

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session  
May 2, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:30 a.m. on Monday, May 2, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven Horsford

**STAFF MEMBERS PRESENT:**

Nicolas Anthony, Committee Policy Analyst  
Kelly Lee, Committee Counsel  
Barbara Moss, Committee Secretary

**OTHERS PRESENT:**

William Bible, Nevada Resort Association  
Terry Lanni, Chairman and Chief Executive Officer, MGM Mirage  
Scott M. Nielson, Station Casinos, Incorporated  
William J. Noonan, Boyd Gaming Corporation  
Dennis K. Neilander, Chairman, State Gaming Control Board  
Peter C. Bernhard, Chairman, Nevada Gaming Commission

CHAIR AMODEI:

The meeting is an informational hearing on gaming issues and merger activity.

WILLIAM BIBLE (Nevada Resort Association):

I submitted two booklets to the Committee: "The Facts About Gaming in Nevada" ([Exhibit C](#), original is on file at the Research Library) and "The Facts About Gaming in Nevada, Nevada Resort Association's 2005 Economic Report" ([Exhibit D](#), original is on file at the Research Library). I will give an overview of [Exhibit C](#), which contains a number of items in graph form that are unique to Nevada, such as population growth, employment, industry, tax structure and trends within the gaming industry.

The graph on page 2 of [Exhibit C](#), entitled "Population Growth, Top 10 Fastest-Growing States, 1993-2003," demonstrates Nevada as the fastest-growing state in the nation and approximately 22 percent above Arizona during the 10-year period. This is not unique for that particular period and is the same for the 1960-1970 period, the 1980-1990 period and the 1990-2000 period.

The graph on page 3 of [Exhibit C](#), entitled "Reasons Cited for Moving to Las Vegas, 2003," is a survey conducted annually by the University of Nevada, Las Vegas, wherein 15,000 southern Nevadans were asked their reasons for moving to Nevada. The survey is uniquely southern Nevada; there is no comparable data on a statewide basis for northern Nevada. The main reasons people relocate to southern Nevada are retirement, job transfer or to be near relatives. The graph shows a decoupling between population growth and the growth of gaming within the State. While people are migrating to Nevada for jobs, they are also moving for a variety of other reasons not related to the growth of the gaming industry.

The graph on page 4 of [Exhibit C](#), entitled "States with the Highest and Lowest Net Migration Rates for the Population 65 Years and Over: 1995 to 2000," is particularly interesting. The top line of the graph shows Nevada at 114, which means for every Nevadan over 65 years of age who moved out of the State, 114 individuals within that age classification moved in. Arizona, Florida and South Carolina follow, which is not surprising because the states listed at the top of the graph are warmer weather, milder climate states; the states listed at the bottom of the graph are typically those with harsher winters and colder weather.

The graph on page 5 of [Exhibit C](#), entitled "Nevada Employment Growth, In and Out of the Hotel, Gaming & Recreation Sector, 1993-2003," shows that

between 1993 and 2003, 52,800 jobs were created in Nevada and tracked by the Employment Security Division. Hotel, gaming and recreation were about 12.7 percent of the jobs, and the other 87 percent were created in the nongaming sector. Arguably, some of the jobs were created in retail and ancillary industries associated with the growth of tourism. Construction is one of the prime movers within the Nevada economy, some of which is related to gaming, some not. This information is unique because growth in employment in the ten-year period showed a relatively small amount occurred in the gaming sector, which demonstrated further decoupling of the industry.

The graph on page 6 of [Exhibit C](#), entitled "Nevada Employment Growth Rates 12 Months Ending October 2004," shows 5 out of every 100 jobs are classified leisure and hospitality, casino-hotels, gaming and accommodations. Construction was one of the main drivers in job growth. Professional and business services, other services, which probably include retail services, education services and government grew at higher rates than the gaming sector.

The bar graph on page 7 of [Exhibit C](#), entitled "Hotel, Gaming and Recreation Employment as a Percentage of Total Nevada Employment, 1993-2003," shows in 1993 the gaming and recreation employment sector constituted approximately 26 percent of total Nevada employment. It shrank in 2003 to 21 percent; therefore, there has been a 5-percent decrease in gaming share of the employment pie during the 10-year period.

Page 8 of [Exhibit C](#), entitled "Largest 15 Employers in Nevada," shows 10 of these employers—Bellagio, Limited Liability Company; MGM Grand Hotel/Casino; Mandalay Bay Resort and Casino; Mirage Casino-Hotel; Caesars Palace; Rio Suite Hotel & Casino; Luxor; Bally's & Paris Casino Hotels; Flamingo Hilton Corporation; and Treasure Island at the Mirage—are gaming companies. The other largest employers are government entities with the Clark County School District being the top employer in the State.

The graph on page 9 of [Exhibit C](#), entitled "Nevada Wages and Salaries Comparison, Nevada Versus National Averages, by Industry, 2003," shows gaming industry wages in Nevada are approximately 92 percent of the statewide average, which would be anticipated because of the number of employees. To a large extent, the average wage in the gaming industry would drive the State's number. This graph compares wages and salaries to national averages by similar industries. The accommodation industry bar shows the

wages paid in Nevada to workers in the hotel-casino industry are 39 percent of the national average, or 39 percent higher than their national counterparts.

MR. BIBLE:

The graph on page 10 of [Exhibit C](#), entitled "Nevada Taxable Wages and Health Care Deductions Casino Hotel Compared to All Other Industries, Q1 through Q3 2004," shows some specific data. When the modified business tax was enacted last Session, an allowance was made for deductibility for health care costs funded by the employer. The graph includes three-quarters of the data from the inception of the tax in January 2004, and shows casino-hotels contributed approximately 18 percent of the total collection, yet received about 33 percent of the total deductions. This indicates the gaming companies and industry have about twice the amount of employer-supported health care costs than other Nevada employers. There is a high degree of subsidization for health insurance costs absorbed by the gaming industry as one of the major employers in the State.

The map on page 11 of [Exhibit C](#), entitled "North American Gaming Establishment Map, 2004," is a dot map indicating the location of gaming establishments in the United States and surrounding regions. New Jersey legalized gambling in the late 1970s; the Indian Gaming Regulatory Act was enacted by the federal Congress in the late 1980s; and after 1990, there was tremendous expansion of gambling through the United States. Tribal ventures occurred on our borders and in California, Arizona, Idaho, Washington, Oregon and throughout the United States. Nevada is no longer the only game in town. Our competitive set is displayed to some extent in the map, but the competitive set in Nevada extends beyond this map globally throughout the world.

The graph on page 12 of [Exhibit C](#), is entitled "Spending on Commercial Gaming in the United States, 1993 to 2003." Eleven states have commercial-style gambling. The graph does not include tribal gaming and lottery proceeds; however, in 1993 Nevada captured about 54 percent of the commercial gambling spend and currently captures approximately 36 percent of the gambling spend. This shows an increase of gambling opportunities throughout the United States and a decreased market share Nevada receives from that gambling spend throughout the United States.

The graph on page 13 of [Exhibit C](#), entitled "Commercial Casino Employment as a Percentage of Total Employment, States with Commercial Casinos, 2003,"

shows the 11 states that have commercial gaming ventures, and does not include tribal gaming or lottery. Nevada is at the top with 228,000 employees and 20 percent of total employment. Illinois is at the bottom with 9,101 employees out of a total base of 6.1 million employees, or one-tenth of 1 percent. This graph illustrates the importance of gambling to Nevada and Nevada's economy. In other jurisdictions, gambling is not a core industry. While it brings significant dollars to the state budgets, by comparison, when we look at the size of our Nevada General Fund, they are relatively smaller in terms of percentage contribution to the state budgets and also considerably smaller in terms of total employment. To some extent, this indicates that gaming in the State of Nevada is not a social experiment, although it still may be a social experiment in other jurisdictions. The consequence of errors in making public policy decisions is considerably different between jurisdictions. Illinois recently underwent a substantial increase in tax rates. The governor had not formed an Illinois gaming control board, which left a number of vacancies and they did not have a quorum to effect business over the past several months. The consequence of errors is considerably different. If something of that nature happened in Nevada, it would clearly have devastating and detrimental effects on the economy of the State.

