IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:	: **SUPREME COURT OF PENNSYLVANIA**
	: **18 W.D. MISC. DKT. 2009**
THE THIRTY-FIRST STATEWIDE	:
	: **ALLEGHENY COUNTY COMMON PLEAS**
INVESTIGATING GRAND JURY	: **CP-02-MD-1124-2009**
	:
	: **NOTICE NO. 5**

ORDER SEALING GRAND JURY REPORT NO. 1

The Court has accepted Grand Jury Report No. 1. This Grand Jury Report shall be sealed and no person shall disclose a return of the Grand Jury Report except at such time deemed appropriate by the Office of Attorney General, or as otherwise directed or permitted by order of the supervising judge.

SO ORDERED this 19 day of May, 2011.

NORMAN A. KRUMENACKER, III
Supervising Judge
Thirty-First Statewide Investigating Grand Jury

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:	: SUPREME COURT OF PENNSYLVANIA : 18 W.D. MISC. DKT. 2009
THE THIRTY-FIRST STATEWIDE	:
INVESTIGATING GRAND JURY	: ALLEGHENY COUNTY COMMON PLEAS : CP-02-MD-1124-2009 : : NOTICE NO. 5

ORDER ACCEPTING AND FILING
INVESTIGATING GRAND JURY REPORT NO. 1

AND NOW, this 19 day of May, 2011, upon review of Investigating Grand Jury Report No. 1, and finding that said report properly regards a matter investigated by the Grand Jury and proposes recommendations for administrative and executive action in the public interest based upon stated findings, and further finding that said report is based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act, 42 Pa.C.S. § 4541 et seq., and is supported by the preponderance of the evidence it is hereby:

ORDERED

1. That investigating Grand Jury Report No. 1 is accepted by the Court with the direction that the original be relayed as directed below by the Office of Attorney General. Disclosure shall be made, in whole or in part, at a later date as an independent document or attached to a larger grand jury report, to be determined by another Grand Jury.
2. That the Attorney for the Commonwealth deliver copies of the Report to the following:
    a. Both Houses and all four caucuses of the Pennsylvania Legislature;
    b. The Governor of Pennsylvania;

c. The Supreme Court of Pennsylvania;

d. The Disciplinary Board of the Supreme Court of Pennsylvania;

e. The Department of the Auditor General;

f. The Pennsylvania Gaming Control Board;

g. The Pennsylvania Treasury;

h. The Pennsylvania Department of Revenue;

i. Any future investigating grand juries empanelled by the Office of the Attorney General.

BY THE COURT:

NORMAN A. KRUMENACKER, III
Supervising Judge

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:	: **SUPREME COURT OF PENNSYLVANIA**
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	: **NOTICE NO. 5**

TO THE HONORABLE NORMAN A. KRUMENACKER, III, SUPERVISING JUDGE:

REPORT NO. 1

We, the members of the Thirty-First Statewide Investigating Grand Jury, based upon facts received in the course of an investigation authorized by the Investigating Grand Jury regarding the establishment and issuance of gaming licenses by the Pennsylvania Gaming Control Board and proposing recommendations for executive and administrative action in the public interest. So finding, with not fewer than twelve concurring, we do hereby adopt this Report for submission to the Supervising Judge.

Carson Marie Lindley
Foreperson – The Thirty-First
Statewide Investigating Grand Jury

DATED: May 19, 2011

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:	: **SUPREME COURT OF PENNSYLVANIA** : **18 W.D. MISC. DKT. 2009**
THE THIRTY-FIRST STATEWIDE	:
INVESTIGATING GRAND JURY	: **ALLEGHENY COUNTY COMMON PLEAS** : **CP-02-MD-1124-2009** : : **NOTICE NO. 5**

GRAND JURY REPORT NO. 1

INTRODUCTION

We, the members of the Thirty-First Statewide Investigating Grand Jury, have conducted an investigation of possible violations of law by individuals during the establishment of the Pennsylvania Gaming Control Board and the issuance of gaming licenses by that entity from approximately July 5, 2004 through the present. Our investigation originated as a result of information received, in part, from former legislators, staff of former legislators, and employees of the Pennsylvania Gaming Control Board. The investigation was initiated into an array of alleged illegality that primarily focused upon the conduct of, and use of, investigations into the suitability of various applicants for gaming licenses.

The Grand Jury reviewed significant and wide-ranging evidence in this investigation, from a variety of sources. We received evidence of the investigative, regulatory and licensing processes of the Pennsylvania Gaming Control Board from participants involved in all aspects of that process between 2004 and the present. Witnesses have included, but not been limited to: Past and current Gaming Board Commissioners; past and current Directors and staff in the Gaming Board's Bureau of Licensing; past and current Directors in the Gaming Board's Bureau of Investigations and Enforcement; attorneys assigned to both the Office of Chief Counsel and the Office of Enforcement Counsel; past and current investigators in the Gaming Board's Bureau of Investigations and Enforcement; past and current Directors and staff of the Gaming Board's Bureau of Corporate Compliance and Internal Controls; gaming experts; drafters of the Gaming Act; and, Executive Staff of the Pennsylvania Gaming Control Board. The Grand Jury also heard comprehensive testimony from agents of the Office of Attorney General regarding their investigatory findings and interviews. Lastly, the Grand Jury reviewed extensive documentary evidence recovered from a variety of sources, including: the Pennsylvania Gaming Control Board, the Department of Revenue, the Auditor General, other gaming jurisdictions, financial institutions, current and former consultants retained by the Pennsylvania Gaming Control Board, the Pennsylvania Harness and Horse Racing Commission, individual gaming applicants, and other law enforcements agencies.

The Gaming Act established, in essence, a 34% financial stake held by the people of Pennsylvania in the licensed gaming facilities (34% represents the tax rate on the daily gross revenue of the slot machines). The Pennsylvania Gaming Control Board had the fiduciary duty to foster and protect this taxpayer stake in a multibillion dollar industry. This Grand Jury undertook this investigation to determine what, if any, violations of law occurred by the public officials and/or private citizens involved in the initial attempt to develop and license Gaming in the Commonwealth of Pennsylvania. Additionally, where the Grand Jury was able to uncover facts and circumstances that amounted to non-criminal misconduct we have endeavored to delineate those occurrences in the text of this report. We believe it is vitally important to the general public and taxpayers of Pennsylvania that the facts associated with the development of the gaming industry be presented as comprehensively and completely as possible.

The Gaming Act provided an adequate framework for the safeguarding of the people's interests in effective, profitable, and safe gaming practices in Pennsylvania. Interpreted correctly, with a proper focus on the best interests of Pennsylvania's taxpayers, the implementation of the Act should have resulted in premiere gaming facilities operated by the finest venders in the Country. The Grand Jury, finds that the following subparts of the Gaming Act properly appreciated and articulated the aims of the Act and appropriate mission of the Board:

> (1) The primary objective of this part to which all other objectives and purposes are secondary is to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.
>
> (3) The authorization of limited gaming is intended to provide a significant source of new revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives.
>
> (7) Participation in limited gaming authorized under this part by any licensee or permittee shall be deemed a privilege, conditioned upon the proper and continued qualification of the licensee or permittee and upon the discharge of the affirmative responsibility of each licensee to provide the regulatory and investigatory authorities of the Commonwealth with assistance and information necessary to assure that the policies declared by this part are achieved.
>
> (11) It is necessary to maintain the integrity of the regulatory control and legislative oversight over the operation of slot machines in this Commonwealth; to prevent the actual or appearance of corruption that may result from large campaign contributions; ensure the bipartisan administration of this part; and avoid actions that may erode public confidence in the system of representative government.

As this report will set out, the Grand Jury more specifically finds that the Pennsylvania Gaming Control Board, through its administration and regulatory process, neglected or wholly ignored these public policy objectives and in particular engaged in conduct that: failed to thoroughly protect the public from unlawful gaming practices; failed to maximize potential new revenue to the Commonwealth to support property tax relief; allowed licensees to participate as a matter of right without requiring the minimum affirmative responsibilities on their part; and, otherwise engaged in activities which eroded, at a minimum, this Grand Jury's confidence in the system.

The Board took the public policy objectives and essentially turned them on their head. Anne Neeb, the former Executive Director of the Board and one of the architects of the agency and its policies explained that the mission of the Board was to "make the licensing process fair and to protect the citizens of the Commonwealth." As this report will bear out, the Grand Jury finds that the Board became pre-occupied, fixated, and singularly focused on making the licensing process fair to the applicants at the expense of adequately protecting the citizens of the Commonwealth. As an experienced gaming law attorney with the Board testified, obtaining a gaming license is not a "right" but a "privilege". This crucial measure of the objective became lost in this process.

Additionally, it is clear that the Pennsylvania Gaming Control Board, from its inception, was dedicated to the over-arching goal of commencing gaming tax receipts, in lieu of all other obligations. The objective to collect and expand this new source of tax revenue created, from the outset, numerous self-imposed problems and statutory devaluations that hampered the proper functioning of the gaming control process. It remains an open question as to whether the time and expense invested was necessary. It seems possible that, absent any consideration of the applicants' suitability, the licenses would have been awarded in the same manner. No applicant was ever deemed unsuitable, despite its clear existence in some cases, leading the board to presumably make its decisions on non-suitability factors.

LEGISLATION

A. *Overview*

Gaming in Pennsylvania became a central issue during the 2002 gubernatorial campaign season. Indeed, the push to bring gaming to Pennsylvania was introduced as part of the first piece of legislation initiated by Governor Rendell in 2003. *The Plan for a New Pennsylvania,* proposed using slot machine revenue to reduce taxes by $1.5 billion. Initially, the idea was to allow for slots at horse and harness racing facilities. Based upon a closer look at the potential revenue to be generated at racinos, it quickly became apparent that the public goal, and promise, of reducing property taxes by at least one billion dollars could not be achieved by simply allowing slots at horse/harness racing facilities. The discussion among the gaming experts and architects of the legislation was thereafter expanded to licensing additional stand-alone casinos and resorts.

By June or July of 2003, drafting of potential gaming legislation started in earnest. The process was informed by a report prepared by The Innovation Group for the Senate Democrat Appropriations Committee of the Commonwealth of Pennsylvania entitled, "Pennsylvania Slot Machine Facilities: Statewide Revenue Projections." The report was premised on the idea of allowing the operation of slot machine parlors at six horse racetracks as well as six additional, non-racetrack facilities. The Innovation Group examined two scenarios, "1) the locations of the six non-racing facilities being pre-determined; 2) the locations of the six non-racing facilities based on the optimal market potential and thus the maximum state tax revenue potential." For Scenario One, the pre-determined locations were: two facilities in downtown Philadelphia, one facility in downtown Pittsburgh, one facility in Long Pond, and two locations to be determined. In evaluating the gaming market, The Innovation Group assumed the following factors: 1) that 12 casinos would be operating 24 hours per day, 364 days per year; 2) reel and video machines would be permitted; 3) there would be a minimum of 1500 and maximum of 3000 machines per facility; 4) a 34% state gaming tax rate on gross daily receipts; 5) 46% of remaining daily receipts to license holder; and, 6) a $50 million one-time license fee.

The Innovation Group report concluded that, under Scenario One, additional facilities in Allentown and Shrewsbury would add the greatest revenue benefit to the Commonwealth. Combining revenues from tourism and the local market, the Innovation Group concluded that the market potential for Scenario One was $2.77 billion which, at a 34% tax rate, represented estimated revenues for the Commonwealth of approximately $941 million. Under Scenario Two, the report concluded that 3,000 slot machine facilities in the following locations would generate the greatest statewide revenues: Philadelphia (5,000 slot machines allotted for this facility), West Philadelphia, Allentown, Shrewsbury, New Castle, and Pittsburgh. The report estimated the market potential at $2.94 billion, with estimated tax revenues of $999.8 million.

The Innovation Group Report and market analysis clearly influenced the Category 2 slot machine license eligibility and location sections of the Act. However, virtually every other section of the Act was heavily influenced by lobbyists and public interest groups of every variety. As with any major legislative initiative, the drafters of the Act testified that they were inundated with phone calls from interested parties essentially every hour of every day until the passage of the Act.. In addition to the concerns raised by lobbyists, interest groups, and private citizens, consideration was also given to the legislative and regulatory structures of other gaming jurisdictions.

Even prior to the passage of the Act, legislators began considering candidates for what would become the Pennsylvania Gaming Control Board. In June of 2004, Senator Mellow met with William Conaboy and indicated that if the Act passed he would have an appointment to the Board. He asked if Conaboy would consider the position. Initially, Conaboy responded by expressing concern about his existing work obligations. Senator Mellow explained that the Board positions would not involve a full-time commitment. Conaboy raised a second concern – that Louis DeNaples would likely be an applicant for a gaming license and he knew him well. As an attorney, Conaboy represented him in the past and DeNaples served on the Board of Directors for the company he worked for. Unequivocally, Conaboy stated that he would not be able to vote on anything concerning DeNaples. Subsequently, the Act passed and ultimately Conaboy accepted an appointment as a Commissioner to the Board. When he accepted the position, Conaboy recalls the following interaction with Senator Mellow, "he said he was only going to say it one time, that he was saying it then because I was not on the Board as of that date, he said his interest was solely his Senatorial district, and if that applicant was qualified and met all the requirements of the Gaming Act, that he would like to see a casino in his District."

The passage of the Act itself was not insignificant. In early 2004, the State House received a bill that came to be called Act 71, a thirty-three line document concerning background checks at horse racetracks around the State. It passed the House after forty-seven days and then moved on to the Senate. It sat in the Senate for one hundred days and then, on July 1, 2004 the original thirty-three lines were scratched and a one hundred forty-five page addition was attached. On the afternoon of Saturday, July 3, 2004, the House started debating the bill. Promises were made and deals were struck to secure the necessary votes. Some of these promises influenced the final version of the bill, while others influenced the very make-up of the Gaming Control Board and arguably the award of certain licenses.[1]

[1] By way of example, there was an effort by the Black Caucus to pull their support for the gaming legislation. Former Chief of Staff to Representative DeWeese, Michael Manzo testified that at the eleventh hour, the Black Caucus threatened to pull their support for the pending House bill unless they were guaranteed that an African American would be appointed to the Gaming Control Board and that at least one of the fourteen recipients of a gaming license would be African American. While the text of the bill was not altered, the Black Caucus received promises from Representatives DeWeese and Veon that they would work hard to address their concerns. As a further assurance, DeWeese and Veon explained that they would appoint Jeff Coy to the Board and that he would be

The Act created three classifications of slot machine licenses. Category 1 licenses permit the placement and operation of slot machines at licensed racetrack facilities. To be eligible for a Category 1 license, the applicant has to obtain approval from the State Horse Racing Commission or the State Harness Racing Commission to conduct thoroughbred or harness racing meetings. The Act permits the award of no more than seven Category 1 licenses. Additionally, the Act permitted the Board to award conditional slot machine licenses to Category 1 applicants upon completion of their background investigations. Category 2 licenses permit the placement and operation of slot machines at up to 5 stand-alone casinos. Two licensed facilities were to be placed in a city of the first class and one licensed facility was to be placed in a city of the second class. One of the framers of the Act explained that while the Act did not dictate the location of the stand-alone casinos, two casinos in the Philadelphia area and one casino in the Pittsburgh area were virtually assured based upon the municipal class designations and mileage restrictions. In particular, he noted

> We used a mileage preclusion by saying that - - I mean, keeping in mind, again, and I know I repeat this a thousand times but it's critically important. Pennsylvania is literally the majority shareholder of each of these venues, so we needed to make as much money. The more successful a Gaming venue is, the better off the State would be financially.
>
> So competition is bad, particularly if they're going to cannibalize one another. So we would put a venue let's say in Grantville, Pennsylvania, where there is a thoroughbred racing track. It does nobody any good if we put another one in Hershey or another one next door because you're not growing the market. You're just taking the same market and cutting it up in smaller pieces.
>
> So what we did is put little circles on the map around each of these venues and say you can't put another one on at least within ten years within - - inside of that circle, and therefore it kind of created a funnel affect by which that factor plus I got to finance \$50 million made it extremely predictable where the non-stated casinos would pop up.

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responsive to their needs. While Coy was not privy to the conversations between the Black Caucus and Representatives Veon and DeWeese, he did recall that the "Black Caucus wanted to make sure that minorities were involved in Gaming at every level, that there were opportunities for minorities." Just after midnight on July 4, 2004, the State House of Representatives passed the bill.

> We knew there would be definitely one in the Lehigh Valley. I couldn't tell you if it was Bethlehem or Allentown in 2003, but I knew - - willing to bet the ranch there was going to be one there, and that somebody may try to put one in Shrewsbury but politically everyone would oppose it.
>
> And that's how the Act was kind of written to provide that kind of predictability, which was also helpful for those that opposed Gaming, they knew exactly where the venues were going to be and there were no real big serious surprises.

Category 3 licenses permit the placement and operation of slot machines at up to 2 well-established resort hotels having no fewer than 275 guest rooms and year-round recreational guest amenities.

While the Pennsylvania Race Horse Development and Gaming Act, hereinafter "the Act" served to create a new industry in Pennsylvania, it did so with due consideration to the concerns raised by those opposed to gaming. One of the drafters of the legislation, reiterated throughout his testimony that "Pennsylvania, through the tax rate, was going to end up being the majority shareholder of every gaming venue in the state." Accordingly, the Act was designed to both protect the public and maximize the public's financial stake in each casino project. The Board, created by the Act, was correspondingly imbued with the same mandate – to protect the public through the regulation and policing of all activities involving gaming.

B. ***Structure, Responsibilities, and Obligations of the Board***

The legislative leaders who passed the Gaming Act envisioned, constructed, and vested the Board with considerable power. Section 1201 of the Act creates and establishes an independent board known as the Pennsylvania Gaming Control Board, consisting of three members appointed by the Governor, and one member appointed by each of the following: the President pro tempore of the Senate; the Minority Leader of the Senate; the Speaker of the House of Representatives; and the Minority Leader of the House of Representatives. Section 1201 provides for a qualified majority vote:

> (1) Except as permitted in paragraphs (2) and (3), any action, including but not limited to, the approval, issuance, denial or conditioning of any license by the board under this part or the making of any order or the ratification of any permissible act done or order made by one or more of the members, shall require a qualified majority vote consisting of at least one gubernatorial appointee and the four legislative appointees.
>
> (2) Any action to suspend or revoke, not renew, void or require forfeiture of a license or permit issued under this part, to impose any administrative fine or penalty under this part or to issue cease and desist orders or similar enforcement actions shall require a majority vote of all the members appointed to the board.

Thus, the make-up of the Board coupled with the voting provisions, effectively required unanimous approval of license issuances and vested each legislative appointee with veto power over the entire Board.

The Grand Jury heard testimony regarding the voting provision, the appointment process, and the way in which both provisions served to politicize the Board. Frederic Gushin, Managing Director of Spectrum Gaming Group, was hired early on to provide Pennsylvania with guidance about how to structure the Board and conduct background investigations of applicants for gaming licenses. Upon reviewing the Act, Gushin recalled having significant concern about the appointment of members to the Board. Gushin testified,

> Then when you went to the Act, they were appointed by different political figures in the State, the governor, the president of the Senate, the Speaker of the House, but they weren't confirmed by the entire Senate, which is the typical way most regulators are confirmed on these boards and so the question that we raised at the time was, are these people representing the public interest, or are they representing the people that appointed them, and would they take instruction from the people that appointed them, or would their mandate be broader, and that was - - that kind of is a very important issue because it sets the tone for the Board.
>
> Is the Board going to be a legitimate Gaming Board? Is it going to be a legitimate Gaming Commission, or are they going to take orders from the people who appointed them because they might want to be reappointed again? They might feel a political obligation.

> And let me just backtrack. In our experience, and we have done work, you know, from Cambodia to New Jersey, to whatever, politics and gaming are a bad mix, because you know, politics, there are different interests in the political system.
>
> Gaming - - and we are not naïve, either. There's always going to be an element of politics there, but where that balance shifts, where politics becomes preeminent, it's a blueprint for disaster, and we have said that to all our clients.
>
> We - - I forgot to mention, we are under contract with the Governor's Office in Massachusetts and the Speaker of the House of Representatives, and we said the same thing to them and helped write their gaming law, which is now being considered in Massachusetts. Politics and gaming are volatile. They will usually result in an explosion. It's not going to be pretty. People can take our advice, they can reject our advice, but the less influence of politics in the system, the better off the broader interests of the public will be served.

