

JEFFREY A. SILVER: THE MAN WHO EXILED FRANK “LEFTY” ROSENTHAL FROM NEVADA GAMING

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I. INTRODUCTION

In 1961, Jeffrey A. Silver and Frank “Lefty” Rosenthal had never heard of each other, but eventually their professions would collide. In that year, Silver was a sophomore at Las Vegas High School in Nevada, and was serving as a Student Court Justice.¹ Rosenthal was testifying before a U.S. Senate committee investigating organized crime and gambling, explaining his career as a gambler and odds-maker and defending against an allegation of sports bribery. While Silver was listening to testimony from fellow students as a Student Court Justice of Las Vegas High School,² Rosenthal was giving testimony regarding his bribery of an amateur athlete in an effort to fix a collegiate football game.

Experience with testimony and growing up in a traditional family are not the only commonalities between Silver and Rosenthal. “Rosenthal grew up in Chicago hanging with street scufflers and mobsters,”³ regularly skipping class to attend horseraces and baseball games; Silver lived with relatives in Evanston, a Chicago suburb while attending Northwestern University.⁴ “[Rosenthal] was a master of odds, numbers[,] and sports wagering[,] always running from the government”;⁵ Silver majored in accounting, became a CPA, audited legitimate businesses and government entities, [and worked for the government].⁶ “Rosenthal ran casinos where ‘the skim’ took place”;⁷ Silver later ran insolvent and bankrupt casinos and successfully stopped the inappropriate outflow of cash.⁸

* Associate at Gordon Silver; Business Restructuring and Bankruptcy Department. I would like to thank Bob Faiss for his guidance and for sharing with me the passion to memorialize Jeff’s contributions to Nevada gaming. I would also like to thank the members of the *UNLV Gaming Law Journal* for their helpful edits and suggestions. And of course, Jeff, for letting me tell your story.

¹ E-mail from Jeffrey A. Silver, Esq., S’holder and Partner, Gordon Silver, to author (Feb. 28, 2011, 09:30 AM PST) (on file with author).

² Despite a serious role as a Justice on the student court, Silver earned the distinction of being the “Most Humorous” in his senior class. E-mail from Jeffrey A. Silver, Esq., S’holder and Partner, Gordon Silver, to author (Mar. 9, 2011, 02:10 PM PST) (on file with author).

³ E-mail from Jeffrey A. Silver, Esq., *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

When the two met in a public hearing in January 1976, Silver was one of the three members of the Nevada State Gaming Control Board and Rosenthal was wielding major influence over an important segment of that state's casino industry.⁹ The result of that hearing and its aftermath would do much to shape the course of Nevada gaming control and the futures of both Silver and Rosenthal. As a result of the intersection of their careers, one of those men would become an acclaimed and influential figure in the Nevada gaming industry. The other would have the dubious distinction of becoming a threat to gaming and thereby begin a downward spiral that included a car-bombing attempt to kill him and a government bar prohibiting him from ever entering a Nevada casino again.

a. *Jeffrey A. Silver*

Jeffrey A. Silver was born on February 13, 1946, in Los Angeles, California and is the son of Benjamin William "Bill" Silver and Grace Silver.¹⁰ Bill Silver was a business consultant who moved his family to Las Vegas after he was appointed as Vice President for Development for the Stardust Hotel in Las Vegas.¹¹ It was ironic that Bill brought his family to this city to assist Tony Cornero with his vision of building the world's first 1,000 room resort hotel.¹² Unbeknownst to Bill, in addition to being a gambler and entrepreneur, Tony also had a "checkered past" that included reputed ties to organized crime.¹³ Unfortunately, Tony never saw his dream materialize.¹⁴ A hard-living man, who had been shot several times during occasional "turf wars," Tony died of a heart attack while playing craps at the Desert Inn Hotel, just across the road from his project.¹⁵ Bill was depressed and upset from this disappointment and disappeared for several years.¹⁶ Separated, and with nowhere to go, Grace began selling classified advertising for the Las Vegas Review-Journal and the Las Vegas Sun in order to support her two young children.¹⁷

Jeffrey Silver went to Las Vegas High School where he was a member of the National Honor Society, the Spanish Club, the Pep Club, the Chemistry Club, the Math Club, and played for the golf team.¹⁸ Jeff also served as the Chief Justice on the Student Court.¹⁹

⁹ See *Hearing on the Application of Frank L. Rosenthal for Licensing as a Key Emp., Before the Nev. State Gaming Control Bd.* (Nev. Jan. 14, 1976) [hereinafter *Rosenthal Bd. Hearing*] at i.

¹⁰ Interview with Jeffrey A. Silver, Esq., S'holder and Partner, Gordon Silver, in Las Vegas, Nev. (Mar. 25, 2011).

¹¹ *Id.*; see also John G. Edwards, *From Gaming to Law, Attorney Helps Shape LV History*, LAS VEGAS REV.-J., June 20, 2010, at E1.

¹² E-mail from Jeffrey A. Silver, Esq., S'holder and Partner, Gordon Silver, to author (Jan. 23, 2013, 02:47 PM PST) (on file with author).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Grace Silver wrote humorous articles about pets and their well-being in her column, *Canines, Cats, and Comments*. Interview with Jeffrey A. Silver, Esq., *supra* note 10. *Id.*

¹⁸ *Id.*

¹⁹ E-mail from Jeffrey A. Silver, Esq., *supra* note 1.

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After high school, Silver moved to Chicago, Illinois to study accounting at Northwestern University.²⁰ At Northwestern, Silver was a member of a local social club, “Praetorians,” and worked as a grants auditor for the Northwestern University Business Office.²¹ In addition, Silver had an accounting job at a downtown Chicago accounting firm owned by his uncle.²² During school vacations and summers in Las Vegas, not only did Silver work as a busboy for the Dunes Hotel and Sahara Hotel, he also worked as a quality control person for an aircraft instrument manufacturer, where he would sit in a darkened paint booth for eight hours per day painting out any light leaks on the instruments’ panels.²³ He graduated in June 1967 with a Bachelor of Science in Business Administration with a major in accounting.²⁴

Silver moved back to Las Vegas in 1968 to work as a Certified Public Accountant.²⁵ He worked for the CPA firm, Zeman, Tuller, Boyer, Goldberg, which later became Laventhol, Kerkstein, Howath & Horwath.²⁶ Coincidentally, his first assignment at Zeman was to audit the Stardust Hotel.²⁷ Silver received his Nevada CPA Certificate in 1968, and his California CPA license in 1970.²⁸

After a year and a half, Silver decided that accounting was not for him, so he applied and was admitted to the University of San Diego School of Law.²⁹ In law school, he was elected Treasurer of the Student Bar Association and participated in the school’s mock trial competition.³⁰ After winning the mock trial competition as a third-year law student, Silver received the award from the International Academy of Trial Lawyers as “the most outstanding trial advocate.”³¹ Silver held various jobs for the law school. During this time, he helped recruit his former boss at Northwestern for the position of President for the University of San Diego.³² He made sure Silver was rewarded for getting him out of those Chicago winters by giving him the opportunity to manage a new graduate student housing complex, which Silver successfully marketed and filled to capacity.³³ Silver also was a monitor at the student cafeteria and worked for the law school’s financial aid office.³⁴ Due to the numerous jobs he per-

²⁰ E-mail from Jeffrey A. Silver, Esq., *supra* note 2.

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²¹ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

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²² *Id.*

²³ *Id.* However, Silver claims his worst job was for the Northwestern University Library. When he learned his first assignment entailed climbing through dark and musty stacks of books and ordering them according to the Dewey Decimal System, he resigned. *Id.*

²⁴ E-mail from Jeffrey A. Silver, Esq., *supra* note 2. Although he received his undergraduate degree in accounting, Silver received an honors designation in geology. To this day, geology is still Silver’s passion. Interview with Jeffrey A. Silver, Esq., *supra* note 10.

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²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² E-mail from Jeffrey A. Silver, Esq., *supra* note 2.

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³³ E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

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³⁴ E-mail from Jeffrey A. Silver, Esq., *supra* note 2; E-mail from Jeffrey A. Silver, Esq., *supra* note 10; *Id.*

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formed for the University, the total cost of his three-year legal education was a mere \$3,000.³⁵ Silver received his Juris Doctor degree in June 1971³⁶ and became a member of the bar in Nevada and California.³⁷

Silver began his legal career in Las Vegas in January, 1972 when he joined the Clark County District Attorney’s Office as a Deputy District Attorney in the Criminal Division.³⁸ He quickly moved up the ranks to become one of the Criminal Division’s Chief Deputy District Attorneys.³⁹ Silver considered becoming a career prosecutor and even attended Career Prosecutor School at the University of Houston.⁴⁰ In November 1974, he became the Chief Deputy District Attorney in charge of the White Collar Crimes and Consumer Fraud Division.⁴¹

One day, he was invited to lunch by Herb Jones and Joe Brown, both prominent local attorneys.⁴² They were interested in the possibility of offering Silver a job in their firm’s litigation department.⁴³ After the interview, casual conversation took the two interviewers to speculate as to who would replace Shannon Bybee as the next Member of the State Gaming Control Board.⁴⁴ Silver listened intently, and the more they talked, the more interesting the Board job became.⁴⁵ When he returned to the office he asked a friend who had just received a judicial appointment, how one could be considered.⁴⁶ The reply: “just send the Governor a letter with a resume.”⁴⁷

Silver’s career dove head first into gaming in July 1975 when Nevada Governor Mike O’Callaghan appointed him to Nevada’s State Gaming Control Board.⁴⁸ He had never met Governor O’Callaghan prior to his appointment – he had only spoken to him on the telephone on various occasions leading up to his appointment.⁴⁹ Silver accepted the appointment, joining John H. Stratton and Chairman Philip P. Hannifin on the Board.⁵⁰ Silver was the only Board Member assigned to the Las Vegas office. It was during Silver’s tenure as Board Member⁵¹ that he came face-to-face with the notorious Frank “Lefty” Rosenthal.⁵²

³⁵ *Id.*

³⁶ E-mail from Jeffrey A. Silver, Esq., *supra* note 2.

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³⁷ *Biography of Jeffrey A. Silver*, GORDON SILVER, <http://www.gordonsilver.com/our-people/bios/jeffrey-silver/> (last visited Oct. 7, 2012).

³⁸ E-mail from Jeffrey A. Silver, Esq., *supra* note 2.

