

# THE SILVER STATE AND THE BLACK BOOK

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The *State Gaming Control Board List of Excluded Persons*, colloquially referred to as the Black Book (“the Book”), is a coeducational fraternity of involuntary members inducted by the Nevada Gaming Control Board and outlawed from any non-restricted gaming establishment in the State of Nevada as a matter of law.<sup>1</sup> With an acceptance rate that is dwarfed by Ivy League universities, the thirty-two current members include legacy members, *made* members, members who served as the basis for Hollywood characters, and at least one possibly deceased member. Membership is for life, and the only ways out are incontrovertible proof of death or successfully petitioning the Commission for removal, with the former accounting for all of the removals to date.<sup>2</sup> The fifty-six year old book follows the modern history of gaming in Nevada from the influences of organized crime to the technological advances of casino cheats.<sup>3</sup>

Given its name from the black leather that covered it,<sup>4</sup> the original Black Book contained a class of eleven who were inducted in 1960 and bore the ignominious titles of organized crime members, enforcers, and bosses.<sup>5</sup>

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<sup>1</sup> *Authority and Implementation*, NEVADA GAMING CONTROL BOARD, <http://gaming.nv.gov/index.aspx?page=75> (last visited Dec. 12, 2016).

<sup>2</sup> Nev. Gaming Comm. § 28.080.

<sup>3</sup> Abigail Goldman, *Black Book, Vegas' Bad Guys Aren't What They Used to Be*, L.V. SUN (Oct. 11, 2009, 2:00 AM), <http://lasvegason.com/news/2009/oct/11/black-book-vegas-bad-guys-arent-what-they-used-to-be/>.

<sup>4</sup> John M. Glionna, *Trapped Between the Covers of Nevada's Black Book*, L.A. TIMES (Mar. 28, 2013, 7:00 AM), <http://latimes.com/nation/la-na-vegas-frankie-20130327-dto-htmistory.html>.

<sup>5</sup> Stephanie Grimes, *Knowing Vegas: What's the Story Behind Nevada's Black Book?*, L.V. REV.-J. (May 7, 2014, 5:27 PM), <http://www.reviewjournal.com/trending/silver-state/knowning-vegas-what-s-story-behind-nevada-s-black-book>.

Reflecting the extraterritorial influences of the time, all were alleged to have ties with organized crime institutions from outside of Nevada.<sup>6</sup> Arguably the most famous member of the class of 1960 was Salvatore “Momo” Giancana,<sup>7</sup> also known as “Sam the Cigar.”<sup>8</sup> Giancana allegedly led a \$2 billion a year skim from casinos in Nevada,<sup>9</sup> gained his notoriety from myriad alleged violent acts, was tied to a 1963 CIA plot to assassinate Fidel Castro,<sup>10</sup> and caused the revocation of Frank Sinatra’s gambling license.<sup>11</sup> While Fidel ultimately outlived Giancana by forty-one years,<sup>12</sup> and the attribution of the violent acts and the skim remain unproven, Giancana’s stay at Sinatra’s Cal Neva Lodge did cost Sinatra his license—even though Sinatra technically gave it up voluntarily before he was required to respond to a Gaming Commission Complaint.<sup>13</sup> The Board claimed Sinatra’s revocation was evidence that it was serious about bans.<sup>14</sup> However, nearly two decades later, the Nevada Gaming Commission granted Sinatra, who at that time had the benefit of a glowing recommendation from President Reagan, a key employee license.<sup>15</sup>

Unaccustomed to being turned away from establishments and unwilling to accept government interference in their personal lives in general, members of the class of 1960 openly visited various casinos, taunted regulators, and filed suits against the regulations. Louis Tom Dragna was entered into the Black Book on June 13, 1960,<sup>16</sup> and one month later, he entered the Dunes hotel and casino alongside civil rights attorneys William B. Beirne and A.L. Wirin.<sup>17</sup> Employees asked Dragna to leave; yet he refused and proceeded to have a complimentary

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<sup>6</sup> *Id.*

<sup>7</sup> Michael Zennie, *The Most Exclusive Club in Las Vegas? Black Book of 11 Banned Mobsters, Cheats and Crooks Tells Sleazy History of Sin City*, DAILY MAIL (Dec. 3, 2011, 9:21 PM), <http://www.dailymail.co.uk/news/article-2069709/The-exclusive-club-Las-Vegas-Black-Book-11-mobsters-cheats-crooks-banned-casinos-sells-auction-5-250.html>.