The graph on page 14 of [Exhibit C](#), entitled "Nevada Gross Gaming Revenue Distribution Clark County Share Clark County, Washoe County and Balance of Counties, 1993-2003," illustrates that Clark County contributed approximately 76 percent of total gaming revenues in 1993 and 82 percent in 2003, which would be expected. The Las Vegas Strip (Strip) and markets in the Las Vegas Valley have been much more vibrant than markets elsewhere in Nevada, including the Reno, Sparks, Carson City and Douglas County areas.

The graph on page 15 of [Exhibit C](#), entitled "Gaming Industry Fee and Tax Collections by Category FY 2003-04," shows the largest number as the percentage fee, which is a tax on gross revenue. That particular tax is applied on gross gaming revenue, which is defined as wins less losses. There are no allowances or deductions for the cost of business, cost of employees, capital costs and the various costs associated with bringing business to Nevada. Most of the revenues are deposited in the General Fund. The major exception is the annual slot tax which brings in about \$52 million; that particular revenue is a \$250 annual tax on slot machines. Most of that goes to the State Distributive School Fund to support elementary and secondary education in Nevada, \$5 million of which formerly went to the Higher Education Capital Construction

Fund for university construction. It was diverted to the General Fund in 1983; a portion of it is used to redeem the debt of building the Thomas & Mack Center in Las Vegas and the Lawlor Events Center in Reno. The total collection was approximately \$854,515,140 in 2004.

MR. BIBLE:

The graph on page 16 of [Exhibit C](#), entitled "State General Fund Revenue Projections 2003-05 Biennium (in millions)," contains indirect contributions to the General Fund using a forecast made by the Economic Forum in December 2004. It shows gaming indirectly contributes about 47 percent of the total General Fund income. Gaming pays the same taxes as all other businesses in the State; like every other business, gaming pays sales taxes for goods, premium insurance taxes for insurance purchased for employees or property and casualty, cigarette taxes and so forth. These estimates indicate the General Fund is 47 percent supported by gaming and gaming-related activities. Page 15 shows the direct contribution of about 35 percent, and this page shows an indirect contribution of about 47 percent.

The graph on page 17 of [Exhibit C](#), is entitled "Nevada's Ten Largest Taxable Property Owners (in thousands)." Gaming, as manifested in southern Nevada, has developed since 1990 in three waves. There was a wave between 1989 and 1990 when the Mirage and Excalibur opened; a wave between 1993 and 1994 when Treasure Island, MGM and Luxor opened; an additional wave in 1998 and 1999 when Bellagio, Mandalay Bay, Venetian, Paris and Aladdin opened; and last week's opening of the Wynn Las Vegas will probably begin the fourth wave. There are substantial projects on the drawing board for southern Nevada. Over the last 10-year period, gaming investments grew from approximately \$9 billion to \$32.9 billion on a statewide basis.

The graph on page 18 of [Exhibit C](#), entitled "Licenses Issued & Active in Nevada, 2004," shows 2,913 active licenses in the State of Nevada. Other jurisdictions have grants of licenses that are almost monopolistic. Regarding tax rate comparisons, Illinois has 11 licenses. Many states that border the Mississippi River, such as Missouri and Mississippi, only allow licenses that have a nexus and are contiguous to the Mississippi River itself and are not further developed within those particular states. In Nevada, there are about 418 nonrestricted, high-level licenses where the licensee operates more than 15 slot machines or at least 1 table game. The licenses consisting of 15 slot machines are seen in tavern-bar locations, supermarkets and convenience stores

throughout the State, but the 418 nonrestricted licenses are those that have table games and more than 15 slot machines. Nevada has a lot more licensing activity than other jurisdictions in the United States.

The last graph, on page 19 of [Exhibit C](#), entitled "Non-restricted Gaming Licensee Revenue Distributions Gaming and Other, 1993-2003," shows the changing mix in the revenue stream experienced by Nevada casinos. It is a breakdown of the statewide income statement for Nevada casinos that have over \$1 million annually in gross gaming revenue. In 1993, 62 percent of the total revenue stream came from gaming. Advancing the clock 10 years, it is now 52 percent; therefore, there has been a significant shift in revenues from gaming to nongaming activities, which include food, beverage, retail sales and a variety of changes that have occurred throughout the industry. It is evident from the type of properties being built and venues currently coming on line within the State of Nevada. There is much greater diversification of the revenue stream.

In conclusion, [Exhibit C](#) and [Exhibit D](#) indicate Nevada's economy is diversifying. Nevada is the fastest-growing state in the Union, not merely as the function of gaming industry growth, but other growth that is nongaming-related. While Nevada is increasing amounts of gaming revenue, it is also a shrinking share of the nation's gaming pie. Nevada is the most competitive marketplace in the United States and the world. Other states do not have similar competitive pressures as those experienced in Nevada. Las Vegas experiences almost hand-to-hand combat on the Strip on a daily basis as larger companies compete with one another. Gaming continues to thrive in Nevada because there is a predictable regulatory environment that has evolved since 1931. The Legislature reviews that legislation frequently, and there is a well-established regulatory system. A like set of input will get a like set of output, which creates a dependable business environment for gaming companies.

There is also a relatively stable tax structure which has not changed dramatically over the years. Nevada has created a business environment conducive to expansion and growth of gambling within the State. Nevada has a unique problem insofar as the distance between attractions and market areas. The nearest market area in Nevada is southern California, which is a difficult drive on some occasions, and an hour flight away. Unlike Illinois and other places, Nevada is not in close proximity to markets or metropolitan areas; the

State must create a core of destination attractions that continue to entice visitors and tourists to come and enjoy the recreational opportunities offered.

Last, gambling is not a social experiment in Nevada, it is a core industry. On a policy basis, the gaming industry requires thoughtful consideration in order to maintain the competitive nature of the business and create a business climate that allows gaming to continue to flourish.

TERRY LANNI (Chairman and Chief Executive Officer, MGM Mirage):

I want to present our views regarding mergers in the gaming industry with special focus on our just-completed merger with the Mandalay Resort Group. This process commenced 10 1/2 months ago with the initial announcement of agreements between the MGM Mirage and Mandalay Resort Group for merger of the two companies. We have completed an exhaustive regulatory review, including unanimous approval from the Federal Trade Commission (FTC). It is interesting to note that 30 million pages of documents were provided to the FTC, as well as 400 terabytes of data—a terabyte is one-trillion bytes. The 400 terabytes of data compiled is equal to all the information in the United States Library of Congress, 20 times over.

We applied for and received approvals from the Mississippi, Illinois, Michigan and Nevada Gaming Control Boards, the Nevada Gaming Commission, as well as the shareholders of the Mandalay Resort Group. In each case, they were unanimous decisions. We sold one property, which is Motor City Casino in Detroit, Michigan, due to state laws that prohibit any one entity from owning two licensed casinos in that jurisdiction.