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³⁹ *Id.*

⁴⁰ E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

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⁴¹ E-mail from Jeffrey A. Silver, Esq., *supra* note 2.

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⁴² E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

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⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; Edwards, *supra* note 11.

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⁴⁹ Interview with Jeffrey A. Silver, Esq., *supra* note 10. Nevertheless, Silver considers Governor O’Callaghan “one of the best Governors the State has ever had,” sharing the same pedestal as former Governor Grant Sawyer. *Id.*

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⁵⁰ See *Rosenthal Bd. Hearing*, *supra* note 9, at i.

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⁵¹ The Nevada State Gaming Control Board has three governor-appointed heads known as “Members.”

⁵² See *Rosenthal Bd. Hearing*, *supra* note 9.

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b. Frank “Lefty” Rosenthal

Frank Rosenthal was born on June 12, 1929, and spent his youth on Chicago’s West Side.⁵³ Just like Silver, Rosenthal appeared to live the traditional childhood with traditional parents: Rosenthal’s mother was a housewife and his father was a produce wholesaler.⁵⁴ However, Rosenthal’s father had hobbies unlike most fathers, hobbies that became his son’s hobbies and would later transcend into a notorious, yet lucrative career for Rosenthal.

Rosenthal’s father had a passion for horseracing.⁵⁵ When Rosenthal was in high school, his father owned several racehorses.⁵⁶ Horseracing ran in the Rosenthal blood; it was Rosenthal’s first attraction with sports, and he quickly developed a love for all sports.⁵⁷ He would regularly skip class to watch the Cubs at Wrigley Field or the White Sox at Comiskey Park, and became a regular at any sporting event including baseball, hockey, and basketball.⁵⁸

Rosenthal’s father also loved mathematics, and “Rosenthal inherited his father’s genius for statistics, probability[,] and game theory.”⁵⁹ Naturally, the love for horseracing and other sports, coupled with a passion and expertise in mathematics and statistics, made for a skilled gambler and bookmaker.⁶⁰ Rosenthal approached gambling and bookmaking methodically as a science, stating, “You don’t determine what team is going to win, but what team offers the best value.”⁶¹ When Rosenthal was in grade school, he would save his weekly allowance and every Friday he would walk to his corner drugstore to wager it on a parlay card.⁶² When Rosenthal combined and perfected his passion for sports with his skills in mathematics, he earned the credential of an expert in sports betting and became reputed as “one of the best handicappers in the country.”⁶³ Rosenthal took his professional gambling and bookmaking career across the country, making stops in Michigan and North Carolina, and eventually, Florida.⁶⁴

II. CROSSING PATHS

From Florida, Frank “Lefty” Rosenthal moved to Las Vegas in 1967,⁶⁵ the same year Silver returned home to Las Vegas after graduating college. Initially, Rosenthal worked as a ticket writer at the Rose Bowl Race and Sports Book, a

⁵³ Roberto Santiago, *Player Interview: Frank “Lefty” Rosenthal*, *PLAYER MAG.*, 2006, available at http://frankrosenthal.com/frankslife/frank_rosenthal_interview.php; see also *Rosenthal Bd. Hearing*, *supra* note 9, at 78.

⁵⁴ Santiago, *supra* note 53.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Rosenthal Bd. Hearing*, *supra* note 9, at 81.

⁶³ JOHN L. SMITH, *OF RATS AND MEN: OSCAR GOODMAN’S LIFE FROM MOB MOUTHPIECE TO MAYOR OF LAS VEGAS* 141 (2003).

⁶⁴ *Id.*

⁶⁵ *Id.*

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stand-alone establishment on Las Vegas Boulevard.⁶⁶ The Book was owned by individuals thought to have ties with organized crime.⁶⁷ Later, Rosenthal became “executive consultant” to Allen Glick, Chairman of the Board of Argent Corporation,⁶⁸ but even as Glick’s consultant, he exercised “infinite power in the casino and increasingly made management decisions without consulting the chairman.”⁶⁹

On January 23 and 24, 1975, the Nevada Gaming Commission (the “Commission”) held an evidentiary hearing to determine whether Rosenthal exercised significant influence over Argent Corporation and should therefore be required to apply for a gaming license as a key employee.⁷⁰ It was clear to the Commission that Rosenthal significantly influenced Argent’s gaming policies and operations at its four hotel-casinos in Clark County—the Hacienda Hotel and Casino, Marina Hotel and Casino, Stardust Resort and Casino, and Fremont Hotel and Casino⁷¹—so “the Commission directed him to submit an application for a gaming license as a key employee.”⁷²

Shortly after Silver took office at the Board in 1975, he had a chance meeting with former FBI agent Downey Rice.⁷³ Rice was now a private investigator on business in Las Vegas regarding one of his investigations.⁷⁴ Rice asked Silver if he needed help with any of his investigations, and Silver mentioned the Board’s Rosenthal investigation.⁷⁵ Rice had been an FBI agent in South Florida and knew Rosenthal very well through his own investigations and various communications with Rosenthal regarding his bookmaking activities.⁷⁶

Prior to Silver’s meeting with Rice, the Board’s preliminary investigative summary regarding Rosenthal did not contain any of his questionable activities on the east coast – it was limited to Rosenthal’s activities since he had come to Las Vegas.⁷⁷ Rice asked whether Silver knew anything about Rosenthal being accused of bribing college athletes.⁷⁸ Silver had not. In fact, in the 1960s, to combat organized crime, Senator John McClellan conducted a series of hearings through the Permanent Subcommittee on Investigations of the United States Senate.⁷⁹ Rosenthal was among the many organized crime associates

⁶⁶ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

⁶⁷ *Id.*

⁶⁸ State v. Rosenthal, 559 P.2d 830, 833 (Nev. 1977); Myram Borders, *Argent Probe Widens: Ex-Slot Boss Subpoenaed*, LAS VEGAS SUN, July 1, 1976, <http://www.lasvegassun.com/news/1976/jul/01/argent-probe-widens/>.

⁶⁹ SMITH, *supra* note 63, at 143.

⁷⁰ *Rosenthal*, 559 P.2d at 832.

⁷¹ See Jane Ann Morrison, *Spilotro was merely a killer; Lefty mastered the more frightening Glare*, LAS VEGAS REV.-J, Oct. 18, 2008, available at <http://www.lvrj.com/news/31224079.html>. At the time, Argent only owned three of these four casinos. See *Rosenthal*, 559 P.2d at 832.

⁷² *Rosenthal*, 559 P.2d at 833.

⁷³ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Rosenthal Bd. Hearing*, *supra* note 9, at 87.

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who were subpoenaed to testify.⁸⁰ Rice volunteered that he had been one of the investigators assigned to the hearings and in fact, he had transcripts of the McClellan Hearings in a set of files in his garage, which he offered to send to Silver.⁸¹

Silver called the Board's Chief of Investigation, Tom Carrigan, to discuss the meeting he had with the former FBI agent regarding Rosenthal's alleged bribes.⁸² Silver also brought these allegations to Chairman Hannifin's attention.⁸³ Hannifin told Silver that Rosenthal had agreed to be an informant for the Board to provide Hannifin with information that would be used to track down organized crime.⁸⁴

However, ten days later, Rice's care package arrived and everything changed.⁸⁵ There could be no deal with Rosenthal. Silver reviewed the McClellan Hearing transcripts and determined that Rosenthal's activities outside Las Vegas could potentially bring disrepute to Nevada's gaming industry.⁸⁶ Accordingly, Silver, with the concurrence of the Chairman, expanded Rosenthal's investigation to a national investigation incorporating the details of the public record.⁸⁷

A month and a half later,⁸⁸ Rosenthal and Silver came face-to-face at Rosenthal's gaming license hearing in the Board's hearing room in Carson City.⁸⁹ Rosenthal was more than adequately represented by his two prominent attorneys, Harry Claiborne (who later was appointed as a Federal judge and subsequently impeached) and Oscar Goodman, an up-and-coming criminal lawyer with numerous clients who were suspected to have mob connections.⁹⁰

a. Testimony before the spotlight turns to Rosenthal.

To preclude a man his right to work based on unsubstantiated circumstances, to preclude a man his license based upon a conspiracy by the elements of law enforcement, would not only be in the worst interests of this State but would be a landmark case of a miscarriage of justice. . . . The policy of what is the best interests of the State cannot be influenced by undue notoriety of any hostile influences.⁹¹

Those were the words of Allen Glick, Argent Corporation's Chairman of the Board, just before he admitted to Silver and the Board that Rosenthal was his "alter ego" in the day-to-day affairs of Argent.⁹² Glick tried using his untarnished reputation as the means by which Rosenthal should be granted a license.⁹³

⁸⁰ *Id.*

⁸¹ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *See Rosenthal Bd. Hearing, supra* note 9, at iii.

⁹⁰ E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

⁹¹ *Id.* at 15.

⁹² *Id.* at 16.

⁹³ *Id.* at 15-16.

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It is still debated whether Glick was a mob victim or associate.⁹⁴ While there was no direct evidence that Glick was working for the mob, Silver opined that Glick was willingly doing the mob’s bidding.⁹⁵ He also recalled Rosenthal stating that if Glick did not do as he said, he would never leave the corporation alive.⁹⁶ Whether it was because he feared for his life or because he was part of the scheme, Glick did not come forward to inform the regulators about the mob activity occurring at his Argent properties.⁹⁷ Regardless of his reasoning, Glick was acting as a front man for the mob.