As discussed below, Spectrum Gaming Group had an initial role in considering best practices and how the Act should be implemented. In order to address some of the concerns raised in the testimony presented above, there was an effort to meet with members of the Board in advance of their first formal Board meeting. In a memorandum dated August 20, 2005 to Eileen McNulty, then Executive Secretary of Revenue, ISG wrote:

> The team members ISG and Spectrum Gaming Group are deeply involved in preparing common practice documents and regulation examples from jurisdictions around the world. This is a monumental and multi-faceted task. The Common Practice working group would benefit greatly by appointees' input. The opportunity to meet opens a dialogue with the Board members so they can provide us with direction, ask questions, and explore different regulatory problems and approaches to their solution in an informal venue. . . . As professionals and experts in gaming we feel there is very little risk in making a positive objective effort to help them establish their Board operation and management environment.

On August 25, 2004, this request was denied by the Department of Revenue because the members had not all been appointed yet and further noted that it was Revenue's "duty to be prepared to perform its responsibilities under the Act no matter the direction we receive from the Gaming Control Board. We have engaged your services to prepare for any eventuality."

Former Commissioner Conaboy testified that when he learned of the voting procedures required by the Act he thought, "that's not good. . . . I didn't think any one Board Member should be entitled, or to have that kind of power to potentially block anything, whether it was a minor matter or major matter." Later during organizational meetings, Conaboy recalled that the Executive Director of the Nevada Gaming Control Board also found the voting provisions problematic.

While the Act created an extremely powerful and autonomous Board, Sections 1201(h), (h.1), (h.2), and (l) attempted to qualify and restrict the activities of the Board and its employees. Of particular note and as discussed at length below, the Grand Jury finds that the following provisions of the Act were either routinely violated and overlooked, or only imposed upon the Board after its constitution because of specific acts of misconduct:

> (h)(3) Each member, employee, and independent contractor of the board shall sign an agreement not to disclose confidential information.
>
> (h)(8) No member, employee or independent contractor of the board may directly or indirectly solicit, request, suggest or recommend to any applicant, licensed entity, or an affiliate, intermediary, subsidiary or holding company thereof or to any principal, employee, independent contractor or agent thereof, the appointment or employment of any person in any capacity by the applicant, licensed entity, or an affiliate, intermediary, subsidiary or holding company thereof for a period of two years from the termination of term of office, employment or contract with the board.
>
> (h)(9) No member may accept employment with any applicant, licensed entity, or an affiliate, intermediary, subsidiary or holding company thereof, for a period of two years from the termination of term of office.
>
> (h)(13) No employee of the board or individual employed by an independent contractor of the board whose duties substantially involved licensing, enforcement or the development or adoption of regulations or policy under this part shall:
>
> > (i) accept employment with an applicant or licensed entity, or an affiliate, intermediary, subsidiary or holding company thereof, for a period of one year after the termination of the employment relating to the conduct of gaming or contract with the board; or

(ii) appear before the board in any hearing or proceeding or participate in any other activity on behalf of any applicant, licensee, permittee or licensed entity, or an affiliate, intermediary, subsidiary or holding company thereof, for a period of two years after termination of the employment or contract with the board.

(h.1) **Fiduciary relationship.** – A member or employee of the board shall serve as a fiduciary of the Commonwealth.

(h.2) **Standard of care.** – Members shall exercise the standard of care required by 20 Pa.C.S. Ch. 73 (relating to municipalities investments) in the performance of their duties under this part.

(l) **Prohibition against nepotism.** – No member may solicit, request, suggest or recommend the employment by the board of any individual related within the second degree of consanguinity to the member as set forth in 23 Pa.C.S. § 1304(e) (relating to restrictions on issuance of license) or the spouse of the individual.

In addition to the restrictions enumerated above, in the first set of amendments to the Act, the Board was required to adopt a code of conduct. 4 Pa.C.S. § 1202.1. This was a direct result of perceived misconduct. Misconduct that the original drafters of the Act did not believe they would have to specifically prohibit as they believed that any member of the Board would simply know better.

The framers felt that the intent of the Act made clear the need for the Board to be fair, impartial and independent. Nonetheless, the Act needed to be amended to specifically disallow Board members from: engaging in ex parte communication with any person; accepting any gifts in any form from any applicant; participating in any proceeding in which the member's integrity may be questioned; holding or campaigning for public office; soliciting funds from any interested party or licensed entity; and, engaging in discussions with any applicant or licensed person. The Act was also amended to admonish the Board members to: "avoid impropriety and the appearance of impropriety at all times and observe standards and conduct that promote public confidence in the oversight of gaming." 4 Pa.C.S.A. § 1202.1 (c)(1)-(9). One of the drafters of the Act and subsequent amendments, explained the adoption of the Code of Conduct as follows:

> In 2004 and 2005 there were certain decisions or stories that came up in the media that called into question the conduct of Members of the Gaming Board. Now this isn't to suggest that there was any wrongdoing but there was enough in the newspaper accounts that if you believed them to be accurate called into questions certain appearance problems.
>
> So there began an effort by Members of the General Assembly to call upon the Board to adopt a strict Code of Conduct, what you can and cannot do, you know, in your private business, how you communicate with other parties, how you communicate with other Board members in an attempt to kind of prevent conflicts of interest or appearances of.
>
> Gaming was always highly scrutinized by the public, the media, and so there was a real concern that we needed to ensure public confidence that things were to be - - done correctly.
>
> So Members of the General Assembly asked the Board to adopt a Code of Conduct. The Board did, and it was not a very good Code of Conduct. So my boss and then the leader of the Senate Republican Caucus drafted fairly lengthy comments that were submitted as a matter of public record to the Board saying, in essence, your Code of Conduct is bad. We think you should adopt a similar one as in New Jersey as well as some other provisions that are related to other agencies under Pennsylvania law. We submitted this to the Gaming Board and they began a process to adopt it.
>
> Then they amended the Act again and adopted in essence verbatim the Code of Conduct that was proposed by the Senator I work for and the Republican leader of the Senate.

In addition to the Code of Conduct, the terms of Board service were also addressed in subsequent amendments to the Act. One of the framers of the Act explained that allowing Board members to serve on a part time basis and hold outside employment created problems, explaining in greater detail that,

> I would say that in hindsight, and it's since been corrected in the 2009-10 amendment to the Act, that was one of the mistakes that we made. By allowing for the Commissioners to have outside employment at the same time that they were Members of this Board, you allowed them to have a whole raft of conflicts of interest.
>
> If they worked for a law firm, will that law firm represent gaming clients? Will they represent gaming clients in the future and appear before the Board, and would that Board member go back to the law firm and create other appearance problems? And keeping in mind that these Board Members are paid $145,000 a year, the Chairman is paid $150,000 a year, that's a full-time job salary. It's not a part-time job salary. I would

say in retrospect, you know, that was a mistake that we made in not making this a full-time position.

C. *Timeline*

The Grand Jury's investigation focused, in part, upon the completeness of the background investigations and subsequent suitability reports presented to the Board. Witness after witness testified that there was immense pressure placed upon virtually every Gaming Control Board employee, which was a direct result of the timeline established by the Act. The Act required that the Board "consider, approve, condition or deny the approval of all initial applications for each and every category of slot machine licenses collectively and together, in a comprehensive Statewide manner, within 12 months following the time set by the board at which all applications are to be filed and deemed complete by the Board." 4 Pa.C.S.A. § 1301.[2]

The Board treated this 12 month mandate as non-negotiable and did not appreciate its option to deem the applications completeness on a more flexible time table. One of the framers of the Act explained the creation of the timeline as follows:

> [T]hat was very carefully written, that while we said that they had to do it within a certain number of months, we gave it up to the Board to determine when they set that clock in motion. So while it looks like they only have a year, they could actually have substantially more than that depending on when the Board determines that everything has been filed and accepted . . . So they could have set a date for everybody to file, waited six months, set another date for when they determine everything is complete, and set another three months to say we're going to get a head start and make sure we've done all of our background investigations and final analysis, fiscal analysis on those applications and then set a date, okay, as of now everybody is complete and we're going to the 12 months.
>
> . . . I mean the real important thing in that - - and I know this because this was written very carefully is we did not want to create a problem for the Board, and so we empowered that Board to determine when that clock was going to start. . .
>
> I'm not saying it's a bad decision or not, but they wanted to - - they felt pressure to hurry up and get this thing done. But make no mistake, the Act is not the one that forced them in that box. The Act was written carefully to give them every tool possible.

[2] In fact, the Board had the power to *not* start the 12 month timeline until confident that the PGCB structure and staff were adequately prepared to perform their duties within the 12 month deadline.

There was belief among all Board employees who testified before the Grand Jury that the deadline for awarding the licenses, whether or not the investigations were carried through to their natural conclusion, was set in stone. With regard to dates and deadlines, the Commissioners set the dates and communicated them to Susan Hensel, the Director of the Bureau of Licensing, who ultimately reported the investigative deadlines to David Kwait, the Director of the Bureau of Investigations and Enforcement.

The Eastern Regional Director of the Bureau of Investigations, Roger Greenbank, testified that investigation of Category 1 licenses had to be completed by June 30, 2006. With regard to Category 2 and Category 3 licenses, the deadline was sometime in November of 2006. There were occasions that Greenbank requested additional time, which usually was not granted. Greenbank would request additional time from Tom Sturgeon, Deputy Director of the Bureau of Investigations and Enforcement, or Dave Kwait, the Director of the Bureau of Investigations and Enforcement, and recalled that he was frequently told that they were to do the best they could, but that additional time was not possible.

The tight deadlines presented another problem. BIE did not receive any vendor investigations until early 2007. The result was virtually any vendor who did work at a casino leading up to licensure, and hence prior to completion of any investigation, did so without being completely vetted and approved by the Board. For example, construction work done at several casinos and completed prior to the investigative assignments did not have to undergo scrutiny by the Board. Greenbank testified, "that was a concern of ours that if organized crime, the Mafia is going to get into our casinos, it would be through the service industries or the construction" and further that the construction vendors should have been vetted before work started on the casinos.

The provider of the central control computer and its background offers another example by which the timeline operated to truncate investigations. As required by the Act, all slot machine terminals are linked to a central control computer. 4 Pa.C.S. § 1323. The central control computer exists to "facilitate the auditing and security programs critical to the integrity of slot machine gaming in this Commonwealth." On November 1, 2005, before the Board was fully functional, the Department of Revenue awarded the contract to operate the central control computer to GTECH Corporation. Once the Board was operational, a background investigation was conducted by the Board. The actual investigative work was contracted to an outside investigation firm, MDB International. As a result of the investigation, MDB International prepared a "Slot Manufacturer Background Investigation and Suitability Report of GTECH Corporation." The draft dated March 27, 2007 developed significant areas of concern and was 210 pages in length. The Board, however, received a "Manufacturer Background Investigation and Executive Summary Suitability Report of GTECH Corporation" dated June 23, 2006. That report was 77 pages in length. On June 28, 2006, the Board voted to unanimously award a manufacturer's license to GTECH. Several witnesses testified that there was pressure to complete the investigation of GTECH because without the operation of the central control computer, the casinos could not open. The Grand Jury correspondingly finds that the timeline in this instance operated to abbreviate the investigation, deprived the Board of significant investigative findings, and excised the investigators out of the process to such a degree that they did not even know that the entity they were investigating had been issued a license by the Board.

Frederic Gushin, Managing Director of Spectrum Gaming Group, recommended that the Board stagger the licensing process. Under this vision, the Board would first consider suitability. If an applicant was found suitable, the Board would then go on to evaluate their project. The opening of the facilities themselves would also be staggered to alleviate some of the pressures facing a newly formed entity.

D. *Suitability*

Section 1202(b) grants the board specific powers and duties. With regard to the suitability standard to be applied to applicants, the Act requires the following of the Board:

> (23) The board shall not issue or renew a license or permit unless it is satisfied that the applicant is a person of good character, honesty and integrity and is a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or the effective regulation and control of slot machine operations or create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of slot machine operations or the carrying on of the business and financial arrangements incidental thereto.

Coupled with Section 1310, discussed below, the Act mandates that the board carefully evaluate an applicant's character and the applicant alone bears the burden of proving his or her own good character by clear and convincing evidence.

One of the drafters of the Act explained the rationale behind the applicable burden of proof and explained in greater detail how it should operate in practice:

> The other provision that's applicable in the Act is the clear and convincing standard, that if you or I were to apply for a license, we have the burden to prove by clear and convincing evidence the good character, honesty and integrity of ourselves. Now, that may seem ephemeral but that has been the law since the '70s in New Jersey, and it's a fairly strict standard by which the burden is to be on you.
>
> That means that you could just be arrested for a crime multiple times, or at least be suspected of it, and you can be turned down - - that's enough for a Board or a Commission to turn you down for a license because you have not proven, because you have the burden that you have good character, honesty and integrity.
>
> So that if a person comes in with an actual conviction, you've got now a heavier burden according to the law to overcome. You have to explain away that conviction. You have to say that since that conviction, I have been on the straight and narrow and that it's not reminiscent of my experience.
>
> And to make it even harder, at least, you know, in theory, is that many of these licenses were competitive applications, meaning that if two people were applying for the

same license and one had a conviction and the other one didn't, you know, geez, that really casts a stronger light against the guy with the conviction.

> And you don't need to put in the statute, geez, if you've been convicted over the last 30 years or 20 years or 15 years of a felony you could never have a license. We make it even broader that there is no per se kicking out, but you got to prove your good character, and if you fail to prove it by clear and convincing standard, that Board can turn you down just on that alone.

In direct contradiction to the Act, the Grand Jury finds that what occurred in practice was that the Board failed to carefully evaluate several applicants' suitability and its own administrative practices placed the burden of establishing an applicant's unsuitability beyond all doubt squarely on the Bureau of Investigation and Enforcement.

In addition to character suitability, the Board was mandated by the Act to require each applicant,

> to produce the information, documentation and assurances concerning financial background and resources as the board deems necessary to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, its affiliate, intermediary, subsidiary or holding company, including but not limited to, bank references, business and reports filed with governmental agencies, and business and personal accounting and check records and ledgers.

4 Pa.C.S.A. § 1313(a). In addition, the Board was mandated to require each applicant to provide: detailed information pertaining to any financial backers; post a letter of credit or bond for the $50,000,000 Category 1 or 2 licensing fee or $5,000,000 for the Category 3 licensing fee; and, provide detailed information establishing by clear and convincing evidence the applicant's business experience and ability, and the applicant's operational viability. 4 Pa.C.S.A. § 1313(b)-(e).

E. *Regulations*

The Act permits the Board to promulgate rules and regulations necessary to administer and enforce the Act. 4 Pa.C.S.A. § 1202(b)(30). Of particular note, the Board was given the authority to pass temporary regulations until April 15, 2007 that were not subject either to the Commonwealth Documents Law or the Regulatory Review Act, the act of June 25, 1982. 4 Pa.C.S.A. § 1203. This was of great time saving benefit and it provided the Board with the opportunity to quickly enact any regulations necessary to make the process as advantageous to the public and to the Board as possible. In particular, the Board could have passed regulations to: properly structure the hiring process so as to reduce political patronage and influence; mandate that licensing hearings occur in an open forum to provide transparency and accountability; create a uniform process by which applicants had access to suitability reports; and, restrict or limit applicant participation in the process. In short, the Grand Jury finds that the Board missed the opportunity and failed in their fiduciary duty to craft regulations singularly focused on what would be in the best interest of the public.

EMPLOYMENT PRACTICES

A. *Hiring Practices and Selection Process*

Once the Board was fully appointed, internal committees were created to build a new State bureaucracy from the ground up. One committee concerned itself largely with the staffing of the Board and was chaired by Commissioners Jeff Coy and Sanford Rivers. Michael Manzo, in his capacity as Chief of Staff to the then majority leader, Representative DeWeese, received resumes from various legislators on behalf of their constituents. Manzo noted each resume as to where the referral came from and then hand-delivered them to Jeff Coy. Coy recalled receiving names of individuals recommended for employment by the Board and took those he received from Manzo as a request from Representative DeWeese, Coy's appointing authority. Occasionally, Representative Veon would voice his displeasure to Manzo about whether Coy was consulting the leadership team prior to filling positions at the Board.

Interference by the General Assembly in its employment practices became known to some of the Board employees. Kwait recalls,

> Occasionally, and probably frequently would be a better word, we would have a list of employees or a list of prospective employees who were recommended by either the General Assembly to a Commission, to our Human Resource Department as it evolved, and ultimately, they would have been interviewed and given preference. If they fell on their face during the interview, of course - - and this happened more times than not - - they wouldn't be hired, but if they turned out to be well qualified and could do the job, then they of course were hired above somebody else who may have been similarly qualified.

The list circulated via email would indicate the Senator or the Commissioner making the employment recommendation. The impression Kwait developed through the course of his employment with the Board was that, "these Representatives who - - particularly the ones that appointed the Commissioners were also interested in having those Commissioners recommend their particular people to be hired by PGCB."

The political influence exerted at the Board and by the Board became one of the primary complaints of the former Director of the Bureau of Investigations and Enforcement, hereinafter "BIE", David Kwait. When asked what is wrong with the Gaming Control Board, Kwait responded in part, "Unfortunately, we also have a political process. I wish, for example, that BIE was an independent agency and not part of the Gaming Control Board, that when we interview somebody for a hire, we didn't have an email that 'he is highly recommended by Commissioner Angeli because he was given to him by Senator somebody.' I wish we didn't have that."

Contrary to the testimony and evidence received by the Grand Jury and summarized above, former Commissioner Coy testified that there were no "must-hires" or influence exerted over the employment decision of the Board. The evidence clearly revealed that those resumes received from Legislators were considered "must interviews." Similarly, Michael Walsh, the former Director of Administration to the Board, initially could not recall whether resumes came directly to him from the Legislature or Commissioners. Although, later in his testimony he stated that Commissioners Coy and Conaboy provided him with resumes and requested that their candidates be interviewed. Once he forwarded the relevant resume on to the interview committee, Walsh "could have" told the committee who referred the candidate. Despite his inability to recall, the Grand Jury received several emails concerning the source of various referrals and whether job applicants came through "normal channels" or "an appointing authority." In several emails, Walsh was the author and clearly engaged in ferreting out the necessary information for those "appointing authorities." The Grand Jury finds that Walsh's inability to recall significant events involving angry phone calls from legislators, major changes to hiring policies within the Board, and communications surrounding controversial events, to be significant and accordingly, reflective of his credibility. For example, the Grand Jury confronted Walsh with a list of employees for a particular position. The left hand column indicated the applicant's name and the column directly to the right of the name indicated the name of the corresponding political sponsor. When confronted with that list, Walsh testified that he never prepared lists of that sort. Contrary to this testimony, former Commissioner Sanford Rivers testified that as a member of the personnel committee he was aware of employment recommendations from the General Assembly. Rivers testified, "Well, they wouldn't come and see me. They would come and talk with Mike Walsh about it and then he would show me the list of people that they were interested in." While Rivers did not recall Walsh complaining directly about pressure applied by members of the legislature to make certain hiring decisions, Rivers believed that "he felt all of the Legislators were pushing to have someone hired."

Nicholas Hayes served as the first Director of Communications for the Board. As he was responsible for press releases and responding to media inquiries, he became intimately aware of some of the problems presented by early hiring practices at the Board. During his testimony before the Grand Jury, Hayes provided examples of at least five employees hired because of political influence and referrals from the legislature or individual Commissioners that ended up getting arrested or investigated for conduct that he ultimately had to try to explain to the public. He also recalls that the edicts from the legislators or specific Commissioners was more than "this person must have an interview," but rather, "this person must be hired." Specifically, Hayes recalls hiring an individual as a press aide at the direction of Commissioner Conaboy and believing that he did not have the option of not hiring that person. Ultimately, the press aide was arrested for murder. As a result of this incident and other employment issues, the Board changed its policy and required that an employee could not start work until after a background investigation was completed.

