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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
ADJUDICATORY HEARING
(DAY TWO OF TWO)

IN THE MATTER OF: APPLICATION OF PENN NATIONAL
GAMING FOR PHASE 1 SUITABILITY DETERMINATION
FOR CATEGORY 2 GAMING LICENSE

September 19, 2013 1:30 p.m. - 4:52 p.m.
BOSTON CONVENTION AND EXHIBITION CENTER
415 Summer Street, Room 109-A
Boston, Massachusetts 02210

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APPEARANCES:

ON BEHALF OF THE MASSACHUSETTS GAMING COMMISSION:

MASSACHUSETTS GAMING COMMISSION

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WITNESSES:	FRANK DONAGHUE
	THOMAS AURIEMMA
	PETER CARLINO
EXHIBITS:	PAGE:
Exhibit 19, Organizational Chart.....	15
Exhibit 20, Philadelphia Inquirer Article.....	25
(Exhibits retained)	

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CHAIRMAN CROSBY: We are ready to reconvene. The Commission concluded the executive session. We are now back into public session of Public Meeting #77 at about 1:30.

I think we have agreed that we are not going to be able to get to the rest of the agenda items on Public Meeting 77, because we have another important matter to get to. I think we're going to have to try to schedule a special Public Meeting, hopefully next week, where we can kind of catch up. But we'll be in touch with everybody about that as soon as we can get a date nailed down.

So, unless there is any other business pending, I would entertain a motion for adjournment of public session #77.

COMMISSIONER MCHUGH: I so move.

CHAIRMAN CROSBY: All in favor?

Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER CAMERON: Aye.

1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER STEBBINS: Aye.

3 CHAIRMAN CROSBY: Opposed? They
4 ayes have it unanimously. Now, we will
5 reconvene our adjudicatory hearing on the
6 Penn National application. And I think,
7 I -- although we're in the midst of
8 hearing witnesses from the applicant, I
9 just want to check with Mr. Mackey and --
10 and Director Wells whether you've got
11 anything else to start us off with.

12 MR. MACKEY: Yes, Mr. Chairman,
13 Commissioners, we do. I think Director
14 Wells would like to read into the record, a
15 -- the results of some additional
16 investigation done last night with respect
17 to an individual identified during
18 yesterday's hearings. It's been shared, as
19 I understand it, with the applicant's
20 counsel and I don't believe they have any
21 objections.

22 MR. ALBANO: That's correct.

23 DIRECTOR WELLS: Based on the
24 inquiry by the Commission yesterday and a

1 request for further information, the
2 members of Spectrum Gaming conducted a
3 phone interview with Mr. Stephen Ducharme.
4 Mr. Ducharme is the chairman of Penn
5 National Gaming Compliance Committee.
6 He was telephonically questioned regarding
7 the hiring of Frank Donaghue as compliance
8 officer in light of the Pennsylvania Grand
9 Jury report which was discussed yesterday.

10 Donaghue was replacing Thomas
11 Auriemma. Mr. Ducharme stated he remembers
12 the Pennsylvania Grant Jury report but did
13 not recall specific details of the report
14 including the specific allegations
15 pertaining to Donaghue.

16 He recalls discussing the report
17 with Jordan Savitch and Tom Auriemma, but
18 does not recall specifics of those
19 conversations, other than that they were in
20 agreement that Donaghue should still be
21 hired.

22 He also telephonically interviewed
23 Frank Donaghue at Jordan Savitch's request.
24 He does not recall specific details of the

1 Donaghue interview, but does not -- and
2 does not recall anything derogatory.
3 Ducharme's assessment is that the Grand
4 Jury report did not contain any criminal
5 wrongdoing and did not contain any
6 derogatory information which was
7 significant enough to prevent Donaghue from
8 being hired. His recollection is that the
9 report contained smoke, but no fire. And
10 Donaghue's background, experience, and
11 qualifications far outweighed any
12 allegations pertaining to him.

13 Ducharme considered the information
14 in the report to be more allegations than
15 proven facts, realized that PCGB and BIE
16 could have done a better job, and
17 attributed this to growing pains.

18 He, along with Savitch and Auriemma
19 supported the hiring of Donaghue.

20 CHAIRMAN CROSBY: Thank you. Any
21 comment on that additional testimony?

22 MR. ALBANO: No, Mr. Chairman.

23 CHAIRMAN CROSBY: Okay. I think
24 we are ready to go to the applicant to pick

1 up the ball.

2 MR. SNYDER: Our next witness is
3 Mr. Donaghue. Chairman, we do have some,
4 as you recall, some additional witnesses
5 who are coming today, who have not yet been
6 sworn in. If you want to swear them in
7 once, do it all at once and dispense with
8 that later on.

9 CHAIRMAN CROSBY: Yeah, right.

10 MR. SNYDER: And an additional
11 witness that we had proposed to call, Mr.
12 Auriemma, who is here. We have given
13 notice to Mr. Mackey and we know that --

14 MR. MACKEY: We have no objection.

15 MR. SNYDER: No objection. So,
16 They will be brief, the additional
17 witnesses.

18 CHAIRMAN CROSBY: Hopefully they and
19 we will be brief. All right. So, any
20 witnesses who -- potential witnesses for
21 today who have not already been sworn in,
22 please stand and raise your right-hand.

23

24 WITNESSES, SWORN.

1 CHAIRMAN CROSBY: Thank you. All
2 have responded in the affirmative. Thank
3 you.

4 MR. SNYDER: I guess I'll just say,
5 Mr. Chairman, for the record, those are Mr.
6 Carlino, Mr. Wilmott, and Mr. Auriemma.

7 CHAIRMAN CROSBY: Okay.

8 MR. SNYDER: We will now proceed
9 with Mr. Donaghue who was sworn yesterday.

10

11 CONTINUED DIRECT EXAMINATION BY MR. SNYDER:

12

13 Q. Mr. Donaghue, could you start by
14 giving us a quick summary of your background,
15 including your extensive law enforcement
16 experience. I note for the Commissioners' benefit
17 there is an Exhibit 13. And Exhibit 13 will be Mr.
18 Donaghue's biographical statement, so we won't
19 dwell on this. We can just run through some of the
20 high points.

21 A. Good afternoon and thank you for the
22 opportunity. Again, I'm Frank Donaghue and I'm the
23 vice president of regulatory affairs and chief
24 compliance officer for Penn National.

1 I graduated from Catholic University
2 in Washington D.C. in 1990. And Widener University
3 School of Law in Harrisburg, Pennsylvania in 1993.
4 Following law school I was employed as a law clerk
5 for the Pennsylvania Supreme Court with Supreme
6 Court Justice Castile. I then had the opportunity
7 to serve ten years with the Pennsylvania Attorney
8 General's office. I served under former Attorneys
9 General Mike Fisher, Jerry Pappert and Tom Corbett,
10 who, of course is now the Governor of Pennsylvania.

11 For the final six years I was the
12 Chief Deputy Attorney General in charge of the
13 Bureau of Consumer Protection, which is the largest
14 section within the Attorney General's Public
15 Protection Division. And I oversaw a staff of
16 about sixty attorneys and agents. We handled about
17 40,000 written complaints from consumers each year.
18 And handled 150 legal actions a year, ranging from
19 small legal actions, all the way up to against
20 large corporations for allegations of wrongdoing
21 that had come to the Pennsylvania's Consumer
22 Protection Law.

23 During that time period I also had
24 the privilege to serve with Attorney General Mike

1 Fisher as one of the lead negotiators for the
2 tobacco settlement. Which of course, resulted in
3 \$206,000,000,000.00 in national tobacco settlement
4 funds given to the states back in 1998.

5 From March of 2006 to 2008, I served
6 as the first chief counsel to the Pennsylvania
7 Gaming Control Board. My duties and
8 responsibilities in that position were to provide
9 legal advice to the Board and to the Agency. In
10 2008 I was named the acting executive director of
11 the Agency while they conducted a review, a
12 national review for hiring a permanent executive
13 director. And then for a year after that, I served
14 as the interim deputy executive director of the
15 Pennsylvania Gaming Control Board. And during that
16 period, although we had originally allowed for
17 slots, the legislature also allowed for table
18 games. And so I was -- I helped in the process of
19 writing the regulations for table games in
20 Pennsylvania.

21 From June of 2010 through 2011 I
22 served as of counsel with the Ballard Spahr Law
23 Firm in Philadelphia. I'm a member of the
24 Pennsylvania Bar Association. I live in Hershey

1 with my wife and three children. A sixteen year
2 old boy, fourteen year old girl, and a seven year
3 old girl. That's my -- that's my background.

4 Q. In addition to being a member of
5 Pennsylvania Bar Association, you're also a member
6 of the Bar?

7 A. Yes, I'm sorry.

8 Q. A licensed attorney. And speaking
9 of licensing, how many jurisdictions do you hold a
10 gaming license?

11 A. I hold a gaming license in nine
12 jurisdictions. In New Mexico; Louisiana; Indiana;
13 Maine; Colorado; Canada; Maryland; Ohio; and
14 Pennsylvania.

15 And I would also add with regard to
16 Pennsylvania, the -- the Bill Ryan, who's the
17 acting -- who was the acting Attorney General in
18 charge of the Pennsylvania Attorney General's
19 office at the time the Grand Jury report was issued
20 subsequently became the chairman of the
21 Pennsylvania Gaming Control Board. At the time of
22 my licensure, he was chairman and he voted in favor
23 of my licensure along with all the other members of
24 the Pennsylvania Board.

1 Q. And you mentioned Ohio.

2 A. Yes.

3 Q. You're familiar with an outfit
4 called Spectrum Gaming?

5 A. Sure.

6 Q. They assisted the Commission in this
7 proceeding?

8 A. Right. Spectrum Gaming did my
9 investigation when they did the investigation for
10 the Ohio Casino Control Commission. And I was also
11 voted in favor for my license in Ohio.

12 Q. And that -- that license in Ohio was
13 approved before or after the Grand Jury report --

14 A. After.

15 Q. -- that we discussed yesterday?
16 Sorry?

17 A. Afterwards.

18 Q. Okay. Let's get right to that then.
19 You were here yesterday when there was questions
20 and testimony regarding that Grand Jury report
21 about the Pennsylvania Board?

22 A. Sure.

23 Q. First, could you tell us generally
24 about that report, the background, how it came to

1 be and your participation in the Grand Jury
2 proceedings.

3 A. So, on May 19, 2011, I appeared
4 before the thirty-first statewide Grand Jury as a
5 witness. I was one witness of about twenty or so
6 other current and former board members of the
7 Pennsylvania Gaming Control Board. There are other
8 individuals who testified not from the PGCB,
9 including Fred Cushing.

10 The Grand Jury examined the issuance
11 of licenses in Pennsylvania in 2006, about seven
12 years ago. I cooperated fully with the process.
13 Although the report was critical of some of the
14 decisions, there was no finding of any criminal
15 wrongdoing. There was no findings of any
16 wrongdoing by me. There were no presentment or
17 indictments that were issued at the Grand Jury.

18 In Pennsylvania the Grand Jury can
19 issue a report, and I understand in other
20 jurisdictions they can just issue an indictments or
21 presentment, but in Pennsylvania they can issue a
22 report.

23 The Grand Jury issued a number of
24 recommendations to improve the regulatory oversight

1 of gaming in Pennsylvania. Many of those
2 recommendations I -- I agree with today. I think
3 there's always room for improvement, particularly
4 when you're building a brand-new agency from the
5 ground up, as -- as I did along with many other
6 people.

7 And I'm also extremely proud of the
8 accomplishments that -- that we ultimately had in
9 Pennsylvania.

10 Q. Mr. Donaghue, next, if you could
11 just briefly tell us how the Pennsylvania Board was
12 organized at the time that you were there and in
13 particular in 2006. And we have, and we've
14 provided to counsel an organizational chart which I
15 ask the witness to identify.

16 MR. SNYDER: And is there an
17 objection, Mr. Mackey?

18 MR. MACKEY: I'm embarrassed to say
19 that I haven't seen it. But I'm --

20 MR. SNYDER: Would you like --
21 distribute that? We'll call that Penn
22 Exhibit 19.

23
24 (Exhibit 19, Organizational Chart, marked)

1 Q. (By Mr. Snyder) Okay. Mr.
2 Donaghue, if you could take a look at that, and
3 first, if you could just tell us, you know, where
4 this organizational chart came from.

5 A. It came from the website, the
6 Pennsylvania gaming --

7 Q. So, is this to your understanding,
8 an organizational chart for the Board and its staff
9 as it exists today or back in 2006?

10 A. As I understand it, as it exists
11 today.

12 Q. Okay. Could you just -- you've
13 looked at this before?

14 A. Mm-hm.

15 Q. Could you tell us, is it more or
16 less the way you understood the organizational
17 chart on the Board to exist in 2006?

18 A. Yes, yes, it is.

19 Q. If I could have you, because -- just
20 because there are some names that have come up or
21 will come up, to point out where all these people
22 fit in this chart. And I want to start with you.
23 You were the chief counsel, where are you on this
24 chart?

1 A. So, I would be right in the middle
2 where it would say office of chief counsel. And
3 then you would have several of those boxes that
4 would be underneath. I would report up to the
5 Executive Director and to the Pennsylvania Gaming
6 Control Board, seven member board.

7 Q. And there's going to be some
8 discussion of the Bureau of Investigations and
9 Enforcement. Can you tell us about, generally,
10 what that was and who was the head of that.

11 A. So, the head of the Bureau of
12 Investigations and Enforcement was Dave Quait.
13 That is to my right of that -- of that box.