Eugene Fresch also testified on behalf of Rosenthal.⁹⁸ Fresch was the Vice President of the Hacienda Hotel and the President of the Marina Hotel.⁹⁹ Fresch testified that during his entire working relationship with Rosenthal, he “never found him to be anything but very credible, truthful.”¹⁰⁰ However, after Rosenthal was denied a gaming license, Fresch came to Silver, terrified.¹⁰¹ Fresch broke out into tears at their meeting, stating that he would like to be able to talk to Silver but could not. At some point down the road, Silver would know why.¹⁰² Silver stated,

The fact is that everyone seemed to be running scared of “Lefty” Rosenthal’s influence, even some of the people that testified. . . . There were a lot of people that had their arms twisted to testify on Rosenthal’s behalf during the course of the hearing who appeared out of fear as opposed to any great love for the man.¹⁰³

An unfortunate event that occurred after Rosenthal’s hearing validated this fear. A confidential informant went to Silver’s home on a Saturday morning at approximately 10:00 a.m.¹⁰⁴ He advised Silver that, presumably at the direction of Rosenthal, they were issuing false invoices at Argent’s gaming properties and there were other syphoning acts occurring regularly.¹⁰⁵ Silver acted on the information, but unfortunately, he was the last person to see this informant alive.¹⁰⁶ The informant’s vehicle had been left in the parking lot at the airport and was discovered several weeks later. To this day, his disappearance remains unsolved.¹⁰⁷

Rosenthal’s counsel also called Ralph Quintel, then acting Chief of the Board’s Enforcement Division.¹⁰⁸ When questioned by Harry Claiborne, Rosenthal’s counsel, Quintel, testified that Rosenthal’s cooperation with the Board during his two visits to the Stardust was “extremely good” and that if the Board asked for anything, “it would be delivered.”¹⁰⁹ While respectful on

⁹⁴ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

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⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Rosenthal Bd. Hearing, supra* note 9, at 33-37.

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⁹⁹ *Id.* at 33.

¹⁰⁰ *Id.* at 34.

¹⁰¹ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

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¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

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¹⁰⁷ Interview with Jeffrey A. Silver, Esq., *supra* note 10; *id.*

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¹⁰⁸ *Rosenthal Bd. Hearing, supra* note 9, at 67.

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¹⁰⁹ *Id.* at 68.

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Rosenthal's part, and canny of Rosenthal's counsel to note on the record, it did not bear any value in a gaming license investigation. After clarifying for the record that Quintel was testifying only because he was subpoenaed, Silver asked Quintel, "This concept of cooperation, would you characterize that as the minimum expected of a gaming employee?"¹¹⁰ Quintel responded in the affirmative and confirmed that a person's non-cooperation with the gaming regulators would "subject the licensee to a complaint to at least one of us with respect to that lack of cooperation."¹¹¹

Before Rosenthal took the stand, various colleagues, associates, friends, current and former Board employees, and others were called forward as witnesses on behalf of Rosenthal.¹¹² Some came upon request, some came on their own dime, and some came only because they were subpoenaed.¹¹³ Clairborne also read into the record a handful of letters that were submitted on behalf of Rosenthal.¹¹⁴

b. "Call Mr. Rosenthal."¹¹⁵

Not long into the hearing, the Board started calling Rosenthal's bluff, starting with Rosenthal's claim that he could not remember the year he graduated from high school. Chairman Hannifin questioned, "you know you are a numbers man, and those are numbers. How come you have this problem with these numbers?"¹¹⁶ Rosenthal claimed that he did not give the memory of his high school graduation year "a priority" in his proverbial "human computer[.]"¹¹⁷

After high school, Rosenthal served as military policeman in a combat zone for the U.S. Army.¹¹⁸ He served in the Army for two years, and four years later, he became an owner of the Mutt and Jeff hot dog stand in Chicago.¹¹⁹ While at the hot dog stand, Rosenthal spent his spare time at sporting events.¹²⁰ This "spare time" hobby evolved into Rosenthal's first "professional gambler"

¹¹⁰ *Id.* at 68-69.

¹¹¹ *Id.* at 69.

¹¹² *Id.* at ii-iii (listing the witnesses called on behalf of Rosenthal as: Allen Glick, Milton Jaffe, Burton Brown, Robert Stella, Yale Cohen, John Dades, Eugene C. Fresch, Edwin Zuiker, Vince Samarko, Billy Smith, Dean Ernest Shendal, Allen Sachs, Burt Brown, Frank Falba, Ralph Richard Quintel, Donald Elmer Rama, John Robert Lovelady, and Frank Mooney).

¹¹³ *Id.*

¹¹⁴ *Id.* at 3. Letters as to Rosenthal's representation were submitted by: Alex K. Sample, President of Southwest Advertising Company; E. Parry Thomas, chairman of the board of Valley Bank of Nevada; Herb Kaufman, President of Wonder World Stores; Carl Cohen, Director of Gaming at MGM Hotel; Ed Torres, gaming licensee; Barney Shapiro, owner and operator of United Coin Machine Company; Jackie Gaughan, owner and operator of the El Cortez Hotel and Casino and later owner of Coast Casinos. *Id.* at 3-7, 9. The letters were entered into the record as Exhibits 1 through 7. *Id.* at 9.

¹¹⁵ *Id.* at 76. Rosenthal's counsel, Harry Clairborne, called Rosenthal to the stand. Also appearing on behalf of Rosenthal was Oscar Goodman.

¹¹⁶ *Id.* at 78.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 79.

¹¹⁹ *Id.* at 79, 81-82.

¹²⁰ *Id.*

career with Bill Kaplan at the Kaplan Sports Service.¹²¹ Rosenthal conceded to the Board that he conducted this “profession” in some places where it was illegal and that he encountered difficulties with law enforcement.¹²² It was these run-ins with law enforcement that prompted the Board to focus its attention on Rosenthal’s McClellan Hearings testimony.¹²³

Before the Board questioned Rosenthal regarding the McClellan Hearings, Silver sought to clarify any aliases Rosenthal may have ever used.¹²⁴ Although the Board suspected Rosenthal of using a handful of aliases – “Lefty” Rosenthal, Frank Carpentier, Larry Franks, Lefty Franks, Frank Larry, Louis Rosenthal, and Frank Grosscup – Rosenthal only admitted to using one: Frank Larry.¹²⁵ Silver then began reading into the record the laundry list of Rosenthal’s arrests: October 15, 1953, in Evanston, Illinois for possession of parlay cards;¹²⁶ March 9, 1960 in Washington, D.C. for “inquiry”;¹²⁷ December 31, 1960, in Miami, Florida for operating a gambling establishment.¹²⁸ However, before Silver could finish Rosenthal’s impressive list of prior arrests, the Board hearing was diverted into in-depth questions regarding a handful of arrests and events: Rosenthal’s 1960 gambling establishment arrest which resulted in the corruption of public officials, his ban from Florida racetracks, the Board’s particular interest in the McClellan Hearings with respect to Rosenthal, and Rosenthal’s February 1962 arrest in Miami, Florida, for conspiracy to attempt bribery in North Carolina, to which he later pleaded “nolo contendere.”

1. Rosenthal’s 1960 Gambling Establishment Arrest and Corruption of Public Officials

On December 31, 1960, Rosenthal was arrested for operating an illegal gambling establishment¹²⁹ while he was living in an apartment in Miami, Florida.¹³⁰ During the Board’s hearing, Silver revealed that, at approximately 3:00 p.m. on the day of the arrest, members from the Florida Attorney General’s office and the Department of Public Safety raided Rosenthal’s apartment.¹³¹ They discovered “two rotary telephone lines, two direct lines, and an elaborate intercom system[.]”¹³² The entire system cost approximately \$1,650.¹³³ Of

¹²¹ *Id.* at 82-83. According to the hearing, Rosenthal also called himself a “professional handicapper,” “odds maker,” and “gambler.” *Id.* at 86.

¹²² *Id.* at 86-87.

¹²³ *Id.* at 87.

¹²⁴ *Id.* at 87-88.

¹²⁵ *Id.* at 88. To the contrary, evidence shows that Rosenthal used the name Frank Carpentier when in Miami. *See infra* Part II.b.3. Further evidence shows Rosenthal used the name “Lefty” when working for Mike Buck at Wagner Pick Up and Delivery Service. *Rosenthal Bd. Hearing, supra* note 11, at 126-27. Rosenthal, however, denied ever working for Mike Buck at Wagner. *Id.* at 84, 127.

¹²⁶ *Id.* at 89-90.

¹²⁷ *Id.* at 90-91. Ironically, Rosenthal could not remember what he was arrested for.

¹²⁸ *Id.* at 91.

¹²⁹ *Id.*

¹³⁰ *Id.* at 92.

¹³¹ *Id.* at 97.

¹³² *Id.* at 96-97.

¹³³ *Id.* at 97; *see also id.* at 114. Edward Clode, in an affidavit, stated that Rosenthal’s “four telephones, two rotary phones, and two direct-lines . . . were so elaborate that [he] had put up

course, Rosenthal denied having such an elaborate telephone system and paying that much to have it installed.¹³⁴

This particular raid and arrest was discussed at great length at the McClellan Hearings.¹³⁵ Mr. Dardis, Chief of Police of the North Bay Village, Florida Police Department, who was present during the raid, testified that an inquiry with the local telephone company revealed that Rosenthal, also known as Frank Carpentier, an alias that Rosenthal denied ever using, had four instruments that were on either a rotary or a straight line in his apartment.¹³⁶

At the McClellan Hearings, Mr. Dardis explained the details of the raid and arrest.¹³⁷ When they knocked on Rosenthal's apartment door, Joseph Strauss, a man who had prior gambling arrests, answered the door.¹³⁸ Rosenthal was in his bed, telephone at hand, taking a horse bet from a man that went by the name of "Cincinnati."¹³⁹ Dardis answered a few subsequent calls,¹⁴⁰ and at one point handed Rosenthal the phone to accept a bet.¹⁴¹ Rosenthal exclaimed to the bettor, "Do you know who you are talking to? You are talking to a cop, you stupid s.o.b.; keep on talking."¹⁴² The bettor hung up.¹⁴³

Silver stated that the McClellan Hearings transcript indicated that there were some "gaming activities" going on in the apartment.¹⁴⁴ However, Rosenthal claimed that he was not running a "gambling establishment" the day of the arrest or any other day in that Florida apartment.¹⁴⁵ In addition, given Dardis' revelation that Rosenthal indeed had multiple phone lines and high-tech telephone equipment in the apartment, Silver stated, "I think that your response regarding the telephones was that you had these telephones in there just for social calls," to which Rosenthal responded, "Yes sir, that's correct, absolutely."¹⁴⁶

When Rosenthal was asked questions or given the opportunity to respond to Dardis' testimony at the McClellan Hearings, he declined to comment on the grounds that his answer might incriminate him.¹⁴⁷ In fact, he pled the Fifth

\$1,650 in deposit for the equipment used in his two-bedroom apartment. He also had an elaborate intercom system in each room[.]” *Id.*

¹³⁴ *Id.* at 96-97. Silver asked, “Do you recall having two rotary telephone lines, two direct lines, and an elaborate system throughout the entire apartment?” Rosenthal responded, “I can’t contest—I could not have had the rotary lines. As far as an elaborate intercom system that you refer to, I can say that I did not have one, because it did not come with the apartment, and I have no recollection of spending money to have it installed.” *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 88, 98-99.

