and the administrative gaming department. That was my first introduction to gaming as a lawyer. The Chairman of the gaming department was a gentleman by the name of Bob Faiss. Anybody who's been around gaming more than ten years knows Bob Faiss. He was the preeminent gaming attorney in Nevada for probably thirty . . . forty years of his professional career. He has since passed away, but I worked with Bob Faiss in the administrative gaming department, along with a few other people who everybody would know like Ellen Whittemore and people like that. So that's how I first got introduced to the regulatory side of gaming.

Now, I grew up here in Las Vegas, so I was familiar with seeing gaming as a resident and as a person who went in and out of 7-Elevens and grocery stores and saw slot machines all the time. And as I was growing up, my mother and father owned a bar and liquor store called Sugar Hill and there was gaming in there; they had restricted gaming licenses.<sup>1</sup> So I've been familiar with gaming

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<sup>1</sup> Operators with fifteen or fewer gaming devices are granted restricted gaming licenses; often associated with bars and taverns. *See* Legislative Material 24, Nevada Gaming Control Board and Nevada Gaming Commission (2019), [https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=35559&fileDownloadName=0215\\_morm\\_GCBpres.pdf](https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=35559&fileDownloadName=0215_morm_GCBpres.pdf).

because I grew up here, but from a professional standpoint being a lawyer, my first introduction to the regulatory side started in 1985.

*Can you speak about what it was like growing up in Las Vegas and the dichotomy between growing up here and building your professional life here?*

When I grew up, Las Vegas was predictably a lot smaller than it is now. I tell people that I remember when the corner of Sahara and Decatur was the end of town. There was nothing south of Sahara and nothing west of Decatur growing up. That was essentially the end of town. It was very different then. There were no big resort hotels like the Bellagio, MGM, Aria, we didn't see any of that. There were a smattering of smaller properties. When I was growing up, the largest hotel was Caesars Palace and what was then called the International, which turned into Hilton, which is now the Westgate. Those were the big properties here in town.

Just a very different environment because of what you see now in terms of walking into a casino. There is no noise from the coins hitting the trays; that's all we heard growing up was, you know, the pulling of the slot machine handles. They were not electronic; they were mechanical slot machines. Now, everything is electronic and we don't hear actual coins hitting the trays and all that noise, that level of excitement. So, it was very different.

In regard to my professional side, I've seen a lot of change. I've seen the Strip become massive-mega properties. Properties that have three, four thousand hotel rooms and a Pyramid. You know, the Luxor. New York, New York that is a replica or a resemblance of New York, and you've got the Venetian that is a replica of Venice. It's just completely different—a lot of imagination has gone into the progression of Southern Nevada, and gambling, and the Strip. Even Downtown—you look at Downtown now, it's very different with the Fremont Street Experience, the Canopy. None of that was there when I was growing up, so it's a different place.

*Your father William, known by many as Bob, was known as a respected civil rights advocate. One of his contributions to the gaming industry was investigating discriminatory practices in Nevada in regard to denying work and opportunities to people of color as the Chairman of the Nevada Equal Rights Commission. When you consider your father's work, what stands out and what can you learn from it?*

Well, what stands out is that people of color have a lot more opportunities in gaming because of his efforts and the efforts of many others during that era. You see people of color in almost every segment of gaming enterprises. There's still a lot of work to be done, particularly at the executive levels. But in every other level, you see integration, you see diversity, you see inclusion, which stems from the work that he had done and the willingness of people like the governor at the time, Grant Sawyer, to make sure that there was

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diversity, there was an elimination of segregation that took place here in Southern Nevada. So that's what I see when I look back at those accomplishments.

One of the things that I remember my dad talking about was his time on the radio, and he was on television back in the 60's.<sup>2</sup> He had a radio show, I believe, sometime in the 60's that emanated from the Fremont Hotel downtown. And initially, they instructed him to come through the back door.<sup>3</sup> He had to come through the back door if he wanted to enter the Fremont Hotel and eventually he refused to. So, he went through the front door because that's just who he was and that's how much he believed in getting rid of segregation. Obviously it's changed now; minorities, African Americans don't have to go through the back door of any place now. Back then that's what was required.

He refused to do it, he went in the front door, and he ended up being the Chairman—I don't know which happened first, but he ended up being the Chairman of the Nevada Equal Rights Commission. You fast forward to today and I'm on the Board of Directors of Boyd Gaming Corporation which owns the Fremont Hotel. So it's ironic that back then he couldn't go in the front door, and you fast forward a few decades and now his son is on the Board of Directors of the very parent company that owns that property. I say that to say there has been progress. Still a lot of progress that needs to take place, but there is progress that has happened over those years.