14 Q. Okay. And who was the Executive
15 Director?

16 A. Ann Neeb.

17 Q. Neeb, N-E-E-B?

18 A. Correct.

19 Q. How about Michael Schwoyer?

20 A. So, he would have been head of the
21 Office of Enforcement Counsel. And so, the Bureau
22 of Investigation and Enforcement and the Office of
23 Enforcement Counsel, they would have
24 administratively reported to Ann Neeb. But they

1 were independent sections for purposes of
2 enforcement on behalf --

3 Q. Okay. And the last name I want to
4 ask you about is someone named Nan Davenport.

5 A. Yes.

6 Q. Where does she fit in this chart?

7 A. She would fit under the Office of
8 Enforcement Counsel in the central regional office.

9 Q. So, how this is set up, just so
10 we're clear, were you David Quait's boss?

11 A. No.

12 Q. Were you Michael Schwoyer's boss?

13 A. No.

14 Q. Were you Nan Davenport's boss?

15 A. No.

16 Q. All right. Could you tell us then,
17 in the Pennsylvania Board, generally how and by
18 whom suitability reports were investigated and
19 written.

20 A. Sure. So, generally suitability
21 reports would have been assembled by the licensing
22 division. And the general background
23 investigations for those suitability reports would
24 have been done by the Bureau of Investigation and

1 Enforcement, along with the counsel that work for
2 the Office of Enforcement Counsel. Again, the
3 director at that time was David Quait. The chief
4 enforcement counsel was Michael Schwoyer.

5 BIE attorneys and agents who
6 investigated wrote that portion of the suitability
7 report, such as Nan Davenport would have reported
8 to Michael Schwoyer. Again, they did not report to
9 me.

10 Q. Okay. One other name that I wanted
11 to ask you about, who was the Chair -- in 2006 who
12 was the Chair of the Pennsylvania Board?

13 A. Tad Decker.

14 Q. So, he goes up at the top of the top
15 of the -- okay. All right. One matter discussed
16 in the Grand Jury report was the Mount Airy
17 suitability report; is that correct?

18 A. That's correct.

19 Q. Could you tell us about that report.

20 A. Sure. So, to give you some context
21 on the Mount Airy suitability report, it's -- it
22 was one of a couple of dozen reports that we were
23 reviewing and working on at the time. The Mount
24 Airy suitability report went through almost a dozen

1 drafts before I saw it for the first time. I saw
2 the first time the draft of the report after the
3 staff's investigation was substantially complete,
4 and shortly before the Board was taking up Mount
5 Airy for suitability considerations.

6 The draft report contained
7 discussions about issues concerning alleged
8 violations of campaign-finance laws and allegations
9 of improper titling of tractor-trailer as a result
10 of the Katrina hurricane by Mount Airy's principal,
11 Louis Denaples.

12 In addition to those two categories,
13 the report also contained information about Mr.
14 Denaples' alleged connections to two people
15 allegedly tied to organized crime. One by the name
16 of Mr. D'Elia, the other one named Mr. Shama Ali.

17 There was other issues in the report
18 as well, such as Mr. Denaples' 1970s conviction for
19 jury tampering.

20 I recall participating in a -- in an
21 internal staff meeting in which the report was
22 discussed at length with Executive Director Ann
23 Neeb, Chief Enforcement Counsel Michael Schwoyer,
24 Deputy Enforcement Counsel Nan Davenport, Agent

1 Roger Greenbank, and Deputy Counsel Moselle
2 Daniels, and they were among others. I just can't
3 remember, you know, who was in that room seven
4 years ago.

5 At that meeting, the consensus,
6 decisions were made to revise and finalize the
7 report. The information about the campaign
8 contributions, also referred to as RAM, I think you
9 heard yesterday, RAM, and the truck sales were
10 supported by the -- by the substantial evidence.
11 That information remained in the report. And I
12 also believe that information, there was other
13 information that would -- that that information,
14 I'm sorry, would pose substantial obstacles to Mr.
15 Denaples being found suitable.

16 With regard to information about
17 allegations of organized crime associations
18 including Mr. D'Elia, decisions were made to attach
19 the Pennsylvania Crime Commission report as an
20 exhibit to the suitability report. My recollection
21 was that there was also a search warrant Affidavit
22 that was attached as an exhibit to the report. And
23 along with other documents. That information,
24 along with other information contained in the

1 report was discussed in executive session among the
2 board members where BIE counsel was present, where
3 counsel for the applicant was present, the
4 applicant was present, and essentially you had an
5 adjudication within executive session where those
6 issues were discussed.

7 We included those -- those as
8 exhibits basically because we considered those to
9 be, you know, the best evidence we had on the
10 subject. Rather than doing a summary of those --
11 of information contained in the exhibits.

12 CHAIRMAN CROSBY: Rather than doing
13 a summary in the -- in the body?

14 A. In the body of the report, that is
15 correct.

16 CHAIRMAN CROSBY: You did it as an
17 exhibit why?

18 A. Basically it was -- it was the best
19 evidence rule. Rather than summarizing what was in
20 the reports and there being multiple issues of
21 hearsay attached to the report. And those exhibits
22 obviously were made available to the Board to
23 review.

24 COMMISSIONER ZUNIGA: Mr. Donaghue,

1 A. Yes.

2 COMMISSIONER ZUNIGA: Were you
3 present at that executive session?

4 A. Yes. As was Ann Neeb. With regard
5 to allegations of Mr. Ali, the staff had been
6 unable to substantiate that association and Mr.
7 Denaples had denied under oath that he -- he knew
8 Ali.

9 There may have been other
10 substantiated information that I -- that I, you
11 know, cannot presently recall. And that
12 information was -- was not included in the report
13 because a determination was that it was
14 unsubstantiated -- unsubstantiated evidence and
15 could not be included within the report, and should
16 not be included in the report.

17 No BIE -- no BIE investigator was
18 instructed by me not to try to obtain additional
19 substantive evidence. In this connection I must
20 note that the Agency attempted on multiple
21 occasions to obtain information about Mr. Denaples
22 from law enforcement agencies.

23 It was later revealed after the
24 license was issued, that there was information

1 regarding Mr. Ali and his connection to Mr.
2 Denaples that was not provided to us despite our
3 repeated requests. And that information was later
4 substantiated that they had a relationship. And
5 actually that was the information that was used at
6 a later date after licensing in which Mr. Denaples
7 was charged with perjury for lying to the
8 Pennsylvania Gaming Control Board. But again, that
9 information was not made available to us until
10 after the licensing decisions.

11 Q. If I could just interrupt you for
12 just a --

13 A. Sure.

14 Q. -- second, Mr. Donaghue.

15 MR. SNYDER: We have proposed an
16 exhibit which was a Philadelphia Inquirer
17 article, seems to be the paper of record in
18 this case. Having to do with the events
19 that Mr. Donaghue just testified about in
20 more detail. And we offer that at this
21 time for what -- for what it is, I guess,
22 for what it is.

23 MR. MEYERS: We have no objection.

24 CHAIRMAN CROSBY: This is exhibit

1 -- Applicant Exhibit Number --

2 MR. SNYDER: This would be 20.

3 CHAIRMAN CROSBY: 20. Do you have
4 copies of that?

5 MR. SNYDER: Yes, I do. Mr. Mackey
6 has that.

7
8 (Exhibit 20, Philadelphia Inquirer Article,
9 marked)

10
11 Q. (By Mr. Snyder) Since I've
12 interrupted you, could I go back to something you
13 said about the executive sessions and relating to
14 Commissioner Zuniga's question.

15 What was it that happened in the
16 executive session? What was the nature of the
17 proceeding in the executive session?

18 A. So, again it was an adjudicatory
19 proceeding in which you had the Board present, you
20 would have had -- the witness would have presented
21 testimony, the BIE counsel would have been present
22 and would have been able to cross-examine the
23 witness.

24 Q. Who was -- who did the work for BIE?

1 A. My recollection was predominately
2 Michael Schwoyer.

3 Q. Okay. And you've identified him
4 before as the Chief Enforcement Counsel?

5 A. He was the Chief Enforcement
6 Counsel, that is correct.

7 Q. Okay.

8 A. And those, of course those executive
9 sessions were all transcribed and they were all
10 made part of the formal record upon which the Board
11 would ultimately make its decision.

12 Q. And the fact that they were
13 conducted as executive sessions as opposed to
14 public sessions, is that -- was that a function of
15 the Pennsylvania statute?

16 A. Yes, yes. The Pennsylvania statute
17 in my interpretation was rather clear that matters
18 that were of a confidential nature had to be
19 conducted in executive session.

20 Q. Okay. Please continue.

21 A. Well, I think, and just in the way
22 of the headline here, this Philadelphia article,
23 Police Left and Board in Dark -- in the Dark, state
24 troopers did not pass on information on casino

1 owner charged with lying about ties to mob.

2 Q. The Commissioners can obviously read
3 this for themselves, but I think it probably bears
4 just reading into the record the first two
5 paragraphs of this article.

6 (As read:) Months before Louis A.
7 Denaples received his casino license, the
8 Pennsylvania State Police realized that he might
9 have lied to gaming regulators, but kept it secret,
10 the police acknowledged yesterday. This is in
11 February of 2008, as Mr. Donaghue has testified
12 after the license had been issued.

13 That decision meant that the
14 Pennsylvania Gaming Control Board was in the dark
15 about the potential perjury when it voted in
16 December of 2006 gave Denaples a license to open
17 412,000,000 Poconos slots parlor.

18 And I'll just skip down, I guess
19 it's the fourth paragraph. Interviews top current
20 and former state police officials said the Agency
21 decided it could not share that evidence even
22 though under a deal brokered by a judge, police had
23 agreed to pass along any damaging information about
24 Denaples.

1 Okay. Could you continue Mr.
2 Donaghue, there were some questions yesterday, I
3 believe, about this part of the report, and in
4 particular respect to Attorney Nan Davenport and
5 communications you might have had with -- with her.
6 Could you tell us about that.

7 Q. Sure. And I think the report
8 suggested that I ordered -- was at a meeting where
9 I ordered Davenport to remove information, myself
10 and Ann Neeb did. I have no recollection of a
11 meeting directly with Nan and -- and ordering her
12 to remove information from the -- from the report.

13 I note that in the IAB's report on
14 page 279, notes that the Grand Jury report is
15 silent on whether PGCB Director, Executive Director
16 Ann Neeb or myself was asked about meeting with
17 Davenport. The IAB report further notes at 283 and
18 284 that I confirmed that I was not asked about the
19 meeting.

20 More detail on this is contained in
21 my January 18, 2012 memo to Spectrum Gaming in
22 which EIB -- which is EIB Exhibit 12. I never
23 exerted any duress on Mrs. Davenport. The Grand
24 Jury report therefore -- therefore does not

1 contain, you know, my side of the story. The Grand
2 Jury report, Exhibit 10 states that ultimately
3 Davenport made the requested changes because
4 Schwoyer told her to.

5 Q. If I could just interrupt you for a
6 second.

7 A. Sure.

8 Q. The memo that's Exhibit 12 that you
9 just referred to, could you just tell us how you
10 came to write that memo.

11 A. Sure. It was during the course of
12 my license application before the Ohio Casino
13 Control Commission, in which I met with the
14 investigators from Spectrum. They had a number of
15 questions regarding testimony that I had gave
16 before the Grand Jury. I gave them the memo from
17 which I of course would not have had the benefit of
18 my testimony, because in Pennsylvania, a witness
19 does not get a copy of their -- their testimony.
20 So, I did my best to recall what I testified to.

21 Q. Okay. And we'll come back briefly
22 about the Spectrum investigation in Ohio. But if
23 you could continue telling us about the meetings at
24 the Board concerning the Board and your interaction

1 with Ms. Davenport.

2 A. Yeah, and again, I mean to be clear,
3 I supported the modifications to the report. I
4 think I had indicated earlier that there was a
5 meeting that I recall, an internal meeting with a
6 large group of people where it was discussed. That
7 -- decisions were made to include information in
8 the report that was factual and could be
9 substantiated. Raw unfiltered intelligence, rumor,
10 unsubstantiated information in my opinion and in
11 the opinion of my colleagues should not be part of
12 that -- that report.

13 On that -- that particular point, I
14 would draw your attention to the Grand Jury report
15 at pages 43 and 44 in which Chairman Decker
16 expressed essentially the same -- the same opinion.

17 And again, you know, my position
18 under Pennsylvania law was that adjudications that
19 that Board would reach have to be supported by
20 facts and substantial evidence. And Pennsylvania
21 case law is very clear on that. While in some
22 jurisdictions administrative agencies can make
23 decisions where the rules of evidence are not as
24 stringent. In Pennsylvania there are -- there are

1 limitations to those rules. And under Pennsylvania
2 case law adjudications must be supported by the
3 substantial evidence.

4 Q. Okay. So, there were some
5 discussion of modification to the report. Did you
6 agree with those modifications, disagree, how did
7 -- how did you come out?

8 A. Again, I agreed with the
9 modifications. And to be clear, the -- the
10 information that was included as exhibits to the
11 report and other information in the report was
12 fully vetted again in executive session. My
13 recollection is that it was just for Shama Ali
14 information that ultimately was not included.
15 There could have been others, but that my
16 recollection was just the Shama Ali information.

17 So, while there is discussion about,
18 you know, revisions to the report and that sort, it
19 was just that one issue. There could have been
20 others, but it was just that one issue that I can
21 recall and ultimately that issue was the subject of
22 a -- of a perjury charge when information was later
23 developed about Mr. Denaples' relationship.

24 CHAIRMAN CROSBY: There's maybe here

1 something that I don't understand. The
2 -- I -- you made, and according I guess the
3 investigative report, you made a strong
4 and in other places, you made a strong point
5 about what administrative law required in
6 Philly, and how you didn't want to muddy the
7 waters of the case. I understood that you
8 felt that beyond the RAMS and the trucking
9 issues, that the rest of the material, the
10 crime commission report and the jury prior
11 conviction, the D'Elia the Shama Ali,
12 whatever his name, all that stuff would not
13 be helpful, that the report ought to be
14 limited to the two issues. Did I
15 misunderstand that?