¹³⁷ *Id.* at 100.

¹³⁸ *Id.*

¹³⁹ *Id.* at 100-01.

¹⁴⁰ *Id.* at 101.

¹⁴¹ *Id.* at 102.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 104.

¹⁴⁷ *Id.* at 106.

Amendment thirty-seven times, including when he was asked for his name and whether he was “left-handed.”¹⁴⁸

During the raid, Dardis had the opportunity to speak privately with Rosenthal.¹⁴⁹ Rosenthal said that he could not understand why he was being arrested because he “had been paying off \$500 a month,” supposedly to “Eli the Juice Man,” so that he would not be harassed.¹⁵⁰ Again, Rosenthal denied any wrongdoing.¹⁵¹ Contrary to Dardis’ testimony, Rosenthal claimed that he refused to pay off anyone, and that Dardis arrested him because he was not receiving his cut of the pay-off.¹⁵² Rosenthal speculated that Eli the Juice Man tipped Dardis off:¹⁵³ “Dardis would not have been there had Frank Rosenthal conceded to the payment.”¹⁵⁴

Also present at this gambling establishment raid was Edward Clode, sergeant of the Public Safety Department from Dade County, Miami, Florida. Clode testified by affidavit¹⁵⁵ that Rosenthal said to him and Dardis, “Why are you guys harassing me? Didn’t you get pieced out? I paid \$500 a month twice, to make sure I didn’t get bothered. . . . You guys must be kidding; evidently you didn’t get your piece.”¹⁵⁶ Both Dardis and Clode testified that Rosenthal admitted to them that he had paid \$500 for protection.¹⁵⁷ Moreover, in response to Rosenthal’s speculations regarding Dardis’ and Clode’s wrongdoings, Silver stated,

I can’t understand why these officers would even bother making mention—there was no arrest for bribery. It appears they were just relating what you said. . . . I am not entirely closed to the fact that it might have occurred, but I find it difficult to believe that if there was widespread corruption that any police officer who was not on the payroll, so to speak, would bother putting it down in his report.”¹⁵⁸

According to Board Chairman Hannifin, “that in essence is the corruption of public officials.”¹⁵⁹ Silver and the Board were not as concerned with his gambling establishment arrest as much as they were concerned with, and found “abhorrent,” Rosenthal’s corruption of public officials.¹⁶⁰

In a recent interview, Silver stated,

[A]nytime you get into a situation where you are saying that the cops were “on the take,” that may explain the fact that you were being shaken down by the police, but the fact is that when you said Eli the Juice Man took care of [the cops,] what you are

¹⁴⁸ Jeffrey A. Silver, Esq., S’holder and Partner, Gordon Silver, Lecture to Adjunct Professor Robert Faiss’ Intro to Gaming Law class at the William S. Boyd School of Law: “Lefty has Left the Building” (Sept. 30, 2010) [hereinafter “*Silver Lecture*”]. See also *Rosenthal Bd. Hearing*, *supra* note 9, at 107.

¹⁴⁹ *Rosenthal Bd. Hearing*, *supra* note 9, at 108.

¹⁵⁰ *Id.* at 108-10.

¹⁵¹ *Id.* at 110.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 120.

¹⁵⁵ *Id.* at 117. Clode testified in front of the Florida Racing Commission and submitted an affidavit to the McClellan Hearings.

¹⁵⁶ *Id.* at 114-15 (quotations omitted).

¹⁵⁷ *Id.* at 117.

¹⁵⁸ *Id.* at 123-24.

¹⁵⁹ *Id.* at 117.

¹⁶⁰ *Id.*

saying is that you were aware of, and facilitated, a bribe to corrupt public officials. So, the act of having crooked cops or somebody like that that was willing to accept money and you were aware of it, that means you were a part of the process of corrupting a public official, which, in and of itself, makes you unsuitable to hold a gaming license.¹⁶¹

Rosenthal belabored the illegal gambling establishment issue.¹⁶² Silver later stated that, as intelligent as Rosenthal was, he missed the boat on the issue that most concerned the Board: corruption of public officials.¹⁶³ The Board had licensees that had previously engaged in illegal gambling in jurisdictions outside Nevada; those sorts of acts, for the most part, could be acceptable.¹⁶⁴ “What was not acceptable was when you were paying off public officials.”¹⁶⁵

2. *Rosenthal Barred from Florida Race Tracks*

Prior to his arrest in Miami for operating an illegal gambling establishment, Rosenthal was licensed by the State of Florida and owned a number of racehorses.¹⁶⁶ However, on March 31, 1961, the Florida State Racing Commission held a meeting, wherein Rosenthal’s gambling establishment arrest was a primary topic, and revoked his license.¹⁶⁷

Under the terms of the revocation, Rosenthal was “barred from appearing on race racetracks or in any pari-mutuel operation within the State of Florida[.]”¹⁶⁸ When asked by Chairman Hannifin whether the revocation was still in effect, Rosenthal claimed that he “wouldn’t have the slightest idea[.]”¹⁶⁹ Nevertheless, Silver’s investigatory diligence prevailed; he interjected that Daniel McPherson, Assistant Director of Florida’s Division of Pari-mutuel Racing (formerly the Florida State Racing Commission), informed the Board that “the order is still in effect and that Mr. Rosenthal is barred from any establishment where there is pari-mutuel wagering; and this is horse tracks, dog tracks[,] and jai alai frontons.”¹⁷⁰

A finding of unsuitability in another gaming jurisdiction is a strong indication to Nevada gaming regulators that the person is likely unsuitable for a Nevada gaming license. According to Silver, the Board was particularly concerned with Rosenthal’s license revocation and ban from all Florida race tracks because “[a] person barred from participating in gaming by a casino or race-track in another jurisdiction, especially where the exclusion is ordered by a regulatory body . . . is evidence that the person posed a threat to gaming, or has

¹⁶¹ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*; *Rosenthal Bd. Hearing*, *supra* note 9, at 117.

¹⁶⁵ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

¹⁶⁶ *Id.* at 134.

¹⁶⁷ *Id.* at 134-35. It should be noted that a part of the very commission meeting that resulted in Rosenthal’s license revocation and ban from Florida racetracks was entered as an exhibit at the McClellan Hearings. *Id.* at 115.

¹⁶⁸ *Id.* at 135.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

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reputational issues that might reflect discredit to the gaming industry in Nevada.”¹⁷¹

3. *Senate Subcommittee Hearing Regarding Rosenthal Bribing Collegiate Football Player Mickey Bruce*

On September 8, 1961, Rosenthal testified at the McClellan Hearings regarding organized crime and gambling.¹⁷² This time, he was being “questioned concerning an incident occurring on September 23, 1960[,] in Ann Arbor, Michigan[::]” Rosenthal’s alleged bribery of collegiate football player, Mickey Bruce.¹⁷³ Before Silver extensively questioned Rosenthal, Silver set the scene:

Michael J. Bruce, who was a student at the University of Oregon, and also a football player, defensive halfback, recounted a story before [the 1961 McClellan Hearing] of meeting with a David Budin and [Rosenthal] at a room at the Dearborn Inn prior to the Oregon-Michigan football game; and he stated under oath before the [1961 McClellan Hearing] that he was offered a \$5,000 bribe if he could insure Michigan would win the game by more than eight points. At that point they were, I believe, favored by six points, according to the testimony.¹⁷⁴

At the McClellan Hearings, Bruce identified Rosenthal as one of the gentlemen at the Dearborn Inn meeting.¹⁷⁵ Bruce testified that

Mr. Rosenthal did most of the talking. . . . They started talking about the possibilities of having a game bribed, and I told them I thought it was entirely possible, and Mr. Rosenthal came out and asked me if it was possible for me to be bribed. . . . At that time they came to my particular part on the Oregon team. I was the defensive halfback, and they pointed out a number of ways that we might lose a ballgame for a team. At that point I wasn’t sure whether I should get out of the room right away or go along with the story, and I decided it would be best if I went along and agreed and reported it as soon as I could.”¹⁷⁶

In addition to the \$5,000 bribe to throw the Oregon-Michigan game, Rosenthal also offered Bruce \$100 per week “for the rest of the time [he was] in school” to call Rosenthal’s Florida residence every Monday to inform him “as to the condition of the team before it was published[.]”¹⁷⁷ Before Bruce left the meeting to get back to football practice, they said to “come back after nine o’clock and they would make further arrangements.”¹⁷⁸

Silver asked Rosenthal why he again pled the Fifth Amendment when the Senate Subcommittee at the McClellan Hearings gave him an opportunity to comment on Bruce’s testimony regarding the attempted bribes.¹⁷⁹ Rosenthal

¹⁷¹ E-mail from Jeffrey A. Silver, S’holder and Partner, Gordon Silver, to author (Mar. 27, 2011, 17:35 PDT) (on file with author).

¹⁷² *Rosenthal Bd. Hearing*, *supra* note 9, at 136.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 137-38.

¹⁷⁶ *Id.* at 139-40.

¹⁷⁷ *Id.* at 140, 142.

¹⁷⁸ *Id.* at 141.