*It reminds me of a similar story that former [Nevada Gaming Control Board Member Terry Johnson had with his parents not being able to go in certain venues.<sup>4</sup> To see him do the things that he's accomplished and seeing you do the things that you've been able to do and accomplish . . . I think it's just a testament to our growth and opportunity. But we couldn't have done it without the people who came before us. So, I really appreciate that.*

And Terry's a great success story in terms of where he started from and ended up being on the Gaming Control Board. And I know my dad was

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<sup>2</sup> Among Dr. William H. "Bob" Bailey's numerous contributions, he served as deputy director of the U.S. Department of Commerce's Minority Business Development Agency, created numerous job training programs, and developed a radio internship program for Black youth. See Honorary Commission Chair William "Bob" Bailey 1927-2014, Nevada Equal Rights Commission, <https://detr.nv.gov/Nerc/bailey>; see also William Yardley, *Bob Bailey, Entertainer Who Helped Integrate Las Vegas, Dies at 87*, N.Y. TIMES (May 31, 2014), <https://www.nytimes.com/2014/06/01/us/bob-bailey-entertainer-who-helped-integrate-las-vegas-dies-at-87.html>

<sup>3</sup> Until the "Moulin Rouge Agreement" of 1960, it was well documented that Black people were not allowed through the front door of numerous Las Vegas casino venues. See generally Claytee White, *The March That Never Happened: Desegregating the Strip*, 5 Nev. L. J. 71 (2004). (discussing the American Civil Rights Movement in Las Vegas).

<sup>4</sup> See Terry Johnson, Foreword, NEV. GAMING LAWYER, Sept. 2020, at 3.

instrumental in his getting his job as the Labor Commissioner for the State of Nevada. Being a guy of high integrity and great ability, he was able to go from there to ultimately be on the Gaming Control Board. He did an excellent job in terms of being in the upper ranks of the regulatory apparatus that controls gaming in the state. What a great success story.

*How have corporate governance structures evolved in gaming relative to when you were voted on the Board, in 2015? Within the past five years or so, have you noticed any nuances or any shifts in governance structures here in the valley?*

I can tell you from my experience being on the Board of Boyd Gaming. Prior to me being on the Board, I know that there was a shift towards diversity and inclusion that really started, from my recollection, with Bobby Siller (who was on the Gaming Control Board prior to Terry Johnson), who was a former special agent in charge of the FBI here in Southern Nevada, an African American. He and the then-Chairman and CEO of MGM Resorts, a person named Terry Lanni, really took the initiative to make sure that diversity was at the forefront of what licensees were thinking about in terms of their hiring and retention practices and making sure that diversity was a part of their culture.

Fast forward to the time that I was appointed to the Board of Boyd Gaming, and it was absolutely a part of the culture when I got on the Board, and has been a part of the culture and initiative from the Board of Directors, the Chairman, to the Executives. We talk about these issues at almost every Board meeting . . . how well are we doing in terms of diversity, inclusion, in terms of environmental—we refer to it as ESG, and those kinds of issues. And look, the fact of the matter is, having diversity means good business. Our customers are diverse. It would be pretty silly from a business standpoint to have a diverse customer base and not have a diverse employee base, right? It wouldn't make sense.

And what we've all learned, I think, from having diverse environments, is that you get diverse opinions and points of view. You are always better off understanding a variety of different points of views as you make decisions that can benefit your company. So, getting back to your question, in terms of governance, and I don't speak for Boyd Gaming, but that is absolutely a part of what we do at essentially every meeting. We were already a diverse company, but we have put focus on continuing those efforts because it's good business, it's smart business, and it reflects how we generate revenue, which is from our customers.

*Being on the Board of Directors for a gaming company, are there considerations you have to make that are unique to the gaming industry compared to other industries?*

Of course, because we're highly regulated. A lot of industries are not highly regulated. We operate in a space where but-for a privileged gaming

license, we wouldn't be allowed to offer gaming activities on our properties. It is indeed a privileged license. We have to be a cut above, in terms of everything we do, because at any point in time, our regulators—in a highly regulated industry—may ask us questions about why we're doing certain things. If the answers are not truthful and consistent with good business practices and honest business practices, and integrity, any gaming licensee is subject to having their license revoked. So, that's very different from numerous other industries. There are other regulated industries, but for the most part, boards in publicly traded companies don't operate in a space that's highly regulated like gaming is.

*One question posed in a class, given the high standard of regulation imposed on vendors and license holders, entertained if it might be worth considering investing in gaming because it is so regulated and, like you mentioned, there's other industries that aren't. So, perhaps you can get more accurate insight at business practices, and it might make it a safe investment. It was just posed as a something for us to consider. Given that, have you noticed any concerns change from shareholders since the pandemic began?*

Let me answer it two ways. One, we were unable to predict what the pandemic would do to gaming, to the country, or to other industries at the time that it started. We went from – I don't speak for Boyd Gaming – we went from twenty-eight to twenty-nine properties generating revenue, to the country shutting down in March of 2020 and having zero revenue. We went from operating with a lot of revenue to zero revenue in the course of a couple days or a week.