As the gaming industry matures and experiences consolidation, competition becomes a central topic of discussion. We believe the merger of these two great companies will strengthen Nevada for the future competition we face. In 1976, New Jersey passed its gaming bill, at which point Nevada no longer had exclusivity in gaming in the United States. Further expansion took place in other states. Most recently on the competitive stage, the burgeoning growth of gaming by Native American operations in the state of California has challenged Nevada. In 2004, Indian nations reported a total of \$31.5 billion of gaming revenues in their operations in 23 different states. They are, indeed, a significant factor in competition for the State of Nevada.

Regarding the consolidation in the Nevada gaming industry, we look at a different view in other states and industries. Nevada is different than a state of the same size, such as Maine. In Maine, if we were to acquire 12 convenience stores, it would be a significant factor because there are probably only 24 convenience stores in the state. The difference is in Nevada's dynamic and fast-growing gaming industry where new properties and developments are emerging at all times. The gaming industry, particularly in southern Nevada, is growth-oriented and appears to be continuing in that fashion.

Three factors separate successful companies from the rest of the pack in an ever-growing and competitive marketplace. One factor is financial strength. Does a company have the wherewithal to continue to reinvest in strengthening its future for shareholders, employees and the communities it serves? The second factor is brand strength. We see it in every aspect of modern society. Companies striving to create brands that have a lasting and enduring franchise with the public are important. The third factor is an empowered and vibrant workforce. As fanciful as any of our buildings might be, it is our employees who deliver on the promise to our guests.

With these three factors in mind, let me examine how the MGM Mirage merger with Mandalay Resort Group stacks up. With the merger, we now have an unmatched collection of world-famous signature brands across all business lines. A major strategic difference sets our company apart due to our decision to foster growth and development of the individual property identities. The FTC recognized the fact that this business model fosters healthy competition from within, as well as outside our company. In 2000, when MGM Grand and Mirage became one company, we promised we would endeavor to make a better company. We said in the transaction in May 2000 and we say now that 1-plus-1 had to equal much more than 2 to make it significant and worthwhile. We promised to increase employment, grow revenues and earnings, reinvest in our properties and grow for the benefit of our employees, customers and stakeholders. That is exactly what we did and what we will continue to do.

Our company currently has invested \$15 billion in the State of Nevada. Last year alone we invested \$750 million in capital expenditures for our company throughout the United States. I might add that \$700 million of that \$750 million is right here in the State of Nevada. One of the attractive assets with Mandalay Resort Group is 64 acres of undeveloped land on the Strip, providing

unparalleled opportunities for our company in this State for future growth. We strongly believe in the future of Nevada and our announcement of Project City Center further demonstrates that.

MR. LANNI:

City Center is a \$4.7-billion investment and the largest private development in the United States. At one point in the construction process, which will be completed in November 2009, there will be 35 cranes on the site. Part of City Center will be a 4,000 room hotel-casino; 1,650 residential units, 1,200 of which will be hotel-condominiums; and 3,400-room nongaming, boutique hotels. This will mean 800 construction jobs over the 4 1/2-year period of construction and development, and 12,000 additional permanent jobs for the State of Nevada.

We know our most important assets are the hard-working men and women who have joined our family of employees. We have an employee base of more than 70,000 people, 40,000 are currently part of the MGM Mirage and 30,000, who joined us a week ago today, brings us to the level of 70,000. Of that 70,000 people, 63,000 are employed in southern and northern Nevada. Following our merger with Mirage Resorts in May 2000, the vast majority of Mirage employees are with our company today, many in advanced positions.

It is important to note that less than 100 Mandalay Resort Group employees have left the combined company of their 30,000-plus employees, which represents less than one-third of 1 percent of the employee base of that company at the time of the merger. All Mandalay Bay employees will retain their original start dates and seniority in our company. No one will be required to reapply for his or her position, and there will be no changes in the company-sponsored health benefits. We will continue to provide all our employees with the industry's leading benefits package and a positive, meaningful and respectful working environment.

We pride ourselves on three things. One is our corporate and employee philanthropy. We are committed to philanthropy and will continue to expand it in the communities in which we operate. The corporation has contributed millions of dollars toward key community needs and donates 1 percent of profits on an annual basis. Since 2000, scholarships have been provided to over 800 children of our employees, a program which will be continued and expanded. An exciting segment of our contribution is the MGM Mirage Voice Foundation, which began

in 2002. It was established as a means for employees to extend their voices in the community. Throughout the MGM Mirage Voice Foundation, employees contribute to charities of their choice, govern the Foundation and determine the direction of the funds they have raised. The company pays all administrative costs; therefore, 100 percent of employee donations go directly to the charities. Since its inception, the MGM Mirage Voice Foundation has raised over \$8 million to address community needs. The company requires corporate and employee contributions be made to communities in which we live and operate. Few contributions are given outside the communities where we operate hotels and casinos.

We have an industry-leading commitment to diversity, which is nationally recognized and will continue to grow. *Fortune* magazine has twice named us in the group of top 50 companies in the United States from a diversity standpoint. We report our details and commitment to diversity in employment, purchasing and contracting each year.

In conclusion, I would like to say, judge us for what we have done. We believe in Nevada and have been a good partner in this State. MGM Mirage, prior to the merger with Mandalay Resort Group, was the single largest taxpayer, property taxpayer, contributor of room taxes and the largest private employer in the State. We are proud to remain No. 1 in each of these four categories. We are proud of our track record in combining companies in the past and know we will again be judged by our performance moving forward.

State Gaming Control Board member, Bobby L. Siller, said in our hearing process, "I truly believe that MGM Mirage knows it cannot be successful unless Nevada is successful. So, as MGM grows, Nevada grows." We are partners in the future of this State. We have demonstrated our enormous investment in the State and our commitment to create jobs, economic opportunities and revenues to meet the needs of our State. With our recent growth, we are in the best position in our history to compete with challenges from around this country, as well as the world.

SENATOR MCGINNESS:

The information submitted by the State Gaming Control Board indicates the top employers in Nevada are gaming and the Clark County School District. In the context of something happening to gaming in general, or your company in particular, how would you respond to the comment "so goes the MGM Mirage,

so goes the State?" Employment in the school district would also decline and the State could experience serious problems.

MR. LANNI:

As Mr. Bible said, the State is diversifying. Gaming is a significant industry in Nevada, and the health of gaming is an important factor to everyone in the State. The State has been responsible in taking a prudent and reasonable approach to the tax base. Other jurisdictions, such as Illinois, decided during an 18-month period to double its taxation from 35-percent marginal rate to 70 percent, which hurt Illinois in terms of jobs, construction and investment.

The MGM Mirage is a large company and there will be a further combination between Harrah's Entertainment, Incorporated and Caesar's Entertainment, Incorporated. That is strength for Nevada because a larger company has a stronger financial position. We have resources from other locations, such as Illinois, Michigan and New Jersey, which will benefit Nevada. As I pointed out, when we spent \$750 million in capital expenditures last year, \$700 million of it was spent in Nevada. Our company and our board of directors made a major bet on the State of Nevada on our \$4.7-billion Project City Center, which will create jobs and allow for continued stability of the tax system. Is everything guaranteed in life? No. We realized that in 1929 and 1930. Things happen in cycles. I contend that stronger-based financial institutions, such as gaming companies, on the strength of their balance sheets, are in a better condition than smaller operators that are less capitalized to withstand changes in economic downturns.

SENATOR HORSFORD:

Based upon your testimony, the strategy, thought process and thoroughness you go through before making a major acquisition clearly makes sense. One of my concerns has been that someone outside Nevada would come in and attempt to buy up local properties. My question is in regard to the workforce and the affordability, livability and maintenance of a good quality of life, particularly in southern Nevada with the increase in home values and finding apartments in which to live. What role do you feel the gaming industry plays in that issue, and what can be done to support affordable living in Clark County?