<sup>8</sup> *Sam Giancana*, THE MOB MUSEUM, [http://themobmuseum.org/notable\\_names/sam-giancana/](http://themobmuseum.org/notable_names/sam-giancana/) (last visited Mar. 24, 2017).

<sup>9</sup> Grimes, *supra* note 5.

<sup>10</sup> RONALD A. FARRELL & CAROLE CASE, *THE BLACK BOOK AND THE MOB* 40 (3d ed. 1995).

<sup>11</sup> Zennie, *supra* note 7.

<sup>12</sup> Fidel Castro died in 2016, while Salvatore Giancana died in 1975. *See Sam Giancana*, THE MOB MUSEUM, [http://themobmuseum.org/notable\\_names/sam-giancana/](http://themobmuseum.org/notable_names/sam-giancana/) (last visited Mar. 24, 2017); *see also* Anthony DePalma, *Fidel Castro, Cuban Revolutionary Who Defied U.S., Dies at 90*, N.Y. TIMES (Nov. 26, 2016), <https://www.nytimes.com/2016/11/26/world/americas/fidel-castro-dies.html>.

<sup>13</sup> Zennie, *supra* note 7.

<sup>14</sup> *Id.*

<sup>15</sup> Myram Borders, *The Nevada Gaming Commission Granted a Key Employee License*, UPI (Feb. 19, 1981), <http://www.upi.com/Archives/1981/02/19/The-Nevada-Gaming-Commission-granted-a-key-employee-license/9462351406800/>.

<sup>16</sup> FARRELL & CASE, *supra* note 10, at 8.

<sup>17</sup> *Id.* at 40.

dinner at the Sands, where he also saw a show.<sup>18</sup> He then saw a midnight show at the Tropicana and an early-morning show at the Stardust.<sup>19</sup> Another member, Marshall Caifano, came to Las Vegas and stayed at the Tropicana his first night in town, a Thursday.<sup>20</sup> But when management at the hotel became aware of who he was, they told him rooms would not be available for the rest of the weekend.<sup>21</sup> So, he moved to a motel without gaming for two nights and then returned to the Tropicana on Sunday night—when the hotel could no longer claim they were out of rooms.<sup>22</sup> While in Las Vegas, he visited the Riviera, Sahara, Silver Slipper, New Frontier, and Last Frontier casinos, where he was frequently greeted and sometimes joined by owners and hotel executives.<sup>23</sup>

Perturbed by Caifano's open presence in the casinos, Gaming Control Board chairman R.J. Abbaticchio, Jr., accompanied by almost his entire Carson City staff, flew from Reno to Las Vegas.<sup>24</sup> There, a "small army" led by Abbaticchio went to all of the casinos visited by Caifano and very publicly confiscated dice and cards for inspection.<sup>25</sup> The process of picking up cards and dice for inspection, which is normally done by no more than two agents and generally invisible to patrons, was done in such a publicity-seeking way by Abbaticchio that reporters were present at the third hotel he and his staff visited.

Caifano, and soon other members of the Book, moved from flaunting the Book by showing up at casinos to fighting the Book by showing up in court. First, Caifano, who legally changed his name to John Marshall,<sup>26</sup> brought a federal civil rights action against Grant Sawyer, the Governor of the State of Nevada, and the Nevada Gaming Control Board, challenging the constitutionality of the Book. In *Marshall v. Sawyer*, The 9th Circuit Court of Appeals held that Caifano's ejection from a casino, as a result of his presence in the Book, was constitutional.<sup>27</sup>

The Court, with great specificity of the fact pattern used in making its decision, determined that Caifano's entry into the Book without an evidentiary hearing was not a deprivation of his Due Process rights.<sup>28</sup> The Court found that Caifano conceded the facts used for entry into the book, and therefore his own actions validated his entry without a hearing:

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 41.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Marshall v. Sawyer*, 365 F.2d 105, 109 n.4 (1966) ("Plaintiff was born Marchello Caifano in New York City, and legally changed his name to John Michael Marshall in 1955 at Clark County, Nevada.").

<sup>27</sup> *Id.* at 113.

<sup>28</sup> *Id.* at 112.