Throughout the nearly two yearlong investigation, the Grand Jury saw a pattern emerge with regard to the hiring practices of the Board. In addition to the political influence exerted over lower level employment decisions discussed above, the selection of certain personnel for key positions within the Board undermined the Board's ability to effectively implement the Act and rigorously follow its mandates. This was to be a multibillion dollar industry, supervised for the people of Pennsylvania by the PGCB. By necessity, there was a clear mandate on the Board to recruit and hire experienced and exemplary experts in gaming to staff the investigative, enforcement and licensing functions of the PGCB. Despite this mandate, and the ability to pay extremely large salaries, the Board failed to recruit appropriate qualified individuals to staff these crucial functions. The Grand Jury finds that the Board missed an opportunity to recruit and retain employees from gaming jurisdictions with strong administrative or regulatory law backgrounds. Instead, the Board largely recruited from other state agencies within the Commonwealth and provided substantial pay increases and salaries. By way of example, the Grand Jury offers the following table:

Pennsylvania Gaming Control Board Salary Information

Title	Salary	Former State Employment
Director of the Bureau of Investigations and Enforcement	$144,216	X
Chief Counsel	$142,103	X
Chief Financial Officer	$136,001	X
Regional Director for the Bureau of Investigation and Enforcement	$133,908	
Deputy Director of the Bureau of Investigations and Enforcement	$133,908	X
Director of Compulsive Gaming Enforcement	$128,763	
Director of Racetrack Gaming	$127,825	
Deputy Chief Counsel	$123,208	X
Director of Licensing	$119,609	X
Senior Hearing Officer	$118,455	
Deputy Chief Enforcement Counsel	$113,037	
Director of Regulatory Review	$112,001	
Senior Counsel	$108,617	X
Director of Administration	$104,020	X
Director of Corporate Compliance and Internal Controls	$103,003	X

For example, Susan Hensel was named the Director of Licensing. Hensel had journalism and law degrees. She worked for 18 years in state government and had no gaming law experience other than assisting the Department of Revenue with understanding the Act upon its passage. She testified that she was selected for the position because of her understanding of the Act. Ultimately, she served in a position that should have been of vital importance in safeguarding the taxpayers of Pennsylvania. She controlled the final form of the suitability reports that went to the Board. Despite that critical task, during her testimony before the Grand

Jury she described her position as "clerical" in nature. She admitted that she did not read the content of the financial suitability reports and that she had no involvement in many key decisions in the licensing process. She also testified that she need not be concerned with the contents because she felt that the Office of Enforcement Counsel and the Office of Chief Counsel were responsible for the reliability of the information regarding character, honesty, and suitability.

In contrast, Nanette Horner served as a gaming attorney in New Jersey for nine years, taught gaming law at Rutgers Law School for six years, and was initially recruited for the Chief Counsel position prior to taking a position as Deputy Counsel assigned to Licensing with the Board. Ultimately, Frank Donaghue was selected for the Chief Counsel position. In sharp contrast to Horner's gaming and regulatory experience, Donaghue had no gaming experience and merely a passing interest in administrative law.

These specific examples demonstrate the Board's failure to properly recruit the expertise necessary to run an efficient, responsive, and effective regulatory agency. This deficiency, in particular, drew the attention of one of the drafters of the Act. He commented, "the Board didn't recognize early on some of the competencies that they needed onboard and they really needed people on - - they needed people that understood Gaming, but you really needed people that understood boring Pennsylvania administrative practice and law. Those are the wheels and the gears and the oil that run State agencies."

VIOLATIONS OF THE SUNSHINE ACT

The Sunshine Act protects the public's right to receive notice of, attend, and observe meetings of decision-making bodies of government, such as boards and commissions. In its preamble, the Act declares that

> [t]he right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the

> enhancement and proper functioning of the democratic process . . . [and that it is] the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon.

65 Pa.C.S. § 702. The Act requires that official action and deliberations of an agency shall take place in meetings open to the public. Official action includes both the awarding of contracts and licensing decisions of regulatory agencies. The Grand Jury finds that the Board conducted significant business behind closed doors thereby eroding the public's trust in its decisions and depriving the public of the opportunity to participate and be heard.

A. *Contracting for Professional Services*

Section 1201.1 of the Act applies other statutes to the Board. In particular, the act of June 21, 1957, referred to as the Right-to-Know law, the provisions of 65 Pa.C.S. Chs. 7, relating to open meetings, and 62 Pa.C.S. Pt. I, relating to the Commonwealth Procurement Code. The Procurement Code dictates how state agencies should acquire services and materials. The Gaming Control Board is an independent agency, which means that it can contract for services without going through the Department of General Services. The Board is, however, required to comply with the procurement policies and procedures created by the Department of General Services. Under the Procurement Code, contracts must be awarded by competitive sealed bidding. There are several exceptions to that bidding process, some of them include: most advantageous, competitive sealed proposal, small procurements, sole sources procurement, emergency procurement, multiple awards, and competitive selection procedures for certain services.

Early on, Senator Jubelirer raised concerns about compliance with the Sunshine Law and initial contracts sought on the Board's behalf. On July 29, 2004, even before the Board existed, Senator Jubelirer sent a letter to Governor Rendell's Chief of Staff regarding the activities of the committee established to start implementing the slots legislation. While Senator Jubelirer agreed that some preliminary work concerning best practices in other states and establishing some administrative groundwork in advance of the first meeting of the Gaming Control Board was necessary, he believed that the anticipated tasks of the committee exceeded such preliminary work. In particular, Senator Jubelirer raised concerns about the central computer contract ultimately secured by GTECH and the meeting practices of the committee when he wrote:

> However, the key tasks outlined in your letter go well beyond the anticipated preliminary work. Some of the responsibility indicated for this committee is properly the province of the PGCB and its staff. It is the expectation of everyone that the individuals selected for the Board will be highly accomplished and quite capable of determining a course of action, without depending on a full set of instructions devised by some committee.
>
> This concern is not merely a matter of differing views on timetable; this proposed approach gives the impression of a series of important decisions being force-fed to the Board at its initial meeting. The public is already skeptical of how much independence this Board will have, given that with one exception the appointing authorities are all strong supporters of the slots legislation. As you can appreciate, the public interest rests more with the quality of decisionmaking than it does with the speed of decisionmaking.
>
> In addition to the powers assigned to the committee, there is also an issue about the conduct of its meetings. Since the committee is charged with developing regulations that would seem to put its operations under the Sunshine Law. From the public perspective, that is the advantage of the arrangement you propose, and the media and public interest groups should be made aware of the pending access.
>
> We had also related our interest in providing a more open and competitive process in terms of acquiring the central computer. If the Department of Revenue is simply charged with acquiring the computer, as reflected on the key task list, that would shut down the opportunity for opening the process. It would be constructive in the alternative for the committee to develop recommendations on how to provide an open and accountable process for that procurement.
>
> Again the basic aims of your approach are useful. But the task list is much too ambitious in its scope, given the legally determined responsibilities of the Gaming Control Board and the resources directed to it for carrying out these responsibilities. I would urge you to rethink and rework the key task list in consideration of these points.
>
> There has also been extensive discussion about correcting certain provisions of the gaming law, and fairly widespread acknowledgement of the necessity of doing so.

That effort should take priority over attempts to rush forward on regulations and computer acquisition.

The committee referenced in Senator Jubelirer's letter was a group of largely Department of Revenue employees who were tasked by the Governor and then Secretary of Revenue, Gregory Fajt, with assisting in the early formation of the Board. For example, the committee selected ISG and the Spectrum Gaming Group to complete an analysis of best practices and report to the Board their findings with regard to background investigation and the overall structure of the organization.

Early in its investigation, the Grand Jury learned that several large contracts were awarded to Price WaterhouseCoopers. Serious questions were raised by several witnesses regarding the selection process and the Board's ultimate selection of PwC. The Grand Jury's concern was compounded by consideration of this practice in light of the Board's apparent predilection for executive sessions or closed hearings, the inability of Board decisionmakers to accurately recall the circumstances of the award of the contract, and the findings of the Auditor General's Special Performance Audit dated December 2010 and entitled "The Pennsylvania Gaming Control Board: A Special Performance Audit, Expenses for Professional Services Contracts, Travel, and Materials/Supplies. The Grand Jury incorporates the findings of this audit by reference and notes that it corroborates much of the testimony regarding the PwC contracting process.

None of the Board members who appeared and testified before the Grand Jury were able to thoroughly explain how it was that Price WaterhouseCoopers received their contracts. For example, Commissioner Coy testified that he believed they were exempted from the Procurement Code because there was an emergency or a "sole source" contract. When asked what the emergency was, Coy explained that it was the time frame under which the licenses had to be awarded. Former Chairman, Tad Decker testified that for their first year they were exempted from bidding contracts. More specifically, the Department of General Services exempted them from complying with the Procurement Code. Decker believed it was an emergency exemption because of the timeframe the Board was working under. The Chief Procurement Officer and his staff at the Department of General Services indicate that they have never granted an exemption from the Code to the Gaming Control Board.

B. *Open Meetings and the Use of Executive Sessions*

Through the course of its investigation, the Grand Jury found that much of the work of the Board was done in executive session. This practice has been noted by Members of the General Assembly, framers of the Act, and members of the public who have attempted to gain access. The shared view is that "the Board takes a very aggressive interpretation of its use and permissive use of executive sessions and what is or is not confidential information." As justification for this practice, Chief Counsel for the Gaming Control Board and other employees testified that they were required to do so by Section 1206(f) of the Act. That Section reads as follows:

> **(f) Confidentiality of information.** – All information submitted by an applicant pursuant to section 1310(a) (relating to slot machine license application character requirements) or obtained by the board or the bureau as part of a background investigation from any source shall be considered confidential. Except as provided in section 1517(f) (relating to investigation and enforcement), the information shall be withheld from public disclosure in whole or in part, except that any information shall be released upon the lawful order of a court of competent jurisdiction or, with the approval of the Attorney General, to a duly authorized law enforcement agency or shall be released to the public, in whole or in part, to the extent that such release is requested by an applicant and does not otherwise contain any confidential information about another person....

Confidential information is defined by the Board's regulations as "materials that are not generally available to the public." 58 P.S. § 401a.3. Based upon this definition, public records concerning campaign contributions and criminal convictions would not be "confidential" necessitating hearings on these topics in closed session. Former Chief Counsel Frank Donaghue testified that he interpreted the Act very narrowly and that he believed that there were very limited circumstances under which matters could be aired publicly. Because of this view, applicants were not required to request an Executive Session. Donaghue testified, "It was our position that matters that were of confidential nature needed to be handled in Executive Session in the first instance. Now over the course of time my recollection is that we did change the regs to permit the applicant or to require the applicant to request to go into Executive Session and essentially establish the need to go in there and then the Board would respond to that. But that was well after the licensing."

As indicated by Donaghue's testimony, the Grand Jury finds that the Board used the confidentiality provision as a sword rather than a shield. One of the framers of the Act explained how the process was intended to work and how it operates in other administrative agencies across the Commonwealth:

> Typically if it - - in the context of the Public Utility Commission, if Duquesne Light wanted to come in for a rate case and they wanted to put in evidence their load usage and marketing strategy and things that they would say that we as a business have a proprietary right to keep confidential, et cetera, they would say we are going - - we claim this information to be confidential.
>
> If one of us wanted to go in under Right to Know Law and ask for a copy of that, the PUC's practice is then to turn to Duquesne and say, so-and-so has requested this information. Are you going to assert a claim of confidentiality? And in some cases the company would say yes, but if they're willing to sign a confidentiality agreement saying they're not going to run it off and give it to our competitors, then they sometimes - - they would share it sometimes. Other times they would say, we don't care if you share it but we're going to redact these particular lines in the document.
>
> And so what you really have is a dialogue of an attempt to try to get the requested information, or at least some parts thereof, to the public so that the public at least has a little bit of a better idea of what's going on. But it's not - - State agencies don't typically say, no, it's confidential. You can't have it, period. They usually - - it's not theirs to claim. It's the holder of the information to claim.

So if an applicant comes in and they have an extensive security system and somebody wants to see it, that applicant - - that license owner is going to say no, we are going to claim the confidentiality to it.

But let's say it's a Member of the General Assembly that wants to see whether or not they're doing an adequate job, the company could say, we will share it with you for the limited purposes of you making that determination and we want you then to sign a confidentiality agreement that you're not going to share it with the public, put in on your website or let it go beyond your own eye.

So I mean, it's that kind of typical give-and-take with a lot of other agencies when they're trying to deal with people seeking confidential information.

The Grand Jury finds it particularly unfortunate that the give-and-take anticipated by the drafters of the Act did not occur at the first instance and that to the extent the Board's practices have changed those changes did not occur until after the vital decision making regarding the award of licenses occurred.

On September 8, 2006, the Office of Chief Counsel prepared a memorandum regarding confidentiality issues at licensing hearings. The memorandum anticipates that Board members will ask questions that will prompt counsel for an applicant to request that the question be answered in Executive Session because the answer will divulge confidential or protected information. The memo takes the position that "all information relating to character and background investigations of any applicant are confidential pursuant to Section 1206(f) of the Gaming Act. The memo proposes that once a request for Executive Session is made, counsel should be specific with regard to the reason for the request, and the Board should consult Board Counsel if uncertainty remains. If the information is confidential under the Act, the Board can withdraw the question, adjourn the public hearing and convene an Executive Session, or permit the applicant the opportunity to submit a written statement after the hearing responding to the question. The memo then suggests that the Board Chair make one of the following statements regarding the information and appropriate procedure:

> The Gaming Act provides that information relative to background provided to the Board shall be confidential. The Act also provides that information relating to character requirements and any background investigation shall be considered confidential and withheld from public disclosure. The Applicant wishes to provide the Board with information protected by the Act and/or the Board wishes to question applicant concerning information deemed confidential under the Act. Therefore, the Board will adjourn the public meeting and convene an executive session to hear this confidential information which is protected by the Gaming Act. The public hearing will reconvene in approximately ___ minutes.

In the event that the information is privileged for some other reason, the memo suggested that the Board Chair state:

> The Board has concluded that the information it seeks is confidential in nature and, therefore, the Board will adjourn the public meeting and convene an Executive Session to receive this testimony that has been deemed to be confidential. The public hearing will reconvene in approximately ____ minutes.

As discussed below, the Grand Jury does not agree with the Board's interpretation of Section 1206(f) and its definition of confidential information. Further, the Grand Jury finds that the Board did not comply with the recommendations made by its own Chief Counsel with regard to public statements and explanations for executive sessions. The Grand Jury reviewed the transcripts of the public hearings held between January 5, 2006 and December 20, 2006. At all but one meeting, Thomas "Tad" Decker chaired the meetings. With regard to the purpose and scope of their Executive Sessions, Decker provided little by way of public explanation noting only that there was an executive session, personnel matters were discussed, and no business was conducted. There was at least one instance when an executive session was held and there was no public announcement. Furthermore, during the meeting immediately prior to the DeNaples closed hearings and the meeting after the closed hearings no public explanation was provided.

Gushin opined about the hearing process testifying that Spectrum Gaming Group advocates transparency in the process. In his view, licensing hearing should be done in a public forum. "Yes, the evidence might be embarrassing. Yes, it could be controversial, but it should be in public. There should be a recorded transcript of proceedings and that way, no one can question the findings of fact and conclusion of law that the Gaming Commission or Gaming Board comes up with, and that - - that was another, actually, one of my criticisms of the law here. There was no mandatory licensing hearings in an open forum, which most other states have. That is not in the Pennsylvania law."

The Board's efforts at exclusion were not confined to the public, but to the Treasurer of the Commonwealth of Pennsylvania, Robert M. McCord. The Treasurer is a non-voting member of the Board who the Board regularly excluded from participating in executive session and fully participating in public sessions. The Board argued, among other things, that because he was not a voting member, McCord was not entitled to participate and that his presence may create an appearance of impropriety. Ultimately, the Commonwealth Court agreed with McCord and ordered that the Board provide McCord with "all confidential or proprietary information relevant to deliberations of the Board." The Grand Jury finds that the Board's effort to exclude McCord is another example of its desire to conceal, obfuscate, and disguise its processes rather than to seek transparency and inclusion.

THE LICENSING PROCESS

In its analysis of the investigations, preparation of suitability reports, licensing hearings, and ultimately the licensing decisions made by the Board, the Grand Jury focuses on the applications of Presque Isle Downs, Inc., Mt. Airy #1, LLC, PITG Gaming, LLC, and Station Square Gaming, LP. In part this is due to the vast amount of information provided by current employees of the Board, former employees of the Board, gaming experts, and individuals affiliated with particular applicants, with regard to the events leading up to the issuance of licenses on December 20, 2006. The Grand Jury dutifully followed where the evidence lead, but is careful to note that this is not to suggest that the problems and concerns raised during its investigation only occurred in these discreet cases. To recite all examples of shortcomings in the process would require a report of unmanageable complexity. These applications represent the best examples of problems and failures that extended throughout the application and licensing process in all the license categories.

A. *The Investigative Process*

Section 1310 of the Act mandates that "every application for a slot machine license shall include such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty, and integrity." The Bureau of Investigation and Enforcement, hereinafter "BIE," was tasked with verifying information provided by the applicant and conducting additional background investigations as mandated by the Act. The Act envisioned that the Board consider and include the following information: "information pertaining to family, habits, character, reputation, criminal history background, business activities, financial affairs and business, profession and personal associates covering at least the ten-year period immediately preceding the filing date of the application." 4 Pa.C.S.A. § 1310 (a).

Before such investigations could commence, the Board had to make a decision regarding how to structure its investigative body and who should perform the work. Spectrum Gaming Group, mentioned above, suggested that the State Police conduct background investigations and that BIE conduct the financial investigations. During their contractual relationship with the Department of Revenue, this position became disfavored by members of Revenue and ultimately the Board. Prior to producing their final draft document purporting to be a blueprint for gaming in Pennsylvania, but after at least two drafts were submitted, Spectrum learned that they were no longer part of the process. As part of their final product, ISG and Spectrum prepared a power point presentation to present to the Board setting forth their recommendations regarding the investigative process. Spectrum learned shortly before the first meeting of the Board that their power point was rejected by Revenue and that they were no longer invited to the meeting. Spectrum Gaming Group became very concerned that their conclusions and recommendations would be altered in the presentation, but that their name would still be associated with the project. Accordingly, on December 9, 2004, Gushin drafted a letter to Chairman-Designate Thomas Decker. In the letter Gushin explains their contractual relationship with the Department of Revenue, that their services were no longer requested, that the report entitled, "Blueprint for Slot Gaming Regulation in Pennsylvania" did not reflect their work product, and that Spectrum does not concur in its recommendations or conclusions.

Eileen McNulty testified that the decision not to use Spectrum's final work product was the result of Senator Jubelirer's letter summarized above. She claimed that it was decided that Revenue should not make decisions for the Board and should not be presenting conclusions or recommendations.[3] Gushin testified that Spectrum's relationship with Revenue shifted dramatically as a direct result of their recommendation that the State Police be relied upon to conduct background investigations. Ultimately, the Board rested the task of conducting background investigations with BIE.

Early in the Grand Jury's investigation, numerous investigators testified or provided information regarding their concerns that they were prevented from fully investigating and pursuing legitimate concerns regarding an applicant's character. Investigators also detailed how

[3] In practice, this sudden recognition of the need to extract executive branch agencies from the exercise of PGCB functions was not uniformly applied – as evidenced by the multimillion dollar contract maintained with GTECH.

information they acquired was not adequately presented to the Board in the final suitability reports prepared by the Bureau of Licensing, and the applicant's burden of establishing good character by clear and convincing evidence was shifted to the investigators. This created a huge loophole in the thoroughness and accuracy of the BIE information getting to the Board, especially areas of concern found throughout BIE investigations.

The role of the timeline largely dictated the outcomes of the suitability process. Those applicants who already possessed horse racing/harness licenses in Pennsylvania were virtually assured a slots license. It was simply a matter of expediency. The Act called for the award of seven slots licenses to horse racing/harness facilities within twelve months. Coincidently, there were only seven licensed horse racing/harness licensees in the Commonwealth at the time. Had a then horse racing/harness license holder failed the Board's suitability evaluation, significant delay in the establishment of a slots facility would have been the inevitable result. Of course, this delay would have also prevented the influx of millions of dollars in tax revenue to the Commonwealth. This virtually assured that the horse racing/harness license holders would receive a slots license.

The Grand Jury heard hours of testimony relating to background investigations pertaining to Mt. Airy #1, LLC, Presque Isle Downs, Inc., and the Pittsburgh applicants for a Category 2 license. The agents assigned to these investigations, without exception, had significant law enforcement experience and included retired FBI agents, municipal police officers, former chiefs of police, retired IRS agents, a retired Allegheny County homicide detective, a retired Postal Inspector, and a former district magistrate.