MR. LANNI:

We are not in the residential real estate business. As in the past, we will continue to provide good pay packages and opportunities for people to grow

into higher positions with better pay. As long as the economy is moving along and we continue to invest billions of dollars, we will bring in more visitors who will spend more money. The issue of escalating housing prices is not limited to southern Nevada, it is the case in almost every community in the country. It has forced more people to live further from their employment, which is difficult, particularly with current gasoline prices. We have not heard of any substantial difficulties experienced by our employees; however, it is worth looking into to see what else we can do. Having comfortable, happy and well-positioned employees is an important factor of a service industry.

SENATOR HORSFORD:

Over the next few years, it will be a greater challenge. In the last decade, Nevada was considered the last frontier because guest room attendants could move to Nevada, earn a good living, receive good benefits, purchase a home and provide for their families. I see the dream established here beginning to deteriorate. I agree it is not solely the responsibility of the industry; as it becomes a challenge, major employers should participate in addressing that issue over the long term.

CHAIR AMODEI:

You indicated in your testimony that a positive impact from the combination of the MGM Mirage and Mandalay Resort Group will strengthen Nevada for future competition. That statement clearly contemplates gaming, in a competitive sense, is a worldwide endeavor these days. Would you indicate how you feel Nevada ranks, in a worldwide sense, as a place to do business from a gaming aspect?

MR. LANNI:

The fact that our board of directors and company invested \$15 billion in Nevada demonstrates we are obviously bullish on the State. Nevada is the center of gaming and will be for many years to come. We have opportunities overseas and are bidding in Macao, Singapore and possibly the United Kingdom. The advantage of a falling currency is the opportunity for foreign visitors to save 40 percent or 50 percent on their expenses when they come to the United States. There will be more visitors coming from the Far East. In 1976, many people felt Nevada would go out of business because New Jersey approved gaming. Currently, 13 states have gaming which has had the opposite effect. People have invested more money in Nevada because visitors want to come

here to experience real gaming. The infrastructure created in southern Nevada will bring great opportunities.

I joined the industry in 1977, at which time 85 percent of the revenues of Caesar's World came directly from gaming and 15 percent from nongaming. Currently, a company with combined revenues of \$8 billion will be in a position to see over 50 percent of revenues coming from nongaming sources, such as rooms, food, beverages, retail and entertainment. Those nongaming sources are profit and employment centers unto themselves and will encourage continuing visitation outside of gaming. The last Las Vegas Convention and Visitors Authority poll suggested gaming is the third reason people come to Las Vegas. First is entertainment, second is retail and third is gaming. We should not be thought of as a purely casino industry because we are the casino-resort, entertainment industry.

SENATOR CARE:

What will happen to vendors in regard to mergers? In addition, what will mergers mean to the political process in Nevada? I have always thought there is a correlation between how industriously a candidate works his or her district and the votes he or she receives. Money is a factor, although not the dominant factor. It has been openly discussed that mergers would impact the political process in Nevada.

MR. LANNI:

In regard to vendors, you must judge us by what we have done in the past, compared to what we might say we are going to do. In 1995, we acquired the Primm organization and expanded the vendor base. The Mirage transaction in 2000 brought extensive additions. At that time, the Mirage had one advertising agency, as did the MGM Grand. Currently, there are six or seven advertising agencies, a number of them based in Nevada. We expanded our vendor base, but insist on goods and services equal to or higher quality than we have at present. We like to deal with local vendors, and have a strong diversity program in purchasing which will continue to expand. We focus on the local community.

Insofar as the political process, I must point out how unsuccessful we were in the last Legislative Session, which proved we do not have as much clout as people think. I do not like the word clout. Dollars have an impact, but they are not the only impact. The quality of a candidate walking door-to-door talking to his or her constituents is an overwhelming factor. We like to be heard, but we

do not force anything on anyone and have no hidden agendas. We are prudent and understand, as a company that has invested \$15 billion in Nevada, we must have a good symbiotic working relationship with various branches of government. However, we in no way feel we have the right or ability to have any control or much effect, other than the bully pulpit. We have the ability to speak our minds, present our thoughts and counsel with people who hold or seek office.

SCOTT M. NIELSON (Station Casinos, Incorporated):

Messrs Bible and Lanni talked about the challenges and changes in the gaming industry. I want to tell you the gaming industry is healthy. You do not have to look any further than the opening of the Wynn Las Vegas to see the vitality of the gaming industry. I will discuss the gaming industry with a focus on one aspect, which is the fact that the health of the gaming industry in Nevada is due to the most stable tax and regulatory environment in the world. During the last Legislative Session, the economic environment in Nevada was uncertain, and the gaming industry and State economy were still recovering from the tragedy of September 11, 2001. It was unclear how deeply we would be impacted or for how long.

I submitted a document entitled "Senate Judiciary Committee Presentation" ([Exhibit E](#)). The graph on page 3 of [Exhibit E](#) demonstrates that the gaming industry has recovered. Gaming revenues have increased from \$9.4 billion in 2002, to over \$10.4 billion in 2004, and the trend is continuing in 2005. This statistic, although impressive, understates the recovery story because gaming revenue is a smaller proportion of most gaming properties. The graph on page 4 of [Exhibit E](#) indicates increased gaming revenues translated into increased gaming tax receipts for Nevada. Gaming taxes increased from over \$630 million in 2002, to nearly \$710 million in 2004.

The positive outlook for Nevada gaming is also reflected in capital investment being made in Las Vegas. Station Casinos has an \$8-million project under construction in Las Vegas; the Boyd Group invested in a \$550-million building on the South Coast; then there is the \$2.7-billion Wynn Las Vegas, the \$1.4-billion Wynn Encore, the \$1.6-billion Sands Palacio and the MGM Mirage's \$4.7-billion Project City Center described by Mr. Lanni. They all demonstrate the confidence the gaming industry has in Las Vegas. In fact, Marc Falconi, an investment banker at Deutsche Bank, predicts that over the next 5 years, more

than \$25 billion will be invested in gaming and high-rise residential projects on the Strip.

Mr. Bible pointed out as Nevada's population increases and its economy diversifies, the State is becoming less dependent on gaming; yet Mr. Lanni said our economy and gaming industry are inextricably linked. As the gaming industry has recovered, the Las Vegas economy has flourished. Page 5 of [Exhibit E](#) indicates that last year 41 million passengers went through McCarran International Airport. New home sales are up 63 percent from 10 years ago, and nearly 7,200 new homes were sold in Clark County during the first quarter of this year. At the end of March, Nevada's unemployment rate was 3.9 percent down from 4.8 percent last year, which is almost 2-percentage points lower than the national average, and 52,000 new jobs were created in the past 12 months.

As a result of the robust economy of Las Vegas and Station Casinos' decision several years ago to concentrate nearly all its resources in Nevada, our company has enjoyed the most successful period in its history. The graph on page 6 of [Exhibit E](#) shows Station Casinos revenue increased from approximately \$635 million in 2002, to almost \$730 million in 2004. The trend is continuing and accelerating in 2005. As a result, the amount of gaming taxes we pay has increased from just under \$60 million in 2002, to nearly \$70 million last year.

There are a number of reasons why Nevada's gaming industry is doing well, which include a strengthening national and international economy, and the low cost of capital that many of our gaming companies enjoy. Nevada has the most stable tax regulatory environment in the world and is benefiting from the strengthening economy. Over the last several years, people are again comfortable with traveling, consumer confidence has improved and business spending has increased. This translates into people spending more money on travel and leisure than they did a few years ago.