¹⁷⁹ *Id.* at 143.

claimed that his attorney advised him to take the Fifth Amendment, but if he would have been charged and brought to court, he would have answered.¹⁸⁰

Strategically, Silver asked Rosenthal the same questions that the Chairman of the McClellan Hearings asked Rosenthal.¹⁸¹ First, Silver asked whether he denied Bruce's testimony that he attempted to bribe Bruce, to which Rosenthal responded, "I am in a position to deny every single accusation in there other than meeting with Mr. Bruce."¹⁸² Rosenthal recalled going to Detroit, Michigan, with two other men, but could not remember how he got there.¹⁸³ He recalled David Budin was there, and claimed that because he, Budin, and the two other men did not know Bruce, another man they were with must have known and introduced them to Bruce.¹⁸⁴ Rosenthal stated that he "did not go to Detroit, Michigan, to see Mr. Bruce, to meet with Mr. Bruce, or to become involved in the Michigan-Oregon game."¹⁸⁵ Instead, Rosenthal stated, he "went to Detroit, Michigan because Detroit University was playing that evening," and he was very interested in the outcome of *that* game.¹⁸⁶

Rosenthal adamantly declared in his customary third-person, egotistic tone, "Frank Rosenthal was not at the meeting at nine o'clock that night. He was not at the meeting at 9:00 a.m. in the morning, not by chance. There were no arrangements. Frank Rosenthal never spoke of \$5,000."¹⁸⁷ Rosenthal speculated that Budin set up the bribe prior to his meeting Bruce.¹⁸⁸

Second, Silver asked, "So you deny that you made a suggestion that he should accept a bribe; you deny that Mr. Budin offered him \$5,000?"¹⁸⁹

No, I don't deny that, Mr. Silver. . . . I denied that Frank Rosenthal ever spoke to Mr. Bruce about anything other than pro sets, defensive alignments, and if—I could have possibly, because I can't remember every word, I might have said if the quarterback ever breaks his leg, give me a call."¹⁹⁰

He further denied that Mr. Budin ever offered Bruce \$5,000 in his presence.¹⁹¹

Rosenthal claimed he did not know of Budin's reputation as a "fixer" until after he met him in Detroit, Michigan, and that once Budin's reputation as a fixer became common knowledge, he suspected that Budin framed him as the "briber."¹⁹² However, Silver pointed out that on March 20, 1960, Rosenthal and Budin were named as co-defendants in a North Carolina criminal case

¹⁸⁰ See *id.* at 144.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 145.

¹⁸⁴ *Id.* at 146.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 149.

¹⁸⁸ See *id.* at 149-50. According to the Rosenthal Bd. Hearing, there were three meetings with Bruce: the one he attended, the 9:00 p.m. meeting, and the 9:00 a.m. meeting. *Id.* at 169. The 9:00 a.m. meeting is a matter of record, because there was an arrest made. *Id.*

¹⁸⁹ *Id.* at 151.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 152.

¹⁹² See *id.* at 154-55.

wherein Rosenthal pled *nolo contendere*.¹⁹³ *Nolo contendere*, as far as the Board was concerned was “in essence [] a guilty plea, for a fixing.”¹⁹⁴

Rosenthal claimed that at the time of his March 20, 1960 indictment, Budin was not a co-defendant, but rather an “unindicted co-conspirator” that was “kept secret.”¹⁹⁵ Again, Silver called Rosenthal’s bluff and referred to a document that read, “Criminal action, The State vs. David Budin and Frank Larry Rosenthal, alias Frank Larry, alias “Lefty” Rosenthal, alias Charles Carpentier. . . .”¹⁹⁶

Furthermore, recall that at the beginning of Rosenthal’s hearing, Silver read through a laundry list of aliases that Rosenthal might have used in his past, and Rosenthal denied using all but one of them.¹⁹⁷ One of the aliases that he denied using was “Frank Grosscup.”¹⁹⁸ The testimony in the McClellan Hearings established, and Silver read into the Board’s record, the following: Frank Grosscup was a registered guest in the Dearborn Inn at the time of Mickey Bruce’s attempted bribery,¹⁹⁹ it was common practice for fixers to use prominent athletes’ names as aliases,²⁰⁰ Lee Grosscup was a former New York Giants quarterback,²⁰¹ phone calls were made to Rosenthal’s apartments in Miami,²⁰² and Frank Grosscup was an alias for Frank Rosenthal.²⁰³ When Rosenthal and his counsel challenged Silver’s interpretation of the McClellan Hearings transcript, Silver countered, “I think the record is clear and speaks for itself.”²⁰⁴

4. *Rosenthal Convicted of Conspiracy to Bribe an Amateur Athlete*

Rosenthal was arrested on February 21, 1962, in Miami, Florida for conspiracy to attempt bribery in North Carolina.²⁰⁵ According to the McClellan Hearings transcript, on or about March 11, 1960, Rosenthal and David Budin conspired to bribe Ray Paprocky, a basketball player from New York University, regarding a basketball game to be played in Charlotte, North Carolina,

¹⁹³ *Id.* at 155.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 158.

¹⁹⁶ *Id.* at 158-59. For more details as to this particular North Carolina arrest, see *infra* Part III.b.4.

¹⁹⁷ *Id.* at 88.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 160.

²⁰⁰ *Id.* at 161.

²⁰¹ *Id.*

²⁰² *Id.* at 162-63. A detective for the Michigan State Police Department checked the phone records for the room Frank Grosscup was staying in and found that two calls were made to Miami, Florida. *Id.* at 162. The detective wrote to the authorities in Miami to find out who the phones were registered to. *Id.* A letter from the Miami authorities stated that the phone call was made to a Frank Carpentier and that Carpentier was really Louis “Lefty” Rosenthal, who had a reputation as being a gambler. *Id.* at 162-63.

²⁰³ *Id.* at 160-65.

²⁰⁴ *Id.* at 167.

²⁰⁵ *Id.* at 180.

between New York University and West Virginia University.²⁰⁶ Rosenthal allegedly offered Paprocky \$500 to influence his play, action, and conduct in the New York University-West Virginia University game.²⁰⁷

Silver read the indictment that alleged that Rosenthal and Budin “unlawfully, willfully, and feloniously combine[d], conspire[d], confederate[d] and plan[ned] together amongst themselves each with the other and with each other, to offer a bribe . . . to Ray Paprocky, . . . a player and member of the New York University basketball team[.]”²⁰⁸ The judgment of this indictment was issued on December 6, 1963, against Rosenthal.²⁰⁹ Silver continued, “[t]he defendant [Rosenthal] through his counsel, Robert G. Sanders and James E. Walker, enters the plea of *nolo contendere* to the charges, as charged in the bill of indictment. It is the judgment of the Court that the defendant be fined \$6,000[.]”²¹⁰

Silver invited Rosenthal to explain what he knew of this particular incident and case.²¹¹ Rosenthal immediately responded, “I know that I was not guilty.”²¹² Rosenthal claimed, like he did regarding Mickey Bruce, that he had previously met Ray Paprocky, but never spoke to him about bribery.²¹³ He also claimed, just as he did regarding the Mickey Bruce case, that the men he allegedly attempted the bribes with, coupled with law enforcement, were conspiring against him.²¹⁴ He asserted that David Budin had no way out of the legal mess he was in, that “David Budin would have given his mother up to stay away from what he had to face, what had been substantiated, all the admissions of attempted fixing, and all the positive identifications.”²¹⁵ He further asserted that the detectives for the case told him that law enforcement would let Budin walk away, possibly free of charges, if he could involve Rosenthal.²¹⁶ Finally, Rosenthal claimed that he was unaware of what a *nolo contendere* plea was at the time, and that his attorneys neglected to fully inform him of the consequences.²¹⁷ All they said was that a trial was a dangerous idea and that if

²⁰⁶ *Id.* at 183. The indictment read into the record listed Rosenthal and Budin as co-defendants, and also listed Rosenthal’s known aliases: Frank Larry, “Lefty” Rosenthal, and Charles Carpentier. *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* (quotations omitted). Silver read into the record three out of the four counts in the indictment, the fourth being the same as the third. In general, all four alleged that Rosenthal and Budin attempted to bribe Ray Paprocky by offering him \$500. *Id.* at 183-85.

²⁰⁹ *Id.* at 185.

²¹⁰ *Id.* at 186. (quotations omitted). The hearing later reveals that the co-defendants, Rosenthal and Budin, were bifurcated into separate cases. Budin also pled *nolo contendere* and was sentenced to two years in state prison, but the sentence was suspended as long as he remained on good behavior. *Id.* at 202.

²¹¹ *Id.* at 187.

²¹² *Id.* at 188.

²¹³ *Id.* at 189.

²¹⁴ *Id.* at 190.

²¹⁵ *Id.* “[Budin] had no possible—just no possible chance of anything but a multiple sentencing, just many, many, many, many, years. He had no possible way out, but he did have a way out—Frank Rosenthal. And that’s the game that David Budin had been playing.” *Id.* at 191.

²¹⁶ *Id.* at 189.

²¹⁷ *Id.* at 191.

Rosenthal pleaded *nolo contendere*, he “would be able to go home with a minimum [of] fine.”²¹⁸

Lastly, Silver inquired about a prior meeting Rosenthal had with the judge in this case, in which Rosenthal denied having ever been to the state of North Carolina.²¹⁹ Rosenthal’s denial was reflected in a summary of a hearing held at 10:15 a.m., on May 18, 1962, in the judge’s private chambers.²²⁰ Silver delved deeper,

[Silver:] But you told Judge Kehoe you were never in North Carolina, is that correct?

[Rosenthal:] That is not correct.

[Silver:] Then this report is inaccurate?

[Rosenthal:] Then this report is inaccurate, Mr. Silver, that’s correct.²²¹

It was becoming clear to the Board that Rosenthal could not refute any of the Board’s allegations or inquiries; instead, Rosenthal only claimed that the record was mistaken or that other parties were conspiring against him. In essence, “[Rosenthal’s] claims of legitimacy were falling on deaf ears.”²²² Silver recently reflected that the more he questioned Rosenthal, the more he convinced his Board cohorts that Rosenthal was not an applicant who should be allowed in Nevada’s gaming industry.

Because Hannifin said I was taking the lead on this [case], I probably spent the greatest amount of time working on this file. It was almost like, if there was to be an inquisitor, a prosecutor, then I knew the responsibility for putting the evidence out there for consideration was mine. As I put more evidence and questions and information, then the two other Board members became more convinced as to the unsuitability of [Rosenthal].²²³

5. *Wrapping Up Rosenthal’s Board Hearing*

Before Silver began questioning Rosenthal at the beginning of the hearing, he started listing the myriad of arrests that Rosenthal had on his criminal resume.²²⁴ However, the completion of his list was interrupted when the questioning diverted into specifics of the above detailed arrests. After going through these four arrests in detail, Silver continued to list off the rest of Rosenthal’s arrests:

- March 6, 1963, in Miami, Florida for disorderly conduct in loitering;²²⁵
- June 13, 1963, in Pikesville, Maryland for gambling;²²⁶
- September 2, 1964, in Miami, Florida for disorderly conduct;²²⁷

²¹⁸ *Id.*

²¹⁹ *Id.* at 201.

²²⁰ *Id.* Judge John J. Kehoe, Assistant State Attorney Roy S. Wood, and Rosenthal were all present at this meeting. *Id.*

²²¹ *Id.* at 202.

²²² SMITH, *supra* note 63, at 144.

²²³ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

²²⁴ *Id.* at 209-25.