Marshall [Caifano] in effect concedes the correctness of the agency determination, implicit in its compilation of the black book, that he has an extensive police record. In his complaint he alleged, in detail, his own police record extending from 1929 to 1955. In the pretrial order proposed by Marshall's counsel, but which was not signed by the judge, the same police record was set forth. At the trial, Marshall admitted that he had a police record, and no evidence to the contrary was submitted on his behalf. The trial court expressly found that Marshall has an "extensive" police record, and on this appeal he has not challenged that finding.

In our opinion, one who concedes the correctness of an administrative determination of an adjudicative fact is not entitled to damages or injunctive relief in a civil rights action based on a claim that he was denied an evidentiary hearing in connection with the determination of that fact. Under the indicated circumstances, the due process claim is without substance and involves, at most, a technical violation which warrants neither an award of damages nor vindication in a court of equity.<sup>29</sup>

The Court then went on to point out that its ruling should not be interpreted as a free pass for agencies to determine adjudicative facts without a hearing.<sup>30</sup> "It must be apparent that administrative agencies may not safely assume that, in other proceedings, they will be likewise relieved from liability which might otherwise attach if no evidentiary hearing is provided."<sup>31</sup> Presumptively in response to the Court's decision, in April 1967, seven months after *Marshall v. Sawyer*, NRS 463.153 was enacted, which permits a person who has been added to the Book to demand a hearing by the Commission.<sup>32</sup>

The next challenge came from Anthony John Spilotro, who was placed in the Book on December 7, 1978, and thereafter challenged that placement all the way to the Nevada Supreme Court.<sup>33</sup> Spilotro challenged the constitutionality of the Nevada Revised Statutes that allowed for the creation and enforcement of the Book as well as the adequacy of the hearing he was granted before the Commission under NRS 463.153.<sup>34</sup> He also challenged the statutes allowing placement in the Book as overbroad, yet that challenge was dealt with legislatively and not judicially.<sup>35</sup> Initially, upon being entered into the Book, Spilotro was excluded "from any establishment that is licensed to operate any gambling game, including slot machines."<sup>36</sup> Because of Spilotro's initial lawsuit, "the Legislature amended the statutes [NRS 463.151(3)] in 1981 to exclude licensed gaming establishments that contained slot machines only."<sup>37</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> NEV. REV. STAT. § 463.153 (2015).

<sup>33</sup> *Spilotro v. State, ex rel. Nev. Gaming Comm'n*, 99 Nev. 187, 189 (1983).

<sup>34</sup> *Id.* at 188.

<sup>35</sup> *Id.* at 192.

<sup>36</sup> *Id.* at 192–93.

<sup>37</sup> *Id.* at 193.

The remaining challenges were handled judicially with the Court finding that the purpose of the statutes was regulatory and not penal, and that the list itself was “designed. . .to protect the interests of the State and the licensed gaming industry.”<sup>38</sup> Ultimately, the Court held that the statutes were constitutional on their face and as applied to Spilotro, but reversed and remanded to the district court, to “remand. . .to the Gaming Commission for a statement on the facts on which it relied in placing the appellant on the exclusionary list.”<sup>39</sup> This case also highlights the intertwined history of the Black Book and the Silver State; the chairman of the Nevada Gaming Commission at the time was Harry M. Reid, who would later go on to represent Nevada as both a Congressman and Senator.<sup>40</sup> Moreover, Oscar Goodman, who would later become mayor of Las Vegas, represented Spilotro in court.<sup>41</sup>

An admitted associate of Spilotro who also brought challenge to the Book under the representation of Oscar Goodman was Frank Rosenthal.<sup>42</sup> Rosenthal was added to the Book, but then a Nevada district court ordered his name expunged.<sup>43</sup> However, the Nevada Supreme Court reversed the lower court’s removal, essentially leaving Rosenthal in the Book.<sup>44</sup> *State v. Rosenthal* was actually Rosenthal’s third time before the Nevada Supreme Court; the first two trips involved appeals to “denial[s] of his application for licensing by the State Gaming Commission as a ‘key figure’ employee at the Stardust.”<sup>45</sup> Although both earlier appeals were denied, Rosenthal was still allowed to work in the casino in a non-gaming capacity.<sup>46</sup> However, this case pertained to his inclusion in the Book, and although the Commission’s ruling would once again be upheld, the results were dramatically different for Rosenthal—he would no longer be allowed back into that or any other Nevada casino.<sup>47</sup>

The Court analyzed three of the criteria set forth under NRS 463.151(3)<sup>48</sup>

<sup>38</sup> *Id.* at 191.