Our industry also benefits from ready access to capital at low rates. As a result of national monetary policies, the cost of money is at near-historic lows. For example, the weighted cost of debt for Station Casinos is about 6 percent, and our incremental borrowing rate is less than 5 percent. That is the lowest cost of debt Station Casinos has ever had and compares favorably with the cost of debt of most other industries.

MR. NIELSON:

The final aspect I would like to address is the tax and regulatory structure. I recently discussed gaming regulatory structure with an attorney in a jurisdiction currently working on adopting gaming regulations. During the conversation, he told me their regulators consider the regulatory structure in Nevada the gold standard for gaming regulation. It made me realize what we often take for granted, which is Nevada has high-quality people at the State Gaming Control Board and the Nevada Gaming Commission who are allowed to do the job they have been appointed to do without interference from political, industrial or other pressures. We also have gaming statutes and regulations that are consistently applied and not constantly changing. As simple as these things sound, they form the backbone of a stable regulatory environment where licensees, investors and lenders know the rules of the game will not change rapidly and dramatically, thereby suddenly putting their investments at risk. Regulatory stability without a stable tax structure cannot create a healthy gaming industry. Nevada has had one of the most stable tax structures in all of gaming, and for that, the Nevada Legislature is to be commended. Sometimes, we hear from individuals relatively new to the State that the answer to many of our fiscal needs is to simply raise the gaming tax rate. They point to gaming tax rates in places such as Indiana or Illinois as evidence that we can pay much higher tax rates. That is a simple response and solution to a complex issue, but I do not think it will work. Stable and moderate tax rates result in capital investment and job creation, thereby contributing to a stronger economy.

Page 9 of [Exhibit E](#) shows the relationship between tax rate and capital investment. It indicates nearly 80 percent of the announced capital investment by the gaming industry over the next 5 years will be made in Nevada, and almost another 8 percent of the amount of announced capital investment will be made in New Jersey and Mississippi, the 2 states with the next lowest tax rates. It is also worth noting that both New Jersey and Mississippi have regulatory structures either patterned after Nevada or much more like Nevada's regulatory model over the past decade.

Page 10 of [Exhibit E](#) shows the relationship between tax rates and job creation. A moderate and stable tax structure invites capital investment which results in the creation of more jobs. There is certainly a reason why Nevada has had more jobs created than any other jurisdiction. This is contrasted by the situation in Illinois which has the highest tax rate in the country, and until recently, did not have a functioning gaming commission. Their casino attendance dropped

18.5 percent and revenues went down 6.5 percent since 2003, when tax rates increased. Little capital investment has been made, and there has been a net loss of jobs over the past two years in Illinois. Their situation is almost the exact opposite of Nevada, despite the fact that the Chicago market is one of the best gaming markets in the country.

In conclusion, Nevada's gaming industry is healthy, but despite that health, the industry is becoming an international business. The spread of gaming throughout the United States and the world creates competition, but also creates opportunities for gaming companies to invest in other locations. Macao, Singapore, United Kingdom and Indian gaming are all looking for capital from Nevada's gaming companies. In order for Nevada to continue enjoying the tax revenues, job creation and other benefits of its leading industry, we need to continue to maintain the policies that created a stable tax and regulatory environment. These policies have resulted in our company investing nearly all its capital in Nevada, as well as Mr. Lanni's company investing a significant portion of its capital here.

SENATOR WIENER:

What impact will the recent tax cap on commercial property have on your properties, job creation and benefits?

MR. NIELSON:

It was a significant factor for our company for two reasons. One, our team member employees live and work in the Las Vegas Valley and would be impacted by the increase. It was not just the impact on our company and the property taxes we pay, it was also an impact on our team members' properties. On the reverse side, the majority of our customers come from the Las Vegas Valley; increases for people who live in Las Vegas and the Clark County area would impact our customer base. It was important a solution be reached, and we are satisfied with the results of the hard work done by the Legislature.

SENATOR WIENER:

What will be the corporate impact of the commercial property tax cap?

MR. NIELSON:

We are comfortable with the commercial property tax cap at 8 percent in going forward with investing and creating jobs.

SENATOR HORSFORD:

You indicated there would be \$25 million of new investment on the Strip over the next 5 years. There has been tremendous economic prosperity for some time. In [Exhibit E](#) you addressed the Las Vegas economy, especially employment and job growth which is at 3.9 percent. I have made several presentations to this Committee and others relating to certain communities that have not enjoyed the same level of prosperity and participation. Specifically, unemployment among Hispanics is over 8 percent and 11 percent in the African-American community, according to the last census. With major investing and all the Legislature has done to support the industry, what increased commitments can we call upon from the gaming industry to work with some of these underserved communities to make sure they also participate in the economic prosperity?

MR. NIELSON:

Our company has an active diversity initiative, adopted in 2000, that deals with employment, purchasing and charitable giving. The gaming industry needs to be responsible and take a role in reaching out to those communities. Having a diverse customer base reflects the diversity of the local economy and our workforce needs to reflect it as well. We will continue to reach out to diverse groups to ensure they are part of, and moving up, in our company.

SENATOR HORSFORD:

I know there is a major commitment on the part of most companies to achieve greater diversity. My concern is the focus on new people coming to Las Vegas to fulfill a wonderful dream; yet there are people who have been there for 20 or 30 years, helped build the industry and are still not participating. I represent a district with many challenges and feel it necessary to encourage industry to work with those people.

SENATOR CARE:

How much longer can the growth in Clark County go on and how much bigger can it get?

MR. NIELSON:

Station Casinos essentially has all its eggs in one basket and questions whether or not it is a good thing. The resounding response is, as long as it is a good basket, you might as well have all your eggs in it. We have continued to invest in southern Nevada. Every time it looks as if it has reached a peak, something new comes along and changes it. Mr. Bible talked about the waves of

development, and it looks as if another wave is going on now. As we wonder how many more people can fit into the valley, we see more high-rise buildings constructed. There is a huge demographic shift going on in the country. People are purchasing second homes and retirement homes. They want to move to Nevada, and have the disposable income and time to do so. Another wave of growth will be handled responsibly. We believe the future is bright, and the local economy in Las Vegas will continue to grow. The growth rate in Reno has also been impressive.

SENATOR CARE:

Every time new resorts open in southern Nevada, they are filled immediately, which is due to curiosity about a new resort; thereafter, they continue to be successful. I suppose investors study the demographics and trends to determine whether they will be able to remain successful.

MR. NIELSON:

Investors determine the size of the investment, type of building, the state of the economy and what is happening with other properties before going forward with a new entity. Soon after the opening of Red Rock Station, we announced an expansion of 400 hotel rooms there. We looked at the results of Green Valley Ranch, which was not located on the Strip, and determined room rates and occupancy levels were up; we were comfortable investing \$800 million there. Studying other properties drove that decision.

WILLIAM J. NOONAN (Boyd Gaming Corporation):

I provided a handout ([Exhibit F](#), original is on file at the Research Library). I will address the highlights of the growth of Boyd Gaming, as well as a recent merger with Coast Resorts. I will cover the development projects in some detail. I provided another handout entitled "Gaming Law Conference 2004, Gaming Mergers and Acquisitions: The Changing Landscape" ([Exhibit G](#)).

The Boyd family moved to Las Vegas in 1941, and 10 years later, the Gaughan family made it their home. In 1962, Sam Boyd opened the Eldorado Casino in downtown Henderson. In 1971, the Gaughan family opened the Union Plaza Hotel in downtown Las Vegas. At the request of the State of Nevada, Boyd took over operation of the Stardust Hotel in 1983, and later the Fremont Hotel. Boyd began trading on the New York Stock Exchange in 1993. In 1994, our first out-of-state casino hotel, Sam's Town Tunica, opened in Mississippi. From 1994 through 1999, Boyd and Coast Casinos opened a total of 5 additional

properties in Nevada, Louisiana, Illinois and Indiana. The year 2000 was a major milestone for both companies with the opening of the Suncoast for Coast Casinos and the groundbreaking for Borgata in Atlantic City, a joint venture with MGM Mirage, which opened in 2003. Finally, in 2004, the acquisition and merger with Coast was announced and finalized July 1.