1. Presque Isle Downs, Inc.

The Grand Jury finds that agents with BIE assigned to the background investigation of Presque Isle Downs, Inc. followed their mandate to verify the applicant's information and conduct a thorough investigation of the associated individuals' and entity's character, honesty, and integrity. Despite their best efforts, they were instructed not to conduct particular interviews, were prevented from requesting additional information from the applicant, and ultimately reliable and verified information was not presented to the Board in the final suitability report.

The investigation identified derogatory information concerning at least fifteen individuals associated with Presque Isle Downs, Inc. The information varied and included, but was not limited to: convictions for gambling related offenses; failure to disclose information concerning a PFA in their application for a license; physical altercations; employment by known members of organized crime; diversion of money from a former employer; failing to file tax returns; failing to accurately report income to the federal government; convictions for murder and other felony offenses; arrest for theft related offenses; and, questionable political contributions. Much to the frustration of the assigned investigators, this information was never presented to the Board collectively so that it could consider whether the pattern of employing persons or doing business with persons of questionable character reflected upon the character of the applicant as a whole. To further compound their frustration, many of the persons of questionable character were permitted to withdraw without prejudice.

The regulations promulgated by the Board allow for an applicant to withdraw an application with or without prejudice. If a petition for withdrawal is granted with prejudice, "the person or entity whose application has been withdrawn will not be eligible to apply for a license, permit, certification or registration with the Board until after expiration of 5 years from the date of withdrawal." 58 Pa. Code § 423a.5 (d)(1). In contrast, a person or entity whose applicant was withdrawn without prejudice is still eligible to apply for a license, permit, certification or registration, subject to restrictions imposed by the Board. 58 Pa. Code § 423a.5 (d)(2). While this practice is common in gaming jurisdictions, the Grand Jury finds that the Board overused the practice in an effort to avoid potential conflict and litigation with applicants. The Grand Jury has not learned of a single instance that the Board acted to find a key employee unsuitable. An attorney assigned to the Office of Enforcement Counsel testified that "every key employee was allowed - - to my knowledge - - I can think of off the top of my head, was allowed to withdraw." For the time period leading up to the award of the licenses, the decision to allow an applicant to withdraw, and under what conditions, rested with Michael Schwoyer. Schwoyer justified the practice by explaining that it was driven by the need to award the licenses all on the same day:

> Most people, if not everybody, was allowed to withdraw for a whole bunch of reasons. First, the Board has to make a decision on all the licenses and on all the applications all at the same time all on the same day. There were issues with appeals and no one knowing, like, if they're trying to withdraw somebody and the Board said no and they decided to appeal, like, what - - where would it go? What would happen? Could it be interlocutory at that point or would it be after they were denied? There were just all kinds of legal issues.

The Grand Jury notes that the driving force behind the practice was concern about the legal result and a desire not to delay the process. The Grand Jury further observes that there was apparently no consideration of the risk to the public and the integrity of the process.

An email sent on September 22, 2006 from Michael Schwoyer, then Chief Enforcement Counsel to the Board, to Susan Hensel, the Director of Licensing, and others involved in the licensing of Presque Isle Downs, Inc. illustrates this point. The email addresses the share arrangement for one key employee[4] of Presque Isle Downs and the withdrawal of an applicant who admitted under oath to participating in illegal gambling. Michael Schwoyer notes that the conduct engaged in by the then Director of Special Projects for MTR Gaming Group, Inc., (the parent company of Presque Isle Downs, Inc.) should be afforded at least the same weight as a conviction and he would therefore be unsuitable for licensure by the Board. Despite that belief, rather than allowing the Board to make a finding of unsuitability and consider whether that individual's unsuitability reflected on the Category 1 application of Presque Isle Downs, Inc., the individual was permitted to withdraw *without* prejudice subject to conditions. It should be noted that under the Act, if a key employee qualifier of the applicant is found unsuitable, the application of the entity as a whole could be denied. In the email discussion regarding the appropriate conditions, Schwoyer is concerned that the conditions seem "too onerous." Subsequent emails regarding the conditions were exchanged between Susan Hensel and the lawyers representing Presque Isle Downs, Inc. with their comments and edits to the proposed conditions.

On October 23, 2006, just two days before the award of the conditional license to Presque Isle Downs, Inc., Board Chairman Tad Decker sent an email to the other Commissioners and copied Frank Donaghue, Susan Hensel, Michael Schwoyer, Anne Neeb, and Paul Resch. With regard to Presque Isle Downs, Inc., he writes "A couple of points. I think that the staff has a plan to carve out the 'unsuitables' from Presque Isle. We may still have questions about the main

[4] A key employee is defined by the Act as, "Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and/or credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller and any employee who supervises the operations of these departments or to whom these department directors or department heads report and such other positions which the Pennsylvania Gaming Control Board shall determine based on detailed analysis of job descriptions as provided in the internal controls of the licensee as approved by the board. All other gaming employees unless otherwise designated by the board, shall be classified as non-key employees.

owners but we need to review the facts and hard evidence careful and not just rely on rumors and innuendo where there is no hard evidence. We should also remember that the Harness Racing Commission's decision re: the grandfather was reversed by the Commonwealth Court." The Grand Jury finds this email illustrative for several reasons. First, as discussed below, it indicates that there was a level of ex parte communications occurring prior to the award of this license concerning the investigation and recommendations of the Office of Enforcement Counsel. Second, there was a clear preference toward carving out the unsuitables as opposed to allowing the Board to consider the applicant as a whole resulting in a finding of unsuitability and a denial of a gaming license. Third, there is an expectation that the Office of Enforcement Counsel or BIE would present the board with "hard evidence" as it relates to the main owners. This is a clear misunderstanding of the appropriate burden of proof and duties of BIE and OEC. As discussed below, once the information is presented to the Board it is incumbent on the applicant to present clear and convincing evidence that they are of good character, honesty, and integrity. Lastly, the Board is concerned, even before any licenses have been issued, of potential appeals and litigation. The Grand Jury heard time and again from numerous witnesses that decisions were made throughout the process to limit confrontation and exposure to litigation even at the expense of preserving the integrity of the process.

The applicable burden of proof alluded to and misapprehended by the Board in the email above was a recurrent problem and one that directly affected the scope and depth of investigations. Supervisory Agent Thomas Brletic learned through his investigation of Presque Isle Downs, Inc. that although the Act mandated that the applicant establish its good character by clear and convincing evidence, the Board, in practice, required that BIE establish an applicant's bad character beyond all doubt and without such proof the Board would find every applicant suitable. In an email addressed to an attorney assigned to the Presque Isle Downs investigation through the Office of Enforcement Counsel, Brletic writes, "Are there just a few of us that believe that something fishy is here? Is this not a license suitability situation or must we prove the entire gang is guilty beyond a reasonable doubt, or worse yet beyond any doubt."

Brletic further testified that he believed that it became incumbent upon the investigators to prove unsuitability beyond any doubt. Kwait shared Brletic's view that the burden was effectively shifted to BIE. Kwait explained, "I always sensed that we had that same reasonable doubt burden, but there again, the agents were out there to do the background investigations." Schwoyer took this burden and extended it further, when he stated to Regional Director Philip Rendin, Agent Gary Tallent, and Supervisory Agent Tom Brletic in July of 2006 that "it's our job to take people and companies that are unsuitable and make them suitable." When questioned about making this statement, Schwoyer testified, "I don't remember saying that. It wouldn't surprise me if I did but I don't remember saying it."

When questioned about the applicable burden of proof, Anne Neeb, the first Executive Director of the Board, testified initially that "any applicant comes in and they fill out an application and the presumption is they're suitable. Then you start investigating and then you turn up information." Later in her testimony, Neeb attempted to explain that she didn't actually mean that the applicants were presumed suitable, stating, "No, it's just I think a normal person would believe that if you're going to fill out all of this paperwork and know that the State Police, investigatory, the tax department, everybody is going to be investigating you, you would have to be a little tilted to put yourself out there knowing that you are not a suitable person." While Neeb attempted to qualify her statement, the notion that the applicants were presumed suitable and that it was incumbent upon BIE to disprove their suitability beyond all doubt was consistent with the experience of many of the agents who testified before the Grand Jury. Gushin directly addressed the notion of a presumption of suitability and explained the appropriate approach to the burden of proof as follows:

> If the applicant - - remember, the applicant has the burden of convincing regulators by clear and convincing evidence.
>
> If the applicant cannot do that, and there are issues that call into doubt either his integrity or his financial ability or his financial integrity, then the license should be denied.
>
> There is no presumption that a license should be issued in most laws, and I don't recall if it's in Pennsylvania, but a license, a gaming license is a privilege, and not an entitlement.
>
> Okay. No one is entitled to get a license. It's only if the applicant can prove by clear and convincing evidence that they meet the standards contained in the Act. Then they get the privilege of a license.

This perceived burden was compounded by the regular interference and thwarting of the ongoing background investigation of Presque Isle Downs, Inc. BIE agents were directed by David Kwait, the then Director of BIE, and Tom Sturgeon, the then Deputy Director of BIE, not to conduct interviews of at least three individuals who could potentially corroborate information provided by another source. Sturgeon again intervened in a request for records served on Presque Isle Downs, Inc. and its parent company. The request concerned payments to vendors associated with the venture and ultimately it was determined that the request for information was too burdensome on the applicant, so they would not be required to provide the payment information. This particular interference was especially frustrating to the agents as they were instructed during their preliminary training that members of organized crime often infiltrate casino operations through vendors and that they were to follow the money in order to ferret out such activity.

During the investigation, agents learned that a Key Employee Qualifier was implicated in a cocaine distribution ring and obtained the sworn federal grand jury testimony of an immunized witness in support of the allegation. Schwoyer told Brletic that such testimony was useless because it was hearsay. When asked how the same testimony was admissible in criminal court and not in an administrative proceeding - with a lower burden of proof and less restrictive evidentiary standards - Schwoyer responded , "because I said it is hearsay." On the issue of hearsay, a licensing attorney with significant experience in New Jersey explained, "Yes. I believe that hearsay does belong in a suitability report. I believe that it's - - a suitability report is to take into consideration the character of the individual, and if hearsay, you know, goes to that, then it's the burden of the applicant to" refute that information. Removal of "hearsay" information from the suitability reports was at the direction of Schwoyer. During this same conversation, in front of four eyewitnesses, David Kwait asked, "why should we care what Sack and Arneault were doing as long as the state gets its money?"[5] Kwait offered the following by way of explaining this statement, "I have no recollection of saying anything like that, and I think maybe it was my management style, particularly with Rendin, that I looked for some consensus from him rather than giving him a direct order on something, and then we would have had these esoteric conversations, and perhaps I said that."

Supervisory Agent Brletic and some of the agents working for him fought stridently to get their concerns about the investigation addressed so as to properly preserve the integrity of the process and ultimately the integrity of gaming in Pennsylvania. Instead of responding with

[5] Edson Robert Arneault, at the time of Presque Isle Downs, Inc.'s application with the Board, was the President CEO of MTR Gaming Group, Inc. MTR Gaming Group, Inc. is the parent company of Presque Isle Downs, Inc. Because of his position, Arneault was considered a key employee who had to qualify for a gaming license. Charles Sack was a business associate of Arneault, who had alleged ties to organized crime. Sack received a series of significant payments from Arneault early on in the Presque Isle Downs, Inc. project. Arneault could never, to the satisfaction of the agents, explain the reason for the payments or point to any significant work product.

support and resources, they were met with skepticism, criticism, and frustration. In a discussion with a high level supervisor of BIE, Brletic and others attempted to address the unresolved investigative issues concerning Presque Isle Downs, Inc. A heated exchange resulted with several eye witnesses present, Brletic and others were told "with the politics – the power, the politics and the money behind this thing, you guys aren't going to stop it." During yet another meeting about the unresolved investigative issues, Brletic asked Schwoyer and Kwait what the public would think if the public learned that Presque Isle Downs, Inc. had been licensed despite all of the available information. Schwoyer responded that he did not care what the public thought.

Schwoyer's testimony regarding Presque Isle Downs, Inc. differed significantly from his testimony about Mt. Airy, practices of the Board, and his job responsibilities. With regard to Presque Isle Downs, Inc. he was completely unable to recall or identify emails he sent, any of the advice he gave to agents working on the investigation, whether they made referrals to outside agencies based on potential criminal activity, significant meetings testified to by numerous other witnesses, decisions about the removal of derogatory information from the suitability report, and even employees of the Board with whom he had worked closely for at least two years.

In October 2006, the Board issued a conditional license to Presque Isle Downs, Inc. In December 2006 the Board then issued a permanent license. The final adjudication issued by the Board states, "Investigation has not revealed any information that would indicate that Presque Isle or any of its principals, affiliates, directors, owners or key employees is of unsuitable character." The Grand Jury finds that the investigation revealed significant information that, if properly presented to the Board, may have warranted a finding of unsuitability.

Licenses are subject to annual renewal. 4 Pa.C.S. § 1326(a). Accordingly, the suitability of any applicant is subject to ongoing investigation by the Board. The agents assigned to the Presque Isle Downs, Inc. application, consequently, sought to continue their investigation where they had left off. The Act obligated the agents to continue investigating and yet, the assigned agents were told to stop investigating and move on. In particular, Tom Sturgeon instructed Brletic "to move on and quit worrying about all the stuff with Presque Isle. It was just time to move on. They're licensed. The Board licensed them. This wouldn't look right if we kept this up and we found something out about them that would result in them having to undergo scrutiny or have their license pulled. It wouldn't make the Board look good. It would make the Board look bad." Kwait echoed Sturgeon's sentiment, stating in front of three eyewitnesses, "Look-Arneault is a crook, we know that, but the Board licensed them and it's time to move on. They've spent a lot of money and you guys need to move on." Kwait explained this comment to the Grand Jury when he testified that he "was encouraging them to accept the fact that, here is the guy. He has his license. We will get our shot at him in the future."

During the renewal investigation, Agents Brletic and Tallent received information regarding a vending machine distributor for Presque Isle Downs, Inc. The initial allegation concerned third party political contributions. Supervisory Agent Brletic sent an email to Kwait requesting that he be permitted to: 1) conduct database searches of federal, PA, WV, and OH campaign finance reports for the vendor; 2) compare the vendor's contributions to contributions made by the principals of MTR/Presque Isle Downs, Inc.; 3) request checking, savings, and deposit account information for the vendor covering a three year period; 4) review political contributions for all Presque Isle Downs, Inc. vendors; and 5) review all MTR, Mountaineer, and Presque Isle Downs, Inc. vendor payments from 1999 to 2007. The acting deputy director of

BIE replied, granting permission to complete the first three tasks and further limited the scope of the investigation. Thereafter, Brletic and others interviewed the vendor at which time he admitted to failing to report income properly for tax purposes.

Subsequent to the statement he provided the agents, the vendor filed a complaint against the agents involved in the interview. Tom Diehl was tasked with calling the lawyers representing Presque Isle Downs, Inc. and he was told that they planned to sue the Board if the matter was not resolved to their satisfaction. If the Board was interested in avoiding a law suit, the attorney for Arneault demanded a letter stating that the agents acted beyond the scope of their authority and vouching for the good character of Arneault. The Deputy Director of BIE did not believe that the agents engaged in any misconduct so a dialogue ensued regarding what they could put in writing.

Ultimately, Diehl drafted the letter with significant input from Arneault's legal counsel and no input from the agents implicated in the complaint. According to Diehl the letter was reviewed and discussed with Kwait and grammatical errors corrected at Kwait's request. The letter was signed by Kwait and stated that "BIE has no actionable information that would support allegations that were made. . ." and that he had "no reason to question the good character, honesty, and integrity" of licensed principals of Presque Isle Downs, Inc. Kwait's impression of the letter was that it was "as a final document to settle crisis, and it seemed like it satisfied all worlds." He acknowledged before the Grand Jury that while he did not write it, he did sign it, read it, and found nothing wrong with it." The agents were not informed of the decision to issue an exoneration letter to the vendor and learned of it only through counsel for Presque Isle Downs, Inc. Donaghue, then Chief Counsel to the Board, learned of the letter after the fact and testified that he "would not have written that letter." Later by way of explanation, Donaghue testified that "at the end of the day, we're the regulator, and if those - - if the threat of a lawsuit or some action against us was threatened within that letter, then have at it, sue us, you know, I wouldn't have written the letter."

2. Mt. Airy #1, LLC

Roger Greenbank, the Eastern Regional Director, and Jack Meighan, an agent assigned to the Eastern Regional Office, conducted the background investigation of Louis DeNaples. Greenbank worked for the FBI for nearly thirty years. Several of those years, Greenbank worked out of the Pittsburgh office and was involved in an investigation of the Pittsburgh La Cosa Nostra family and its efforts to own and control a casino outside of San Diego, California. Meighan is also a retired FBI agent who spent much of his time in Philadelphia investigating organized crime. Meighan also has a law degree. Greenbank testified that BIE turned in an investigative report that contained all relevant information it was able to develop. In his view the background investigation of Mt. Airy #1, LLC was incomplete because,

> the Pennsylvania State Police had information in its possession and refused to share it with us, information that I believe had we had and included in our report, I think - - I don't know whether - - and I'm not saying Mount Airy would not have received a license, but I think it certainly would have gone directly to the character, honesty, integrity of Louis DeNaples. That's one area.
>
> The second is this Mr. D'Elia, Billy D'Elia, Mafia member, who I mentioned was arrested twice in 2006, the first time in June for money laundering, conspiracy. He was arrested by I think it was the FBI and the IRS. The second time in November of 2006 he had been indicted on federal charges, the second time with more serious charges including solicitation to commit murder and he was denied bond.
>
> We, BIE, tried to get to Mr. D'Elia, meaning we tried to interview him and his attorney referred us to the United States Attorney's Office who would not talk to us, would not allow us to interview Mr. D'Elia.
>
> So that's what I meant by we were not able to do a complete and full investigation.

Nan Davenport, then Assistant Enforcement Counsel assigned to Mt. Airy, expressed concern that BIE needed additional time to complete their investigation and that, as a result, the Board did not have enough information to make a reasoned decision with regard to Mt. Airy's suitability. Davenport testified,

> I had great concerns. I didn't think we had enough information at the time to make a determination as to suitability.
>
> We had a lot of pending referrals that were referred to different state agencies and federal agencies that had not responded back to us, and frankly, I had concerns that we didn't have enough information in order to make a determination, but according to section 1301 of the Act, we didn't have any more time.
>
> A determination had to be made, and unfortunately we ran out of time.

While the agents assigned to the investigation believed in large part that they were able to fully investigate Mt. Airy and Louis DeNaples, there may have been an effort to influence BIE's view of the applicant. Kwait testified to the following impromptu meeting with DeNaples well in advance of the award of his license:

> Q: Did you ever have an occasion to speak to an applicant?
>
> A: Never. I met Louis DeNaples once because we were in a hearing in Philadelphia, and I was standing with one of the Commissioners and a couple of agents and either Conaboy or Angeli, and I think it would have had to be Conaboy, came over and said, "Hey, I want you to meet Louie DeNaples . . . I got to shake Louis DeNaples' hand, and he asked me a question. He said, "Who could I get? What company could I get to do a background investigation of me that would satisfy you and the queen?" And I said, "What?" And he asked me again, and I really didn't respond to him. Later, Conaboy pushed and said, "Well, suggest one, "and I suggested, "Well, try the Kroll Agency in New York, "and that was the end of my one and only conversation with Louis DeNaples.
>
> Q: Did it bother you that a current Commissioner was introducing you to an applicant - -
>
> A: Yes.
>
> Q: - - in a friendly way?
>
> A: Yes.

Q: The notion that he would need to hire an outside agency, I guess, to vouch for him to you seems a bit odd to me.

A: For sure.

Q: I mean, you have a team of investigators that are former homicide detectives that are perfectly capable of conducting an investigation. If he has nothing to hide, shouldn't he just be able to reply on your own agency to give him a clean bill of health?

A: Hopefully, I agree 100 percent, so it was nonsense to begin with. No matter who he hired to do whatever, it wouldn't have made a hill of beans as we proceeded to do our job.

As the investigation unfolded, there was a concern at least initially that the work of BIE was moot. On July 14, 2004, Louis DeNaples formed a limited liability company, Mt. Airy LLC, for the sole purpose of pursuing and obtaining an at-large Category 2 gaming license. DeNaples did not at that time own the Mt. Airy property. In December 2004, DeNaples acquired the former Mt. Airy Lodge and adjacent property. In July 2006, Mt. Airy completed site preparations and broke ground on construction of the proposed Mount Airy Casino & Resort. In short, DeNaples created a company for property he did not own and then began building a casino for which he did not yet have a license. A former agent with BIE visited the Mt. Airy casino and testified that the building could only be effectively used as a casino and further opined "you would have to be, I guess, pretty rich or pretty sure that you were going to get a license if you were going to do that."