16 A. Yes.

17 CHAIRMAN CROSBY: Okay.

18 A. Yes, so at the end of the day,
19 again, the report contained those two issues that
20 you just discussed, RAM and the Katrina trucks.
21 But it also contained other information, such as
22 the 1970s conviction, and -- and other information
23 that again was discussed and vetted before the
24 Board. There was other information that was

1 originally summarized in the report regarding for
2 example the crime commission report. The
3 determination was rather than do a summary, go with
4 the best evidence, include it as an exhibit, which
5 was made available to the Board for their review.
6 And --

7 CHAIRMAN CROSBY: And you had no
8 problem with that part being -- you didn't
9 think that was muddying the waters?

10 A. No.

11 CHAIRMAN CROSBY: Okay. I
12 misunderstood that.

13 Q. (By Mr. Snyder) And when you say a
14 decision was made, a decision was made how and by
15 whom?

16 A. My recollection, it was -- it was a
17 consensus among the group that was -- that was in
18 that room. I made recommendations. I mean, how
19 people would -- interpreted my recommendations
20 related to that, basically I felt I was doing my
21 job as Chief Counsel to make sure that there was
22 not information included in the report that
23 ultimately the Board might rely upon and then the
24 Supreme Court overturn because it was not

1 substantiated.

2 Q. Did you think there was any -- was
3 this merely a theoretical concern, or did you think
4 there was a real prospect that if the Board denied
5 this license there might be further litigation?

6 A. The counsel for Mr. Denaples, John
7 Donnelly, he had raised several issues with regard
8 to unsubstantiated efforts.

9 CHAIRMAN CROSBY: Why would he want
10 it out if it would be reversible error?

11 A. Well, because I would suspect that
12 he would -- his -- his issue was he didn't have the
13 ability to essentially challenge the issues because
14 it was like triple hearsay. That was his position.

15 COMMISSIONER MCHUGH: He also would
16 want to win, wouldn't he?

17 A. He would -- that's right. He would
18 want to --

19 Q. (By Mr. Snyder) His first
20 preference would be to win, his second preference
21 would be to have grounds to take an appeal; is that
22 correct?

23 A. Yeah.

24 COMMISSIONER CAMERON: I have a

1 question.

2 Q. Albeit distant second.

3 COMMISSIONER CAMERON: Mr. Donaghue,
4 what about the -- can you speak to the
5 matter that investigators testified before
6 the Grand Jury that they were not allowed
7 to try to verify the information; that they
8 were told no more interviews. Do you have
9 knowledge of that, do you have information
10 regarding that testimony?

11 A. Not other than what, you know,
12 reading the Grand Jury report. I don't think any
13 of those allegations were made toward me, that I
14 essentially thwarted those -- those efforts. I
15 think that was made regarding other people.

16 COMMISSIONER CAMERON: Did -- did,
17 to your knowledge, when information which is
18 very serious in nature comes from the
19 investigative arm of the Commission, did
20 anyone say look, this is information we
21 should try to verify, this is significant.
22 I mean, rather than -- maybe you don't have
23 any knowledge of someone saying no, don't.
24 But did anyone say let's try to verify this

1 information, it's really important if this
2 were accurate.

3 A. My recollection is that the
4 investigators, the agents were always attempting to
5 do the best job to attempt to verify that
6 information.

7 Q. (By Mr. Snyder) I think -- I'm
8 sorry.

9 COMMISSIONER CAMERON: No, I --

10 Q. (By Mr. Snyder) I think you
11 mentioned, just to follow-up, earlier that there
12 were some efforts made in particular with respect
13 to obtaining information from other law enforcement
14 agencies. Maybe you could just give us a little
15 bit more detail on what that is.

16 A. So, when an applicant would apply
17 for license in Pennsylvania, one of the BIE's
18 standard protocols was to send a letter to all law
19 enforcement, the Attorney General's office, to
20 State Police, to the Feds, and would ask if they
21 had any information in their possession which would
22 preclude an individual from being licensed.

23 Q. And just circling back to the point
24 about the law in Pennsylvania about administrative

1 agency determinations and what constitutes
2 substantial evidence, we have included the as
3 Exhibits 15 through 17, the pertinent statute in
4 Pennsylvania and two cases that fill out the --
5 what that standard was at the time in 2006.
6 There's another case that's included as part of the
7 Board's exhibits, the number of which escapes me at
8 the moment.

9 Okay. We won't -- we won't go into
10 -- the panel can give you those 15 to 17. Could
11 you talk just generally, Mr. Donaghue, about as
12 Chief Counsel to the Board what your goal was with
13 respect to the presentation of these suitability
14 reports, and in particular the Mount Airy report.

15 A. Yeah, again, you know, I think
16 staff's goal, my goal as Chief Counsel to the
17 Agency was to make sure that there was an
18 appropriate presentation of the facts based upon
19 the substantial evidence at issue. And there
20 that's -- that's where we worked towards.

21 Q. Okay. And now, the eventual result
22 was that Mount Airy was granted the license,
23 correct?

24 A. Correct.

1 Q. And so, Mr. Denaples' lawyers didn't
2 take an appeal, but did somebody?

3 A. Yes, yes, there was Mr. Denaples'
4 application would have been one among the at-large
5 casino licenses in Pennsylvania. I believe there
6 was about four or five other applicants. And I
7 know at least Pocono Manor, one of those other
8 applicants, that was basically vying for a casino
9 in the same region filed an appeal to Mr. Denaples'
10 award of a license.

11 Q. Okay. And that -- did that
12 eventually end up in the Pennsylvania Supreme
13 Court?

14 A. Yes, that -- that -- actually, the
15 Pennsylvania Supreme Court had original
16 jurisdiction. And for any appeals for the Board's
17 licensing decisions, so it immediately went up.
18 And they upheld the Board's decision in the Mount
19 Airy case.

20 MR. SNYDER: All right. And that
21 opinion is Penn Exhibit 18 in the -- the
22 Pocono Manor appeal in the Mount Airy
23 license.

24 Q. (By Mr. Snyder) Just in general,

1 Mr. Donaghue, could you just sum up what you've
2 just told us by way of summary of your efforts with
3 respect to the suitability report.

4 A. Sure. I mean, I can assure you that
5 at the end of the day, the modifications were made
6 for the appropriate reasons. To this day I'm not
7 aware of any reason which was, you know, improper
8 or untoward. Again, the decisions that I were part
9 of -- that I was part of was based on my read of
10 Pennsylvania law, and the evidence that was before
11 us at that time. You know, and I was just doing
12 the best job that I could -- that I could do.

13 Q. Okay. Mr. Donaghue, there were a
14 couple questions yesterday I believe to Mr. Savitch
15 about your role in the drafting of this Mount Airy
16 suitability report. So, let me just ask you
17 straight up, did you play a prominent role in
18 drafting the Mount Airy suitability report?

19 A. No.

20 Q. I think you said that by the time
21 the suitability report got to you it had been -- it
22 had gone through several drafts?

23 A. I -- I --

24 Q. According to your best recollection?

1 A. I received draft eleven. And I
2 think there was a total of twelve.

3 Q. And when you received that draft, in
4 what stage was the process?

5 A. It was substantially complete.

6 CHAIRMAN CROSBY: It was what?

7 A. Substantially complete.

8 Q. (By Mr. Snyder) Did you play a
9 prominent role in editing the dozen or so drafts in
10 that Mount Airy suitability report?

11 A. No, again I supported the decisions
12 that were made with regard to modifications of that
13 report.

14 Q. Okay. Now, there were some
15 questions yesterday also about your January 18,
16 2012 memo to Spectrum Gaming. That's the Board's
17 Exhibit Number 11. And in particular there was
18 reference to a paragraph on page 3. First, could
19 you tell us how you came to prepare and provide
20 this memorandum.

21 A. Yeah, again, I was asked to provide
22 a memorandum by Spectrum Gaming about the testimony
23 that I gave before the Grand Jury. I think I
24 stated before that I didn't have a copy of that

1 testimony. In Pennsylvania, a witness is not
2 entitled to receive that. I think I actually -- we
3 actually asked if we could have it, and -- either
4 asked or just -- I think we are asked or we
5 examined the law in Pennsylvania as to whether a
6 witness was entitled to that information. And a
7 witness is not. And so, I just, you know, based on
8 my best recollection of the information and
9 testimony that I gave, I put the memo together.

10 Q. Okay. And -- and so, I think in
11 particular you were asked -- you were asked about
12 yesterday as to a statement in the memo that it was
13 your best recollection that you told the Grand Jury
14 you were reluctant to criticize another attorney's
15 performance. Could you just give us some
16 background and context as to what that particular
17 paragraph of your memo is about, and that
18 statement.

19 A. Yeah, again, I was not Mr.
20 Schwoyer's boss. And, you know, I -- I was not
21 going to do a comparative analysis in terms of what
22 Mr. Schwoyer had done, and whether I had -- could
23 have done a better job than Mr. Schwoyer.

24 CHAIRMAN CROSBY: Why not? I mean,

1 I -- I was the one who asked the question,
2 as you know.

3 A. Yeah.

4 CHAIRMAN CROSBY: There was a
5 misunderstanding that that is not trivial.
6 I didn't -- I hadn't computed that the
7 lawyer didn't work for you. I thought that
8 he did. And it wasn't until you reminded
9 the Schwoyer relationship. So, that -- I
10 get that there's a difference there. But I
11 would certainly want our general counsel to
12 tell us whatever she thought about the
13 performance of any of our lawyers, anywhere
14 in the operation. And in a situation like
15 this, there was -- I mean, something
16 happened. You -- you made the judgment that
17 you had a very strong case against this guy.
18 You had every, it looks like, it sounds like
19 you had every expectation that he was not
20 going to get a license. And you were wrong.
21 Something happened. Either your judgment
22 wasn't very good or the case that you
23 supported being prepared wasn't very good,
24 or it was poorly delivered, or you were

1 grossly out lawyered. Something happened.
2 What happened, and when the Grand Jury was
3 trying to figure out what happened, why
4 would you not contribute your analysis to
5 that?

6 A. I -- Mr. Donnelly, who represented
7 Mr. Denaples did a substantial job of refuting a
8 number of the issues that were -- that were raised.
9 He did a very good job of that.

10 CHAIRMAN CROSBY: But you dealt with
11 Mr. Donnelly, too. He -- he didn't change
12 your mind. You had -- there had been a
13 series of negotiations with staff and
14 Donnelly, and you ended up staffing it up
15 -- taking the strong position that you took.

16 A. And again, he just did a very good
17 job of -- of dealing directly with those issues in
18 executive session. I also recall for an example,
19 that there was a Penn DOT employee who was there,
20 and was discussing the issues related to the
21 retitling of the trucks. And ultimately Mr.
22 Donnelly got that employee to admit on examination
23 that the two forms that should be utilized when
24 going through the retitling process, that they were

1 confusing. And that one might use the form that
2 Mr. Denaples' people used when they retitled the
3 trucks, as opposed to being the appropriate one.

4 CHAIRMAN CROSBY: This is -- this
5 is new information at the hearing?

6 A. This was -- this was information
7 that was developed in executive session. So, when
8 the Katrina trucks issue was being discussed, Mr.
9 Donnelly got the expert from the Pennsylvania
10 Department of Transportation to admit essentially
11 that the forms were confusing.

12 CHAIRMAN CROSBY: So, you were --
13 you were out lawyered pretty seriously.

14 A. Mr. Donnelly did a nice job.

15 CHAIRMAN CROSBY: This is a minor
16 point in a way, I mean, I -- my thoughts
17 about this are evolving. But you've heard
18 me say that particularly in the positions
19 that you're in, somebody needs to make
20 hard calls. So, you are reluctant to be
21 critical of Mr. Schwoyer here. You're
22 mincing your words, you know, so as to not
23 be critical of the performance of him, or
24 his staff, or whatever. And, you know, as a

1 -- as a characteristic in this
2 context that seems inappropriate to me.

3 A. Well, I've been a managing attorney
4 for -- for most of my professional career. I am
5 not afraid to make difficult calls. I've made them
6 when I was at the Attorney General's office; I made
7 them when I was at the PGCB. I -- I make them
8 today. I am not reluctant to make difficult calls
9 at all. I think Mr. Schwoyer did an adequate job.
10 I think there were times where he was -- micro-
11 managed issues and others. There's some things
12 that I would do differently than Mr. Schwoyer did,
13 you know, sitting in hindsight. But, Mr. Chairman,
14 I can assure you I -- I can make difficult calls,
15 and I -- I do it regularly.

16 CHAIRMAN CROSBY: Has there been
17 an example, just out of curiosity, since
18 you've been Compliance Officer, where you've
19 had to go to your bosses and tell them
20 something that they did not want to hear?

21 A. Yes.

22 CHAIRMAN CROSBY: Can you give us
23 an example.

24 A. Sure. And of course, I don't -- I

1 don't think it would be, since it's an employment
2 matter, wouldn't be appropriate to get into names.
3 But I can recall an instance in which we had a
4 compliance officer at one of our properties who had
5 made certain allegations of wrongdoing with regard
6 to the management team. And I -- the -- one of the
7 senior vice presidents and our HR folks wanted to
8 immediately terminate the individual because of
9 some of the things that he had done. And I, along
10 with Carl Sottosanti, I put the stops on it and
11 said no, we've got to investigate this matter fully
12 before we make any decision to terminate this
13 particular individual.

14 We did that, we did a full
15 investigation. I directly participated in that
16 investigation. Ultimately this employee's
17 allegations were -- were held to be unfounded, and
18 I did a report on that. And I sent that report to
19 I believe Mr. Wilmott and the senior vice president
20 who was dealing with the issue as well as the HR
21 director.