²²⁵ *Rosenthal Bd. Hearing*, *supra* note 9, at 210.

²²⁶ *Id.* at 211.

²²⁷ *Id.*

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- September 11, 1964, in North Miami, Florida for failure to register as a convicted felon;²²⁸
- November 28, 1965, in Miami, Florida for interstate transportation of wagering information;²²⁹
- February 2, 1966, in Miami, Florida for open profanity;²³⁰
- May 26, 1966, in Miami for interstate transportation of wagering information;²³¹
- February 7, 1967, in Miami for disorderly conduct;²³²
- February 13, 1968, in Las Vegas, Nevada for failure to register as a convicted felon;²³³
- July 29, 1968, in Las Vegas, Nevada for second degree burglary;²³⁴
- July 30, 1968, in Las Vegas, Nevada for vagrancy and loitering;²³⁵
- Two arrests in December 1970 in Las Vegas, Nevada for interstate gambling;²³⁶ and
- March 19, 1971, in Las Vegas, Nevada for illegal gambling activity.²³⁷

Silver expressed particular concern as to the last arrest: Rosenthal's March 19, 1971, arrest for illegal gambling activity, referred to in the Board hearing as the Rose Bowl case.²³⁸

[Silver:] Did you ever accept any bets while as an employee of the Rose Bowl other than over the counter as the regulation 5.030.3 provides?

[Rosenthal:] Are you speaking about me specifically or the operation?

[Silver:] You.

[Rosenthal:] I really don't recall—I was not a clerk in that operation, so I will give you a twofold answer. There were wagers being accepted via telephone intrastate in the State of Nevada. Never out of the State of Nevada. I don't think the government even alleges to that, but I do not personally recollect ever having been on the instrument accepting a wager, only because it was not my function.

[Silver:] Did anybody as an employee of the Rose Bowl in your presence accept wagers over the telephone in violation of our regulations?

[Rosenthal:] Now you are asking me, Mr. Silver, do I specifically recall an incident. I have said to you that there were wagers. You are asking me to go back and remember a specific individual possibly who was the caller. I can't do that.

²²⁸ *Id.* at 212.

²²⁹ *Id.*

²³⁰ *Id.* at 213.

²³¹ *Id.* at 213-14.

²³² *Id.* at 214-15.

²³³ *Id.* at 215.

²³⁴ *Id.* at 225.

²³⁵ *Id.* In fact, Rosenthal even recalled that the sheriff arrested him three times within a twenty-four hour time period. *Id.* at 215. In addition, it should be noted that Rosenthal deleted his two July 1968 arrests from his personal history report. *Id.* at 225.

²³⁶ *Id.* at 215-18.

²³⁷ *Id.* at 217-18. In the hearing, it is unclear whether the date of the arrest was March 19 or March 9, 1971 because Rosenthal's counsel, Oscar Goodman referred to March 19, but when Silver asked what the basis for the dismissal of the case was, he referred to the case as the "March 9, 1971 case." *Id.* at 218.

²³⁸ *Id.* at 218, 222.

[Silver:] Well, the concern that I have here is that fact that you are applying for a license which would in essence enable you to oversee the operations of other employees, and as part of that license it would be your responsibility to insure that there was no violation of the regulations by any person under your authority, and if you have been in a situation in the past where you had seen these things occurring and had not reported them, then I would be interested in it.

[Rosenthal:] I am sure you would be interested, but that doesn't suggest that I would violate—I think you are suggesting that if I did that, that I might violate another Nevada law, is that correct?

[Silver:] No, that is not the suggestion. I am just asking you the question of whether or not you observed anything occurring in the past?

[Rosenthal:] My answer to you was that I admit to you that there were telephone wagers being accepted in the Rose Bowl.²³⁹

Thereafter, Rosenthal claimed that he was not aware that bets made from anywhere, even intrastate – such as Clark County, Nevada – via telephone to the Rose Bowl violated gaming law and regulations.²⁴⁰

The Board also expressed concern regarding a safety deposit box containing items which Rosenthal claimed as assets in his gaming application.²⁴¹ His wife, the only named person on the account, would not give the Board access to the box.²⁴² Further, when the Board investigators checked with the bank, there was no record that the box or respective account existed.²⁴³ The Board expressed its concern to Rosenthal: “the burden is yours in this whole proceeding. If you are going to tell us that you have an asset and that asset cannot be verified, [we] can't accept your statements, [and] you haven't carried your burden.”²⁴⁴ Even after the Board expressed its concern and reminded him of his burden, Rosenthal was not willing to give details about the box or its contents.²⁴⁵ Instead, he claimed that it existed when he completed his gaming license application and that it may or may not exist anymore.²⁴⁶

Lastly, the Board expressed its concern regarding Rosenthal's relationships or alleged relationships with unsuitable characters such as Fiori DiChiarante, Fiori Buccieri, Sam Giancana, Gussie Alex, Sam Minkus, Gil Beckley, Maurice Dodson, Carl Maisch, John Frekes, Joseph Nosalino, David Yaras, Felix El Dorisio, John Cirone, Samuel Green, Joseph Fariola, Mario di Stefano, James Katura, William Masino, Charles English, Jerome Zarowitz, Frank Schweiss, Anthony Salerno, John Clarence Cook, James Torello, Joseph Ayupa, John Sinitilo, Frank Maselli, and of course, Tony Spilotro.²⁴⁷

A noteworthy exchange occurred between Silver and Rosenthal regarding Joseph Ayupa, a reputed mob kingpin. Rosenthal claimed he only knew of

²³⁹ *Id.* at 222-23.

²⁴⁰ *Id.* at 223-24.

²⁴¹ *Id.* at 226-27.

²⁴² *Id.*

²⁴³ *See id.* at 229.

²⁴⁴ *Id.* at 227.

²⁴⁵ *See id.* at 230-31.

²⁴⁶ *Id.*

²⁴⁷ *See id.* at 234-43. The Board discussed at length Rosenthal's involvement with notorious crime figure Anthony Spilotro. *Id.* at 243-57.

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Ayupa by reputation after reading the newspaper.²⁴⁸ When Silver asked Rosenthal again how he knew Ayupa, Rosenthal exclaimed, “I don’t recall [what] I read in the newspaper, Mr. Silver, but I have read his name. If you are asking me to do your work, my answer is I won’t do it. . . . You are badgering me Mr. Silver[.]”²⁴⁹ At that point, if looks could kill, Silver was a “dead man walking.” Silver was aware of Rosenthal’s long-time friendship and association with Tony Spilotro, a reputed mob enforcer and realized this face-to-face encounter in a public forum may not bode well for him.

After the Board inquired as to Rosenthal’s long-term relationship with Anthony Spilotro, Silver addressed Rosenthal’s “badgering” accusation,

I didn’t personally manufacture any of the things I have asked you. Someone has to ask you a list of questions that we have concerning the protection of the [gaming] industry in this State. If I have asked you questions which might have been embarrassing for you to answer, or you felt that I was harassing you in that way, that was not my intent. I think it’s very courageous of you to stand up here and attempt to respond to questions over a five-hour period today and several hours yesterday.

I’m aware of physical illness that you are currently suffering under right now and the fact that you might have to stand up here and answer questions is perhaps painful to you; but the fact remains for the protection of the interests of this State if there are these questions that . . . have been brought to us in an investigative summary, they have to be brought forward, and this is the form and this is the forum, and this is the time and place to be brought forward. . . .

The [fact] is that certain questions regarding your past and your background have been brought up, and the burden is your[s] to come forward and tell us that those items are true or explain how they could have arisen.²⁵⁰

In the same vein, Silver rehashed in a recent interview,

[T]he fact of the matter is that every question is fair game. When you file a gaming [license] application, you open yourself up to any inquiry about your life and if you don’t want to have people inquiring about your life, then the answer is simple: don’t apply for a license. . . . But since [Rosenthal] put himself on the public stage and in the limelight, then he was responsible to justify everything that appeared to be inappropriate in his life, no matter what it was.²⁵¹

Nevertheless, in Rosenthal’s last-ditch effort to convince the Board that he should receive a gaming license, or rather, in Rosenthal’s self-presented gaming license eulogy, he proclaimed,

[Mr. Silver] suggests that it takes some courage, but [he] has done a pretty good job on me, I think. Actually we have a difference of opinion. I know you to be a fair and open minded man. I know Mr. Stratton to be the same. I wouldn’t infer that Mr. Silver is not, but I can infer, just as he has done, that I was told by rumors that Jeffrey Silver, he’s got you before you ever go in there. I only mention that because there isn’t one chance in one billion based on Jeff Silver looking at me as I look at you, and I know you read me well, and if I turn my head away from you, I’m lost with you, and the same applies to me, but Jeff Silver is a member of this Board, speaks with a forked tongue to me. He admires me for my family, my illness; he looks at me and laughs at me, and I resent that.

²⁴⁸ *Id.* at 242.

²⁴⁹ *Id.* at 242-43.

²⁵⁰ *Id.* at 262-64.

²⁵¹ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

I have given you the best I have. I have given Mr. Glick the best I have, and my family. . . . [T]he industry knows about your integrity, Mr. Chairman, Jack Stratton. Jeff Silver is a Johnny-come-lately as far as the industry, but I am sure he wouldn't be here or the Governor wouldn't appoint him unless he was beyond any reproach; but he will not allow me the same consideration, the same thoughts that I say to him, and I heard that from people that I consider to be reliable, that Jack Stratton and Phil Hannifin are open minded, and they will call them the way they see them, and Jeff Silver's already got you, and I don't like being a part of that society.²⁵²

Chairman Hannifin interjected to defend Silver against Rosenthal's accusation: "I can't think of any instance where [Silver] has even come close to coming to [a Board hearing] with his mind made up. . . . I think he probably has a far more open mind than myself."²⁵³ Silver added, and also to conclude his participation in the hearing,

In view of the comments Mr. Rosenthal had stated regarding fairness, I would say that I have been on this job for six months now, and I found it to be, save and except for my colleagues, a very lonely job, and a job wherein you are not considered to be an individual, but more of title or a position, a job that has with it great pressure and certainly no time or no room for personal considerations, if there are any in this industry; and I assure Mr. Rosenthal at this point that any vote that I would make on this issue – and . . . any vote that I have already made since I have assumed this position [–] has been based on the best interests of the State of Nevada as I perceive them, which is my sworn duty[.]²⁵⁴

The Board then concluded that the record regarding Rosenthal's hearing was sufficient.²⁵⁵ Consequently, on January 15, 1976, the Board – Chairman Philip P. Hannifin, Jeffrey A. Silver, and John H. Stratton – recommended that the Commission deny Rosenthal's gaming license application.²⁵⁶

III. GAMING LICENSE: DENIED

On January 22, 1976, the Commission unanimously denied Rosenthal's gaming license application "based on the record made by the Control Board."²⁵⁷ Generally speaking, the Commission denied Rosenthal a gaming license because if licensed he would "reflect or tend to reflect discredit upon the State of Nevada."²⁵⁸ However, the Commission's denial was based on the following specific findings:

1. Statements by police officers Dardis and Clode to [a] Senate subcommittee and to [the] Florida Racing Commission that applicant admitted he was corrupting public officials in return for protection;
2. The applicant's being barred from race tracks and pari-mutuel operations in the State of Florida;

²⁵² *Rosenthal Bd. Hearing, supra* note 9, at 267-68.