Following the award of the license to Mt. Airy, a Dauphin County Grand Jury indicted Louis DeNaples for perjury and other charges. The Board suspended the license issued to DeNaples and set conditions that DeNaples was not to conduct business at the casino. Eventually, the Dauphin County District Attorney withdrew the charges pending against DeNaples with the condition that he not associate with the Mt. Airy casino. Thereafter, the Board re-instated DeNaples' license and he was again subject to investigation as a result of the license renewal process. One of the conditions with the reinstatement of his license was that Mt. Airy form an Audit Committee to oversee the operation of the casino.

Following the award of the license, agents also attempted to focus their investigation on the vendors building Mt. Airy. Greenbank became increasingly frustrated by the lack of response from Mt. Airy with regard to the identity of the particular vendors. Joe Wright, an attorney representing Mt. Airy, wrote to then Chief Enforcement Counsel Dale Miller and explained that he would no longer respond to any requests for information from BIE agents. By statute, the failure of an applicant to fully cooperate in an ongoing investigation can result in the denial of license. 4 Pa.C.S. § 1310(b). Dale Miller also disclosed to Greenbank "that the feeling in Harrisburg was that we in the east were out to get Mount Airy, and we wouldn't - - we were not letting it go." In particular, Miller alleged that Greenbank was looking forward to his appearance before the Dauphin Grand Jury as he perceived it as an opportunity to tell everything he knew about Mt. Airy.

In May of 2007, Greenbank was also called to task by then Chairman Tad Decker. Decker asked Greenbank if he was picking on Mt. Airy, why he was pestering them for vendor information, and why BIE was asking questions about the persons on the Audit Committee. Greenbank explained, "that we were not picking on Mt. Airy. We were not doing anything different with Mt. Airy than we would be with any other licensee, that - - and I remember telling him distinctly that I am concerned that I am going to get flooded with a huge amount of vendor cases all at once rather than being able to spread them out so I could assign them effectively to all the agents in the office. . . . so again, I expressed to Commissioner Decker my assurance that I was not picking on Mt. Airy, that I was treating Mt. Airy no differently than any other applicant." Because of the meeting with Chairman Decker, the belief by those in Harrisburg that

BIE was unfairly harassing Mt. Airy, and logistical concerns about the vendor investigation, Greenbank transferred the case to the Central Office in Harrisburg.

B. *Preparation of Suitability Reports*

The Grand Jury received extensive information about the licensing process. Upon completion of a background investigation, BIE prepared a draft suitability report containing all of the pertinent findings of their investigation. That draft report was then submitted to the Bureau of Licensing. Licensing attorneys assigned to the applicant in question were tasked with cutting and pasting information from the BIE report into the final suitability report. If the licensing attorneys had any question about the content of the BIE suitability report, they were directed to the assigned BIE enforcement counsel. The licensing attorneys, with a few rare exceptions, had no contact with the agents responsible for the report. Testimony before the Grand Jury varied widely as to the sort of information appropriate for inclusion in the report. One licensing attorney testified that so long as the information could be explained it could be included in the final report and that because she was relying on the investigative work of the agents she was not in a position to change it. She further testified that if the assistant enforcement counsel assigned to the investigation vouched for the reliability of the information she would accept that as verified and appropriate for the report. Another licensing attorney testified that the ultimate decision with regard to content came from the Office of Enforcement Counsel, so that ultimately Michael Schwoyer was responsible for the BIE material contained in the report. Kwait testified that any changes made to the report should have been made between the attorney, chief enforcement counsel attorney, and the regional director of the case agent.

Incredibly, the former attorneys assigned to the Office of Enforcement Counsel could not recall the procedures followed and could not specifically recall any of the material they removed from the reports. The Grand Jury heard the following exchange with Thomas Diehl, a former assistant enforcement counsel assigned to the Presque Isle Downs, Inc. application:

> Q: Would you ever take material out of those reports?
>
> A: I think so.
>
> Q: On your own or would you discuss it with the agents first and then?
>
> A: I think we had to discuss it with the agents, discuss it with Mike Schwoyer. Yeah. I mean, there would be discussion before anything would be taken out, I think.

Later Diehl again claimed that the agents were consulted regarding the removal of information from the suitability report.

> Q: And it's your testimony today that the agents would have been consulted each and every time that information was removed from their reports?
>
> A: I'm not going to say each and every time but more often than not I would certainly think so.
>
> Q: So were there circumstances that they were not consulted?
>
> A: Not that I'm aware of.

As represented in the table below, significant information was removed from the Presque Isle Downs, Inc. suitability report. When Diehl was confronted about specific sections of the Presque Isle Downs, Inc. suitability report, in particular the sections identified in the table below, he offered the following testimony:

> Q: Do you recall in particular seeing the reports for Gregory Rubino and Ted Arneault?
>
> A: I - - I'm familiar with both those applicants and I have no doubt that I saw those reports.
>
> Q: Significant pieces of information were removed from their (sic) reports. Do you recall that?
>
> A: I do not.

> Q: Do you recall speaking to the agents assigned to that investigation about the removal of information from those reports?
>
> A: I don't know. I specifically - - I discussed Greg Rubino's and Ted Dragisich's backgrounds in detail with the agents because I was - - you know, I was part of the deposition with them. But with respect to removing items, I don't know that that's the case.

All of the agents assigned to that background investigation testified before the Grand Jury or were interviewed by the Office of the Attorney General and none recalled ever being consulted about the removal of information from their reports. Accordingly, the Grand Jury finds the testimony presented above to be wholly disingenuous and not credible.

Schwoyer attempted to explain the process further, stating "the goal with regard to the suitability reports was to secure stipulation from the other side, from the applicant, as to its admissibility and making it part of the record." If the applicant refused to agree to the stipulation, Schwoyer required absolute proof to establish the fact. Ultimately, the preeminent consideration was the applicant's sensitivity rather than the merits of the information. The Grand Jury finds that it was this approach that ultimately lead to the removal of significant derogatory information from the reports. It is clear that the more derogatory information contained in the report the more difficult it became to secure the necessary stipulations. The grand jury further finds that this practice was in direct contradiction with the Act which required that the applicant establish its suitability by clear and convincing evidence. It also deprived the Board of its authority to thoroughly weigh all of the relevant information in making its determinations.

Once a near final version of the suitability report was prepared, copies were provided to the applicants for review and comment. There were profound disparities in this practice, as well. For example, Mt. Airy was given two weeks to review and respond to their suitability report while their competitive opponent for a license, Pocono Manor, was given just 48 hours. Schwoyer testified that he exercised his discretion and determined that because of the issues involving DeNaples additional time should be provided to his counsel. This practice did not sit well with the case agents assigned to various applications and the process was never thoroughly explained to the agents. Kwait recalled that the practice came as a surprise to him.

> A: Oh, it came as kind of a surprise. Mike Schwoyer was having a conference with attorneys, and I assume that it would have been DeNaples' attorneys, because they were in the office most, and they were all going through a copy of a report, and when I questioned Michael about that later, he told me that under Pennsylvania administrative law that that's the way they would come to a conclusion.
>
> Q: Did it bother you?
>
> A: Sure.

Kwait further testified that their practice was very similar to the practice in New Jersey and yet nevertheless, the agents thought the practice was nonsense.

Ultimately, Susan Hensel signed off on the final version and controlled the final content of the suitability reports submitted to the Board. The Grand Jury finds that virtually every licensing attorney called to testify, including Ms. Hensel, had a complete inability to recall events, instructions, or participation in the preparation of the final reports.[6] While the Grand Jury recognizes that some time has passed since the award of licenses, it is inconceivable that an entire group of employees could have collective amnesia regarding a vital aspect of their job with such historic significance to the Commonwealth of Pennsylvania.

The Grand Jury finds that the final suitability reports given to the Board were no reflection of the real investigative facts developed by BIE and were further tainted by the applicants' editing through threat of litigation. In particular, in the final versions of the

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[6] Nanette Horner, who had had extensive gaming law experience in New Jersey, was an exception. She testified with clarity about the licensing process and the proper role of BIE. Unfortunately, she was transferred out of the Bureau of Licensing before the preparation of the final reports.

suitability reports for Presque Isle Downs, Inc. and Mt. Airy #1, LLC significant information was removed from the work product submitted by BIE. With regard to PITG Gaming, LLC, the Grand Jury finds that significant information was excluded from the financial suitability section of the report. To the extent that the Bureau of Licensing was engaged in cutting and pasting from the BIE report, in these two instances there was more cutting than pasting occurring. The Grand Jury further finds that within the practice of providing draft suitability reports to the applicants, exceptions were made for those applicants with significant issues. For example, attorneys for Mt. Airy #1, LLC were given drafts of the suitability report nearly three weeks in advance of the closed hearings, while their competitor Pocono Manor was given just 24-48 hours to review the draft report. Accordingly, there existed a great disparity in the amount of time certain applicants were permitted to review and the level of participation they were permitted to have regarding the draft report.

1. <u>Presque Isle Downs, Inc.</u>

Presque Isle Downs, Inc. applied for a Category 1 gaming license because of the existing harness/race track license it held. The Board sought to issue all conditional Category 1 licenses by the middle of September, 2006. The agents assigned to the investigation fervently requested additional time to complete their investigation. In the end, they were given an additional 30 days. BIE prepared a Background Investigation and Executive Summary Suitability Report of Presque Isle Downs, Inc. in advance of the Board's vote on the conditional licenses. This report was submitted to licensing in June of 2006. The BIE report is 67 pages long with 45 pages dedicated to the Applicant's suitability. The suitability report submitted to the Board prior to the award of the conditional license was 58 pages long with 38 pages dedicated to the Applicant's suitability. BIE continued their investigation and prepared an additional report in advance of the issuance of the permanent Category 1 licenses. The BIE report was submitted to licensing in November of 2006 and was 119 pages long.

However, the Grand Jury has found no evidence that the Board received an additional suitability report prior to the award of the permanent license on December 20, 2006. The Grand Jury finds that Michael Schwoyer and Tom Deihl were responsible for the content of the suitability reports submitted to licensing and that Sue Hensel was responsible for the content of the suitability reports submitted to the Board as evidenced by her signature in the final report. The Grand Jury further finds that all three Board employees were responsible for the fact that BIE's additional investigative work was never provided to the Board prior to their award of the permanent Category 1 license to Presque Isle Downs, Inc. Even within the sole report provided to the Board, the Grand Jury finds that there are significant and important differences between the information developed by BIE and what the Board ultimately considered. The Grand Jury offers the table below to illustrate those disparities.

Comparison of BIE Draft Background Investigation and Executive Summary Suitability Report Dated June 30, 2006 and Final Background Investigation and Suitability Report of Presque Isle Downs, Inc. Dated September 25, 2006

Heading/Subject Matter	BIE Draft Suitability Report	Final Suitability Report
Contributions, Bribes and Kickbacks	"In an ongoing investigation of MTR Gaming Group, Inc., Edson Arneault and his associates, BIE is attempting to determine whether there have in fact been any illegal contributions, bribes or kickbacks. This is discussed under the Key Employee/Qualifier Natural Person Qualifier for Edson Arneault in this report (pages 26 through 43). When the Nevada Gaming Commission investigated allegations, it did	"Investigation has not disclosed any questionable contributions, bribes and/or kickbacks made by any party acting on behalf of Presque Isle. Investigation is ongoing."

Heading/Subject Matter	BIE Draft Suitability Report	Final Suitability Report
	not pursue them to their logical conclusion because it did not believe that it had the jurisdiction to address concerns in the state of West Virginia."	
Ownership of Land	A two page discussion detailing the International Paper Site, Troyer/Green Shingle Site, Route 97 Site, and Summit Township Construction Issues is included. In particular, the involvement of Technica Development Corporation in the purchase of the property is explained in detail.	A 1 paragraph statement concluding that Presque Isle's ownership of the property has been reviewed and verified.
Key Employee/Qualifier-Natural Person Qualifier Edson (Ted) Arneault	A detailed 16 page report describing Arneault's personal history and associations. In particular, the report notes that interviews established both positive and negative information regarding his character. The "background and positions held" section included his financial net worth, education, and other information about his assets and investments. Concerning Arneault's associates, BIE cites to information obtained from the Nevada Gaming Control Board concerning their investigation of MTR and Arneault's business dealings, oral consulting arrangements, an employee writing bad checks, a Director of MTR associations with organized crime, and various consultants with ties to organized crime. Further information was developed regarding the Supervisor of	A 1 page report with all derogatory information removed.

Heading/Subject Matter	BIE Draft Suitability Report	Final Suitability Report
	Special Events for MTR and his history of illegal gambling. Arneault's sister-in-law provided additional information regarding Arneault and his business dealings, a questionable political contribution, and his personal affairs. 2 pages are dedicated to the discussion of concerns involving the acquisition of land through Technica Development Corporation. A history of Arneault's political contributions is provided. A chart provided by the Nevada Gaming Control Board depicting Arneault's connections to organized crime in Pittsburgh, Youngstown, and Las Vegas was also provided.	
Key Employee/Qualifier- Natural Person Qualifier Gregory J. Rubino	A detailed report containing background information and areas of concern developed during the investigation including: allegations of drug sales, questionable business practices, refusing to admit to a previous Protection From Abuse Order, and unusual campaign contributions to an Erie Councilman. The report submitted to Licensing before the permanent license was awarded also included information pertaining to his sworn deposition and the terms of the withdrawal of his application without prejudice.	A 1 page report indicating that Rubino had not yet been interviewed.
Key Employee/Qualifier- Natural Person Qualifier	The final BIE report submitted to Licensing prior to the award	A 2 page report indicating that he was being permitted to

Heading/Subject Matter	BIE Draft Suitability Report	Final Suitability Report
Theodore Dragisich	of the permanent license contained a 5 ½ page detailed report including a significant history of arrests, failure to report 35 civil law suits, information developed by the Nevada Gaming Control Board during their own investigation of Dragisich, and the results of his deposition.	withdraw without prejudice. None of the information from the Nevada Gaming Control Board or his significant arrest history was included.

The Grand Jury is particularly troubled by the volume of information removed from the final suitability report. For example, all information relating to or referencing investigations conducted by the Nevada Gaming Control Board was removed. Numerous PGCB employees and former employees testified that during the creation of the Board they were repeatedly told that Nevada and New Jersey were to serve as examples of successful gaming jurisdictions. Former Commission Conaboy testified that they were told that "New Jersey and Nevada were kind of the gold standard in Gaming and so we were talking to both Boards."

2. Mt. Airy #1, LLC

Nan Davenport, Deputy Enforcement Counsel, wrote the honesty, character, and integrity section of the Mt. Airy suitability report. This, in and of itself, was a bit unusual as Lisa McClain was the licensing attorney assigned to the applicant. Davenport explained that Mt. Airy had so many issues, she was much more hands on: reviewing documents, suggesting interviews, and then compiling the final suitability report. By all accounts, Davenport was thorough and fully supportive of the work of the BIE agents. Along the way, the investigation developed information that was not included in the final version of the suitability report. There was also a meeting at the eleventh hour during which Davenport was instructed to remove approximately four pages of information. The Grand Jury again finds that the Board should have been privy to all relevant information.

An example of excluded information included safety deposit boxes controlled by Louis DeNaples. On his application for a gaming license, DeNaples indicated that he did not own any safety deposit boxes. During his first interview, DeNaples volunteered that he made a mistake on his application and that he actually had ten safety deposit boxes. From bank records, agents subsequently learned that on the day prior to his interview, Dominick DeNaples, Louis DeNaples' brother, went into the safety deposit boxes at the very moment that agents were sitting down with DeNaples' accountants. Greenbank considered this information "an area of interest." Greenbank further opined that information pertaining to the safety deposit boxes should have been included in the report,

> Because it's an area in our view, my view, it's an area of honesty. I didn't - - I didn't believe him when he said he had forgotten to put that down on his application. Now, as it turns out, of those ten, some were with him and his daughter, him and his son, him - - and several with his brothers and so forth, but in my view he had to have knowledge of all of them. But that combined with the fact that his brother had been in some of those boxes the very day that agents are meeting with his accountants prior to being interviewed and those boxes not having been - - no one having been in those boxes for years certainly was suspicious to me.

At the time of his testimony, Greenbank was unaware of the fact that information pertaining to the safety deposit boxes was not included in the final suitability report. He further testified that the links between DeNaples and members of organized crime were not fully explained or explained to his satisfaction in the report that went to the Board.

Greenbank described a meeting that occurred just weeks prior to the award of the licenses. The agents assigned to investigate Mt. Airy, Davenport. Schwoyer, Neeb, Donaghue, Misken, and the Director of Diversity were all present. The purpose of the meeting was to prepare for the upcoming hearings and inform Neeb and Donaghue of any potential issues raised by the investigation. The meeting lasted a couple of hours and Neeb and Donaghue were fully apprised of all of the derogatory information concerning the character, honesty, and integrity of Louis DeNaples. Greenbank described the outcome of that meeting as follows: "The sum and substance of that meeting, which was long. I would say a couple of hours, was this, and this was a joint agreement by Anne Neeb and Frank Donaghue, that you have more than enough evidence here to deny him a license based on Katrina and RAM alone. You have proof. Don't put anything else in the report to water it down. Don't put anything in the report that cannot be substantiated and cannot be proven." The information that Neeb and Donaghue believed was "unsubstantiated" pertained to DeNaples' alleged connections to organized crime and the contents of Pennsylvania Crime Commission reports, which linked DeNaples to members of organized crime.

At 11:00 AM on December 1, 2006, the date that Mt. Airy's suitability report was due, Davenport met with Neeb and Donaghue. During the meeting, Neeb and Donaghue required Davenport to make changes to what she believed was her final Honesty, Character, and Integrity report on Louis DeNaples. In particular, Davenport was ordered to change section 4) of the report originally entitled, "Allegation of Ties to William D'Elia and Other Organized Crime Figures." The original section 4) was approximately four pages long and included information from Pennsylvania Crime Commission reports, the results of an IRS/PSP search warrant executed at the residence of D'Elia, DeNaples' testimony regarding D'Elia and the search warrant, the exclusion of D'Elia by the New Jersey Division of Gaming Enforcement, D'Elia's indictment in May and October of 2006, and a meeting between the alleged kingpin of Philadelphia's Black Mafia Shamsud-Din Ali and DeNaples. In the final version of the report section 4) was re-titled "Other Sources of Information That Name Louis DeNaples" and reads as follows:

> DeNaples was mentioned in several reports published by the now defunct Pennsylvania Crime Commission. [citations to Pennsylvania Crime Commission reports omitted].
>
> DeNaples was also mentioned in a May 2001 Affidavit for a federal search warrant that was filed in the Middle District of Pennsylvania and on the inventory sheets of items seized from a home pursuant to the search warrant. [citations omitted].

Initially, Davenport was concerned about the proposed changes and discussed the meeting with Schwoyer. Schwoyer testified that he had no recollection that Neeb and Donaghue met with Davenport and ordered her to remove information from the suitability report. A few moments later he justified the removal of the information by testifying as follows:

> Q: Were you bothered at all about the fact that those four pages of information were taken out of the suitability report?
>
> A: No, because my understanding is that all of the information that was contained in those four pages or whatever - - four paragraphs or whatever was included in the report as an attachment in those various exhibits.

He further testified that he had no idea that Davenport and the agents assigned to the investigation were upset about the removal of the information. Next, Schwoyer testified "No. I didn't know that there was information removed." The Grand Jury concludes that this testimony is not credible as Schwoyer is, on the one hand, justifying the removal of the information and explaining how it was attached and then on the other hand, denying any knowledge of the meeting that resulted in the removal of the information and that information was removed at all.

Greenbank and the case agent assigned to conduct the background investigation of Mt. Airy were upset with the changes made just hours before the final report was submitted. Davenport recalled, "I don't think any of the BIE agents were satisfied with what the Board received. . . . Because they felt as though they should have received more information. They did not - - they thought Version 11 should have been the final version that the Board should have seen."[7] Davenport testified that if it were left to her the Board would have been given all of the information. Ultimately, Davenport made the requested changes because Schwoyer told her to.