<sup>39</sup> *Id.* at 195.

<sup>40</sup> *About Senator Harry Reid*, U. S. SENATOR FOR NEV. HARRY REID, <http://www.reid.senate.gov/about> (last visited Dec. 12, 2016).

<sup>41</sup> *Spilotro*, 99 Nev. at 187.

<sup>42</sup> *State v. Rosenthal*, 107 Nev. 772 (1991).

<sup>43</sup> *Id.* at 774.

<sup>44</sup> *Id.* at 773.

<sup>45</sup> *Id.* at 774.

<sup>46</sup> *See id.* at 773.

<sup>47</sup> *Id.*

<sup>48</sup> In making that determination, the Board and the Commission may consider any:

- (a) Prior conviction of a crime which is a felony in this state or under the laws of the United States, a crime involving moral turpitude or a violation of the gaming laws of any state;
- (b) Violation or conspiracy to violate the provisions of this chapter relating to:
  - (1) The failure to disclose an interest in a gaming establishment for which the person must obtain a license; or
  - (2) Willful evasion of fees or taxes;
- (c) Notorious or unsavory reputation which would adversely affect public

and listed how each applied to Rosenthal. The Court found that subsection (a) applied because Rosenthal had a 1963 conviction for attempting to bribe a college basketball player; subsection (c) applied because Rosenthal admitted association with organized crime figures; and subsection (d) applied because Rosenthal had been banned from Florida race tracks.<sup>49</sup> Rosenthal's other challenges, which included a due process violation as a result of a protracted delay between his initial nomination and ultimate inclusion in the Book, and the arbitrary and capricious nature of his inclusion, were also unheeded by the Court.<sup>50</sup>

Frank "Lefty" Rosenthal and Anthony "The Ant" Spilotro were also given the nicknames of, Sam 'Ace' Rothstein and Nicky Santoro respectively, when their lives—and in Spilotro's case, death—were artistically *documented* in Martin Scorsese's movie *Casino*.<sup>51</sup> Moviegoers were given a narrated view of the influences and actions of organized crime that served as the genesis for the Book and the reason for the first decades of entries.<sup>52</sup> Eighteen words voiced over by Nicky Santoro in the beginning of the movie, as the screen shows a seemingly untouched expanse of the Nevada desert, adumbrated what the Book was fighting, "Got a lot of holes in the desert, and a lot of problems are buried in those holes."<sup>53</sup> But, the movie ended with an acknowledgement of how gaming in Nevada changed. Sam Rothstein said, "The town will never be the same."<sup>54</sup> And he was right. In the mid 1980s, organized crime lost its grip on gaming in Nevada due to pressure and convictions by federal authorities, investment by legitimate corporations, and even the Book itself.<sup>55</sup> However, the Book remained—and like the industry it is designed to protect—it evolved.

In the second half of the 1980s, the Book became coeducational and focused on those who were stealing *from* the casinos, rather than those who were stealing *with the help of* the casinos. Modern era members of the Book are cheats and thieves, no longer surreptitiously skimming, but rather boldly stealing. In 1986, Sandra Kay Vaccaro, a participant in a slot-cheating ring, was placed in the

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confidence and trust that the gaming industry is free from criminal or corruptive elements; or

- (d) Written order of a governmental agency which authorizes the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.

Nev. Rev. Stat. Ann. § 463.151 (2015).

<sup>49</sup> See *Rosenthal*, 107 Nev. at 775.

<sup>50</sup> *Id.* at 775–77.

<sup>51</sup> *Casino*, FACT BEHIND FICTION, [http://www.factbehindfiction.com/index\\_files/Casino.htm](http://www.factbehindfiction.com/index_files/Casino.htm) (last visited Mar. 24, 2017).

<sup>52</sup> See generally *id.*

<sup>53</sup> *CASINO* (Universal Pictures 1995).

<sup>54</sup> *Id.*

<sup>55</sup> Jeff German, *From Siegel to Spilotro, Mafia Influenced Gambling, Regulation in Las Vegas*, L.V. REV.-J. (Mar. 9, 2014, 8:33 AM), <http://www.reviewjournal.com/nevada-150/siegel-spilotro-mafia-influenced-gambling-regulation-las-vegas>.