22 CHAIRMAN CROSBY: And Mr. Wilmott
23 wanted to fire this person right off the
24 bat?

1 A. It wasn't Mr. Wilmott, it was the HR
2 folks and the senior vice president.

3 CHAIRMAN CROSBY: To whom you
4 report?

5 A. I don't report to them. They're --
6 I report to Mr. Savitch.

7 CHAIRMAN CROSBY: So, that wasn't
8 somebody that -- I was saying is there
9 somebody that you report to you had to say,
10 bring word to somebody you report to --

11 A. Yeah.

12 CHAIRMAN CROSBY: -- tell them
13 something they very much did not want to
14 hear?

15 A. I report to Mr. Savitch and I report
16 to the Compliance Committee. Mr. Savitch and I, we
17 regularly engage in very -- at times we have very
18 good and -- good discussions about issues. And I
19 am not afraid to express my opinion at all.

20 COMMISSIONER MCHUGH: Is that --
21 the same would apply with respect to the
22 meetings and interactions with the members
23 of the Compliance Committee?

24 A. Absolutely.

1 COMMISSIONER MCHUGH: I didn't mean
2 to interrupt.

3 CHAIRMAN CROSBY: Okay.

4 Q. (By Mr. Snyder) All right. Mr.
5 Donaghue, why don't -- you mentioned -- I might
6 just have a moment. You mentioned earlier that
7 Spectrum Gaming was involved in conducting the
8 investigation for the Ohio Casino Control
9 Commission, this was back in 2012?

10 A. Right.

11 Q. Could you tell us a little bit about
12 that. By the way, that was after the Grand Jury
13 report information that was --

14 A. Correct.

15 Q. -- that was out there.

16 A. Correct.

17 Q. Could you tell us about that process
18 that Spectrum Gaming used to investigate that
19 matter.

20 A. Sure. Again, throughout the
21 investigative process, I was extremely cooperative
22 with them. I met with them in person. I ended up
23 providing them with two memos in terms of follow-up
24 conversations, had telephone calls with them, and

1 then also they asked that I give sworn testimony as
2 to a number of questions that they had related to
3 my testimony before the Grand Jury and the
4 licensing process. And again, I completely
5 cooperated with that. And I think all that
6 information was made available both to Ohio and to
7 this Board.

8 Q. Okay. And then what was the -- I
9 think you mentioned before, what again was the
10 result in Ohio?

11 A. Ultimately the Ohio Casino Control
12 Commission voted in favor of my -- my license. I
13 think in the Spectrum report they said it was
14 unhesitantly and without question.

15 Q. That's at page 277 of the Bureau's
16 report. And you are licensed elsewhere?

17 A. Again, I'm licensed in nine
18 jurisdictions.

19 Q. And when -- you come up for renewal
20 from time to time?

21 A. Yeah, I just recently -- well, I get
22 renewed every year in Indiana. So, yes, from time
23 to time I get renewed.

24 Q. So, the renewals that come up where

1 your -- your Grand Jury report, your name being
2 mentioned in the Grand Jury report is out there?

3 A. Sure. Absolutely. Something that I
4 indicate on any one of the applications that I
5 would file. I -- I put information in about my
6 testimony that I provided as a witness before the
7 Grand Jury.

8 Q. And then you've -- you've obviously
9 reviewed the Bureau's report in this case,
10 reporting on the work that Spectrum Gaming did in
11 this matter for the Massachusetts Commission,
12 right?

13 A. Mm-hm.

14 Q. And what did the -- Spectrum checked
15 your references like they checked all the other
16 individual qualifiers?

17 A. Yes, and --

18 Q. And what did they conclude?

19 A. Their conclusion was that all of the
20 references indicated regarding myself as of the
21 highest character and integrity, with no negative
22 or derogatory issues noted. No derogatory
23 information was developed which would preclude Mr.
24 Donaghue from being licensed by the Massachusetts

1 Gaming Commission.

2 Q. Okay. Now, I want to talk a little
3 bit, there was some discussion yesterday about your
4 being -- the events surrounding your being hired by
5 Penn. Could you tell us about your recollection of
6 that process.

7 A. Sure. I was -- I was with Ballard
8 Spahr Law Firm, and was contacted in the spring of
9 2011 by Mr. Savitch and by Mr. Sottosanti. They
10 expressed that Tom Auriemma was moving on. It --
11 was essentially retiring, and I -- had asked
12 whether I was interested in pursuing the position.

13 Q. Okay. And then what happened after
14 that? Why don't you run us through the process,
15 who you talked to and --

16 A. Sure. There was the -- I -- I met
17 then with Jordan and other members, including --
18 well, ultimately I interviewed with the CEO of the
19 company, Peter Carlino. I interviewed with the
20 chief operating officer, Tim Wilmott. I
21 interviewed with the chief financial officer, Bill
22 Clifford; the senior vice president of HR, Jean
23 Clark; as well as Deputy General Counsel, Carl
24 Sottosanti.

1 Q. Okay. How about the Compliance
2 Committee, did you have any contact -- you also
3 mentioned Mr. Auriemma who was retiring. Did you
4 have any contact with those folks?

5 A. Yeah, shortly after Jordan had
6 originally discussed the issue with me, I met with
7 Tom and had an interview with Tom. And then
8 subsequently to that I also had interviews with Mr.
9 Ducharme over the phone, as well as Mr. Handler,
10 was on the Compliance Committee.

11 Q. And Mr. Ducharme, again, is?

12 A. He's the chairman -- he's the
13 Chairman of the Compliance Committee.

14 Q. Okay. And in any of those
15 discussions, did the subject of the Grand Jury
16 report come up?

17 A. I remember discussing those issues
18 directly with Jordan Savitch, who was -- again, had
19 originally contacted me about those issues. I let
20 him know that -- I had let him know that I was
21 subpoenaed to testify, that I was -- had been a
22 witness and that a Grand Jury report had been
23 issued. I think I actually forwarded the report
24 directly to him. I also recall him saying that he

1 had discussed the issue with Tom Auriemma.

2 Q. Okay. Did you also interview with
3 Mr. Auriemma?

4 A. Yes.

5 Q. Okay. Last topic I'd like to have
6 you talk about is, if you could just give the
7 Commission an overview of the compliance structure
8 and process at Penn National Gaming.

9 A. Sure. So, again I'm the Chief
10 Compliance Officer. I oversee all aspects of
11 compliance related to Penn National Gaming. There
12 -- our gaming businesses, our racing businesses.
13 And I serve as the company's primary -- primary
14 liaison with the regulatory authorities in all
15 jurisdictions in which PNGI operates. It's part of
16 my job again, Chairman, I -- I ask the hard
17 questions and I'm not afraid to ask them at all.

18 The -- I've got a staff internally
19 of the Deputy Chief Compliance Officer, licensing
20 analysts and an admin. And we have property
21 compliance officers at each one of our properties.
22 I think with the exception in -- in Mississippi,
23 and maybe one or two -- one or two other
24 jurisdictions where one compliance officer covers

1 the three properties there. That's something that
2 we got clearance through the regulators, and they
3 were perfectly comfortable with that.

4 Again, I report to General Counsel
5 Savitch and the Compliance Committee. The
6 compliance program, we have a number of documents
7 that essentially is our Charter. For example our
8 Compliance Charter is -- was set up, I think in
9 early 2000, and outlines essentially what the
10 compliance plan is for Penn National.

11 We also have a Code of Conduct as
12 well as a Responsible Gaming Plan. Penn adheres to
13 the AGA Code of Conduct for responsible gaming,
14 which concerns problem gaming, underage gaming,
15 unattended minors, responsible alcohol service, and
16 responsible advertising.

17 We also obviously have money --
18 anti-title 31, anti-money laundering programs at
19 each one of our properties. Each property has a
20 developed a written anti-money laundering
21 compliance program that covers currency
22 transactions and suspicious activity reports. And
23 actually one of the first things I did when I --
24 when I got on board is I developed a foreign

1 corrupt practices plan that was ultimately inserted
2 into our audit committee charter and speaks to
3 violations of the Foreign Corrupt Practices Act.
4 And essentially how our executives are supposed to
5 be governed by that -- by that.

6 Q. If I could interrupt you on that --
7 on that point. Without getting into any
8 confidential details, was there a proposed
9 transaction in Asia that you had input on,
10 particularly with respect to FCPCA -- FCPA
11 concerns?

12 A. Yes, we had a development interest
13 in Asia. And we did quite a bit of due diligence
14 on a number of the potential partners out there.
15 We ended up hiring an outside firm, consultant that
16 had experience in foreign matters. And ultimately
17 they -- they issued a report to us. I believe
18 actually that report would have been provided to
19 you during your compliance review of Penn. And
20 ultimately we did not enter into a business with
21 that organization.

22 Q. Okay. And the other thing I wanted
23 to ask you about by way of follow-up is you
24 mentioned the responsible gaming matters, and the

1 various heads that you ran through fall under your
2 jurisdiction. Have there been any employees who
3 have been fired for violation of the company's
4 responsible gaming policies?

5 A. Been terminated?

6 Q. Terminated.

7 A. None that I can think of off -- off
8 the top of my head.

9 Q. Let me, just to follow-up on one
10 other point that you made was -- was the plan about
11 discipline for violation of responsible gaming.

12 A. Again, it's just not coming to me.
13 Oh, oh, oh, I got you. oh, yeah, we have -- we
14 have instances in which we'll have unattended
15 minors or individuals who are over served. And as
16 part of of our responsible gaming program, we will
17 often, at the property, will conduct investigations
18 into those issues. And often they result in
19 terminations if a person was over served or if you
20 had unattended minor type of issues. So, yes, we
21 regularly have disciplinary actions related to
22 responsible gaming.

23 Q. Okay. That is something that you
24 direct and have input in?

1 A. Sure.

2 Q. Okay. You mentioned documents that
3 govern and provide guidance with respect to your
4 compliance efforts.

5 MR. SNYDER: Just for the
6 Commissioners' benefit, we have included the
7 Compliance Review and Reporting Plan as our
8 Exhibit 2. And the Code of Business Conduct
9 as our Exhibit 3.

10 Q. (By Mr. Snyder) And with reference
11 to that Exhibit 2, which I think you referred to as
12 the Compliance Committee Charter, could you just
13 briefly outline for us the Compliance Committee and
14 how that operates at Penn National Gaming.

15 A. Sure. Again, Penn is very committed
16 to compliance issues. We have a Compliance
17 Committee to which I report. Our Chairman is
18 Stephen Ducharme. Mr. Ducharme was the former head
19 of the Nevada Gaming Control Board. And another
20 member who is here today, and you'll hear from him
21 is Mr. Auriemma. He's the former head of the New
22 Jersey Division of Gaming Enforcement. I think
23 between the two of them they have fifty, maybe
24 sixty years of gaming and law enforcement

1 experience. They're a great resource for me.
2 They're always available, either by e-mail or by
3 phone. And I call them frequently and see what
4 their view is on particular issues related to
5 compliance. We also have two of our directors, one
6 who had recently retired, who also serves on the
7 Compliance Committee.

8 On a quarterly basis I provide them
9 with a Compliance Committee report, in which I run
10 through, you know, a series of information for the
11 Compliance Committee that we report on.

12 And to just, you know, give you a
13 quick laundry list material transactions that the
14 company's going through, such as joint venture
15 projects; development projects; transactions with
16 suppliers. If we have vendors who are doing more
17 than \$100,000.00 in business with either Penn
18 directly or with one of our affiliates, we do a
19 background check on those suppliers. That all gets
20 run up to the Compliance Committee.

21 When new directors are brought on
22 board, that director has to go through a compliance
23 review and a background check. Ultimately the
24 compliance review that we've conducted will go up

1 to the Compliance Committee and will be informed
2 about the status of an incoming director.

3 Material litigation compliance laws,
4 and acts of wrongdoing, you know, if we've gotten
5 fined in a jurisdiction. For example, an underage
6 person gets on the floor and we've received a fine
7 from the jurisdiction, I advise them as to all the
8 material issues that we face on a quarterly basis.

9 Q. Okay. You mentioned that Mr.
10 Ducharme is the Chair of that committee. And he is
11 the individual that we heard that the report and
12 conversation with earlier from Director Wells?

13 A. Right.

14 MR. SNYDER: And this is for the
15 Commissioners' benefit, a biographical
16 statement is -- with respect to him is
17 Our Exhibit 14. And also included in
18 Exhibit 14 is a biographical statement from
19 Mr. Auriemma, who you'll be hearing from
20 later this afternoon.

21 Q. (By Mr. Snyder) Let me ask, with
22 respect to the Committee, before we move on, does
23 it have committee meetings?

24 A. Yeah, yeah, we meet on a quarterly

1 basis.

2 Q. All right. And other than the
3 members of the Compliance Committee, who usually
4 attends those, you?

5 A. I attend those. Jordan Savitch
6 attends those. Our Chief Operating Officer, Tim
7 Wilmott attends the meetings, as does our internal
8 Audit Vice President, Greg Hart; as well as our
9 Deputy Compliance Officer, Jim Valbeche.

10 Q. Just give us some idea of the source
11 of matters that fall within the Compliance
12 Committee's review and jurisdiction if you will.

13 A. I think I went over some of that
14 already. One of the -- one of the things that we
15 have is a network hotline complaint, where any
16 employee, either from a corporate perspective or
17 from any one of our properties, if they have an
18 issue that they believe violates, for example, the
19 Code of Conduct that Penn has, they can file
20 anonymously, a complaint. We receive that
21 complaint through the compliance office, and then
22 we essentially initiate an investigation.

23 Some of those are complaints about
24 their boss. But some of those are very serious

1 complaints and we run them down; we investigate
2 them. And there are numerous resulting employment
3 actions as a result of those complaints. It's a
4 great system and it works well.

5 Q. With respect to that outline and
6 complaint process, has there ever been anyone in a
7 position of general manager who has been
8 terminated?

9 A. I can't remember off the top of my
10 head a general manager. But again, there is
11 numerous instances in which individuals at
12 management levels and -- and above, you know, have
13 been the result of an investigation that was
14 initiated through the hotline.

15 Q. Those are decisions and
16 investigations that occur through the compliance
17 group?

18 A. That's correct.

19 Q. Okay. The last thing I wanted to
20 ask you about is do you have any involvement with
21 the Board of Directors Audit Committee?