> Q: I don't understand why you wouldn't want the Board to have as much information as possible about an applicant before making a decision that involves millions of taxpayer dollars?
>
> A: I did, but unfortunately, I am the attorney. My boss, I - - I - - we talked about it. My boss said, "Make the changes." I made the changes. He approved it. . . .
>
> Q: So your testimony is that that information should have been in there, but your supervisors told you to take it out, and it didn't matter anyway because it was all fleshed out in hearings?
>
> A: I don't know about it didn't matter anyway, but it was fleshed out, and at the - - the executive sessions. I would have liked to have kept it in there, but it was not my - - my choice to make.
>
> Q: Did you fight for it?

A: Yeah, we fought a little bit, especially BIE. They were very, very upset, and Mike Schwoyer talked to all of us and said, you know, "we have to do this," and I - - I think when I left that meeting it was 11:00 o'clock in the morning. My next version, it was done by 6:00 o'clock that night with the changes going back and forth, because I know I would have met with Mike to see exactly what he wanted to take out. I wouldn't have made that kind of decision on my own.

3. PITG Gaming, LLC

As with all other applicants competing for a Category 2 license in Pittsburgh, BIE prepared a Background Investigation and Suitability Report of PITG Gaming, LLC. As the process unfolded and the time to award the licenses drew near, agents forwarded numerous drafts

[7] Davenport and Greenbank both explained that the fact that 11 versions of the report were prepared is not significant. Davenport described her work process which involved creating an entirely new version each time she received additional information from BIE, rather than write over a previous draft. Accordingly, version 11 was the comprehensive report that both the case agents and Davenport agreed was final and should be submitted to the Board.

of the report to Licensing for finalization and distribution to the Board. With regard to financial suitability for all applicants, the Bureau of Corporate Compliance and Internal Controls headed by Denyse Miskin, was responsible for the analysis. Eventually a sub group of that Bureau was assigned to individual applicants and became known as the Financial Suitability Task Force, hereinafter "Task Force." The Task Force, also lead by Misken, was responsible for the actual content of the financial suitability section of the report. The Task Force was comprised of accountants and financial analysts employed by the Board as well as consultants employed by PricewaterhouseCoopers, hereinafter "PwC."

With one exception, the changes made to the final suitability report concerned the information developed by and the work product of the Task Force. The one exception concerns the information provided to the Board concerning Donald Barden. Donald Barden wholly owned Barden Development, Inc., which wholly owned Jurat Holding, LLC and PITG Gaming Investors, LLC, both of which wholly owned PITG Gaming, LLC, (the applicant competing for a Category 2 gaming license in Pittsburgh). In short Don Barden was PITG Gaming, Inc. The BIE draft of the suitability report dated October 1, 2006 and entitled, "Background Investigation and Executive Summary Suitability Report of PITG Gaming, LLC," contained significant information about Barden and other investors. The final report eliminated reference to other investors and with regard to Barden only the following paragraph was provided to the Board.

> Mr. Barden is the Owner and CEO of Barden Development, the holding company of PITG Gaming, the Category 2 applicant. Mr. Barden has not been convicted in any jurisdiction of a felony or gambling offense within the last 15 years; has no history of litigation that would preclude licensure; has not made any political contributions in violation of 4 Pa.C.S. § 1513; and the personal and business tax records for Mr. Barden are clear. BIE has investigated the qualifications of Mr. Barden and the investigation has failed to reveal any information that would indicate that he does not possess the requisite good character, honesty or integrity to be granted a Key Employee Qualifier License.[8]

[8] This paragraph powerfully encapsulates the degree to which the proper functioning of BIE, and the Gaming Act, had been subjugated to predetermined outcomes. It was **not** reflective of BIE's work or statutory function. It also

The Grand Jury offers the following table to illustrate the differences between the BIE October 1, 2006 suitability report and the final report provided to the Board dated November 17, 2006.

Comparison of Key Employee/Qualifiers – Natural Person Qualifiers Information Related to Don H. Barden

Heading/Subject Matter	**Background Investigation and Executive Summary Suitability Report of PITG Gaming, LLC – Draft dated October 1, 2006**	**Final Background Investigation and Suitability Report of PITG Gaming, LLC dated November 17, 2006**
	The report is 80 pages long. The Key Employee/Qualifier report on Barden is three full pages.	The report is 29 pages long. The Key Employee/Qualifier report on Barden is one paragraph.
Background and Positions Held	A detailed section discussing his marital, education, and employment history. With regard to his gambling practices, the report states that in the first three months of 2005, Barden wrote checks to five different casinos for over $500,000. As of the date of his application, Barden indicated markers outstanding to numerous casinos totaling over $1.9 million. Between 2001 and 2006, Barden lost over $11.1 million.	There are no sub sections and no discussion of Barden's gambling history.

Between November 14, 2006 and November 17, 2006, a decision was made to attach significant portions of the financial suitability information as an exhibit as opposed to including the information in the final suitability report itself. This also became the practice with regard to the other competitors for the Category 2 license in Pittsburgh, IOC Pittsburgh, Inc. and Station Square Gaming, LP. The Grand Jury reviewed all financial suitability reports and all attached

entirely projected BIE into a role of burden holder and determiner of applicant suitability. All of which was in direct contradiction of the Gaming Act.

exhibits for all Category 2 applicants. With the exception of PITG Gaming, LLC, all financial suitability exhibits included the following language:

> Based on the information contained in the Application, the financial suitability analysis contained herein, and an agreement with the Applicant to execute relevant documents, the Financial Suitability Task Force did not find anything financially material that would preclude [the Applicant], from obtaining a Category 2 slots operator license.

The Grand Jury heard testimony from all employees assigned to the Task Force, including representatives from PwC. No one could explain either the decision to attach the financial information as an exhibit or more significantly, the missing language from the PITG Gaming, LLC report. Denyse Misken testified that Jim Talerico and Richard O'Neil were largely responsible for the preparation of PITG Gaming, LLC's financial suitability report. With regard to the missing language, Misken testified that she could not recall any discussions about not including a statement about PITG's financial suitability. Richard O'Neil is a CPA and a lawyer and is employed by the Board as a Forensic Accountant assigned to the Financial Investigations Division. O'Neil testified that his involvement in the financial investigation of Barden and PITG Gaming was very limited. When confronted with the portion of the suitability report with the missing language, O'Neil testified that he had no involvement in the preparation of the suitability reports. James Talerico served the Board as a manager of the financial section of the Bureau of Corporate Compliance and Internal Controls, hereinafter "BCCIC." Talerico recalled that O'Neil was responsible for developing the information that ultimately was included in the financial suitability section of the report. The executive summary section of the report, according to Talerico, was drafted by Misken and Sharon Lewis of PwC. According to both Michael French and Sharon Lewis of PwC, the role of PwC was to provide assistance in the preparation of the drive time analysis along with other accounting functions. PwC did not and could not, because of their corporate policy and contractual obligations to the Board, offer formal opinions as to an applicant's suitability. Therefore, PwC did not participate in the decision to omit or include language pertaining to an applicant's financial suitability. Talerico could not offer an explanation for the missing paragraph and further testified that he believes he saw a report containing the missing language among Natalie Jacoby's documents that were to be provided to the Office of Attorney General in response to this Grand Jury's subpoena. Jacoby was employed by the Board as a compliance analyst. Jacoby assisted with the financial analysis of applicants, but also maintained the information that was ultimately forwarded over to licensing. Jacoby received her instructions from Lewis and Misken and only would have forwarded the report to licensing after they gave her permission. Part of finalizing the report would have been to include the conclusory language that is missing from the PITG Gaming, LLC report. Thus, the changes made to the report occurred after it left Jacoby's hand and could have been at the direction of Susan Hensel or Denyse Misken. Lastly, Anne Neeb testified that she had no idea why that language wasn't included and believed that "actually that would have been something that Chief Counsel's office would have, you know, should have caught."

The Grand Jury finds the omission of this information as significant and as an effort on the part of an unknown employee of the Board to highlight their serious reservations about his financial suitability. Based upon the testimony of Commissioners, representatives from PwC, and virtually all financial analysts assigned to PITG Gaming, Inc., the Grand Jury finds that Barden's financial history and corresponding level of risk was wholly ignored by the Board. Instead, the Board singularly relied upon committed financing for the PITG Gaming project by Jefferies & Company, Inc. Given that this was a competitive license, with viable and competitive alternatives, the Board disregarded its fiduciary relationship to the Commonwealth and its obligation to exercise care in the investment of the public's money.

Comparison of Suitability Report Dated November 14, 2006 and Final Suitability Report Dated November 17, 2006

Heading/Subject Matter	November 14, 2006 BIE Final Suitability Report	November 17, 2006 Final Suitability Report Submitted to the Board
Financial Suitability	This section is 6 ½ pages long and details past financial performance, financial risk profile, provides an explanation of individual financial analysis, financial wherewithal, and project revenue potential.	This section is 2 ½ pages long and does not include any discussion of sub headings referenced in the column to the left.
Sub-Heading: Past Financial Performance	This section notes that the financial fitness of majestic Star was analyzed because PITG Gaming, LLC has no financial history. The Task Force analyzed the six most recent audited financial statements and financial figures and ratios of the 12 month period ending June 30, 2006. The Task Force concludes that "The Majestic Star Casino, LLC, has demonstrated weak financial performance during the fiscal years ended December 31, 2000 through and including December 31, 2005."	Information provided in Exhibit 2.
Sub-Heading: Financial Risk Profile	The financial analysis of Majestic Star indicates a history of operating with a very high risk. This section discusses Majestic Star's interest coverage ratio and cites to Moody's and Standard & Poor's. It notes that Majestic Star operated with adjusted	Information provided in Exhibit 2.

Heading/Subject Matter	November 14, 2006 BIE Final Suitability Report	November 17, 2006 Final Suitability Report Submitted to the Board
	EBITDA/interest expense ratios that are substantially below the gaming industry median of approximately 3.1x. Majestic Star ranged from 1.28x to 1.81x. The generally accepted minimum for interest coverage ratios is 1.5x and ratios lower than 1.0x indicate that the company is not generating sufficient income to satisfy its annual interest expense.	
Sub-Heading: <u>Individual Financial Analysis</u>	"The Task Force did not identify any of the natural persons, key employees/qualifiers as significant financial contributors to the proposed project." The Task Force relied solely on the financial analysis of Majestic Star.	Information provided in Exhibit 2.
Sub-Heading: <u>Financial Wherewithal</u>	The Task Force concludes that PITG Gaming has demonstrated its financial wherewithal to develop the proposed facility, Majestic Star Casino (Pittsburgh). This is based entirely upon the Jeffries Funding, LLC commitment letter of $435 million in debt financing.	Information provided in Exhibit 2.

4. Station Square Gaming, LP

As noted above, unlike the racinos or Category 1 licenses, the Category 2 licenses were competitive. During the background investigation of Station Square Gaming, LP the agent assigned to monitor and supervise the suitability investigation developed two areas of concern. The first was the volume and frequency of political contributions made by the family who owns

Forest City Enterprises, LP or the principal owner of Station Square Gaming, LP. While the contributions were not prohibited by the Act and were properly made, the agent found them noteworthy and believed they may have represented an effort on the part of Forest City to gain favor from Pennsylvania politicians with regard to their gaming proposal. Accordingly, the agent included a detailed explanation of the political contributions in the suitability report.

The second area of concern related to a business deal between Forest City and Charles Zappala and William Lieberman. Through the agreement, Zappala and Lieberman would obtain approximately 7% ownership in the casino. The agreement raised concerns with BIE because neither Zappala nor Lieberman were investing any equity into the casino project, yet they stood to earn millions of dollars should Station Square Gaming, LP obtain a gaming license. Additionally, Zappala and Lieberman were paid a "development advisor fee." BIE included information pertaining to political contributions and the Zappala/Lieberman agreement in their final version of the suitability report. Sometime prior to the award of the Category 2 license in Pittsburgh, the agent learned that the report to be submitted to the Board had been "washed out." As discussed below, the agent believed that the Board deserved the complete report and provided the complete BIE report to former Commissioner Ken McCabe.

The Grand Jury believes that the Board should have been provided all relevant information and offers the following table to illustrate the differences in the two reports. The final version of the report prepared by BIE and submitted to the Bureau of Licensing was 203 pages long. The final suitability report provided to the Board was 78 pages long.

Comparison of the BIE Category 2 Background Investigation and Executive Summary Suitability Report dated October 1, 2006 and the Final Category 2 Background Investigation and Suitability Report of Station Square Gaming, LP dated November 17, 2006

Heading/Subject Matter	BIE Category 2 Background Investigation and Executive Summary Suitability Report dated October 1, 2006	Final Category 2 Background Investigation and Suitability Report dated November 17, 2006
Eligibility of the Applicant	A five paragraph statement regarding statutory eligibility with a bolded paragraph noting the following: "Station Square Gaming, LP is currently suitable pending the outcome of the significant Ratner family, William Lieberman, and Charles Zappala political contributions to Pennsylvania political leaders from 2001-2005. Furthermore, the issue of Harrah's financing of Lieberman's and Zappala's investment in Station Square Gaming, couples with a $2.75 million "development advisor fee" to be paid by Station Square Gaming to both Lieberman and Zappala needs to be resolved. In addition, other issues involve the equal ownership of an advisory firm of Lieberman, Zappala, and Michael Perzel, brother of House Speaker Perzel,. . . The issues are more fully addressed and detailed throughout this report."	A one paragraph statement containing none of the information provided in the column to the left and noting that Station Square is an eligible applicant.
Project History	A 2 page section of the report describing the partnership, acquisition of the land, relevant land agreements, and a timeline of events.	A 1 ½ page section describing the acquisition of the land and relevant land agreements. The timeline of events was removed and there was an explanatory paragraph provided concerning the Lieberman/Zappala agreement. In anticipation of the passage of the Act Lieberman and Zappala formed a joint venture to get involved in the gaming industry. Forest City approached Zappala regarding the Pittsburgh business

Heading/Subject Matter	BIE Category 2 Background Investigation and Executive Summary Suitability Report dated October 1, 2006	Final Category 2 Background Investigation and Suitability Report dated November 17, 2006
		market. Lieberman and Zappala managed the local affairs of the business venture and contributed $200,000 and $100,000 respectively. In exchange for work performed on behalf of the business venture, they would each receive a 7.5% interest in Station Square and would be permitted to purchase an additional 1.5% interest. In addition, each was to receive a development advisors fee of $2,750,00, one half payable upon the first anniversary of the opening and the remaining half payable on the second anniversary.
History in Other Jurisdictions	A 2 ½ page summary of Harrah's gaming operations in Arizona, Illinois, Indiana, Iowa, Kansas, Mississippi, Missouri, Nevada, and New Jersey. The summary notes that Harrah's is in good standing with each regulatory body.	A 2 paragraph summary indicating that Harrah's entertainment operates 44 casinos in twelve states, two foreign countries, and is one of the largest casino entertainment providers in the world.
Political Contributions	A 2 ¾ page summary of campaign contributions, including a table of contributions made by Zappala, Lieberman, and the Ratner family to those politicians spearheading the Act and ultimately having appointing authority to the Board. Of particular note are contributions made by Zappala and Lieberman on March 29, 2004. The Act passed the House on March 22, 2004 and went to the Senate for approval. Just seven days later, Lieberman contributed $10,000	A 3 paragraph summary with no historical information concerning political contributions.

Heading/Subject Matter	BIE Category 2 Background Investigation and Executive Summary Suitability Report dated October 1, 2006	Final Category 2 Background Investigation and Suitability Report dated November 17, 2006
	to Perzel and Zappala contributed $10,000 to Fumo.	
Key Employee Qualifiers- Entity Qualifiers – Affiliates Harrah's Entertainment, Inc.	The six page report includes Harrah's regulatory history and reference to disciplinary actions taken in various gaming jurisdictions involving fines in excess of $50,000.	A 3 page report that omits entirely any reference to Harrah's regulatory history in other jurisdictions.
Entity Qualifiers	The BIE report included entity background information of Third Avenue Management, LLC, Goldman Sachs Asset Management, LP, Janus Capital Management, LLC, Private Capital Management, LP, and Capital Research & Management Co.	Background information for these entities not included. Waivers requested.
Key Employee/Qualifiers- Natural Person Qualifiers William Lieberman	A detailed 5 page report describing Lieberman's employment history, his Board service, political activities, and campaign contributions after the passage of the Act.	One paragraph form language regarding overall suitability.
Key Employee/Qualifiers- Natural Person Qualifiers Charles Zappala	A detailed 4 page report describing the partnership agreement, his education and background, and campaign contributions made after the passage of the Act.	One paragraph form language regarding overall suitability.
Key Employee/Qualifiers- Natural Person Qualifiers Brian Ratner James Ratner Ronald Ratner Albert Ratner Charles Ratner Deborah Ratner-Salzberg	Detailed 3- 4 page reports on each Key Employee describing their education, employment and background, and campaign contributions made after the passage of the Act including contributions to Fumo and Perzel.	One paragraph form language regarding overall suitability for each applicant.

At the time that Station Square Gaming, LP sought a Category 2 license, Section 1513 of the Act prohibited an applicant for a slot machine or a key employee license from contributing any money to a candidate for any public office in Pennsylvania. This prohibition stemmed from the Act's intent "to prevent the actual or appearance of corruption that may result from large campaign contributions." 4 Pa.C.S.A. § 1102(11). Given the prohibitions contained in the Act and the clear legislative intent, the Grand Jury is troubled by the removal of all reference to campaign contributions throughout the Station Square Gaming, LP suitability report. Even if the contributions were not specifically prohibited, their volume and frequency were noteworthy to this application and certainly warranted the Board's consideration.

The issue of political contributions made by applicants for Category 2 and Category 3 licenses was an internal concern for the Board and at times a source of confusion. On August 14, 2006, Glen Stuart, Assistant Enforcement Counsel to the Board, sent an email to David Kwait and Scott Miller of the Pennsylvania State Police. In the email he writes, "in light of a recent conversation with Michael Schwoyer, please trace all investigation into the Category 2 and 3 applicants' political contributions back to July 4, 2004. . . . Michael and I agree that the date an applicant should have stopped making political contributions is the date the Act was enacted, July 4, 2004, and not the date the application was submitted to the PGCB." This email was forwarded to all Regional Directors and Greenbank responded, "Wow this is going to set off a s____ storm! DeNaples for one, made lots of contributions through November of 2005 and filed in December, 05." Then Deputy Director Sturgeon agreed and replied, "The rules keep changing and it is not very fair. From what I have seen, and it is not much, this could cause some serious problems."

As the email discussed above indicates, the issue of campaign contributions, the completeness of the available contribution information, and the appropriate look back period became an issue for BIE. Greenbank testified that "the filing of campaign contributions in

Pennsylvania, particularly in large cities, is hit or miss. To this day you can't be 100 percent certain that you have seen all the documents. They just are not easy to find." As a result, Greenbank was not confident that BIE was able to obtain complete information relating to campaign contributions. To compound the problem, there was internal uncertainty as to whether BIE should include any contributions made after the passage of the Act or only those contributions made after the filing of an application. With regard to Station Square, this information was significant as the representatives of Forest City, Lieberman, and Zappala all gave significantly after the passage of the Act and all of that information was ultimately excluded from the suitability report.

The Grand Jury also notes that Harrah's success as a gaming operator and regulatory history was diluted in the final version of the report. The BIE report provided the Board with individual histories for Harrah's operations in nine states in the United States, including its standing with the applicable regulatory body. Further, the BIE report provided a description of significant disciplinary actions taken in multiple gaming jurisdictions. These were all largely removed from the final report that went to the Board. Certainly, the relationship that an operator enjoys with various regulatory agencies as well of its history of disciplinary actions relates directly to its potential success in Pennsylvania and warranted consideration by the Board.

C. *Licensing Hearings and Decisions*

1. Mt. Airy #1, LLC

Mt. Airy #1, LLC was treated differently almost from the start. Whether this was because the potential suitability issues were known or because this was a critically important license from a political standpoint is unknown. The investigation revealed significant areas of concern regarding the character, honesty, and integrity of Louis DeNaples. These areas concerned his prior felony conviction, the re-titling of tractors damaged by the Katrina flooding, a series of third party political contributions, and his potential ties to organized crime. While the investigators assigned to the applicant testified that they were largely able to investigate these issues, each and every investigator and enforcement counsel who appeared to offer testimony to the Grand Jury expressed their disappointment in the Board's decision to grant a license to Mt. Airy. The disappointment expressed before the Grand Jury ranged from outright disbelief, anger and embarrassment to statements that they would not themselves have granted Mt. Airy a license. Former Director Kwait described the DeNaples situation and outcome as "what not to do in a gaming situation."