No one could have predicted the effect it would have on companies; no one could predict what kind of effect it would have on gaming companies; and no one could predict how long it would last. And no one could predict whether or not gaming companies had sufficient liquidity to withstand operating in a zero-revenue environment for an extended period of time. So, at that point in time, we couldn't predict anything. We were just, you know, put on your seatbelts, strap yourself in, and let's see where the rollercoaster goes, because nobody could tell you with any degree of certainty what was going to happen.

I think most people would have predicted that once properties started to open up again, it would take a substantial period of time before we ever got back to the kind of revenues and the bottom-line EBITDA that we experienced pre-pandemic.<sup>5</sup> Most people were wrong because we have found out that once properties started opening, and whether it's because of pent-up demand from people wanting to get out and visit hotels, gamble, see shows, or eat in restaurants, and/or the stimulus that the government injected into our economy – which provided liquidity for a lot of people – bottom-line EBITDA and margin

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<sup>5</sup> Earnings before interest, taxes, depreciation, and amortization. See Ronald Cohen and George Serafeim, *How to Measure a Company's Real Impact*, Harvard Bus. R. (Sept. 3, 2020), <https://hbr.org/2020/09/how-to-measure-a-companys-real-impact>.

growth has been exceptional. Whatever all those factors are, we came back a lot quicker than I think most people would have anticipated.

We came back quicker, not as quickly on top-line revenue, but on bottom-line EBITDA . . . most gaming companies are publicly traded, and if you go back and look at how they've done and what they've announced, they've done a lot better than anybody could have anticipated. For the pandemic, you know we're still in the midst of some part of it. Nobody has declared that it's over and that it's business as usual. I think we're kind of in a "new norm" in terms of not only gaming properties, but our society. We don't know where that's going to go, but so far, we've come back a lot stronger than I think anybody could have anticipated.

*Boyd Gaming operates in multiple jurisdictions throughout the states. As a Board Member, is it common to consider the nuances of each jurisdiction when making decisions? If so, what are some things you have to consider?*

Every jurisdiction has a body of gaming law, and we have to operate within the confines of that gaming law for each jurisdiction. Now ninety-plus-percent, and I'm ballparking here, require essentially the same kind of transparency, honesty, integrity, and suitability. But every jurisdiction has their own little nuances that are different from other jurisdictions, and we have to pay attention to those nuances and those differences. Fortunately, at Boyd Gaming, we have an excellent legal department headed by Uri Clinton, who is our General Counsel and Senior Vice President.<sup>6</sup>

Different jurisdictions require different investment levels. We have several properties in the mid-south region, and because of that, their weather environment is very different than Las Vegas, or Nevada. We have properties that experience hurricanes and tornadoes. We have to deal with those kinds of issues from time to time. Actually, every season there's some kind of hurricane or some weather effect that has the potential to close a property. Usually, it's over in twenty-four to forty-eight hours, but those are the kinds of issues we have to be sensitive to. Those jurisdictions have different regulations that deal with closing a property for a short period of time, due to weather problems and those types of issues.

*How do you get the right people on your team when you are setting up the C-suite, and these various executive positions?*

Great question. It is part science, part art, and a lot of luck. You identify the kind of culture you want. I'm speaking as if I was the owner of a property that was going to open up and I had to go hire a C-suite: you identify the kind of

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<sup>6</sup> Uri Clinton is Boyd Gaming's first Black Executive Vice President. See Latoya Silmon, *Black History in the Making: Breaking Barriers and More*, KSNV-TV NBC (Feb. 15, 2022), <https://news3lv.com/news/local/black-history-in-the-making-breaking-real-estate-barriers-and-more>.

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culture you want; you obviously identify people who have the capabilities and who are strategic thinkers—preferably with some exposure to gaming, to hospitality; and you engage possibly a search firm to find those individuals. Typically, when you find your CEO, he or she will have a list of people whom they have worked with in the past, that they view favorably. So, with that comes some potential candidates to round out the C-suite, and you would obviously look at those individuals. You'd have to ensure that they were suitable and that they could be licensed, right? You ask all the questions dealing with their background, encounters with law enforcement and criminal conduct, and those kinds of issues. And you'd want people who are diverse, not only in gender or ethnicity, but in their experiences. That's how you would probably go about gathering a pool of people that you'd try to slot into their right positions, and you'd probably go from there.