Book.<sup>56</sup> Brent Morris had eleven convictions for charges related to cheating at gambling when he was placed in the Book in 1994.<sup>57</sup> He was then arrested in 2010<sup>58</sup> and found guilty of unlawful entry into a gaming establishment while on the excluded persons list and three counts of fraudulent acts in a gaming establishment for post betting at craps at three different casinos in Las Vegas.<sup>59</sup> He was given three concurrent twelve-month sentences for the unlawful entries.<sup>60</sup> Larry Keith Green was placed in the Book in 2013<sup>61</sup> for attempting to use an electronic device to skim slot machines.<sup>62</sup> Tasia Musa was placed in the Book in 2015 after multiple convictions for grand larceny<sup>63</sup> for stealing players' chips while they played, often without his victims even knowing.<sup>64</sup> As of 2013, he had stolen \$220,000 in chips.<sup>65</sup> The evolution of who is selected for the Book has been driven administratively and not judicially or legislatively.

For the last two decades, entry into the Book meant first crossing the desk of Deputy Chief James Taylor of the Enforcement Division of the Gaming Control Board. To put someone in the Book, he "needs" a felony and a nexus.<sup>66</sup> It only takes one felony conviction to qualify, but the nexus requirement is a little more interpretive.<sup>67</sup> Broadly described, a felon facing nomination must have a criminal past dealing with the casino industry and a tie to Nevada.<sup>68</sup> Taylor wants nominees to be the "worst of the worst" and has even received recommendations

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<sup>56</sup> *Who's on the List*, L.V. SUN (July 4, 1999, 9:29 AM), <https://lasvegassun.com/news/1999/jul/04/whos-on-the-list/>.

<sup>57</sup> Brent Eli Morris, NEV. GAMING CONTROL BD., <http://gaming.nv.gov/index.aspx?page=196> (last visited Mar. 24, 2017).

<sup>58</sup> Richard N. Velotta, *Man on Nevada's Black Book Arrested at Caesars Palace*, L.V. SUN (Sept. 23, 2010, 5:08 PM), <http://lasvegassun.com/news/2010/sep/23/man-nevadas-black-book-arrested-caesars-palace/>.

<sup>59</sup> *Id.*; See also Clark County Courts, CASE NO. C-10-269265-1 EIGHTH JUD. DIST. CT. REC.S INQUIRY, <https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=8721462> (last visited Dec. 12, 2016).

<sup>60</sup> Clark County Courts, *supra* note 59.

<sup>61</sup> Larry Keith Green, NEV. GAMING CONTROL BD., <http://gaming.nv.gov/index.aspx?page=281> (last visited Dec. 12, 2016).

<sup>62</sup> Cy Ryan, *Las Vegas Slot Cheat May Be Headed for Nevada's Black Book*, L.V. SUN (July 11, 2013, 5:10 PM), <http://lasvegassun.com/news/2013/jul/11/las-vegas-slot-cheat-may-be-headed-nevadas-black-b/>.

<sup>63</sup> Clark County Courts, CASE NO. C-13-292266-1 EIGHTH JUDICIAL DIST. COURT RECORDS INQUIRY, <https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11119639> (last visited Mar. 24, 2017).

<sup>64</sup> Nicole Raz, *Basic Casino Cheating Scams Hardest to Catch, Gaming Experts Say*, L.V. REV.-J. (Sept. 26, 2016, 4:36 PM), <http://www.reviewjournal.com/business/casinos-gaming/basic-casino-cheating-scams-hardest-catch-gaming-experts-say>.

<sup>65</sup> *Id.*

<sup>66</sup> Interview with James Taylor, Deputy Chief, Nev. Gaming Control Bd., in Las Vegas, Nev. (Dec. 7, 2016) [hereinafter Taylor Interview].

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

from casino operators to investigate individuals believed to have a deleterious effect on the industry.<sup>69</sup>

Taylor and his team create a file on potential nominees, which is given to the Gaming Division of the Office of the Attorney General to use in their presentation to the Board and Commission. Currently, one nominee is represented on Taylor's desk by a manila folder bulging with nearly two inches of paperwork, which will be used to justify the yet-undisclosed person's nomination.<sup>70</sup> Taylor also serves the nominee with notice in accordance with NRS 463.152, sometimes against uncooperative nominees.<sup>71</sup> Herbie Blitzstein, who was murdered in between his nomination and inclusion in the Book, was served by a certified letter with no return address after he repeatedly yelled through the door that he was not home when attempts were made to serve him in person.<sup>72</sup> Stephen Cino was served while in prison and told Taylor that he had, "ruined his lunch."<sup>73</sup>