²⁵³ *Id.* at 268.

²⁵⁴ *Id.* at 277.

²⁵⁵ *See id.* at 277-78.

²⁵⁶ *Id.* at 278; *see also* *State v. Rosenthal*, 559 P.2d 830, 833 (Nev. 1977).

²⁵⁷ *Hearing on the Application of Frank L. Rosenthal for Licensing as a Key Emp., Before the Nev. Gaming Comm'n* (Nev. Jan. 22, 1976); *see also Rosenthal*, 559 P.2d at 833.

²⁵⁸ *Rosenthal*, 559 P.2d at 833.

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3. Testimony of Mickey Bruce in Senate subcommittee hearings that applicant attempted to bribe him to throw a 1960 Oregon-Michigan football game; [and]
4. A North Carolina court's finding of guilt for conspiracy to bribe an amateur athlete.²⁵⁹

Rosenthal immediately appealed to the Eighth Judicial District Court of Nevada.²⁶⁰ The district court “declared certain portions of the Gaming Control Act unconstitutional.”²⁶¹ However, in the landmark decision *State v. Rosenthal*,²⁶² the Nevada Supreme Court reversed the district court's ruling, holding that the Commission's rulings with respect to gaming license applications are not subject to judicial review.²⁶³ “A denied applicant for a Nevada gaming license has no recourse against the Commission” for its decision.²⁶⁴ The import of this ruling was that “gaming” was deemed to be an activity reserved to the states under the Tenth Amendment to the U.S. Constitution. The findings in the case established the licensing standards for Nevada and, eventually, all other jurisdictions with legalized gaming.

Rosenthal's battle with Silver and the rest of Board at the January 14, 1976, hearing was not the only time he butted heads with Nevada gaming regulators. After his first denial, Rosenthal could no longer directly influence operations at Argent Corporation as “executive consultant,” so he attempted to circumvent the gaming licensure process by taking on a myriad of different positions at the Stardust – positions ranging from Food and Beverage Director to Entertainment Director.²⁶⁵ Regardless of the “titles” of his new positions, it was apparent that Rosenthal “continued to significantly influence gaming.”²⁶⁶ The Commission determined that Rosenthal was still acting as a key employee and “once again directed him to submit an application for a gaming license”²⁶⁷ as Entertainment Director.²⁶⁸

The Board and Commission held a joint hearing in December 1978 regarding Rosenthal's gaming license application as Entertainment Director.²⁶⁹ In yet another ironic parallel, this was Silver's last hearing on the Board as a Member,²⁷⁰ and also Rosenthal's last appearance before the Nevada gaming regulators. Rosenthal attempted to show that his duties were unrelated to gam-

²⁵⁹ *Id.* (Converted original text and format to a list-format with numerals; also re-ordered the list for organizational purposes).

²⁶⁰ LIONEL SAWYER & COLLINS, *NEVADA GAMING LAW* 92 (3d ed. 2000).

²⁶¹ *Id.*

²⁶² *Rosenthal*, 559 P.2d at 832.

²⁶³ “[J]udicial review is confined to a final decision or order of the Commission and then only in specified instances.” *Id.* at 41; LIONEL SAWYER & COLLINS, *supra* note 260, at 92.

²⁶⁴ LIONEL SAWYER & COLLINS, *supra* note 260, at 91. Rosenthal even appealed this Nevada Supreme Court decision to the United States Supreme Court, but the writ of certiorari was denied “for want of a substantial federal question.” *Rosenthal v. Nevada*, 434 U.S. 803 (1977) (*cert. denied*).

²⁶⁵ *Rosenthal v. State ex rel. Nev. Gaming Comm'n*, 620 P.2d 874, 875 (Nev.1980) (hereinafter “*Rosenthal II*”).

²⁶⁶ *Id.* at 877.

²⁶⁷ *Id.* at 875.

²⁶⁸ *Silver Lecture*, *supra* note 148.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

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ing,²⁷¹ but Silver and the other gaming regulators were not convinced. Again, the Board recommended, and the Commission voted, to deny Rosenthal a gaming license.²⁷² Not only was the denial based on the same grounds used in the January 1976 Board and Commission hearings and respective denials, but also because Rosenthal consistently displayed conscious disrespect toward the gaming regulators, which posed a threat to the public interests of the State of Nevada.²⁷³

Rosenthal appealed this second Commission decision to the judiciary as well. In 1980, the Nevada Supreme Court affirmed its decision in *State v. Rosenthal*, holding that “one who seeks to acquire a gaming license . . . does not have existing privilege” and, therefore, has no right to judicial review of a gaming license denial.²⁷⁴

Rosenthal also tried his luck at the federal level in the United States District Court for the District of Nevada. In *Rosenthal v. Nevada*,²⁷⁵ Rosenthal brought a civil rights action against the State of Nevada, the Commission, the Board, and certain members of each regulatory arm.²⁷⁶ Because Silver’s tenure as Board Member ended in December 1978, he was not listed as a defendant. Rosenthal alleged that his civil rights were denied by the Commission’s revocation of his “gaming employee” work permit after his gaming license application as a “key employee” was denied.²⁷⁷ Judge Roger D. Foley held, “[Rosenthal] should have asserted his [civil rights] damage claims . . . in the state court action. . . . Th[e] Court believes that the doctrine of *res judicata* precludes the plaintiff from pursuing his [civil rights] claim . . . in this case.”²⁷⁸

Hence, Rosenthal’s trek to circumvent the Board and the Commission via the judicial system failed, yet his efforts established policies, procedures, and safeguards that endure today.

IV. DIVERGING PATHS: ROSENTHAL FLEES TO FLORIDA, SILVER CONTINUES PROSPEROUS CAREER IN GAMING

After their face-to-face meeting at the Board Hearing, Rosenthal’s gaming career plummeted, while Silver’s gaming career continued. If Rosenthal’s numerous gaming license denials were not enough notice that he did not belong in Nevada gaming, he ended up learning the hard way. “Rosenthal received his retirement suggestion on October 4, 1982, when he turned his ignition of his Cadillac outside Marie Callendar’s restaurant on East Sahara Avenue. . . . The car exploded, and only the heavy metal plating under the floorboard prevented

²⁷¹ *Id.*

²⁷² *Rosenthal II*, 620 P.2d at 875.

²⁷³ *Silver Lecture*, *supra* note 150.

²⁷⁴ *Rosenthal II*, 620 P.2d at 875.

²⁷⁵ *Rosenthal v. State of Nev.*, 514 F. Supp. 907 (D. Nev. 1981).

²⁷⁶ *Id.* at 908.

²⁷⁷ *See generally id.* at 908.

²⁷⁸ *Id.* at 912.

the blast from killing [him].”²⁷⁹ The message was received; Rosenthal fled back to Miami, Florida, this time for good.²⁸⁰

Even after Rosenthal’s departure, Nevada gaming regulators made certain Rosenthal did not come back. In 1988, the Board nominated Rosenthal for inclusion on the List of Excluded Persons,²⁸¹ commonly known as the “Black Book.”²⁸² In January 1989, the Commission unanimously approved the Board’s nomination, and Rosenthal was placed in Nevada’s Black Book.²⁸³ Rosenthal was officially banned from any casino in Nevada.

While Rosenthal was exiled in Florida, and before his death on October 13, 2008,²⁸⁴ he took to the Internet to express his rage towards the Nevada gaming industry and its regulators. On his website, Rosenthal referred to the gaming regulators as “The Desert Rats.”²⁸⁵ Rosenthal recounted his Board Hearing: “I was grilled for hours by Jeff Silver[.]” Rosenthal also has a webpage titled “Frank’s Hall of Famers,” where he credits certain people as members of his “Las Vegas Hall of Fame.”²⁸⁶ He described Steve Wynn as “Captain Marvel,” Howard Hughes as “Extrasensory Perception,” Bugsy Siegel as “The Right Stuff,” and Elvis Presley as “Undisputed King.”²⁸⁷ Recall that in Rosenthal’s 1976 Board hearing, Rosenthal stated that Silver “speaks with a forked tongue[.]”²⁸⁸ Silver also made Rosenthal’s “Las Vegas Hall of Fame” list²⁸⁹ under the category “rattlesnakes.” Rosenthal designated Silver as the “Hooded Panhandler.”²⁹⁰ Rosenthal had also referred to Silver in the Board hearing as a “Johnny-come-lately” in the gaming industry.²⁹¹ Given Silver’s continued impact on gaming in Nevada, Rosenthal was clearly wrong.

Rosenthal’s gaming career collapsed while Silver went into private law practice for a short period after his tenure on the Board.²⁹² Gaming attorney Robert Faiss and former Governor Grant Sawyer recruited Silver to join their ranks as a partner in the law firm Lionel Sawyer & Collins.²⁹³ However, after just two years, Silver left the practice of law at Lionel Sawyer & Collins to become General Counsel and then Chief Operating Officer at the Landmark

²⁷⁹ JOHN L. SMITH, *SHARKS IN THE DESERT: THE FOUNDING FATHERS AND CURRENT KINGS OF LAS VEGAS* 42-43 (2005).

²⁸⁰ Dennis N. Griffin, *Legendary Las Vegas Casino Figure Frank “Lefty” Rosenthal Dead at Age 79*, AUTHORSDEN.COM, (Oct. 19, 2008), <http://www.authorsden.com/visit/viewarticle.asp?id=43065> (last visited Oct. 20, 2012) (According to Griffin, Rosenthal fled to California first, then to Florida).