The map on page 9 of [Exhibit F](#) illustrates the company is divided into 5 primary operating units. Three of the units are located in Nevada: the Las Vegas Locals, which are oriented properties, the Strip and downtown Las Vegas. We also operate five riverboats and one racino—a racetrack-casino facility—in the Midwest and South. Finally, our last operating unit is the Borgata, located in Atlantic City. The company enjoys a broad-based diversity of cash flow across all five business units. Prior to the Coast merger, the cash flow was more heavily skewed to the Central Regions outside Nevada. After the merger, we achieved broader diversity and cash flow stability in and outside Nevada.

I will address major expansions recently completed and new developments in our growth pipeline. We are proud of the recent expansion of the Orleans property. We added 460 rooms, bringing the total hotel size for that off-Strip property to 1,900 rooms and suites. The additional room inventory was immediately absorbed and drove the property to new revenue levels. Our next expansion property was the Delta Downs, a racino located in Vinton, Louisiana. We just opened a new 200-room hotel tower, events center, more food outlets and a totally remodeled casino floor. Initial customer feedback was positive and raised the competitive bar in the southeast Louisiana casino market. As part of our blue-chip casino expansion, we are constructing the largest riverboat ever built in northern Indiana on Lake Michigan. The one-story vessel is being built directly behind the expansion. We are also adding a parking garage and a renovated entertainment pavilion.

MR. NOONAN:

Moving back to Nevada, the South Coast, located five miles south of Mandalay Bay on Las Vegas Boulevard, is being constructed in the fastest-growing area of the Las Vegas Valley. Next door to that project, a timeshare complex of 2,500 units is under construction by another company. In addition to the normal complement of local casino amenities, the South Coast will feature an equestrian event center which will accommodate horse jumping and similar competitive events. A 150,000-square-foot exhibit and convention center will complement the equestrian activities. The facility is anticipated to be completed

the first quarter of 2006. Additionally, two more hotel towers are planned which will add 2,000 rooms. Pages 18 and 19 of [Exhibit F](#) show aerial views of the South Coast project under construction.

Page 20 of [Exhibit F](#) highlights the Borgata, which is a joint venture with the MGM Mirage. We are currently building a \$200 million public space expansion, which includes casino space and 3 signature restaurants. The project is scheduled to be completed the second quarter of 2006. We are planning to build 800 additional rooms and suites beginning the fourth quarter of this year, to be completed the fourth quarter of 2007.

Page 21 of [Exhibit F](#) addresses the legendary Stardust, located across Las Vegas Boulevard from the northern end of the Wynn Las Vegas development. We have begun the master-planning process to determine the best use of the 63 acres we control at that site. We expect to make further announcements on the scope of the project and timing of the development later this year. We are excited about development on the north end of the Strip and believe the Stardust will take advantage of the next wave of success in Las Vegas.

In summary, today's Boyd Gaming is quite different from a few years ago. With five distinct operating units, we are one of the largest gaming companies. We enjoy a diverse asset base, a strong management team made even stronger through the Coast merger and an outstanding pipeline, all of which should produce continued financial success.

CHAIR AMODEI:

The Committee has been provided a document, submitted by Dennis Neilander, entitled "Nevada Gaming Commission and State Gaming Control Board" ([Exhibit H](#)), regarding the regulations the State Gaming Control Board (Board) and the Nevada Gaming Commission (Commission) work with in terms of evaluating merger applications. We understand that you cannot respond to any questions about ongoing matters before the Board regarding pending applications. Your participation will be based on the policies and procedures to evaluate merger applications.

DENNIS K. NEILANDER (Chairman, State Gaming Control Board):

There is an outline in [Exhibit H](#) demonstrating the processes undertaken by the Board and Commission in reviewing a merger. I will address the highlights in

terms of procedure. The Board and Commission are charged with consideration of mergers and acquisitions (MAs) within the gaming industry. The MAs can positively affect Nevada by allowing strong companies to step in, and in some cases, take over companies that might be struggling financially. There are synergies created within some of these mergers; for example, a company that is a leader in one area will merge with a company that is a leader in a different area, which creates diversification. Mergers and acquisitions can positively boost State economy in terms of employment and revenues, but that does not mean they are not without problems. Negatives considered in the analysis are federal and State laws regarding monopolies, as well as issues unique to Nevada that might be part of the federal analysis.

The ideal is a plethora of strong companies in the market because competition is generally healthy for the industry. In fact, public policy of the State of Nevada is annunciated in *Nevada Revised Statute* (NRS) 463.0129, which promotes the preservation of a competitive economy and policies of free competition. Nevada is the most competitive gaming market in the world. It is one of the only gaming markets that has free and open competition. The number of licenses in Nevada is not limited. The only limitations are capitalization and suitability to hold a gaming license; you do not see two or three licenses as in some jurisdictions. Riverboat jurisdictions may tend to have 6 to 12 licenses. The market is different in Nevada and requires a different analysis due to free competition.

When the Board and Commission receive an application, the primary guiding principle is Regulation 3.070, which requires an independent analysis. It is fairly broadly written and specific in some parts, but states the Board and Commission may look at "any other index or criteria relevant to the effect of multiple licensing ... ." That clause is used to continually update the analysis of the mergers. The regulation works because it is flexible in that sense. The regulation refers to an index. We use the Herfindahl-Hirschman Index (HHI) which is also used by the federal government in reviewing antitrust matters.

The Board reviews innumerable documents from merging companies. Mr. Lanni mentioned the terabytes of information the MGM Mirage and Mandalay Resort Group submitted to the FTC in respect to that merger. The information is reviewed from a different perspective, company executives are interviewed and past FTC antitrust decisions are researched. We keep current on federal requirements and, most importantly, look at what has happened with companies in the past. How have they done previous acquisitions? What have

been the numbers going forward? Regulation 3.070 was adopted in 1968 to alleviate concerns about Howard Hughes. At that time, Howard Hughes had a lot of capital, and he intended to purchase the entire Strip. Regulation 3.070, from Regulations of the Nevada Gaming Commission and State Gaming Control Board, was adopted along that backdrop. The bottom of page 1 and top of page 2 of [Exhibit H](#) is a recitation of the actual regulation.

The bolded titles on page 1 of [Exhibit H](#) set forth the general statement which is: "The board and commission shall consider whether such multiple licensing is in the best interests of the State of Nevada having due regard for the state's public policy concerning gaming." There is a list of factors considered when looking at a merger. This is not an all-inclusive list, just the basic things considered. We ask whether or not there has been an adequate period of performance by the applicant upon which the Board and Commission can base a conclusion. There are also questions about key personnel, the business plan and capitalization of the company. Subsection 7 of Regulation 3.070 contains the categories looked at in respect to gaming and different data collected. It is done per regulation on a statewide, countywide and geographical location basis. Subsection 7 of Regulation 3.070 contains the meat and potatoes of the analysis. Subsection 8 of Regulation 3.070 requires an analysis from a monopolistic point of view, and subsection 9 has some additional antitrust types of questions.