*Given the recent merger and acquisition trends in the industry, what are some ways in which a Board can help in the process of a merger or acquisition?*

Well, typically every M&A transaction requires Board approval from either the acquirer or the acquired side. So, Boards are fully engaged in any kind of M&A transaction whether it's a tuck-in transaction or you are selling the company or are buying a company . . . we are fully engaged in that process. We have analysts, bankers, and advisors who provide us with pertinent information to help make strategic decisions as to whether or not we do a transaction. Ultimately, we have to approve or disapprove potential M&A transactions. We're not sitting on the sidelines when M&A activities occur.

*When the Board is presented with various deals, what are some of the challenges that you run into in the course of getting all this information and having to make a tough decision?*

Ultimately, you're going to ask yourself if doing this deal is in the best interests of the company. And if we do the deal, what is the company going to look like on the other side of the deal? What's it going to do to our balance sheet? What's it going to do to our stock price? If we're acquiring a company, what are we going to do with perhaps excess employees? What kind of synergies are going to be developed because we're buying a company? And now, unless we can make the combined company a better company, then we're not going to do the deal, right? Those are the top-line questions that we as a Board have to ask ourselves, and if the answers are not good, then we don't do the deal.

If the price of the deal is not in an acceptable range, then we don't do the deal. You have to be very disciplined about doing deals, particularly transformational deals, because there's a lot that you know, but there's a lot that you don't know. Deals that look good today, you know, you go out three years from now and you look back and you go 'Maybe we shouldn't have done that deal. Or vice versa, you do a deal, and you think 'This is a good deal, because it's going to take our company up X-percent—whether it's revenue, EBIDTA, or

share price and then you go five years into the future and look back and go ‘My goodness, that was a great deal! Not only did we go up what we thought we’d go up, but we multiplied it by two or three.’ You just go with the best information that you have at the time you’re trying to make a deal; and, like I said, we have advisors, we have people who are giving us the upside, the downside, what are we going to look like on the other side of the deal, is this going to be good for the company, why is it going to be good for the company, what are the negatives, what are the potential ramifications, all of those.

*Regarding recent deal considerations, what are some contemporaneous factors that gaming boards, or the industry, are considering? Earlier we spoke to emerging technology, and the pandemic, but looking back at this interview some years in the future, how would we time stamp what’s going on right now?*

I’ll give you two big things that all companies are looking at and perhaps considering. Number one is you see companies like MGM Resorts, and here’s the term that they use, going “asset light,” which means that they are heading in a direction of being, and essentially operating, a management company, versus owning its own real estate. So, in the past, five-six-seven years, there has been a lot of REIT activity.<sup>7</sup> There are these new gaming REITs that have focused on gaming properties, and there are gaming companies who have sold their real estate to these REITs and have entered long-term leases to operate those properties. So, they’re separating the operations from the real estate. That’s kind of what people have been looking at and some companies have gravitated toward that framework.

The other thing that all gaming companies, and all companies in general, are focused on is cyber-attacks, cyber-terrorism, and potential loss of customer information through cyber-attacks. That’s something that’s always top of mind. When you ask people in our company what are some of the things that you might lose sleep over at night, we’re all very focused on making sure that our properties, our intellectual infrastructure, our internet systems, and all of our systems are safe and protected from cyber-attacks. Every company will tell you that is one of the top-five things that causes executives to lose sleep because there are millions of people around the world, every day, trying to penetrate our firewalls and trying to get information about our company, trying to get our customers’ information, credit card information, and that kind of sensitive information. It has value on the black market. Cyber-security issues are the kind of issues that keep executives awake at night.

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<sup>7</sup> See Simon Johnson, *Has the Time for Large Gaming Property Involved REITs Finally Arrived?: A Review of the Potential for REIT Investment in Destination Gaming Resort Properties*, 2 UNLV GAMING L. J. 47 (2011).



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*Is anything we're leaving out, or is there anything else pertinent to mention?*

When I was growing up, gaming probably represented eighty-plus-percent of earnings for properties. Now as I understand it, depending on which property you're talking about, gaming could be less than fifty percent, because there are other revenue generating sources: whether it's hotel rooms, shows, concerts, restaurants and alcohol, and shopping. There are just a lot of different integrated pieces of revenue that make up a major gaming property. So that's been an evolution.

People come to Vegas for experiences other than gaming. Whereas when I was growing up, people were coming here primarily so they could gamble, because there were no opportunities to gamble where they were. The other thing that's huge now is internet sports betting, which is a big segment of what people are projecting in terms of revenue sources for hospitality properties going forward, so that's another big area of opportunity. And Las Vegas, you know, we've got sports teams now. I suspect that going out ten to fifteen years from now, we'll probably have NBA, MLB, and MLS teams, hopefully.

We have become a real city. We've got a vast amount of culture that has come to this city. We have top tier chefs and restaurants that are world class. We've got the Smith Center that is world class, and we're growing up. We sit at the "big table" now, which is exciting. It's exciting to see the evolution of Las Vegas from a little city to where it is now. I think that the future is very bright for Las Vegas.