²⁸¹ *State v. Rosenthal*, 819 P.2d 1296, 1298 (Nev. 1991).

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ See Griffin, *supra* note 280.

²⁸⁵ *Desert Rats*, FRANK777.COM, <http://www.insidervlv.com/flr/november98.html> (last visited Oct. 26, 2012).

²⁸⁶ *Frank’s Hall of Famers: Las Vegas Hall of Fame*, FRANK777.COM, http://frankrosenthal.com/hall_of_famers/ (last visited Oct. 26, 2012).

²⁸⁷ *Id.*

²⁸⁸ *Rosenthal Bd. Hearing*, *supra* note 9, at 267.

²⁸⁹ *Frank’s Hall of Famers*, *supra* note 286.

²⁹⁰ *Id.*

²⁹¹ *Rosenthal Bd. Hearing*, *supra* note 9, at 268.

²⁹² Interview with Jeffrey A. Silver, Esq., *supra* note 10.

²⁹³ *Id.*

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Casino.²⁹⁴ The Landmark had run out of money and was facing a near inevitable bankruptcy, so Silver was given the opportunity to run the property until it could be sold.²⁹⁵ Silver defied the odds; he turned the Landmark around and made it profitable for the first time in the property's history.²⁹⁶ This success caught the eye of the Riviera owner, Meshulam Riklis.²⁹⁷

In 1983, Silver became president of the Riviera.²⁹⁸ The Riviera had filed for bankruptcy for the second time,²⁹⁹ and Meshulam Riklis hired Silver to come in and clean up.³⁰⁰ According to Silver, "I turned around the hotel. There was obviously a lot of money going out the back door. I stopped the bleeding. I terminated a lot of people who didn't belong."³⁰¹

Silver also revolutionized the gaming industry while he was the president of the Riviera.³⁰² Silver recalls walking around the outside of the Riviera and noticing the cheap meals ranging from one to three dollars at the Circus Circus and Slots-A-Fun.³⁰³ Next to these properties was a McDonald's, and Silver was baffled as to why people would go to McDonald's when cheap food was being offered in the casino.³⁰⁴ Silver concluded that casino patrons were "uneasy about the quality of food in the casinos" and desired the security of a restaurant with which they were familiar.³⁰⁵ Silver was the first casino operator to put a fast-food chain restaurant inside of his casino.³⁰⁶ Silver's Riviera Burger King "was for a long time the most successful franchise in the chain."³⁰⁷ "Silver's vision of a Burger King Revolution on the Strip came to pass: fast-food restaurants now appear inside many Strip hotels, and the Riviera's food court came to include a variety of options, from Pizza Hut to Quizno's Subs, including the original Burger King."³⁰⁸

After some managerial and financial disagreements with Riklis, Silver resigned from the Riviera and, in 1984, became Senior Vice President of Marketing at Caesars Palace.³⁰⁹ But, the hierarchy and pretentiousness of the corporate world, coupled with Silver's passion to practice law, got the best of him. In 1984, after a meeting in a coffee shop at Caesars with close friend Gerald Gordon, Silver left the corporate gaming arena and joined the law firm that now bears his name, Gordon Silver.³¹⁰

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *See id.*

²⁹⁸ *Id.*; Edwards, *supra* note 11.

²⁹⁹ Interview with Jeffrey A. Silver, Esq., *supra* note 10; Edwards, *supra* note 11.

³⁰⁰ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

³⁰¹ *Id.*; Edwards, *supra* note 11.

³⁰² *See generally* David G. Schwartz, *The Burger King Revolution: How Las Vegas Bounced Back, 1983-1989*, 14 GAMING L. REV. & ECON. 261 (2010).

³⁰³ Interview with Jeffrey A. Silver, Esq., *supra* note 10.

³⁰⁴ *Id.*

³⁰⁵ Schwartz, *supra* note 302, at 268.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Interview with Jeffrey A. Silver, Esq., *supra* note 10; Edwards, *supra* note 11.

³¹⁰ *Id.*

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Silver and Gordon's relationship started long before they shared a law firm together. They first met in 1969 when they were volunteer tour guides for some French college students touring the United States.³¹¹ Jeff had just returned from Northwestern University to be an accountant in Las Vegas and Gordon was attending the University of Nevada, Las Vegas.³¹² It turned out that Silver was a member of the same Greek fraternity that Gordon had just established at the university, so Silver became the fraternity's advisor.³¹³

Gordon's next encounter with Silver was after they had both graduated from law school.³¹⁴ Gordon was an associate at Weiner, Goldwater and Galatz (now named Gordon Silver) representing a defendant in a capital murder trial; Silver was the prosecutor.³¹⁵ Gordon recalls, "Jeff was a remarkable trial attorney, but I remember him most for his compassion, objectivity and commitment to a just outcome. I remember thinking about practicing law with him in the future."³¹⁶

At the time Silver was considering leaving Caesars Palace, Weiner, Waldman and Gordon was a small litigation firm whose size had remained static.³¹⁷ Gordon thought a boutique bankruptcy and gaming firm made sense and immediately thought of Silver.³¹⁸ Gordon distinctly recalls their lunch in a Caesars coffee shop,

We were surrounded by tables of other executives. I asked Jeff why he would consider leaving his job. He looked at me and quietly said "watch." He then picked up a salt shaker from the middle of the table, turned it over and inspected the bottom of the shaker for a few seconds. He then put it down and proceeded to talk to me. Over the next 2 to 3 minutes I noticed the executives at the other tables discreetly pick up their saltshakers and inspect them. Several put the shakers on the floor and one put it in his pocket. He had offers from bigger firms for significantly more money, but I told him that if he shared my vision, we could develop a significant practice and that I would never bug his office.³¹⁹

Today, Gordon Silver has offices in Las Vegas, Reno, Phoenix, and Washington, D.C.³²⁰ Silver is currently the Chairman of the Administrative, Gaming, and Government Affairs Department of Gordon Silver.³²¹ He is a member of several professional organizations; he is a former president of, and current Counsellor to, the International Association of Gaming Advisors.³²² Silver also has held roles as chairman and vice-chairman of the American Bar Associa-

³¹¹ E-mail from Gerald M. Gordon, Esq., S'holder and Partner, Gordon Silver, to author (Apr. 17, 2011 08:07:18 AM PDT) (on file with author).

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ GORDON SILVER, <http://www.gordonsilver.com/our-people/bios/jeffrey-silver/> (last visited Oct. 20, 2012).

³²¹ *Jeffrey A. Silver, Our People*, GORDON SILVER, <http://www.gordonsilver.com> (last visited Nov. 20, 2012).

³²² *Id.*

tion's Gaming Law Committee.³²³ It is without question that Silver has been, and continues to be, a major contributor to the advancement, expansion, and success of the Nevada gaming industry. Most recently, Silver was appointed as a founding member of the "Mob Museum Board (Museum of Law Enforcement and Organized Crime) located in Downtown Las Vegas. In a final irony, Silver's sponsor was Rosenthal's former lawyer, Mayor Oscar Goodman.³²⁴ Gaming attorney and adjunct professor Robert Faiss remarked, "Jeff Silver's contributions to gaming control, the gaming industry, and gaming law over the course of decades have shaped each in positive and meaningful ways. Those of us who benefit from them owe Jeff our gratitude."³²⁵

V. CONCLUSION

Silver's adamancy in keeping Rosenthal exiled from Nevada casinos changed the legal landscape of Nevada gaming. The Nevada Supreme Court set the State's precedent that Nevada gaming regulators' rulings with respect to gaming license applications are not subject to judicial review³²⁶—an applicant that is denied a gaming license "has no recourse against" the gaming regulators for their decisions.³²⁷

Moreover, in 1980, the Ninth Circuit adopted *State v. Rosenthal's* reasoning in *Jacobson v. Hannifin*,³²⁸ holding that an applicant's "interest in a gaming license is not so fundamental as to warrant constitutional protection apart from its status under [Nevada] law."³²⁹ Thus, there is no federal claim for a violation of due process if an applicant is denied a gaming license.

Finally, in 1983, the Nevada legislature codified the *State v. Rosenthal* holding³³⁰ in Nevada Revised Statutes section 463.318, declaring that, "[j]udicial review is not available for actions, decisions[,] and orders of the Commission relating to the denial of a license or to limited or conditional licenses."³³¹

Jeffrey A. Silver moved to Nevada with his parents in 1955, and began contributing to Nevada gaming law in 1975 when he met former Board Member, gaming attorney, and gaming executive extraordinaire, Shannon Bybee.³³² He said that Bybee "exuded integrity, that no one could do or say anything to compromise that integrity. . . . He was honest, he was intelligent, he was hardworking, and he definitely was interested in protecting the State of Nevada

³²³ *Id.*

³²⁴ E-mail from Jeffrey A. Silver, Esq., *supra* note 12.

³²⁵ E-mail from Robert D. Faiss, Esq., Partner, Lionel Sawyer & Collins, to author (April 8, 2011 2:55:58 PM PDT) (on file with author).

³²⁶ "[J]udicial review is confined to a final decision or order of the Commission and then only in specified instances." *State v. Rosenthal*, 559 P.2d 830, 834 (Nev. 1977); LIONEL SAWYER & COLLINS, *supra* note 260, at 92.

³²⁷ LIONEL SAWYER & COLLINS, *supra* note 260, at 91.

³²⁸ *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980).

³²⁹ *Id.*

³³⁰ *See Rosenthal*, 559 P.2d at 834.

³³¹ NEV. REV. STAT. § 463.318(2) (2011).

³³² Interview with Jeffrey A. Silver, Esq., *supra* note 10.

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and wanted to make sure I had a good start” in the industry.³³³ When asked how being on the Board made him the successful lawyer he is today, Silver responded, “I am not afraid to say ‘no.’ You must understand that your reputation and the preservation of the system is more important than the money from any client. You have to be able to say ‘no.’ You have to be able to tell them why you are saying ‘no.’”³³⁴

Today, Silver represents clients in front of the Board—the same gaming regulatory arm where he previously served as Member—under the same, strict regulatory framework he helped construct. Jeffrey Silver’s remarkable integrity is the benchmark to which gaming attorneys, licensees, and applicants should strive.

³³³ *Id.*

³³⁴ *Id.*