What is done with the gathered data? The rest of the outline in [Exhibit H](#) describes the analysis. The HHI uses what the Department of Justice (DOJ) and the FTC set forth in Horizontal Merger Guidelines. These are helpful in doing the State analysis and walking through the HHI test. Over the years, the Board has developed an excellent relationship with the DOJ, FTC and Securities and Exchange Commission. Our agents work with the three agencies on a regular basis. Page 3, section III of [Exhibit H](#) demonstrates a series of questions asked when gathering data. The main concern is will the merger, in light of market concentration and other factors, create anticompetitive effects? Will entry be timely, likely and sufficient either to deter or counteract the competitive effects?

MR. NEILANDER:

We ask the questions and then do two things. First, the relevant market is defined, and the potential competitive or anticompetitive effects within that market are determined. Second, we identify the product. Page 4, section IV of

[Exhibit H](#) lists the tests that identify both the market and the product. The guidelines used by the federal government state:

A market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a “small but significant and nontransitory” increase in price ... .

This is called the snip test, which is used to determine the market, the product and the effect of the merger in respect to that market and product. The actual test is stated at the bottom of page 4, section III of [Exhibit H](#). Page 5 of [Exhibit H](#) shows the geographic test. For each existing product market, we must use the snip test to determine the relevant geographic market in which the product is sold. The next step is to evaluate the effect of the proposed merger within those contexts. This is done by analyzing the market share each participant would have in the geographic market and looking at market concentration. After arriving at a market concentration understanding, we then analyze whether a significant market concentration affects or impacts any of the factors found in Regulation 3.070, as well as the public policy statement in NRS 463.0129. If a high-market concentration in any geographic markets for a certain product resulted from the merger, we would ask whether that company could exercise dominant market power. Would it pose problems from a regulatory perspective that may be unique to Nevada?

Traditional antitrust analysis is different from what is done with respect to gaming. Normal antitrust analysis is thought of in terms of widgets—a specific common product. Gaming is not like that. There has been a shift in revenue over the last decade. Some of the larger companies’ balance sheets and income statements from ten years ago show gaming as a dominant source of revenue; whereas, food, beverage, entertainment, retail and other things were loss leaders. There was a turnaround about four years ago, and currently, most of the gaming revenues of the major gaming companies in Nevada are less than 50 percent of overall revenue. There has been a big shift. Gaming is not widgets. Gaming includes entertainment, food, beverage, retail, and in some cases, convention business because it could also be a relevant antitrust market. The product becomes a bundle of things, which makes it more difficult to analyze. There is so much competition within each category; the analysis is

different than gasoline or coal. It is a big product bundle once defined, and each bundle within the product must be analyzed. The product and geographic markets are delineated, and then we peruse the power of the combined companies going forward in terms of competition. We look at price elasticity of demand, which is the likely consumer response to an increase in price.

An interesting difference in gaming from other industries is a 75-percent payback requirement in the regulations; therefore, there is already a built-in fix in price. There is a notion that as the hold percentage increases, it reduces the time a patron plays on a gaming device. If it increases too quickly, once the patron exhausts his or her gaming budget, he or she will not spend time in the other categories, which are hotel, food, beverage, retail and entertainment. There are some built-in safeguards unique to gaming which are not seen in other markets.

MR. NEILANDER:

Sometimes assessor reports are helpful in property value analysis in determining to what extent a market is geographic. We peruse the delineation used by the merging parties in their own conception of the market. For example, Mr. Lanni and others argued that the market is not Las Vegas, it is the world, and they are competing against the world in respect to their gaming product. I have not come to that conclusion and believe Las Vegas can be treated as a market for purposes of antitrust review. However, the gaming industry is no longer just competing with riverboats or Atlantic City. There is tribal gaming, as well as the expansion of gaming in the Pacific Rim and United Kingdom. Gaming is exploding around the world.

The Board also considers correlations in granger casualty, which is the way different geographic areas influence each other. For example, hotel room prices that increase on the Strip will not necessarily correlate with hotel rooms in the downtown area. Again, there are unique aspects with respect to hotel rooms. Granger casualty determines whether percentage changes in one market might affect another.

After the delineation, the likely competitive effects of the proposed merger are determined. The HHI is used. An HHI of 10,000 means there is 1 firm in the market which is highly concentrated and monopolistic. If there are 10 firms in the market, the HHI level is about 1,000. In between that scale are a number of things. The HHIs are perused to determine the level of concentration; then the

Board considers market performance, gaming and room revenues from different locales, and all slot, table, counter games and sports book win percentages for different locales.

The next determinant is whether there is an ability to collude, either tacitly or overtly. Our analysis relies heavily on the federal government for their analysis in this regard. One of the primary things the DOJ investigates is internal documents that might indicate the company may collude on a going-forward basis, whether or not tacitly. The only way to tell is by a thorough document search. The effect on likely competition, entry and expansion of gaming and nongaming properties, and potential additions to the market are studied. It provides a sense of market competitiveness. There are a number of projects on the drawing board and current gaming economy in Nevada is very competitive. The final part of the outline is a restatement of the HHI which is one of the tools in our analysis.

PETER C. BERNHARD (Chairman, Nevada Gaming Commission):

Chairman Neilander adequately set forth the process on which the Nevada Gaming Commission relies when addressing these types of issues. The gaming industry is somewhat unique in that our regulatory structure provides ongoing regulatory oversight which acts as an additional check and balance over any anticompetitive effects the MAs might provide. In other words, in your standard widget factory situation, once the federal government makes its decision, the widget industry continues and companies go forward without continuing regulatory oversight. That is not true with the gaming industry in general and the Nevada gaming industry in particular. If we felt the best interest of the State was adversely affected by any post-merger anticompetitive actions, we would have the ability and power under our regulations and statutes to deal with it as it happens. It acts as an additional safeguard or check and balance. Our regulatory structure is a tremendous weapon, which is the power to affect the gaming license and operations of the companies on a day-to-day basis going forward.

SENATOR CARE:

In regard to the MGM Mirage and Mandalay Resort Group merger, it was determined the surviving entity would have half the rooms in Las Vegas and about 40 percent of the slot machines. Having said that, what other factors were considered before the merger was approved?

MR. NEILANDER:

I can show you the transcripts from the hearing in which we walked through every factor and balanced them. Hotel rooms were not looked at just from the point of view of Las Vegas. The factors were broken down from the point of view of the Strip, the top 20 properties on the Strip, Clark County and the State.

SENATOR CARE:

The average person might say the entity ending up with half the rooms is a lot, as well as 40 percent of the slot machines, which would be a natural reaction. To rephrase the question, you looked at the situation, but the way you looked at it considered the facts just laid out.

MR. NEILANDER:

Hotel rooms are just one slice of the analysis. We weighed whether the applicant had a history of raising prices. We asked who would be harmed if the MA entity had 48 percent of the hotel rooms. Principally, the consumer would be harmed; therefore, we looked at it from that point of view. Would it be likely they would raise prices in such a way that would be anticompetitive in the market? Based on the data we reviewed and their own documents, as well as our analysis, I concluded they would not do that. However, there was still enough competition on the Strip that raising their prices would not be profitable. Hotel rooms are a very competitive business.

We also looked at it in terms of vendors. When looking at hotel rooms, you are also looking at vendors that supply linens and things of that nature. The history of that particular applicant, as well as other mergers we have seen, demonstrated that more vendors were added after a merger of that size, rather than a reduction. That was part of the analysis.

SENATOR CARE:

In regard to 40 percent of the slot machines, how many other games were included?