22 A. Yeah, so I regularly attend the
23 Audit Committee meetings. And I also, I'm twice a
24 year we give the Audit Committee a code of conduct

1 review and essentially inform them of, you know,
2 significant thefts that we -- that we have had, or
3 any major code of conduct issues that would fall
4 within the purview of the -- of the Audit
5 Committee.

6 For example, we did have an issue at
7 our Indiana property in Lawrenceburg where our
8 surveillance director and his -- one of his
9 employees was stealing from the company.

10 Ultimately I think he stole about \$450,000.00 by
11 setting up a sham corporation and purchasing
12 surveillance equipment through -- through the
13 company. And -- but he was recently convicted. As
14 soon as we found out about that, it was actually
15 our internal control and audit section that
16 discovered it. We immediately turned it over to
17 the Indiana State Police, as well as the gaming
18 regulators in Indiana.

19 Q. Okay. And what happened to his
20 employment?

21 A. He was -- he was fired.

22 Q. Okay. All right. I think -- I
23 think I've covered -- anything else that you want
24 to say before we turn the mic over --

1 A. No, I -- I just want to again thank
2 you again for the opportunity. I understand that
3 you need to be thorough and cautious as you
4 proceed. And I thank you for the opportunity to be
5 here today.

6 CHAIRMAN CROSBY: Thank you.

7 Mr. Mackey.

8 MR. MACKEY: Thank you, Mr.
9 Chairman, Commissioners.

10
11 CROSS EXAMINATION BY MR. MACKEY:

12
13 Q. Good afternoon, Mr. Donaghue.

14 A. Good afternoon.

15 Q. Minor matter just to begin with,
16 Applicant Exhibit 7, which is the collection of
17 biographical information about Penn National
18 officers, do you have that in front of you?

19 A. Yes.

20 Q. And your -- your bio is on page 9.

21 A. Mm-hm.

22 Q. And it just says in the first
23 sentence, Frank T. Donaghue became Vice President
24 Regulatory Affairs and Chief Compliance Officer

1 in July, 2010.

2 A. No, that's a -- it was 2011.

3 Q. Okay. I -- I take it that was a
4 typo?

5 A. Yeah.

6 Q. Okay. So, you, in July of 2010 you
7 are at Ballard Spahr, correct?

8 A. (Witness nodding.)

9 Q. And you were performing compliance
10 functions for Penn National when you were at
11 Ballard Spahr?

12 A. Compliance functions no, but legal
13 counsel on some issues, yes.

14 Q. On an -- on an outside counsel
15 basis, okay.

16 MR. SNYDER: I'm going to ask you
17 to face the Commissioners, just for the
18 sake of the mic. I think you're getting
19 lost.

20 THE WITNESS: Oh, sorry.

21 Q. (By Mr. Mackey) So, going to the
22 Grand Jury report that's gotten quite a bit of
23 attention in the last day or so, Bureau Exhibit 10.
24 Do you have a copy in front of you?

1 A. Hang on a minute. Yeah.

2 Q. Now, Mr. Denaples, as an applicant
3 at the time he -- I shouldn't say he was applying,
4 but he was the sole owner of an entity that was
5 applying for a casino license in Pennsylvania,
6 correct?

7 A. Correct.

8 Q. Okay. And at the time he applied,
9 he had a federal felony conviction on his record?

10 A. Correct.

11 Q. And did you investigate the
12 circumstances surrounding that federal felony
13 conviction?

14 A. Well, again, the Bureau of
15 Investigations and Enforcement would have
16 investigated that.

17 Q. Okay. Do you have an understanding
18 about what the conviction was for?

19 A. My recollection it was for jury
20 tampering. Are you referring to the 1970s --

21 Q. Correct.

22 A. -- conviction? Yeah, it was for
23 jury tampering. And again, my recollection is that
24 that conviction was fully developed in the

1 executive session before the Pennsylvania Gaming
2 Control Board.

3 Q. My understanding is, and let me just
4 say I have no firsthand, non-hearsay evidence of
5 this, that the conviction was actually for
6 defrauding Lackawanna County in connection with a
7 flood cleanup. Does that ring a bell?

8 A. But I believe it was ultimately the
9 conviction was a jury tampering related to --

10 Q. Related to that, correct. Okay.
11 And are you aware that -- that Mr. Denaples, he was
12 convicted for fraud in the underlying case,
13 correct?

14 A. I -- that could be, I don't recall
15 specific.

16 Q. But that other individuals were
17 convicted of the jury tampering in a subsequent
18 case.

19 A. Again, I don't recall.

20 Q. And do you recall whether one of
21 those individuals who was convicted of paying a
22 bribe to a juror was associated with a known
23 organized crime family?

24 A. That sounds familiar.

1 Q. Let me draw your attention now to --
2 to the Grand Jury report, pages 64 and 65. I just
3 want to go through very quickly some of the
4 material that -- that was edited in one of the last
5 versions of the report.

6 Again, though in the context you're
7 dealing with an applicant with a federal felony
8 conviction on his record, correct?

9 A. Correct. In Pennsylvania, that was
10 not a precluder if fifteen years had gone by since
11 the date of the -- I think the end of the
12 conviction.

13 Q. Right. But fair to say it wouldn't
14 enhance his application?

15 A. It would not enhance, I -- I think
16 that's fair.

17 Q. Okay. Now, on page 64 of the Grand
18 Jury report, there's a reference to some testimony
19 before the Grand Jury from an individual named
20 Greenbank.

21 A. Okay.

22 Q. Do you see that, it's in the --
23 right before the blocked quote, there's a reference
24 to Greenbank considered this information and area

1 of interest.

2 A. Mm-hm.

3 Q. Who was Mr. Greenbank?

4 A. He was the head investigator from
5 our Philadelphia office.

6 Q. Okay. And there's a discussion
7 about some discrepancies in Mr. Denaples'
8 interviews regarding his ownership of safe deposit
9 boxes on that page. Do you see that?

10 A. Yes.

11 Q. That material did not appear in the
12 report, as I understand it.

13 A. I have no recollection one way or
14 another as to whether it did.

15 Q. And do you have any -- do you have
16 any recollection about seeing in any form, in any
17 draft of the report, or in any other way any
18 information about these safe deposit boxes?

19 A. No recollection -- recollection
20 about the safety deposit boxes.

21 Q. Okay. And it's your testimony that
22 you were not involved in a decision to edit or
23 remove material about the safety deposit boxes from
24 the report?

1 A. I, again, have no recollection about
2 the safety deposit boxes.

3 Q. Now, on page 65 of the Grand Jury
4 report, there's a summary of some of the edits that
5 were made to the final draft of the report.

6 A. Mm-hm.

7 Q. And I want to draw your attention to
8 paragraph -- the first paragraph beginning on page
9 65 at 11:00 a.m. Do you see that?

10 A. Yes.

11 Q. And I'm going to read, just the
12 sentence, the beginning, the original section four
13 was approximately four pages long, and included
14 information from Pennsylvania Crime Commission
15 reports, the results of an IRS PSP search warrant
16 executed at the residence of Delia. Denaples'
17 testimony regarding Delia and the search warrant,
18 the exclusion of Delia by the New Jersey Division
19 of Gaming Enforcement, Delia's indictment in May
20 and October of 2006, and a meeting between the
21 alleged kingpin of Philadelphia's Black Mafia,
22 Shama Ali and Denaples. And my question to you,
23 Mr. Donaghue, is that consistent with your
24 recollection of -- of the four pages of material

1 about those connections?

2 A. Again, what I recall was the
3 information about the crime commission report and
4 the information about the search warrant. Those
5 are the two items that I recall that were attached
6 as exhibits. As I said, there could have been
7 others, but that's what I recall.

8 Q. And then the next sentence is in the
9 final version of the report, we're over on page 66
10 now, section four was retitled Other Sources of
11 Information that name Louis Denaples. And reads as
12 follows, and then there's two sentences that
13 follow.

14 And if you could just review those
15 two sentences and tell the Commission whether
16 that's your -- consistent with your memory of the
17 way the final text of the report looked once it was
18 issued to the Commission.

19 A. Again, my recollection in terms of
20 the information that was included as an exhibit was
21 the Pennsylvania Crime Commission report and the
22 Affidavit.

23 Q. Right. And I understand that much
24 of the material reflected on the previous page was

1 included as an exhibit. So, I'm asking you is, is
2 the material reflected at the top of page 66, is
3 that consistent with what your recollection of what
4 was in the body of the report?

5 A. In terms of what was in the body of
6 the report?

7 Q. Yes.

8 A. In terms of what was being
9 summarized, for example in terms of the summary of
10 the Pennsylvania Crime Commission Report --

11 Q. Yes, I'm talking about the body of
12 the report.

13 A. Yes, so there was summaries of this
14 information. And again, the decision was made to
15 include the Pennsylvania Crime Commission report as
16 an exhibit, and to include the Affidavit
17 information as an exhibit, rather than summarizing
18 that information because of the hearsay issues that
19 it -- that it developed. Basically again, it was
20 our best evidence rule.

21 Q. Okay.

22 A. There may have been -- there may
23 have been other information that was included as
24 exhibits and there may have been other information

1 that was not included, but that's again what I can
2 remember.

3 Q. You described in your direct
4 testimony the choice to remove some of this
5 material as a consensus choice?

6 A. Correct.

7 Q. But it would be fair to say at least
8 as reflected in the Grand Jury report that the
9 Agency did the investigation were very upset about
10 the changes that were made?

11 A. Again, I can't -- in terms of the
12 decisions that I made as chief counsel in those
13 meetings, again I supported those. I made those
14 recommendations. How people interpreted those
15 decisions, I don't know. But in terms of agents
16 being upset about that, I -- I don't remember that.

17 Q. Okay. Let me just ask you what the
18 report says. The final paragraph beginning on page
19 66, that first sentence, Greenbank and the case
20 agent assigned to conduct the background
21 investigation of Mount Airy were upset with the
22 changes made just hours before the final report was
23 submitted. Did I read that correctly?

24 A. Yeah.

1 Q. Okay. And then on the page after
2 that, page 67, this is a discussion with Nan
3 Davenport. And in the middle of page 67 after a
4 question about, you know, the back and forth about
5 what was going to be in the report, she answers
6 yeah, we fought a little bit, especially BIE.
7 BIE is the Bureau, correct?

8 A. Mm-hm.

9 Q. They were very, very upset. Did I
10 read that correctly?

11 A. Yes. And again, the BIE, they did
12 not report to me. They would have reported up to
13 Dave Quait and Nan would have reported up to Mike
14 Schwoyer.

15 Q. Now, I want -- I want to look at --
16 spend some time on Bureau Exhibits 11 and 12, which
17 were memoranda that you created following the
18 issuance of the Grand Jury report. Do you have
19 Bureau Exhibit 11 --

20 A. I do.

21 Q. -- in front of you? Okay. And you
22 testified earlier this was a document that you
23 prepared in connection with -- this was in
24 connection with the Ohio --

1 A. Yes.

2 Q. -- due diligence investigation? And
3 it was written and prepared by you, Mr. Donaghue?

4 A. Yes.

5 Q. To Mr. DiGiuseppi at Spectrum?

6 A. Correct.

7 Q. Okay. And then on the second page,
8 I want to focus on the last paragraph on the second
9 page. The sentence that begins I testified, and
10 again this is -- this is you recollecting your
11 testimony before the Grand Jury.

12 A. Mm-hm.

13 Q. I testified that Mr. Denaples'
14 attorney, Mr. John Donnelly, had objected to
15 several areas of concern that were raised in the
16 suitability report as being unsupported or based
17 upon hearsay to which he had no ability to disprove
18 or refute.

19 A. Mm-hm.

20 Q. And I take it that those several
21 areas of concern being referenced there were the
22 organized crime connections that had been the
23 subject of discussion by what's edited from the
24 main body of the report, correct?

1 A. I believe so, yes.

2 Q. Okay. Now, in -- would it be fair
3 to say that your primary concern about much of
4 those four pages would be the fact that that
5 information about those organized crime
6 associations were hearsay?

7 A. Yes.

8 Q. And you would -- you would
9 acknowledge for this Commission that it's very
10 often a hybrid for an investigative bureau to put
11 together non-hearsay testimony about an
12 individual's association with an organized crime
13 figure?

14 A. Again, I -- I know that the Bureau
15 was doing the best that they could to pull
16 information together that could be substantiated.

17 Q. But in order for you to be
18 comfortable including it in the main body of the
19 report, you wanted it to be admissible, non-hearsay
20 evidence of these connections, correct?

21 A. We wanted that to be substantiated
22 evidence, correct.

23 Q. Then on the next page of Exhibit 11,
24 there's, at the very top, a decision was made to

1 remove information based on hearsay that could not
2 be proven. And to make reference to other
3 information in their entirety as an exhibit to the
4 suitability report. And I -- I take it that was a
5 decision made by you and the Executive Director?

6 A. Again, it's my recollection that
7 through that internal meeting when we met and
8 discussed that, it was supported by me, it was
9 supported by Ann, and my recollection, it was
10 supported by others.

11 Q. And then the next paragraph down,
12 the last sentence of that paragraph, and this is
13 the last sentence of that next paragraph is thus,
14 under Pennsylvania administrative law, the Board
15 could not rely upon or make adjudicatory decisions
16 based upon hearsay and/or unsubstantiated evidence.
17 And I take it that was your view of Pennsylvania
18 law when you were involved in review of the
19 suitability report?

20 A. Correct.

21 Q. And that was your understanding of
22 Pennsylvania law at the time you created this memo
23 for Mr. DiGiuseppi?

24 A. (Witness nodding.)

1 Q. Then let's look at Bureau Exhibit --
2 Exhibit Number 12. Could you just very briefly
3 describe -- describe what this memo is.