Taylor also argues for the expansion of the prohibitory effect of the Book to include gaming areas anywhere in Nevada, including at restricted license locations.<sup>74</sup> Currently, the Book only excludes members from entering non-restricted establishments, since a member would be prohibited from entering most grocery stores and pharmacies in Nevada if he or she were banned from establishments that have restricted licenses.<sup>75</sup> But a person in the Book who has been convicted of using technology to steal from a slot machine can lawfully access thousands of slot machines around the State.<sup>76</sup>

One individual opposing the Book and its prohibitory effect on entrance into the entire casino property in particular is movie star, former Las Vegas mayor, and attorney—to Anthony Spilotro, Frank Rosenthal, and other Book members—Oscar Goodman. In his memoir, Goodman refers to the Book as "another example of government abuse."<sup>77</sup> He likens the pursuit of his clients for entry into the Book to the Salem Witch Hunt and finds particular fault with the use of hearsay during hearings and the targeting of Italian Americans.<sup>78</sup> Goodman is responsible for having the statute changed in 1981 to allow members to go to establishments that only have slot machines.<sup>79</sup> He is ok with felons like

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> OSCAR GOODMAN & GEORGE ANASTASIA, BEING OSCAR: FROM MOB LAWYER TO MAYOR OF LAS VEGAS, ONLY IN AMERICA 74 (2013).

<sup>78</sup> Interview with Oscar Goodman, Mayor of Las Vegas 1999-2011, in Las Vegas, Nev. (Nov. 30, 2016) [hereinafter Goodman Interview].

<sup>79</sup> *Id.*



Tasia Musa not being permitted into a casino, since Musa stole in a casino.<sup>80</sup> But Goodman's daughter's bat mitzvah had to take place outside a casino so that Joey Cusumano, a member, class of 1990, who had one conviction for an insurance scam, could attend.<sup>81</sup> Goodman faulted the Book for not requiring the nexus of a gaming conviction and points out by way of example that Spilotro was entered into the Book despite never having a gaming-related conviction.<sup>82</sup> Goodman says the Nevada Supreme Court only ruled against Spilotro—sending him into the Book—after the FBI threatened to investigate the justices if they did not rule that way.<sup>83</sup>

While Goodman is an authority on the Book's past, prognostications about the Book's future can be best gleaned from the newest member of the Gaming Control Board, Terry Johnson. Member Johnson has a "one and done" mindset and believes that certain singular actions by individuals merit that person's placement in the Book.<sup>84</sup> He says this with a global awareness of the industry he regulates. He notes a "larger list would increase the cost of compliance," but there may be room for growth.<sup>85</sup> Whereas Nevada's list has thirty-two current members, New Jersey's is forty-six pages.<sup>86</sup> Johnson partly justifies the differences in the list lengths between jurisdictions to their different ways of regulating the industry in general; in the abstract, a licensee may face significant fines in another jurisdiction for an action that Nevada would consider minute.<sup>87</sup>

Johnson also articulates how the industry has evolved. Supremely knowledgeable about the current threats to his industry, he points out that non-gambling areas of the casino like nightclubs—seven of the top ten clubs in 2014 were in Las Vegas<sup>88</sup>—may draw those who intend to threaten the industry and should therefore also be a target of the Book.<sup>89</sup> In 2015, gambling revenue accounted for only 43.2% of total revenue for the 271 casinos in Nevada that grossed over \$1 million in revenue;<sup>90</sup> so non-gambling activities may still have

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<sup>80</sup> *Id.*

<sup>81</sup> GOODMAN & ANASTASIA, *supra* note 77, at 78.

<sup>82</sup> Goodman Interview, *supra* note 78.

<sup>83</sup> *Id.*

<sup>84</sup> Interview with Terry Johnson, Member, Nev. Gaming Control Bd., in Las Vegas, Nev. (Dec. 2, 2016) [hereinafter Johnson Interview].

<sup>85</sup> *Id.*

<sup>86</sup> 439 people are on New Jersey's excluded persons list as of March 24, 2017. *Exclusion List*, NJ DIV. OF GAMING ENFORCEMENT (2017), <http://www.nj.gov/oag/ge/exclusion/fullexcl1.pdf> (last visited Mar. 24, 2017).