MR. NEILANDER:

We not only looked at slot machines, but broke it down by denomination. There were categories for penny, nickel, quarter and multi-denomination slots. It was broken down by table games, counter games and sports book revenue. Within gaming itself, we compartmentalized and looked at each one. We then looked at

the hold percentages and how they correlate to average percentages on the Strip area, as well as the balance of county, unincorporated parts of the county and statewide. Looking at all those categories and the win percentages, a determination must be made whether or not there would be harm by an entity having 37 percent of the slot machines just on the Strip. It would not include local places or downtown. Who would it would harm? Again, would it harm the consumer? I concluded it would not harm the consumer because there was so much other competition it would not make sense to artificially inflate the win percentage. It is the same thing with respect to vendors. In this case, to be a vendor of a slot machine, you must be a licensed manufacturer. Would it harm the licensed manufacturers? I do not believe it would because there is enough competition among licensed manufacturers. In fact, they are just as competitive as the operators, and in some cases, even more so. At the end of the day, when looking at the combinations, you have to reach the conclusion as to whether it reaches a level to cause harm. I concluded it did not.

SENATOR MCGINNESS:

Did you consider what would happen to the State if the entity should come down with the flu for a year?

MR. NEILANDER:

When considering a merger or license, we look at the entity's capital structure, determine its financial strength, peruse its income statements and projections on a go-forward basis, and calculate how much revenue must be generated to support its debt structure. We do a detailed analysis going forward and determine its break-even point. We calculate our own break-even point. Obviously, the company has its own projections, but we generate our own projections and analysis to determine whether it will meet the projections, not have enough capital or have too much debt going forward. Those matters are considered as part of the application.

SENATOR MCGINNESS:

Page 2, section II, subsection 11 of [Exhibit H](#) says:

Any other index or criteria deemed by the board and commission to be relevant to the effect of multiple licensing upon the public health, safety, morals, good order and general welfare of the public of the State of Nevada.

Would a merger with an entity that has 40 percent of the market in Las Vegas be viewed differently than an entity with 40 percent of the market in Churchill County?

MR. NEILANDER:

There is a distinction because some rural counties do not have enough access to capital; in some cases, one particular entity may be willing to take that risk while others may not. In those types of circumstances, the Board and Commission must make a determination. The regulation requires us to define the geographical area on both a State and countywide basis. It allows us to define the market and take it into account. For example, in the event of a rural area competing heavily with Native American gaming in another state, we must ask whether it is in the best interest of the State to allow oligopolistic types of structures as long as there are no monopolistic types of behavior. We determine whether it would be appropriate in that circumstance.

SENATOR NOLAN:

Is it possible for you to predict cyclical economic shortfalls that happen every decade or so? How do you handle short-term events, such as the tragedy of September 11, 2001 (9/11) which brought months of economic devastation and employment layoffs? In those events, do you look at debt structure, loss of gaming revenues, major layoffs and unemployment?

MR. NEILANDER:

Typically, we do a projected free cash flow over a 3-year period and consider ratio analysis. With respect to your other question regarding 9/11, no one can possibly predict such a situation. I am a regulator without a crystal ball. We do the best we can with modern analysis in terms of going forward. If investors are willing to take a risk, their capital structure is sufficient, their financing is adequate and their personal and financial background is suitable, the Board will not second-guess.

I thought the Stratosphere was going to be a home run the first time around; it went into bankruptcy in two years. I thought you could make money by putting a cardboard box on the corner where the Aladdin was built, but it did not turn out that way. That is the beauty of Nevada, it is entrepreneurial. People can take risks in Nevada. We try not to quell entrepreneurial spirits through the regulatory process.

SENATOR HORSFORD:

In regard to the regulation and criteria regarding employment practices, Las Vegas was formerly a property town and decisions were made at that level. Currently, we are a corporate town and decisions regarding employment are corporate-wide decisions. With MAs taking place, a person's ability for employment is impacted by corporate hiring decisions. What was the Commission's review in that area and were there any vulnerabilities?

MR. NEILANDER:

We look at employment practices and judge an entity upon what it has done in the past. Employment is balanced against the fact that Nevada is an at-will State; however, in some instances, a merger may involve a unionized company.

SENATOR WIENER:

What would put an MA over the top in terms of property and employees?

MR. NEILANDER:

There are current matters under investigation. I do not wish to answer a question which would require me to speculate because I would not want my comments misconstrued.

SENATOR HORSFORD:

Mr. Lanni indicated only 100 employees had been released with the merger of the MGM Mirage and Mandalay Resort Group. Should that change over the next year and major layoffs and reductions-in-force occur, do you have the ability to review the MA based upon representations made to gain approval from the Board?

MR. NEILANDER:

There is a provision in Regulation 5 which allows the Board to take disciplinary action against a licensee who engages in predatory behavior in a monopolistic sense. Yes, there is ability to look at it, and we do look at it on a regular basis, not just as a follow-up to the MA. Keep in mind, there are agents who monitor public companies on a full-time basis. There are certain other things that require Commission approval and the entities appear regularly before the Board and Commission. With respect to Regulation 5, there is a specific provision we look to in terms of evaluating those types of things.

CHAIR AMODEI:

You have been through a couple of rounds of these things in recent history. It is interesting to look at the genesis relating to Howard Hughes, which has been revisited over the course of 40 years or so. Do you lack any tools needed to perform your job? As you talk about the matriculation of the industry from one that predominantly drew profits from gaming activities to one that is now engaged with time-shares, retail and so forth, your view has gone from eye-in-the-sky, making sure there is no cheating and the money is accounted for, to companies involved in a variety of multitasking. Have your tools evolved? Do you need anything else in statutory terms? This is not just meant in a MA context, but in an overall context as well.

MR. BERNHARD:

We rely on NRS 463.0129 in almost every application that comes before us; this statute is the public policy set by the State and Legislature for us. Since my first meeting with the Commission after the tragedy of September 11, 2001, I read and reread this particular statute and found it helpful regarding decision points necessary to determine what is best for the State in all contexts. Frankly, it has worked well and stood the test of time. As general policy guidance, the statute helps us regulators follow what you Legislators determine is in the best interest of the State of Nevada. It has enough specificity to give concrete guidelines and enough flexibility to adapt to changing conditions. I am comfortable the statute and public policy, as delineated, gives us the flexibility to confront the changing nature of not just the gaming industry, but the entire economic circumstances our industry must face on a worldwide basis.

MR. NEILANDER:

I agree with the Chairman's remarks. I wish to add, as part of our analysis with MAs, we typically utilize the services of outside experts, such as professors associated with Stanford University and the University of Texas. We have also been helped with gathering data and conducting analysis by a consulting group composed of former regulators from the FTC. While I would like to think Chairman Bernhard and I are experts on all matters, in truth, we are experts on gaming, but not antitrust matters. We have been fortunate to find individuals who have helped us put the issues into perspective, not only from a federal point of view, but the State point of view as well.

Senate Committee on Judiciary  
May 2, 2005  
Page 33

CHAIR AMODEI:

Referring to Regulation 3.070, subsection 11 on page 2 of [Exhibit H](#), you are a political scientist, sociologist, economist and an expert on gaming; but now the purview of the Board and Commission within the context of people who have licenses or are applying for licenses is actually 360 degrees.

MR. NEILANDER:

As Chairman Bernhard pointed out, that is the flexible part. There is a specific part, but the provision is broadly written. We debated over the years whether we should amend the regulation and provide, for example, not going over a certain percentage of the items on the list under subsection 7. That does not work because it would not be a realistic analysis. Other states have put in percentages and repealed them after recognizing there is no way a percentage is always going to be at the appropriate level. That is the reason we have not done it in that context.

CHAIR AMODEI:

There being no further business to come before the Committee, the hearing is adjourned at 10:38 a.m.

RESPECTFULLY SUBMITTED:

---

Barbara Moss,  
Committee Secretary

APPROVED BY:

---

Senator Mark E. Amodei, Chair

DATE: \_\_\_\_\_