4 A. Yeah, again this was a memo that --
5 a follow-up to the interview that I had with
6 Spectrum.

7 Q. The bottom of the second page, again
8 this is largely repeating a theme, the bottom of
9 the second page you say before the footnote, I was
10 concerned that the Board's reliance upon
11 unsubstantiated evidence or rumor could lead to
12 reversible error by the Pennsylvania Supreme Court
13 if the Board denied the license based upon
14 unsubstantiated evidence. And then in that regard
15 well-established Pennsylvania administrative case
16 law requires that a Board's decisions of an
17 adjudicatory nature must be based upon the
18 substantial evidence and not hearsay or rumor.

19 Did I read that correctly?

20 A. I believe so, yes.

21 Q. Okay. And again, that was your view
22 at the time you wrote the memo.

23 A. (Witness nodding.)

24 Q. And there's a citation then to the

1 Wintermeyer case, which I'm presuming you added
2 there because it supports the proposition that you
3 --

4 A. Right. And I would also add the
5 Pennsylvania code 2PACS 704, that a Board's Order
6 must contain findings of fact and conclusions of
7 law supported by credible, legally competent and
8 substantial evidence.

9 Q. Okay. And that's Exhibit 15 that
10 your --

11 A. Yes.

12 Q. -- counsel has put into the record
13 today. So, this standard that's identified in
14 Exhibit 12, the decision had to be based upon
15 substantial evidence, you believed that that was
16 the standard -- that was the standard that you
17 applied when you were assessing -- when you were
18 involved in the -- in the assessment of the
19 suitability of Mr. Denaples, correct?

20 A. Again, as a Pennsylvania lawyer, my
21 read on that statutory provision and Pennsylvania
22 case law was that rules -- I'm sorry, decisions of
23 and adjudicatory nature have to be supported by the
24 substantial evidence.

1 Q. And so, just to put a finer point on
2 if the Board, if the Pennsylvania Gaming Control
3 Board had a substantial amount of hearsay evidence
4 about an applicant's organized crime connections,
5 it -- it could not rely on -- it would not be able
6 to rely on that for its decision?

7 A. I'm sorry?

8 Q. If -- if all a Board had was a
9 substantial amount of hearsay evidence about an
10 applicant's organized crime connections, that would
11 be insufficient for it to deem an applicant
12 unsuitable?

13 A. Yes, again, in -- in Pennsylvania,
14 an adjudicatory decision made by an administrative
15 agency has to be supported by the substantial
16 evidence. Understanding that some jurisdictions
17 that standard is not as high. But in Pennsylvania,
18 the courts have regularly come back and said while
19 there's a limited nature in terms of the hearsay or
20 other evidentiary rules, there's numerous cases
21 where they've overturned administrative agency
22 decisions based on that standard.

23 Q. Now, page 71 of Exhibit 13, this is
24 your sworn interview in front of, I believe again,

1 this is the -- your sworn interview in connection
2 with the Ohio due diligence proceeding; is that
3 correct?

4 A. Yes. I'm sorry, what page?

5 Q. It's Exhibit 13, page 71. And
6 you're asked a series of questions here about these
7 issues that we've been discussing, the burden of
8 proof and so forth. And on line 20, on page 71,
9 you say again, Pennsylvania administrative law is
10 very clear that when a Board is making a decision
11 of an adjudicatory nature relating to the
12 underlying rights or privileges in this instance,
13 privileges related to an applicant due to
14 adjudication, the Board has to rely on what's in
15 the record, has to rely on substantial evidence.
16 So, I believe these reports in fact reflected that.
17 Did I read that correctly?

18 A. Yes.

19 Q. So, going back for a minute to the
20 Grand Jury report, there's, you know, as we've
21 talked about at length, some significant criticism
22 in the report about the manner in which the reports
23 were edited at the end of the day. But there was a
24 further critique of the gaming control Board's

1 handling of the burden of proof in these
2 suitability hearings. Do you recall that?

3 A. Yes.

4 Q. Now, you would acknowledge that in
5 these proceedings, and it's true in Massachusetts
6 law as well, the applicant always has the burden of
7 proof to demonstrate by clear and convincing
8 evidence that suitability --

9 A. I agree.

10 Q. -- for a license. And that the
11 Bureau has no burden, it's the applicant's burden?

12 A. I agree that it's yes, the
13 applicant's burden to establish that by clear and
14 convincing evidence.

15 Q. Well, on page 47 of the Grand Jury
16 report, I just -- I want to -- in connection with
17 the reports review of this issue regarding the --
18 it's concerns about the way the burden of proof was
19 applied, there was reference to a statement made by
20 a licensing attorney with significant experience in
21 New Jersey. Which I understand is a different
22 jurisdiction and they may have different laws that
23 are applicable. But at the top of -- a third of
24 the way down the page on page 47, I'll just read

1 this.

2 On the issue of hearsay, a licensing
3 attorney with significant experience in New
4 Jersey's explained, yes, I believe that hearsay
5 does belong in a suitability report. I believe
6 that it's a suitability report is to take into
7 consideration the character of the individual. And
8 the hearsay, you know, goes to that, then it's the
9 burden of the applicant to refute that information.

10 Now, would you agree with that
11 statement or disagree with that statement?

12 A. I think you may have said it best.
13 I mean, it's a New Jersey attorney, not a
14 Pennsylvania attorney. I was applying Pennsylvania
15 law.

16 Q. Okay. Let's -- if we could just --

17 CHAIRMAN CROSBY: Mr. Meyers, if I
18 could just interrupt you for one second.
19 I would like to get a sense of the
20 Commission. I have a little bit of the
21 feeling that we're beating a dead horse.
22 And if there is new stuff, I don't mean
23 just you, I mean we, that we want to
24 continue. Is there more to pursue, or have

1 we talked about these issues and Mr.
2 Donaghue enough?

3 COMMISSIONER MCHUGH: I want to
4 spend three minutes with Mr. Donaghue.
5 Just -- just to make sure I understand.

6 COMMISSIONER CAMERON: I have a
7 couple of additional questions as well.

8 MR. MEYERS: I will conclude this
9 line of testimony very quickly.

10 CHAIRMAN CROSBY: Okay.

11 MR. MEYERS: And I apologize --

12 CHAIRMAN CROSBY: That's fine.

13 MR. MEYERS: -- for how long it's
14 gone.

15 Q. (By Mr. Meyers) Applicant Exhibit
16 15, that's the statute that reflects the general
17 standard in Pennsylvania that counsel has put into
18 the record. Title 2, Subchapter 7, Subchapter A.

19 A. Mm-hm.

20 Q. That's the statute you referenced
21 before with respect to the substantial evidence
22 standard applying to a proceeding like this. Okay.
23 And then your counsel has also put into the record,
24 the Pocono case. And you were referencing the

1 Pocono case earlier today. And it's in the record,
2 your exhibit --

3 MR. SNYDER: 18.

4 Q. (By Mr. Meyers) 18. The bottom of
5 page 8. And at the lower right --

6 MR. SNYDER: He's still getting
7 there.

8 Q. (By Mr. Meyers) The lower right-
9 hand corner of --

10 MR. SNYDER: He's still getting
11 there.

12 Q. (By Mr. Meyers) Oh, I'm sorry.

13 A. I'm still getting there. I'm sorry,
14 the bottom of page 18.

15 Q. Yes, the bottom of page 18, lower
16 right-hand corner. Beginning a headnote.

17 A. Okay.

18 Q. And then there's a citation there to
19 the standard of review that applies in the gaming
20 context. Do you see that?

21 A. Mm-hm.

22 Q. And it cites the statute, the
23 provision of the Gaming Statute that provides that
24 standard of review.

1 A. Mm-hm.

2 Q. And what it says is notwithstanding
3 the provisions of Title 2 Pennsylvania CS, Chapter
4 7, Subchapter A, which is the statute that you were
5 relying on in Exhibit 15, the Supreme Court shall
6 affirm all final orders, determinations or
7 decisions of the Board involving the approval,
8 issuance, denial, or conditioning of a slot machine
9 license unless it shall find the Board committed an
10 error of law or that the order, determination, or
11 decision of the Board was arbitrary and there was a
12 capricious disregard to the evidence. Did I read
13 that correctly?

14 A. Yes.

15 Q. So, what Pocono -- would you agree
16 with me that what the Pocono decision is saying is
17 that your Exhibit 15 and the statutes that are
18 therein does not apply in the gaming context?

19 MR. SNYDER: Could I just object.

20 And maybe this is picking up on the Chair's
21 point. We are now talking about as printed
22 in the Supreme Court decision that was
23 decided after the events at issue.

24 MR. MEYERS: Decided after the

1 events at issue, but well before the
2 witness' quite clear consistent and repeated
3 testimony justifying the approach taken in
4 the Mount Airy suitability report.

5 MR. SNYDER: In 2006. Objection.

6 CHAIRMAN CROSBY: Yeah, it's noted.
7 Are you -- are you -- have you finished your
8 point?

9 MR. MEYERS: I've finished my point.

10 Q. (By Mr. Meyers) In connection with
11 this burden of proof, I have only looked at the
12 material that you and your counsel have brought to
13 the attention of the Commission through the
14 exhibits and in your interview. But certainly
15 based on the Pennsylvania gaming statute, which
16 provides its own standard of review, based on the
17 Pocono Supreme Court decision that describes what
18 that standard review is, there's certainly at least
19 a position to be taken here that the substantial
20 evidence test doesn't apply here.

21 A. Again, my best professional judgment
22 at the time as Chief Counsel to the Pennsylvania
23 Gaming Control Board was that that adjudications
24 that were entered into by the Board had to be

1 supported by the substantial evidence.

2 Q. Did anybody -- presuming that you
3 had many, many discussions with your legal
4 colleagues on the Board during the period of time
5 you going to suitability determination, did anybody
6 on the team, any of your colleagues say hey, let's
7 take a step back here because there is this
8 standard of review that applies specifically in the
9 gaming context that maybe is the applicable
10 standard of review?

11 A. Actually, one of the deputies that I
12 hired, a gentleman by the name of Doug Sherman who
13 ultimately became the chief counsel to the -- to
14 the Pennsylvania Gaming Control Board, one of the
15 best public attorneys I know, he completely agreed
16 with the position. We had many discussions on
17 that.

18 Q. If you were in the position, and I
19 presume you are in the position now, of on occasion
20 vetting the background of an employee with your
21 Compliance Committee, there is a provision in your
22 Compliance Committee Charter that talks about
23 suitability determinations that sometimes do go to
24 the Compliance Committee; is that correct?

1 A. Sure.

2 Q. If you were dealing with a
3 situation, a Penn National employee, any employee,
4 who was working on the floor of one of your casinos
5 and you came into possession of information that
6 was equivalent to the information on the four pages
7 that were moved from the body of the report, would
8 you report that information to the Compliance
9 Committee in connection with that person's
10 employment?

11 A. Sure. Absolutely. The Compliance
12 Committee would not be engaging in an adjudication.

13 Q. And it would be -- so it would be
14 appropriate, then, for your Compliance Committee to
15 act on that information, correct?

16 A. (Witness nodding.)

17 Q. So, your reading of Pennsylvania law
18 is that the law would not protect Mr. Denaples'
19 employment if he were dealing cards on the floor of
20 your casino, but it would protect him if he were
21 the sole owner of a company trying to get a
22 lucrative casino license from the State of
23 Pennsylvania?

24 A. My reading of the law and in terms

1 of the facts and circumstances at the time was, you
2 know, I was exercising my best professional
3 judgment. And there were others who were in
4 agreement with me.

5 Q. And just a little bit closer to
6 home, standard review for Massachusetts key gaming
7 officials and for licensure, generally the same as
8 Pennsylvania, clear and convincing evidence,
9 correct?

10 A. As I'm not a Massachusetts lawyer,
11 but I'll take your -- your word for it.

12 Q. If you're in my position, you're --
13 you're advising the investigative bureau here, and
14 it turns out Mr. Denaples has applied for a key
15 gaming license, you're in possession of those four
16 pages, do you report that information on to the
17 Commission?

18 A. Again, I'm not a Massachusetts
19 attorney. I -- I don't know Massachusetts
20 jurisprudence and I think it would be unfair for me
21 to opine on that.

22 MR. SNYDER: Mr. Chair, I guess I
23 have to -- he's not here applying for a
24 position with the commission.

1 CHAIRMAN CROSBY: I don't
2 particularly disagree and I think that I'm
3 going to -- sorry. Are you finished?

4 MR. MACKEY I'm concluded, thank
5 you.

6 CHAIRMAN CROSBY: Any other -- I
7 mean, there are --

8 COMMISSIONER CAMERON: I have a few
9 questions for Mr. Donaghue.

10 COMMISSIONER MCHUGH: I have
11 concluded the horse has no life.

12 COMMISSIONER CAMERON: Just a few
13 questions.

14 Mr. Donaghue, were there lessons
15 learned from your experience as chief
16 counsel, things you may have done
17 differently?

18 A. Absolutely, hindsight.

19 COMMISSIONER CAMERON: Would you
20 just quickly outline some of those for me.

21 A. I mean, look, you know, when I -- as
22 I sit here today in your public forum, I read
23 Pennsylvania law very strictly as it related to
24 conducting matters in executive session. And as I

1 recall there was also sanctions associated with
2 violating Pennsylvania's gaming control law as it
3 related to dealing with confidential information,
4 and if you publicly disclosed it, there were --
5 there were sanctions.

6 You know, as I have -- as I have
7 grown professionally, I certainly would support
8 changes to Pennsylvania's law dealing with how
9 matters are dealt with in a public forum.

10 COMMISSIONER CAMERON: Thank you.

11 As your -- new topic, as your present
12 position, in your present position,
13 compliance -- vice president of compliance,
14 do you oversee the racing aspect for Penn
15 National as well?