Louis DeNaples was the only applicant with a felony conviction. Because that felony conviction fell outside the statutory period he was still eligible for a license.[9] His eligibility for that license did not, however, preclude the Board from considering the fact of the conviction. A former licensing attorney offered the following opinion with regard to the significance of that conviction, "My opinion was that anybody who seeks a gaming license has the obligation to prove that they are of good character, honesty, and integrity. Any individual has to prove that. So if you have a felony conviction in your past, you have a tough road to hoe to prove that you are of good character, honesty and integrity. Unlike in a criminal proceeding, [where] the burden is on the government to prove this person is bad, with a gaming license the burden is on the

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[9] Section 1213 of the Act states that "No applicant for a license or permit under this part, including principals and key employees, who has been convicted of a felony or gambling offense in any jurisdiction shall be issued a license or permit unless 15 years has elapsed from the date of expiration of the sentence for the offense. When determining whether to issue a license or permit to an applicant who has been convicted in any jurisdiction of a felony or gambling offense, the board shall consider the following factors:

(1) The nature and duties of the applicant's position with the licensed entity.
(2) The nature and seriousness of the offense or conduct.
(3) The circumstances under which the offense or conduct occurred.
(4) The age of the applicant when the offense or conduct was committed.
(5) Whether the offense or conduct was an isolated or a repeated incident.
(6) Any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received and the recommendation of persons who have substantial contact with the applicant. 4. Pa.C.S.A. § 1213. This section was amended to include the six enumerated factors on November 1, 2006.

individual to prove themselves good. How do you prove yourself good if you have a felony conviction in your past?"

This clear understanding of the burden of proof and the weight to be given DeNaples' felony conviction, even though outside of the statutory look back period, was clearly not shared by the Board. For example, former Commissioner Coy testified that a conviction that fell outside the preclusion period could not be considered by the Board. While he could not recall who gave him that instruction, Coy testified that "I am certain that during the time of all these examinations that we were given those parameters." Thus, Commissioner Coy gave no weight and did not consider DeNaples' prior conviction for purposes of assessing his character, honesty, and integrity. Coy further explained because no one brought charges against DeNaples for his conduct in relation to either the Katrina tractors or RAM's campaign contributions he did not consider either instance as an issue of bad character, honesty, or integrity for DeNaples to overcome. Later, Coy explained to the Grand Jury that he believed a criminal conviction was required to establish a person's bad character.

Similarly, Commissioner McCabe testified that he believed that he could not rest his decision not to award Mt. Airy a license on the fact that Louis DeNaples had a prior felony conviction. When asked if he received that information on the advice of legal counsel to the Board, McCabe responded, "Possibly. We could have - - we definitely would have talked about that but counsel - - our legal people would have said, look, you know, that's over 15 years so you really can't, you know, eliminate him because of that."

One of the evenings following the closed hearings on Louis DeNaples a licensing attorney walked back to the office with a couple of Board members. The Board members commented that Michael Schwoyer had not done his job presenting the evidence to the Board.

The licensing attorney reminded the Board that "Mike Schwoyer could have been sitting there with his feet up on a desk reading a newspaper. It was not his burden to prove this guy bad. It was Louis DeNaples' burden to prove himself good."

The closed hearings on Louis DeNaples occurred over three consecutive nights. Schwoyer represented BIE with regard to their presentation of the derogatory information developed by the agents. Schwoyer recalled that Anne Neeb, the Executive Director, and Frank Donaghue, the Chief Counsel, interjected themselves in the process. Neeb criticized his decision not to call an expert witness and ultimately he put the witness on the stand. Donaghue limited the number of questions he was to ask of a witness because one of the Board members needed to leave.

Davenport believed that the issue of RAM and the state and federal election code violations were among the strongest and most pertinent issues reflective of DeNaples' character.[10] The witness mentioned above was an expert witness from the Department of State who was scheduled to testify about the campaign contributions made through RAM. Davenport recalled reminding Schwoyer that their expert had not testified yet,

> So Mike stood up at that point and said to Tad Decker, who was the Chairman, "We have a witness that we would like to present," and he basically said something like, "You have five minutes," or something, and I am thinking "Oh, God, that's not enough time."... We bring her in, and she had no - - absolutely no prep.
>
> I would have handled it a lot differently . . . even though Karen would have been an excellent witness, I think she would have helped the Board realize some of the concerns that we had with what went on with RAM and the contributions from RAM to -

[10] Louis and Dominick DeNaples are partners in D & L Realty. Louis DeNaples was a consultant to RAM Consultants. In the event of RAM's liquidation, Louis DeNaples would receive 33% of the value. D & L has a one-third interest in RAM. Accordingly, Louis DeNaples had a 16.65% interest in RAM and failed to disclose that in his application for a gaming license. Between 2000 and 2005, RAM made $522,500.00 in federal and state political contributions. In his gaming application, Louis DeNaples denied making any campaign contributions or disbursements within the past ten years. In his sworn statement, DeNaples testified that contributions were made through RAM and that if someone approached him for contributions he would "send one down from RAM." The Pennsylvania Campaign Reporting Law requires that contributions be made in a person's own name. Further, an individual or a partnership must give money directly to a candidate, campaign, or political action committee.

> - or from D&L to RAM and then to State and Federal candidates, I don't think that was fully fleshed out.
>
> I believe back then, and I still believe to this day, that RAM had the issue that - - or it was the issue that I thought was the strongest, that we could actually prove. We had a paper trail, and plus we had referrals, and I don't think it was presented as well as it could have been. . . . I feel the Board needed to know more information."

The licensing process for Mt. Airy also differed from others in the amount and type of influence exerted over the process itself. One Board employee paid particular attention to the Mt. Airy investigation and licensing process. Don Shiffer was employed by the Board between October 2005 through August 2007 as Assistant Counsel. Shiffer obtained his position with the Board with the assistance of former Commissioner Conaboy. Senator Robert Mellow had appointed Conaboy to the Board. Conaboy shared a professional relationship with Louis DeNaples that spanned over twenty-five years and included shared Board service, legal representation, and social events.

Once employed by the Board, Shiffer was officially assigned as the licensing attorney for Pocono Manor. Despite the fact that he was assigned to the competitor's application, Shiffer expressed an interest, early on in the process, in the application of Mt. Airy #1, LLC. First, he requested that the Deputy Licensing Attorney assign him to the Mt. Airy application. Shiffer testified that he could not recall ever making such a request. A few days later Shiffer again approached the attorney making licensing assignment and requested again that he be assigned. This time he stated that he knew people involved in the application. The licensing attorney denied the request explaining that his familiarity with the applicants was even more reason not to assign him to the application. Next, Shiffer approached Lisa McClain, the licensing attorney assigned to Mt. Airy, and asked that she swap applicants with him. On more than one occasion, Shiffer approached Davenport and asked to see drafts of the suitability report concerning Mt.

Airy and Louis DeNaples and even claimed to be the licensing attorney assigned to Mt. Airy. Lisa McClain also recalled another incident when she could not locate a box of documents pertaining to Mt. Airy. Because he expressed interest in the application, McClain chose to look for the documents in Shiffer's office and located them under his desk. At the time that the box went missing, Shiffer was not assigned to any portion of the investigation and had no reason to be in possession of the documents.

Toward the end of the licensing process, Shiffer again offered to assist with the Mt. Airy application and was given 5 paragraphs of information pertaining to 5 key employee qualifiers to fact check. One of those individuals was Dr. Lisa DeNaples. To complete this task, Shiffer needed the Pennsylvania Personal History Disclosure form and the investigative report. Shiffer testified that the only time he had documents pertaining to Mt. Airy was during the fact checking he was asked to conduct of the application and denied any knowledge of the missing box of documents.

At the request of Commissioner Angeli, Shiffer indirectly participated in the closed hearings.[11] Although he was not the licensing attorney assigned to Mt. Airy, Commissioner Angeli sought him out because of his legal knowledge. Commissioner Angeli explained that from a licensing standpoint, Shiffer was extremely knowledgeable about the process so if he had any questions he would seek out Shiffer. For example, "If we were going into a meeting or anything and I needed anything clarified, I just had that relationship with him that he was the guy who could kind of tell me, give me the information I needed to make good decisions." With regard to his conduct leading up to and during the hearings, Shiffer explained as follows:

> Q: Did you volunteer information to him regarding the Pocono Manor Investors Suitability Report or investigation and anything you knew about Mount Airy?

[11] Upon the resignation of Commissioner Conaboy, the Senate Democratic Leader, Robert Mellow, appointed Raymond Angeli to replace Conaboy on the Board.

A: I mean, not anything more than I was asked.

Q: Then did he also ask you to be present during the hearings for Mount Airy?

A: Yes.

Q: Did he ask you to be present at any other hearing for any other applicant?

A: No.

Q: Do you know why he requested your presence at the Mount Airy investigation or hearings, the Executive Sessions?

A: He indicated to me that there was voluminous types of information, some of which dealt with legal issues that he was not familiar with being a non-attorney and that he wanted me to attend certain session with him. I'm not certain if they were all sessions. . . .

Q: Was there any concern internally that you had worked on the Pocono Manor Investors Suitability Report and so maybe you should have somebody else that wasn't associated with either investigation present?

A: That wasn't brought up to me.

During the hearings, Shiffer sat behind the Commissioners and continually engaged in private conversation with primarily Commissioner Angeli. Several eyewitnesses observed Shiffer writing notes and handing them to Commissioner Angeli and whispering in Commissioner Angeli's ear. Shiffer testified that he was asked questions by Commissioner Angeli concerning the legal meaning of a nolo contendere plea, how many key employee qualifier applications were associated with Mt. Airy, and whether the Department of Transportation was an administrative agency under the Commonwealth. Kwait, Roger Greenbank, and Nan Davenport complained about Shiffer's conduct, "because he was always on stage, and everybody knew he was there for Louie DeNaples." Ultimately, Shiffer's conduct during the closed hearings resulted in a confrontation between Shiffer and then Chairman Decker, one that Kwait was also pulled into. Kwait recalled,

> Apparently he said something to Tad Decker, complaining that BIE was putting all its resources and focusing on dirtying up DeNaples, and I am paraphrasing, because I don't know what he said to Decker, but I am assuming this is what he said, that we are dirtying up DeNaples and giving a green light to Pocono Manor, so Decker called me over, and he - - he is on the stage, and I am standing below, and he is standing next to Shiffer, and he said to me, "Is it true that you weren't properly investigating Pocono Manor? Instead you were trying to dirty up Louie DeNaples?" And I looked at him and looked at Shiffer, and I said, "Shiffer, did you say that to him?" And then I said, "You are too F'ing close to this DeNaples thing." And Tad went back in, a bit of a shock, and he starts yelling at Shiffer to keep his nose out of BIE's affairs, or something like that, and the incident ended.

Shiffer testified that the altercation was a result of a comment by Chairman Decker about the uniformity of the background investigations. Shiffer disagreed with the comment and stated that there were different levels of investigation on specific applicants. Shiffer denied during his testimony before the Grand Jury that his statement related to Mt. Airy or a perception on his part that they were treated unfairly by the BIE investigation. Former Chairman Decker recalled the confrontation as follows:

> We were in Executive Session reviewing Mr. DeNaples' application and also he was testifying, and I think some others were testifying, expert witnesses and so forth. It had mostly to do, without getting off track, to what we thought were some violations of the law in campaign contributions and Katrina trucks if I recall correctly - - and I think on that particular occasion. And what we got - - what happened is Ray - - I think it was Ray, could have been Shiffer, said to me, why are we spending so much time on DeNaples? It isn't really fair. And then I said, listen, the guy pled nolo to a crime how many years ago, 17, 18, 25 years ago, whatever it was, I forget to be honest. I said, we have a duty to do that and also we have these issues with people complaining about Katrina trucks or, you know, something else. I said, we're here to investigate.
>
> And the response was, we spent - - and I think it's probably true - - we spent more time on DeNaples than we did on everyone else combined. I don't know if that's true or not, but that was kind of what was said back. And then Shiffer and I sort of got into an argument about it.

When Shiffer initially left the employ of the Board he claimed he was going into private practice, "absolutely unrelated to gaming." Less than one month after his departure he began working for Wright and Reihner, a private law firm representing Mt. Airy.[12] While employed by Wright and Reihner, Shiffer occupied an office located in the Mt. Airy casino. Shiffer explained his role with the firm, "there's no mistaking that I was, you know, going to be focusing a very significant amount of my time on regulatory issues for their main client, which was Mount Airy. That's pretty much - - you know, I was hired on as an expert or a - - someone who was very conversant in the Gaming Act and in the licensing process in general." Shiffer further testified that during his time with Wright and Reihner, 95% percent of his time was occupied by performing legal work for Mt. Airy. When asked why he waited a year to work for Mt. Airy directly, Shiffer explained "I effectively was doing my best to honor the fact that even though attorneys per se would not be subject to the restrictions of the Gaming Act, there was a limit - - I think that at the time it was a year period of time where you - - where you wouldn't be able to go to direct work for casinos and all that." It is widely believed by both current and former PGCB employees that Shiffer was effectively in house counsel without having to actually hold a key license. Despite the fact that he occupied an office with a telephone in the casino and did 95% of

[12] As of February 22, 2011, approximately nine individuals left the Gaming Control Board and obtained employment with licensed casinos or law firms that represent such casinos. Narcisco Rodriguez-Cayro worked as Senior Chief Counsel to the PGCB, resigned, and immediately went to work for Ruben & Aronson, the law firm representing MTR Gaming Group, Inc., the parent company of Presque Isle Downs. David Kwait served as the Director of BIE. Shortly after his resignation in December of 2008, Kwait worked for Ruben & Aronson as their Director of Investigation and was tasked with responding to an RFP concerning gaming work for the State of Maryland. David Kwait, Jr., the son of David Kwait, obtained a paid internship with the law firm of Ruben & Aronson while his father was still employed as the Director of BIE. Tad Decker resigned from the PGCB and is currently the president and CEO of Cozen O'Connor, which represents the interest of the Sugarhouse Casino. Because of his prior affiliation with Cozen O'Connor, Decker recused himself from voting on the Sugarhouse application. Frank Donaghue resigned from the PGCB while serving as the Interim Executive Director. Donaghue joined the law firm of Ballard Spahr, which is the attorney of record for Woodland's Casino, Penn National Gaming, and the Valley Forge Casino. James Doherty worked as Assistant Chief Counsel to the Board. Upon leaving the PGCB, he formed a law firm and immediately obtained work representing Mohegan Sun at Pocono Downs, Philadelphia Park Casino, and Mt. Airy. Kevin Hayes resigned from the Board as Director of Gaming Operations. Hayes joined the law firm formed by Doherty. Doherty and Hayes, while employed by the Board, worked on the applications of Mohegan Sun and Mt. Airy. Thomas Sturgeon served the Board as Deputy Director of BIE and Director of Casino Compliance. Currently, Sturgeon is seeking a gaming license to serve on Mt. Airy's audit committee. Frederic Gushin, Managing Director of Spectrum Gaming Group and a former Deputy Attorney General in New Jersey's Gaming Enforcement Section, testified that in New Jersey there is a four-year post-employment restriction on working for any casino licensee.

his legal work for Mt. Airy, Shiffer claims that his year of employment with Wright and Reihner was "not an attempt in any way, shape or form to try to act as a subterfuge of the limitation to work for a casino. In fact, it ended up that the period of time that I spent devoted to the casino was much greater." Contrary to Shiffer's claims, the Grand Jury finds that his employment with Wright and Reihner was precisely that – a subterfuge to hide the fact that he left the Board to work immediately for Mt. Airy. In October of 2008, Mt. Airy formally hired Shiffer to serve as General Counsel and later Vice President.

As a result of his position with Mt. Airy, Shiffer had to file an application with the Board and undergo a background investigation as a key employee qualifier. During the investigation, concerns about his conduct during the Mt. Airy background investigation, his conduct during the closed hearings, and ultimately his subsequent employment with Mt. Airy became part of the inquiry. BIE conducted a thorough investigation, interviewing all current and former Board employees who observed Shiffer's efforts to involve himself in the Mt. Airy application process.

In addition to interview, BIE obtained the cell phone records for Shiffer's personal cell phone, work cell phone, and Board issued BlackBerry. A review of the phone records showed that while Shiffer was employed by the Board, there were 91 calls to and from Shiffer's various phones to Lisa DeNaples, the daughter of Louis DeNaples. There were also 3 calls from his phone to the business telephone of Joseph Wright of Wright & Reihner. Lastly, there were 300 calls between Shiffer and Commissioner Angeli. For comparison purposes, BIE looked at any calls made to any other Commissioners during the relevant time period. That analysis revealed 1 call to Commissioner Mary Collins, 3 calls to Commissioner Sojka, 3 calls to Chairman Tad Decker, 13 calls to or from Commissioner Sanford Rivers, 5 calls to Commissioner James Ginty, 5 calls to Commissioner John Marshall, and 1 call to Commissioner McCabe. As a result of this comparison, the Grand Jury finds the calls to Commissioners Conaboy and Angeli to be significant in number.

Shiffer explained that Angeli regularly sought him out to assist him with general questions about the Act and the regulatory process. Some of those questions related to Mt. Airy and Pocono Manor while others had to do with the process and the differences between the categories of licenses.

BIE further analyzed the phone calls between Lisa DeNaples and Don Shiffer during Shiffer's employment with the Board, comparing them to Board activity. The Grand Jury offers the following table to illustrate that analysis:

Significant Calls Between Lisa DeNaples and Don Shiffer

Date	Board Activity	Call Detail
3/13/07	PGCB Executive Session	2 calls from Lisa DeNaples
3/15/07	PGCB Board Meeting	2 calls from Lisa DeNaples 5 calls from Shiffer
3/22/07	PA Supreme Court rules that Pocono Manor is entitled to Executive Session Exhibits as part of the appeal of the denial of their license.	2 calls from Lisa DeNaples 1 call from Shiffer
3/23/07	See above.	4 calls from Shiffer 3 calls from Lisa DeNaples
4/9/07	PGCB Meeting	1 call from Lisa DeNaples 1 call from Shiffer
5/16/07	PGCB Executive Session	2 calls from Shiffer 1 call from Lisa DeNaples
6/22/07	PGCB Executive Session	I call from Shiffer
7/2/07	PGCB Executive Session	1 call from Shiffer
7/16/07	PGCB Board Meeting	6 calls from Shiffer 3 calls from Lisa DeNaples
8/7/07	PGCB Executive Session	2 calls from Lisa DeNaples 1 call from Shiffer
8/8/07	PGCB Board Meeting	5 calls from Shiffer 1 call from Lisa DeNaples

Many of the meetings referenced in the table above occurred during Executive Sessions of the Board for which there are no publicly maintained transcripts or agendas. As discussed below, the amount and type of business conducted by the Board in Executive Session is of grave concern to the Grand Jury. Even on those dates listed above for regular meetings of the Board there were also Executive Sessions for which there are no minutes or transcripts. However, the August 8, 2007 is of particular note. During that meeting, Mt. Airy gave a power point presentation entitled, "Project Update" that informed the Board of its construction progress and projected opening dates. Additionally, during the public portion of the meeting the Board passed Resolution No. 2007-10-OCC that permitted Mt. Airy to take possession of slot machines. Lastly, the Board passed Motion No. 2007-127-EXE to allow Commissioner Angeli to approve all pre-opening conditions for Mt. Airy. Accordingly, the Grand Jury finds it noteworthy that on that same date Shiffer and Lisa DeNaples exchanged 6 phone calls.

Shiffer testified that in January or February 2007 he developed a professional friendship with Lisa DeNaples. Initially, Shiffer mentioned his desire to work for Mt. Airy during a chance meeting with Louis DeNaples. He suggested that Shiffer contact his daughter. Shiffer contacted Lisa DeNaples and claims that from that initial phone call their relationship began to develop. While he was still employed by the Board, Shiffer made himself available to her to answer a variety of questions concerning the Act and procedural questions regarding its enforcement and regulation. Shiffer did not have this sort of communication with any other gaming licensee and did not inform his supervisors that he communicated regularly with Lisa DeNaples.