<sup>87</sup> Johnson Interview, *supra* note 84.

<sup>88</sup> Hugh McIntyre, *America's 10 Biggest Nightclubs Earned Over \$550 Million in Revenue Last Year*, FORBES (May 26, 2015, 7:50 AM), <http://www.forbes.com/sites/hughmcintyre/2015/05/26/americas-10-biggest-nightclubs-earned-over-550-million-in-revenue-last-year/#74d352582762>.

<sup>89</sup> Johnson Interview, *supra* note 84.

<sup>90</sup> *Nevada Gaming Abstract - 2015*, NEV. GAMING CONTROL BD. (Jan. 7, 2016), <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10751>.

a nexus to the industry.<sup>91</sup> Johnson reiterates that Nevada has an “economic dependency” on casinos and the intention of the Book is to protect the industry from reputational harm, which in turn would have a negative effect on the entire State.<sup>92</sup> As citizens of that State, Mayor Goodman, Deputy Chief Taylor, and Member Johnson all have a vested interest in the success of the industry and, by extension, the Book.

While there may be an increase in the Book’s membership paralleling the growth of non-gaming activities, there will also likely be a correlated increase in demand by those already in the Book to visit non-gaming areas of casinos. When asked how those in the Book go to a restaurant in a casino, Peter C. Bernhard, Chairman of the Nevada Gaming Commission from 2001 through 2014 said, “They don’t. Unless they have a very good disguise.”<sup>93</sup> Deputy Chief Taylor once turned down Frank Rosenthal’s son’s request for his father to be granted a waiver.<sup>94</sup> When recounting the incident, Taylor said, “It’s not me saying no, it’s the law saying no.”<sup>95</sup> But, there should be a formalized waiver process for those in the Book to go to events in non-gaming areas. There is even a process for Federal prisoners to be temporarily released from custody.<sup>96</sup>

Additionally, those who have been nominated for entry into the Book should be afforded pro bono representation for their appearance before the Commission. The 2012 pro bono program set up by the Gaming Law Section of the State Bar of Nevada to represent those seeking a gaming license could serve as a model.<sup>97</sup> While the bulging manila folder on Deputy Chief Taylor’s desk may encourage many to claim that there is sufficient justification for nominees to be added to the Book without representation, as Mayor Goodman wrote when answering questions about defenses he provided in various cases, “[u]npopular clients still deserve representation. Our adversarial system is set up so that the accused is presumed innocent and must be proven guilty.”<sup>98</sup> Clearly, there is no Sixth Amendment right to counsel in the proceedings before the Commission,<sup>99</sup> but to further entrench Nevada as the model for gaming law and regulation, pro bono representation should be encouraged for those facing inclusion in the Book.

The future of the Book is literally yet to be written, and it is unknown who will be added to it, or why. In an industry of no sure bets, there is little doubt for

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<sup>91</sup> Johnson Interview, *supra* note 84.

<sup>92</sup> *Id.*

<sup>93</sup> Peter C. Bernhard, *The Oral History of Peter C. Bernhard—Chairman of the Nevada Gaming Commission*, 4 UNLV Gaming L.J. 189, 214 (2013).

<sup>94</sup> Taylor Interview, *supra* note 66.

<sup>95</sup> *Id.*

<sup>96</sup> 18 U.S.C. § 3622 (2012).

<sup>97</sup> Scott Scherer, *Pro Bono Representation in the Gaming Employee Registration Process*, NEVADA GAMING LAWYER 24 (Sept. 2012), [https://www.nvbar.org/wpcontent/uploads/Gaming\\_Law\\_2012\\_Pro\\_Bono\\_Representation1\\_0.pdf](https://www.nvbar.org/wpcontent/uploads/Gaming_Law_2012_Pro_Bono_Representation1_0.pdf).

<sup>98</sup> GOODMAN & ANASTASIA, *supra* note 77, at 115.

<sup>99</sup> U.S. CONST. amend. VI (The Sixth Amendment applies “In all criminal prosecutions. . .,” yet Commission hearings are not criminal prosecutions).

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the continued need of an exclusion list as long as gambling exists. Over the last half century, the State Gaming Control Board List of Excluded Persons has traced a history of the nefarious individuals and their negative effects on gaming as well as the noble individuals who investigate, adjudicate, and even defend them. Over the next half century and beyond, the roles of these four groups of individuals will exist, but only the future will tell who will play them.