16 A. From a compliance standpoint, yes.

17 COMMISSIONER CAMERON: Compliance
18 with racing --

19 A. Yes.

20 COMMISSIONER CAMERON: -- and the
21 gaming side of the house, correct?

22 A. Yes.

23 COMMISSIONER CAMERON: As you may or
24 may not know, the Racing Commission in

1 Massachusetts was disbanded and we now have
2 responsibility for racing. We've taken that
3 responsibility very seriously and instituted
4 regulatory reform, hired a director with
5 tremendous credentials and is on the cutting
6 edge of racing reform, instituted
7 accreditation for our judges and stewards,
8 just a number of -- a number of reforms.
9 Just wondering about Penn's position with
10 racing, a number of tracks, for example.
11 For example, our standard bred track here
12 has voluntarily entered into accreditation,
13 which is certainly something. We've worked
14 with them and they've advocated for change
15 with us. Could you just briefly give me an
16 idea of Penn's position on accreditation and
17 regulatory reform.

18 A. Yeah, you know, and we also have Mr.
19 Wilmott here today and Mr. Carlino, and from an
20 operational standpoint quite frankly, they may be
21 better to talk about, you know, those racing
22 related issues. You know, my dealings are both
23 with racing commissions and gaming commissions
24 throughout the jurisdictions that we -- that we

1 have been in have been very good. But from -- but
2 from an operational standpoint -- a reform
3 standpoint, probably Mr. Carlino or Mr. Wilmott
4 would be --

5 COMMISSIONER CAMERON: So you have
6 no role in, you know, whether it be safety,
7 medication, any of those issues with your
8 tracks? It's not something your job as --
9 A. No, we have a senior vice-president
10 of Penn for racing who deals with those issues.

11 COMMISSIONER CAMERON: Last question
12 is, I was reviewing all of the compliance
13 issues that are listed, enumerated here in
14 the report. And it struck me -- and I'll be
15 specific with you, I'm looking at pages 40
16 through 51 in the report. And I just --
17 I've just read over and over again, and this
18 is in numerous, numerous jurisdictions, so
19 it crosses -- it's not one facility, in
20 other words, violations and fines for late
21 paperwork. I mean, I have 20 some odd
22 violations here for late paperwork, and then
23 a couple others for failing to notify the
24 regulator. It just -- it just seemed to me

1 to be somewhat of a pattern very different
2 than, say, underage gaming or, you know,
3 drinking, where, you know, there may be
4 training issues. This looked to me to be a
5 pattern of just consistent paperwork, and
6 I'm just wondering about those -- the amount
7 of fines for this particular violation.

8 A. Yeah, and again we have compliance
9 officers at most of our facilities. We work to do
10 our best, but we are a large operation, we have a
11 lot of subsidiaries. And -- and we do, at times,
12 make mistakes. It's my job and the compliance
13 officer's job to make sure that we improve upon
14 them, that we're communicating those issues to the
15 regulator, and I'm communicating those issues up to
16 the Compliance Committee.

17 Failure to report is a very serious
18 issue and we don't go for that at Penn, and we get
19 -- we get those corrected as soon as we can. So, I
20 can tell you that I'll continue to do my best to
21 work with our compliance officers to make sure
22 those issues are addressed.

23 COMMISSIONER CAMERON: Thank you.

24 CHAIRMAN CROSBY: Who's turn?

1 Did you change your mind?

2 COMMISSIONER STEBBINS: Just a
3 couple of quick questions. How was it
4 that you came about being appointed interim
5 Executive Director?

6 A. The interim, So Ann Neeb, who was
7 the Executive Director, she had left the office.
8 And they asked if I would be the interim Executive
9 Director. And shortly thereafter I made the
10 determination that I wanted to try the private
11 sector. So, I let the Board know that I was not
12 interested in applying for the full-time Executive
13 Director position. And so they engaged in a rather
14 extensive search and ended up landing Kevin
15 O'Toole, who in my opinion has done a wonderful job
16 for the Agency.

17 COMMISSIONER STEBBINS: So, it was
18 the control board that asked you to step in
19 as interim Executive Director?

20 A. Yes. Yes. And then once Mr.
21 O'Toole came on, I stayed for another year in
22 capacity and basically helped Mr. O'Toole through
23 the transition. And then as I mentioned, helped
24 with the table games regulations.

1 COMMISSIONER STEBBINS: Thank you.

2 CHAIRMAN CROSBY: Anybody else?

3 Redirect, recross, up, down, sideways?

4 MR. SNYDER: Maybe -- well, let me
5 just say --

6 CHAIRMAN CROSBY: It's your horse,
7 man.

8 MR. SNYDER Yeah, well, if it's dead
9 -- if it's dead, I'm not going to beat it
10 and I'm not going to stab it. So I get the
11 sense that you don't want to hear any more
12 about the Grand Jury report.

13 CHAIRMAN CROSBY: We may or may not,
14 but it's your -- your call.

15 MR. SNYDER: All right, I'll be
16 quick.

17

18 REDIRECT EXAMINATION BY MR. SNYDER:

19

20 Q. But just on the last point of
21 Commissioner Cameron's questions about racing. I
22 understand you've testified there is a senior VP
23 who is in charge of that aspect. But are you aware
24 whether the Penn has any Code of Conduct with

1 respect to the racing side of the --

2 A. Yes. Yes, we do have a Code of
3 Conduct that I think Mr. Sottosanti put together.

4 Q. All right, then, very quickly then.
5 On the -- do you have the Grand Jury report I --
6 I'll follow very quickly up on Mr. Mackey's
7 questions about the Grand Jury report.

8 A. Where at?

9 Q. Let's start at page 47, and I'm
10 going to 47, 66 and 67. Attorney Mackey asked you
11 about some unidentified New Jersey attorney, but
12 immediately thereafter kind of skipped over a
13 sentence. And I want to draw your attention to --
14 sorry, I need the Grand Jury report. Here's the --
15 what's the number on it? You've got it, 47?

16 A. Yeah.

17 Q. Immediately after the opinion
18 expressed by that anonymous New Jersey attorney, do
19 you see where it says removal of hearsay
20 information from the suitability reports was at the
21 direction of Schwoyer?

22 A. Okay.

23 Q. And Schwoyer, he's the chief
24 enforcement counsel that we've been talking about?

1 A. Correct.

2 Q. And then 66, if you go to 66.

3 A. Okay.

4 Q. Mr. Mackey asked you about, I think
5 it's around a various quotes from this page, but if
6 you look at the first full paragraph, after the
7 sections of the report that he asked you about.

8 A. Right.

9 Q. Do you see that there's a sentence
10 there that says, Schwoyer testified that he had no
11 recollection that Neeb and Donaghue met with
12 Davenport and ordered that remove information from
13 the suitability report. Do you see that?

14 A. Yes.

15 Q. And then if you skip over to the
16 next page, at the top of that page, third line
17 down, told them that we -- Davenport made the
18 requested changes because Schwoyer told her to. Do
19 you see that?

20 A. Yes.

21 Q. And then the last point, just to go
22 down further, really, on the same point and then I
23 will stop. There's some question and answer from
24 the Grand Jury proceedings. There's a paragraph

1 over to the margins as A, yeah, fought a little
2 bit, especially BIE. They were very, very upset
3 and Mike Schwoyer talked to all of us and said, you
4 know we have to do this. Do you see that?

5 A. Yes.

6 Q. I have no further questions, thank
7 you.

8 MR. MEYER: No further question.

9 CHAIRMAN CROSBY: Thank you, Mr.
10 Donaghue.

11 THE WITNESS: Thank you very much.
12 Thank you for the opportunity, I appreciate
13 it.

14 COMMISSIONER CROSBY: All right,
15 let's take a real quick break, better make
16 it five, and then we will reconvene.

17
18 (A recess was taken)

19
20 CHAIRMAN CROSBY: We're reconvened,
21 I think we're back to the applicant for your
22 next witness.

23 MR. ALBANO: Thank you, Mr.
24 Chairman. John Albano, good afternoon. Our

1 next witness is Thomas Auriemma, who is a
2 member of the Compliance Committee and a
3 special consultant to Penn. He also has a
4 prior employment history at Penn. Our plan
5 here is a brief testimony by the witness.
6 And I think that with that testimony we'll
7 allow the Committee to assess whether -- the
8 Commission to assess whether there are
9 follow-up questions that the witness can be
10 held for.

11
12 DIRECT EXAMINATION BY MR. ALBANO:

13
14 Q. Sir, could you please tell us your
15 name and give us an overview of your experience in
16 the gaming industry.

17 A. Good afternoon members of the
18 Commission, my name, as you know is Thomas
19 Auriemma. I'm an attorney admitted in New Jersey
20 and also in the state of New York. I got my start
21 in New Jersey as a criminal prosecutor. I worked
22 for the state of New Jersey for over 30 years,
23 mostly, though, in the regulatory field of gaming,
24 regulatory matters.

1 I also spent about a year or so in
2 private practice early in my career. But I was --
3 as a young lawyer, a very younger lawyer, in the
4 1970s I was part of a group of individuals that
5 worked in the Jersey Casino Control Act. I was,
6 essentially a day one employee of the New Jersey
7 Casino Control Commission. In New Jersey there are
8 two agencies, Response Before the Regulation of
9 Gaming, I was a day one employee there working my
10 way up to become the deputy director of their legal
11 division.

12 In 1986, I became one of the very
13 few employees to work for both agencies. I
14 transferred, and was allowed to transfer, to the
15 Division of Game Enforcement, which is a law
16 enforcement agency that has criminal, regulatory
17 and civil responsibilities. I became its deputy
18 director and was it's long-time deputy director.
19 Directors came, directors went, but I was the
20 deputy director for many, many directors.

21 Ultimately in 2002, the Governor of
22 New Jersey appointed me as the director, that's a
23 governmental appointment, and I served four or five
24 years until 2007. I'm still the longest serving

1 director in the history of New Jersey Division of
2 Gaming Enforcement.

3 At that point, I was eligible to
4 retire, I had been eligible to retire for some
5 period of time. And an opportunity at Penn
6 National arose, and I accepted the position as vice
7 president and the chief compliance officer. I
8 moved from New Jersey to Pennsylvania and served in
9 the capacity of vice president chief compliance
10 officer from March of 2007 until I retired at the
11 end of July 2011.

12 At that point I was not expecting to
13 work, but circumstances changed. And then Penn
14 asked me to stay on. I think they saw some value
15 in me, and they asked me to be a member of their
16 Compliance Committee, and I accepted that. They
17 also asked me if I would be a special consultant
18 because of my knowledge of gaming matters around
19 the country. As they were engaging in a real
20 estate investment trust transaction, they asked me
21 if I would be of great assistance to them in doing
22 presentations, both private and public around the
23 country, and I said that I -- that I would.

24 And yesterday I was in Maine, and I

1 was supposed to be in Maryland today, but I got
2 redirected here for this particular hearing.

3 I also -- while I do -- while I am
4 partially retired, I do work, I'm also on the
5 chair of Compliance Committee of Cadillac Jack,
6 Inc., they are a slot machine company based in
7 Georgia. I also sit on the Compliance Committee of
8 Casino Rama, which is managed by Penn National.
9 Ontario law requires that that entity have a
10 Compliance Committee, and I sit on that Compliance
11 Committee.

12 For two years I was the chairman of
13 the Compliance Committee for the Relic Casino in
14 Atlantic City. I was responsible for setting up
15 that Compliance Committee, also setting up its
16 Audit Committee, which I sat on, and its
17 Compensation Committee. But that ended in May of
18 this year.

19 So that is my -- that is background.
20 I am, as you know, a lawyer.

21 Q. Would you tell the Committee what
22 your major duties and accomplishments were during
23 the period from 2007 to 2011 at Penn.

24 A. Prior to 2007, I mean, I knew of

1 Penn National, but didn't know them very well.
2 They did not operate a casino in New Jersey, but I
3 knew a few people who -- who were at Penn National.
4 And Penn National, you know, had grown quite
5 dramatically from the 1990s. They were a small
6 race track company, you know, publicly traded.
7 They were a small race track company and they grew
8 in the 1990s, they really started to grow in the
9 early 2000s.

10 They hired as their chief operating
11 officer, Kevin Desanctis, who is a very well
12 respected gaming operator. Had -- he had worked
13 for many, many gaming companies at that point in
14 time. They paid him quite well to advance the
15 gaming opportunities of Penn National and he
16 certainly did.

17 The company grew, it had an
18 individual turn of compliance and level individual
19 lawyer, but a lower level individual.

20 And I just want to digress for a
21 second, their early compliance matters in the
22 beginning field. Compliance committees, compliance
23 lawsuits are relatively new to the gaming area,
24 they started in Nevada in about the 1990s.

1 In fact, New Jersey didn't even
2 require companies operating in New Jersey to have
3 compliance committees until about 18 months ago,
4 although many did on their own in a voluntary way.

5 But there has been an evolutionary
6 process with respect to compliance committees and
7 chief compliance lawsuits. And that process really
8 started to pick up speed around 2006 and 2007. I
9 guess from -- I don't want to put words into Penn's
10 mouth, you can hear from Mr. Carlino with respect
11 to that, but Penn clearly was looking to enhance
12 and refine their compliance function.

13 When they sought me out, they
14 actually sought me out in 2006, but I wasn't quite
15 ready to retire yet, and I held them off for a
16 little bit. And then I did retire and join them in
17 March 2007. They had another compliance committee
18 already, Stew Leshrine, who I've known for 25 years
19 or 30 years. He's a chair, as you know, is in the
20 gaming control board, a very well respected member
21 of the gaming community.

22 But Penn wanted to enhance the
23 operations of compliance. They hired me, I did a
24 survey and it was clear that Penn National has a

1 now major publicly traded gaming and race track
2 company. It needed to enhance itself based on its
3 staff. While everyone was spending money unwisely,
4 it was necessary to have a deputy chief compliance
5 officer and licensing coordinator. Ultimately,
6 there was a second licensing coordinator.
7 Absolutely necessary given the amount of
8 jurisdictions that Penn National operates in.