The Grand Jury finds Shiffer's contact with Lisa DeNaples and Commissioner Angeli to be significant and to raise serious questions about the integrity of the process. On May 15, 2006 and January 10, 2007, Shiffer signed the Code of Ethics Statement indicating that he understood the Board's policies and the ramifications for violating them. Additionally, on August 29, 2005, Shiffer signed the Board's Non-Disclosure Agreement whereby he agreed not to disclose any confidential information to anyone outside of the Board. Pursuant to the agreement, confidential information included, "work product resulting from or related to work or projects performed or to be performed for the PGCB or its consultants, including but not limited to all lines of inquiry, hypotheses, research, and conclusions related thereto and the methods, processes, procedures, analyses, techniques, and audits used in connection therewith." To the extent that Shiffer regularly engaged in communications with Lisa DeNaples regarding the Board's internal procedures and interpretations or the minutes of any Board Executive Session, the Grand Jury finds that those communications violated the Non-Disclosure Agreement.

Kwait spoke with then Chairman Decker following the Board's decision to issue a license to DeNaples over the competitor, Pocono Manor. Decker stated "the project wasn't near as nice as Louie's, and then the other issue that was raised is that Louis is Pennsylvania. It is Pennsylvania jobs. The other guy came from someplace else, New York or Nevada or someplace else." Accordingly, Kwait believed that the Board weighed the derogatory information regarding Louis DeNaples against their view that that Pocono Manor's application or setting or project did not have the same community support.

2. PITG Gaming, LLC

Don Barden's application for a Category 2 license in Pittsburgh also received its fair share of preferential or special treatment. A licensing attorney explained her fear that Board members were engaged in horse trading, effectively agreeing to vote for each other's applicants in advance of the hearings. The differential treatment afforded to Barden forms, in part, the basis for her belief that horse trading was part of the Board's unofficial process. She explained to the Grand Jury, "attorneys who were representing applicants who came to speak with us spoke to Susan [Hensel] and me and we had a whole room full of staff that they could come and ask their questions, voice their concerns. They could pick up the phone and call us and ask questions, and I recall that Don Barden seemed to have - - he would go right to Anne Neeb, our Executive Director and she was giving answers to him on certain things, and that just seemed to be shortcutting the process. You have to come through staff in order - - you know, we needed to control it. And so I know that there was some sort of relationship there."

By several accounts, there was an audible gasp in the hearing room when the Board announced its decision to award the Pittsburgh license to PITG Gaming, LLC. The reason for the shock and surprise was twofold. First, many considered Station Square Gaming, LP to be the most qualified applicant for the license. Second, to others PITG Gaming, LLC was at best the weakest applicant financially and at worst was not financially suitable. Misken testified unequivocally that upon closer inspection (after the award of the license) of the financial information available, PITG Gaming, LLC was financially unsuitable. Michael French testified that he believed the Board glossed over certain issues in Barden's historical financial profile. French explained as follows:

> Glossed over, I - - our assessment, if I remember this part, our assessment of his application, aside from, you know, him being very popular because he was always at all the meetings, and what the Board thought, our assessment was that at the time he had the financial capability to develop the project. However, based on his funding and based on the package he presented, the risk profile was very high, very high. And I think that we spelled that out in our report that there was a very high risk because of historical financial profile and we presented that to the - - in our report, in our summation.

French further testified that PITG Gaming, LLC was the only applicant who presented as a very high risk profile and when asked to rank the respective Pittsburgh applicants French provided the following analysis:

> I would - - I myself - - I always lean to how does that State get the money quickest and who can deliver and who has a proven track record. So I don't know what the numbers were, but I would give Harrah's the top number. Now, maybe people didn't like the site over there, so maybe that knocked it down a little bit. You know, maybe people like the

> fact that the other applicant was going to build an arena, which they were going to do, which, you know, I'm a hockey fan. I'm a Canadian. I like that too. So I would say that, you know, I would have Isle of Capri between - - obviously Barden at the bottom and Harrah's at the top.

The Board is obligated by the Act to maximize revenue to the Commonwealth. This is set forth both in the Act's description of its legislative intent and also in the inherent financial interest of the taxpayers, as the intended beneficiaries and shareholders in every casino licensed in the Commonwealth. One of the drafters of the Act explained the Board's fiduciary obligations to the Commonwealth as follows:

> Q: What was the purpose of that section?
>
> A: That references what's otherwise called the prudent person standard. And as it applies to investments it says, you're to invest the public's money as would an ordinary prudent person would under like circumstances. You can't gamble with it, in other words. You can't take unnecessary risks. You have to be prudent about it. So they took - - we took that standard and applied that to licensing standards, because one of the ways of assessing each of the applications is what's your business experience? What's your financial viability? Do you have the ability and wherewithal to run a successful venue? And we say to the Board, you in making that decision have the responsibility of exercising that choice pursuant to the prudent person standard. . . .
>
> Q: And in your explanation of the prudent person standard and the standard of care, setting all other factors aside, it would seem that if you have two other viable competitive applicants you wouldn't pick the highest risk?
>
> A: Agreed. I just - - I don't recall if that was done in reaction to the Pittsburgh scenario or while it was occurring.

Following the Board's licensing decisions, numerous appeals were filed by those applicant's denied a license. The Grand Jury heard testimony and received information from representatives associated with Station Square Gaming, LP. Through the course of the appellate process, in making their best case to the Supreme Court, they became well versed in Barden's finances. The Grand Jury recognizes their inherent bias toward the process, but also finds the analysis provided concerning Barden's financial history illuminating.

In the early days, here's what we knew. We knew that Majestic Star was one of the worst casino operators in the country. We knew that financially they were undercapitalized. What does that mean? They didn't have cash or access to cash. How did we know that? We know that because when you're a business and you have to raise money to do something you have to sell bonds. When you sell bonds, you're required to tell the world of your financial performance, just like you have to fill out a credit application. When he did that every time he needed to raise money, he put their performance out there.

And here's what we knew. We knew that his money was very expensive, and what does that mean? If you have good credit, a good relationship with your bank you'll get a credit card that might be eight or nine percent interest rate. If you don't pay your bills and you're a high risk credit, you might be paying 28 percent interest on a credit card.

Well, it's the same when it comes to business and access to capital. The better you are, the more capitalized you are, the more the bank knows you can repay the money, the less they charge you for it. Don Barden's interest rates were extraordinary on his loans.

Here's the second thing we knew. Because it's a public transaction when you don't make your payments or you don't meet the criteria of your loan and you become in default of your loan, it's called something different than it's called when we don't pay a bill. It's called missing your coverage. When I don't pay a bill, they send me something that says, you're late. You've got to pay it. In business when it's big loans, it's missing your coverage. We knew that Barden had missed his coverage multiple times on his lines of credit during this period of time.

The third thing we knew about Barden is because gaming is regulated you have to - - the government releases your performance every month. Pennsylvania Gaming Control Board does that in Pennsylvania. If you're in Davenport, Iowa it does it. If you're in Biloxi, Mississippi it does it. If you're in Las Vegas it does it.

We knew Barden's performance in all the markets he was in was the very last lowest operator. Even during this time we knew that while the gaming industry was expanding, sort of everybody else was growing, doing more business, generating more money, we knew that Barden at the same time was losing. He was getting smaller and he was making less.

That's what we knew at the time of the applications, and that was all we needed to know to tell us we don't need to worry about this guy.

We became intimately familiar with Majestic Star Casinos after the decision because it is then from the standpoint of picking through every nook and cranny and morsel that we studied the finances and the operations of Majestic Star Casinos. And we had forensic accounts, teams of forensic accountants going all over the place, getting every piece of information that was available to analyze it and come back. . . . We concluded that Majestic Star was worse than we thought it was after looking at all the numbers. It was really really bad. . . . I believe during the time of application his credit rating was downgraded four times, four. I believe during the time of the gaming application process and decision he had missed his coverage on debt seven times.

During the time of the application filing his credit rating was downgraded by Moody's, which is the investor service that does this and others, three times.

D. ***Ex Parte Communications***

Very early on ex parte communications became an issue for Members of the Board. Former Commissioner Conaboy's testified about an ex-parte visit he had from a representative of the Senate Democratic Caucus. Sometime during July 4th weekend in 2005, Conaboy received a phone call from Tony Lepore, Senator Mellow's Chief of Staff. Lepore proposed that they meet and Conaboy replied that given the holiday, perhaps they could speak on the telephone. Lepore indicated that he would like to conduct the meeting in person and drove to the Scranton area. Conaboy described the meeting as follows:

> He met me at my house. And it was a very short meeting but he wanted to tell me that the - - as he described it, the Democratic Caucus in the Senate had some concerns that they wanted to talk to me about, and I told him I have not heard from Senator Mellow. He said, this is - - I am not here on behalf of Senator Mellow. I said, well, I understood you worked for him. He said, well, I work for the Senator and the Caucus, and the Senator is the minority leader because of the Caucus so it's one and the same he was saying. But he said that the Caucus wanted to talk to me about some concerns. I said what were they. He said first - - I - - the gist of it was that I was acting too independently I guess, that I was not engaging them in the work at the Gaming Board. He said for instance that they never saw the weekly agenda or biweekly, whatever it was, the agendas that came out before the meetings. So they had no idea what was going on at the Gaming Board. And I said, well, I think that's public information, these agendas, but I could certainly talk to the staff, the clerical staff at the Gaming Board and if it's appropriate - - because again, I think it's public information - - I could get them - - get an agenda to you.
>
> And I said, what else? He said also that there was a concern that I was kind of just getting along with everyone and not objecting to anything. And I said, I don't know what you mean. He said, well, voting is going to start happening on policies, procedures, whatever it might be, and that they might start letting me know that, you know, I was part of the Democratic Caucus I guess or the instructions were coming.

> And third, because I had been so open about my intent to recuse myself if the Mount Airy/DeNaples or any other conflict arose, he said they were concerned about that and that they didn't want me recusing myself from any votes.

Then Commissioner Conaboy responded that he would not be told how to vote and that he would be the sole person to judge whether it would be appropriate to recuse himself. Lepore indicated that he was simply delivering a message and would deliver Conaboy's response.

The November 2006 amendments to the Act included a code of conduct concerning ex parte communications. Section 1202.1 prohibits members of the Board from engaging in off-the-records communications with any person "regarding the merits of any fact in issue relating to a 'pending matter' before the Board or which may reasonably be expected to come before the Board in a 'contested-on-the-record proceeding.'" On November 7, 2006, Chief Counsel Frank Donaghue sent an email to all Board members with a memorandum attached explaining the amendment to the Act and the applicable PGCB Code of Ethics. In his memorandum, Donaghue defined "pending matter" and "contested-on-the-record proceeding" as follows: "the discretionary issuance, approval, renewal, conditioning, revocation, suspension, or denial of any license or permit or any petitions or motions that would require Board consideration and action, which are not policy or administrative issues." In addition to those duties imposed on the Board, "an attorney representing the bureau (referring to the Bureau of Investigation and Enforcement) or the Office of Enforcement Counsel, or an employee of the bureau or office involved in the hearing process, shall not discuss the case ex parte with a hearing officer, chief counsel or member." 4 Pa.C.S.A. § 1517.2.

As a result of the amendment and the new code of conduct, the Board began maintaining a log of all ex parte communications. The log is accessible through the Board's website. The most recently available log covers communications between November 30, 2006 through

November 18, 2010. The Grand Jury notes that as of November 30, 2006 the conditional Category 1 licenses were already issued and the Board was less than one month away from issuing permanent Category 1 licenses and Category 2 licenses.

Anne Neeb, the former Executive Director of the Gaming Control Board, explained that the rule regarding ex parte communications was necessitated by the requirement that there be a separation between the investigative and adjudicatory functions of the Board. In particular, Neeb explained,

> The Board, again, their role - - they served as judges, just no different than judges in a regular courtroom would serve and no different from a prosecutor would have a relationship or be assigned to a particular courtroom but there's still that professional separation of duties. And so that's pretty much how it was. The Board was very aware of that. We had - - we had a very good ethics policy in the office. We had Non-Disclosure Agreements that each employee signed. Ethics was a really big deal.

Former Commissioner Sanford Rivers explained that initially none of the Board members could agree on the definition of "ex parte communication" and what type of conversation was actually prohibited. Eventually, Rivers believed that there was consensus among the Board members regarding prohibited communications. Rivers explained his understanding of the rule against ex parte communications as, "that we could not have any conversation that dealt with an issue before the Board with the employees." In particular, Rivers believed that Commissioners were not to have any communications with any agent of the Board regarding the status or scope of an ongoing investigation.

Greenbank described his understanding of ex parte communication and the need for separation between the investigative process and the Board as follows:

> BIE was free to discuss any aspect of its investigation at any time with members of the Office of Enforcement Counsel at any stage of the investigation. We - - and we did so. We were not to discuss any matters with any members of the board. We were prohibited from discussing matters with the Executive Director or Chief Counsel. When we did so it was only out of necessity. We were free to discuss licensing matters at any time during

> the investigation if an application was not complete or someone - - the agent or licensing analyst would discuss various matters, but we did not discuss a pending investigation with the Bureau of Licensing.

Despite this clear understanding and duty imposed by the Act, Commissioner McCabe engaged Greenbank and Kwait in a conversation about the background investigation concerning Mt. Airy. In December of 2006, McCabe, Greenbank, and Kwait attended the open house of the Western Regional Office. The open house occurred after the closed hearings on Mt. Airy, but before the Board issued the licenses on December 20, 2006. Before the meeting started, Kwait told Greenbank privately that Commissioner McCabe needed something that he could review so that he could vote against Mt. Airy. As a result of the brief meeting, Greenbank provided McCabe with the interview report of Frank Pavlico. Pavlico explained that he is a cousin of William D'Elia and was familiar with the long business and personal relationship existing between D'Elia and DeNaples. The report then detailed specific family events and business meetings DeNaples and D'Elia attended together. D'Elia and several other individuals reportedly involved in these meeting are associates of the La Cosa Nostra family. Information pertaining to Pavlico was excluded from the final suitability report. Greenbank explained that this information was excluded from the report because it was second hand information, which they were unable to corroborate. Nonetheless, the information was provided to Commissioner McCabe who ultimately voted to award the license to Mt. Airy.

When asked to explain his understanding of ex parte communications and the necessary separation between the Board and the investigations, McCabe testified as follows:

> A: My understanding was we were the judges - - we were acting in a quasi judicial role in that we were on the judge side.
>
> Q: Because of that position and that role, would that have entitled you to information as the investigations were ongoing.

> A: No, I don't think so. From my understanding - - and no one - - how things were supposed to be done is, no, we're not supposed to know about things as they get going. It's to go up our chain, and we had a process established where the people, our lawyers, the supervisors over the investigators, if there was information in there that we weren't supposed to see, it wasn't corroborated by facts, evidence, that it shouldn't have been in there, that we shouldn't see things that we weren't allowed to see.
>
> Q: Did you see things that you weren't allowed to see?. . .
>
> A: I don't think so.

When confronted specifically about the information he requested from Greenbank, McCabe could not recall the meeting. Once his memory was refreshed regarding the occurrence of the meeting, McCabe testified, "if I talked to them it was, yeah, you guys got to get a piece of evidence. You got to get a picture. You got to get an overhear or a wiretap (sic). You have to get a surveillance report. You have to get somebody to come in here that's going to testify. McCabe is not only describing his recollection of an ex parte communication but also the burden placed squarely on BIE's shoulders to establish DeNaples' bad character beyond doubt through the use of a photograph, or surveillance, or a wiretap. When asked why the information provided to McCabe wasn't included in the final suitability report, McCabe explained:

> I have no idea why - -our lawyers, the supervisor were to scrub - - look at those reports, and as long as they were able to verify and had evidence and facts to back up this person - -
>
> And also, like I said, looking at the credibility of the person providing that information, if the person was credible, the information was valid, it should have come to us. But the lawyers and the supervisors on the way up, there were a lot of levels between us and then the front line guys.

When asked to explain the practice of scrubbing BIE reports, McCabe testified that "scrubbed" is a generic FBI term referring to Harrisburg's practice of making corrections and grammatical changes.

Commissioner McCabe described another instance when he was provided with information from BIE prior to awarding the Category 2 licenses. In particular, McCabe recalled learning that the Board was not receiving all of the information that BIE developed. Accordingly he asked former BIE agent Bill Wells to bring him the information he developed pertaining to Station Square. Wells provided McCabe with two volumes of investigative reports including BIE's 200 page version of the suitability report. McCabe testified that he did not read the entirety of the two volumes. Instead, he reviewed some reports to ascertain the quality of the investigator's work. By way of explanation, McCabe testified that he did not review all of the reports because he knew he was not supposed to have the information.

Despite his purported understanding of his role and the necessary separation between BIE and the Board, McCabe testified that he did not believe his contact with Wells or Greenbank to amount to an ex parte communication. When asked why, McCabe testified, "Well, one, because my position as having been the head of the - - the head of the FBI. My conversations with them were not directly initially just right at the Gaming, and I just did not look at them as ex parte. They were not trying to influence my decision in any way, so I didn't look at them as being ex parte communications."

RECOMMENDATIONS

We the members of the Thirty-First Statewide Investigating Grand Jury, having heard testimony and reviewed evidence pursuant to submission of Notice No. 5, make the following recommendations:

1. To ensure diversity and competency among the membership of the Gaming Control Board, require that at least one Gubernatorial appointee to the Board possess at least 10 years of state or federal law enforcement employment experience; and at least one Gubernatorial appointee to the Board possess at least 10 years of private business or finance employment experience.

2. Create specific statutory authority vesting an independent state agency, such as the Department of the Auditor General, with the responsibility for annual auditing and inspecting of the P.G.C.B. to help insure adherence to the obligations of the Gaming Act.

3. Physically separate the Office of Enforcement Counsel and the Bureau of Investigations and Enforcement from the Board and establish BIE as an independent law enforcement agency.

4. The Grand Jury finds that the Pennsylvania Crimes Code and related criminal statutes are inadequate to the job of combatting public corruption. A new chapter of the Crimes Code, specifically focused on the need to eliminate fraud and corruption, perpetrated against the taxpayers of Pennsylvania by public officials and employees, should be established. Additionally, provisions should be added to the Gaming Act to criminalize material and intentional violations of the Act.

5. Amend Section 1201 of the Act to explicitly prohibit any person from serving as a member of the Board who was an applicant for or holder of a Pennsylvania slot machine license.

6. Amend Section 1202 to explicitly prohibit any member of the Board from being an applicant for, or holder of, and Pennsylvania slot machine license.

7. Require that the Board post on their website all contracts, including contracts for legal work. This would include all aspects of the process including initial RFP, the contract applicants, and the final awardee of the contract.

8. Create regulatory clarity about the role and function of BIE. Special attention should be placed on making clear that all information uncovered by BIE about a vendor or applicant must be contained in their report to the board.

9. Require the Board to submit an annual report listing the number of executive sessions conducted by the Board, including an agenda for each executive session.

10. Prohibit members of the Board from meeting in executive session for the purpose of conducting quasi-judicial deliberations involving slot machine license applications, except for the limited circumstance to consider actual confidential information. With amendments to the statute clarifying what qualifies as "confidential information" as narrowly as possible.

11. Require the Board to seek a voluntary waiver of any claim of confidentiality prior to rejecting any request under the Right-to-Know Law for any public record.

12. Require the Board to list on its website a description of all Right-to-Know requests, the number approved, the number rejected, the number of appeals filed as a result of the Board's rejection, and the outcome of each appeal.

13. Require each executive meeting of the Board to be transcribed in detail.

14. Prohibit any PGCB employee from obtaining employment with a gaming entity or any firm that represents or conducts business with any gaming entity for four years from the termination of employment.

15. Prohibit any vendor or licensee from obtaining a contract or commencing work at a casino without the completion of a background investigation.

16. Create a uniform practice for the review of suitability reports by applicants.

17. Create uniform and transparent hiring practices based upon merit alone.

18. Create a uniform policy for referral to outside agencies upon the discovery of potentially criminal conduct.

19. Eliminate through either regulation or legislation, whichever is determined to be necessary, any doubt regarding the waiver of due process rights of an applicant or license holder. A gaming license in Pennsylvania should never be a right. It should be clearly understood by the applicant, and the law, as a privilege subject to complete inquiry and oversight by the representatives of the people.

20. Significantly overhaul the current employees of the Board. The Board should be staffed with experienced and notable individuals in the fields of Gaming and administration. This is especially crucial of the attorneys employed by the board.

21. Establish and make public the budgetary guidelines for the Gaming Control Board, including the establishment of a salary matrix for all employees to include Board members.