9 I systematized the way reports to
10 the Compliance Committee were written. They are
11 much more detailed than what they were previously.
12 and Frank Donaghue has continued with that format,
13 very detailed reports to the Compliance Committee.

14 Also, I made it a mission of mine to
15 attend every audit committee meeting at Penn
16 National. And as you've heard from Mr. Donaghue,
17 the vice president of internal audit attends every
18 Compliance Committee. You might say that it's a
19 little redundant, and yes, it is. In a lot of
20 respect it is redundant, but it is a redundancy
21 that I think is vital because it aides in the
22 compliance function around the country, and
23 ultimately assists Penn National in achieving its
24 goals.

1 So those, I think, are my general
2 accomplishments.

3 Q. Based on your approximately 30
4 years of experience, is there such a thing in the
5 gaming industry as a compliance culture?

6 A. Yeah. I mean, there -- in this
7 sense, every gaming company, whether it's Penn
8 National or any of our competitors, wants to be
9 compliant. There's -- and there's many aspects of
10 compliance, and I attend gaming conferences, I
11 speak at gaming conferences.

12 And what we are concerned about as
13 compliance professionals is that our companies --
14 but not only that the individuals we hire,
15 especially in the casino levels, that the companies
16 that we are doing business with, and again, you
17 heard from Mr. Donaghue, the threshold that we use
18 is \$100,000.00 from vetting individuals and
19 companies that we've done business with as vendors.
20 Other companies have a much higher threshold,
21 250,000, even \$500,000.00, but we have a lower
22 threshold and we think that's important. And we're
23 going to keep it at that threshold because we think
24 that's -- adds in the -- in our compliance process.

1 But what we have done and what we
2 seek to do is to professionalize compliance
3 officers. Many companies, even today, do not have
4 separate compliance officers. In many card gaming
5 companies their general counsel will double as a
6 compliance officer. Penn chose not to go down that
7 road. They gave me a separate vice president
8 position and gave me full authority to do what I
9 thought was necessary to enhance the compliance
10 function at Penn.

11 And that compliance function also
12 deals with all of the properties, both gaming and
13 race track properties, to a certain extent, that
14 Penn operates. We have to be concerned with
15 complying with all of the internal controls that we
16 have at these properties, with all of the
17 regulations that are imposed upon us by the various
18 jurisdictions that we operate in.

19 Q. Now that it's a public company, are
20 there other watchdogs that Penn has to address?

21 A. There are numerous watchdogs that we
22 have to be concerned about and attend to, including
23 the gaming and racing regulators. They are always
24 watching what we do, we report to them. We have an

1 obligation to make self-reports if there is a
2 violation. And so, many of the -- many of the
3 complaints that you might see around the country,
4 from whatever the violation is, have been self-
5 reported. Some are not, but I would say the vast
6 majority involves self-reporting by the company to
7 the gaming regulators. That's our obligation, that
8 would be our obligation here in Massachusetts.

9 If there is a minor on the casino
10 floor, if there's some other issue and we become
11 aware of it, as we should through our own process
12 and our compliance process, we would report that to
13 you without -- without question.

14 But we must be very vigilant in
15 complying with all of those regulations. You heard
16 Mr. Donaghue run through a litany of what we do and
17 how we operate with respect to our 24/7 hotline
18 system, with respect to responsible gaming and
19 whether we have ever disciplined individuals. I
20 know you just put him on the spot. I had a little
21 time to think back there on this.

22 We have -- we have disciplined and
23 terminated individuals for over serving customers,
24 for failing as security guards to do their job with

1 respect to keeping minors off the floor. That is a
2 firm commitment that we have. And yeah, I believe
3 in progressive discipline, so we obviously look at
4 the individual before we make any -- any decision.

5 But yes, it's something taken very
6 seriously by Penn National. And I don't know if
7 Frank discussed it, but we do have also, a
8 corporate responsible gaming committee, which, you
9 know, meets periodically during the course of the
10 year. The senior executives of Penn attend that,
11 including Mr. Wilmott, who also attends that and is
12 very active in it. And we discuss ways to improve
13 in the area of responsible gaming.

14 Q. So, last question, there is an
15 understandable interest in whether the culture at
16 Penn supports or promotes the ability of people to
17 ask the tough questions. Based on your experience
18 at Penn, could you please provide us with your
19 assessment of how the company does on that segment.

20 A. Before I came to Penn National,
21 again, I knew a few people at Penn National, but I
22 had been in my 30 year term, I have been in the
23 corporate offices of virtually every gaming company
24 in the United States, virtually every slot

1 manufacturing company, and I know how they operate.
2 It can be very stiff, very formal, very rigid.

3 I came to Penn and I always heard
4 Penn had a culture being entrepreneurial, being
5 open door. And that's something that I happen to
6 like because that's the way I operated my office as
7 a regulator. When I got to Penn it was crystal
8 clear everybody was available for the compliance
9 officer, everyone is available to meet with and
10 discuss issues that arise in the company. Yes, we
11 all have titles, we all have a chain of command,
12 but be that as it may, we are, as a company, a
13 relatively modest corporate office where -- and
14 we're all bunched, we're not out in Las Vegas,
15 we're in Wyomissing, Pennsylvania, an interesting
16 spot to be, but we have access to anyone in that
17 company.

18 So if I wanted to walk into the door
19 of Peter Carlino, I can walk into the door of Peter
20 Carlino. If I want to walk in the door and talk to
21 any issue about Tim Wilmott, I can do that.

22 And I'll give you one example, and
23 Mr. Wilmott doesn't know I'm going to raise this
24 today. But it -- but it just shows you how you can

1 speak to a corporate officer and be free about it.
2 We have very free discussions, I mean -- and that's
3 one of the beautiful things about Penn. There are
4 very frank discussions about compliance, about
5 business decisions, about what to do in a
6 particular jurisdiction. Many of them I am
7 involved in. Even -- even to this day they seek my
8 advice, especially on the real estate investment
9 trust transaction.

10 But somewhere around -- it was
11 probably 2008, it might have been 2009, there was a
12 general manager in one of our -- one of our
13 properties, I'm not going to name the jurisdiction.
14 But there were numerous allegations both by phone
15 call and in writing to regulators about this
16 general manager; theft, waste, fraud,
17 mismanagement, corruption, all sorts of stuff. I
18 looked at the allegations and I came to the
19 conclusion early on that this was probably a
20 disgruntled former employee who is making these
21 allegations. The regulators in that jurisdiction
22 thought the same thing.

23 They asked me what I was going to do
24 about it, and I said to them, well I'm going to --

1 I'm going to do an investigation, I'll do it
2 myself.

3 And I served -- I had to notify
4 certain people. I notified the senior vice
5 president of operations who had jurisdiction over
6 that casino. I also went to Tim Wilmott and said,
7 I'm going to do this, just so you're aware of
8 what's going on, here's -- here's the allegations,
9 I'm going to invest it thoroughly, I don't believe
10 it. And he says, I don't believe it either, I
11 think -- you know, this doesn't make sense to me.
12 I'm not going spend a lot of time and effort, are
13 you sure you want to do this. And I said,
14 absolutely. He said, you don't have to do it if
15 you don't think it's right. I said, look, Tim,
16 this is absolutely necessary to do because we have
17 to document this, that's what we're supposed to do,
18 that's what I do, my role as compliance officer.
19 And Tim said, I agree with you, go do it, and
20 wherever the chips fall, they'll fall.

21 I did an investigation and as it
22 turned out, and as I suspected, most of the
23 allegations weren't patently untrue. Some were
24 unsubstantial, I came up with some recommendations

1 for improvement in internal controls. I wrote a
2 very lengthy, detailed, 25 page report, which I
3 shared with the Compliance Committee at Penn, the
4 Audit Committee at Penn, the general manager of the
5 property, the regulators, and everyone was
6 satisfied.

7 So that's one example of our
8 compliance culture and how you can discuss issues
9 and deal with issues at Penn. That's one thing
10 that I can offer to you.

11 Q. Thank you, sir.

12 MR. ALBANO: Mr. Chairman, I have no
13 further questions of this witness.

14 CHAIRMAN CROSBY: Mr. Mackey?

15 MR. MACKEY: Just a couple, briefly.

16
17 CROSS EXAMINATION BY MR. MACKEY:

18
19 Q. Mr. Auriemma, it sounds like you
20 were involved in Mr. Donaghue's hiring as your
21 successor?

22 A. Yes, I was.

23 Q. And you had a conversation with Mr.
24 Savitch about it?

1 A. Yes.

2 Q. And did you -- did Mr. Savitch give
3 you a copy of the Grand Jury report?

4 A. Yes. I've read the Grand Jury
5 report as did, I believe, Mr. Ducharme. Mr.
6 Ducharme and I talked about it, Mr. Savitch and I
7 talked about it. I wasn't here yesterday for Mr.
8 Savitch's testimony. One of the things he also did
9 was he called the former chair of -- Pennsylvania
10 Control Board? Decker. To ask about Frank, his
11 work habits, his abilities, as well as if he
12 thought he was an individual of good character,
13 honesty, and integrity. And Mr. Decker gave him a
14 very, very high rating and that was -- that was
15 related to me back in 2011 by Mr. Savitch as well.

16 Q. Do you recall discussing the Grand
17 Jury report with Mr. Donaghue?

18 A. Yes, I did. I met with Mr. Donaghue
19 actually several times. I met with him one time, I
20 think he got a little bored because I was with him
21 for probably over three hours.

22 Q. Do you recall asking -- it was just
23 a general conversation about the report or did you
24 ask Mr. Donaghue about some of the issues in the

1 report as it regards to the placement of material
2 in exhibits as opposed to the main body, and
3 burden of proof and so forth?

4 A. Yeah. Yeah, I did not go line by
5 line with respect to the report. One of the things
6 that struck me about the report, and I've heard
7 everything that was said today, and I heard most of
8 Donaghue's testimony, clearly there's an internal
9 squabble at the staff -- at the staff level at the
10 Pennsylvania Control Board about this report.
11 Different people have different views. And not
12 surprising to me, I had many of those discussions
13 over decades at the Division of Game Enforcement as
14 to what should go into a report, what should not go
15 into a report, can we prove certain things, how do
16 we strengthen the report. So, clearly there was an
17 internal squabble and that's how I viewed this
18 whole episode with Mr. Donaghue.

19 Q. When you were asked by Spectrum
20 investigators about your reaction --

21 A. Yeah.

22 Q. -- to the report, and this is on
23 page 283, it says you did not place significant
24 weight on the report during Mr. Donaghue's hiring

1 process; is that a fair statement?

2 A. Well, in this sense. I obviously
3 considered the report, it's a report, it's not a
4 guidance, not a presentment, which to have -- at
5 least in New Jersey, have little connotations, it's
6 a report. I know there are certain things in
7 there, I won't mention one of them I found actually
8 laughable. But to me, I think it was undue weight
9 by the Grand Jury on what seemingly is an internal
10 squabble as to how to write this report. Again, I
11 don't know, I never met Mr. Schwoyer. I've known
12 Mr. Donaghue from about 2006 because he came to New
13 Jersey when I was still a regulator and I met him
14 at that point, so I've known him since then.

15 But one of the things -- if I were
16 Mr. Schwoyer, I would have considered is Mr. John
17 Donnelly, and we've heard Mr. Donnelly mentioned --
18 again, I've known him for over 30 years, I've
19 litigated against him, he is a very formidable
20 attorney in New Jersey and Pennsylvania.

21 And if I were writing a report, I
22 would want to make sure that anything in that
23 report is going to stand up and I wasn't going to
24 let him pick it apart.

1 Q. I have no further questions.

2 CHAIRMAN CROSBY: Any questions?

3 COMMISSIONER: MCHUGH: I have
4 nothing.

5 CHAIRMAN CROSBY: When other people
6 were -- you were talking about the hiring of
7 Mr. Donaghue. Did anybody say, you know, I
8 know Frank, he's a good guy.

9 A. Yeah.

10 CHAIRMAN CROSBY: But, you know,
11 there's a, you know, the papers have
12 fooled us right now, we just don't need
13 this, why would we hire a guy that is in the
14 middle of this controversy?

15 A. We knew. Obviously, we knew about
16 the Grand Jury report. We knew about the newspaper
17 articles, but at the end of the day you have to
18 make a decision with respect to good character,
19 honesty, and integrity. Penn National pays me good
20 money. They pay Steve Ducharme good money, and
21 they pay us money for a reason. They expect that
22 we have the talent, the experience, the mileage to
23 give them good advice. And when we're voting a --
24 whether it's a director, a senior officer of the

1 company, we're predictive because we look at a
2 situation we have to say, are we going to embarrass
3 the company if this individual is hired and not
4 licensed.

5 I mean, that's one of the first
6 things that always comes to my mind. If we hire
7 this person, is he or she not going to get licensed
8 anywhere. That would be a critical mistake on my
9 part or Steve Ducharme's part. So I always put on
10 my little regulator hat and then say, what would I
11 do if as a regulator if I were still in New Jersey,
12 would Frank Donaghue get a license, what would I
13 recommend. My answer to myself was, he would get a
14 license and Savitch and Steve Ducharme do the same
15 thing. Frank Donaghue got licenses wherever he has
16 to apply and he has nine licenses at this point in
17 time. And with all due respect, I hope you also
18 see it that way because I think he's done an
19 excellent job in the two years that he has been
20 vice president of regulatory affairs and chief
21 compliance officer for Penn.

22 CHAIRMAN CROSBY: It all depends on
23 the condition of that horse.

24 A. Yeah.

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CHAIRMAN CROSBY: Anybody else?

Thank you very much.

MR. ALBANO: If I may, we did hear from a witness mentioned, Mr. Tad Decker, who is also identified on that organization chart that you received during Mr. Donaghue's testimony. Mr. Decker contacted us, he's now in private practice in Pennsylvania. He's given us his contact information that I have -- we have today, and offered that if the Commission wishes to speak with him about the contact he had, he is more than receptive to that.

CHAIRMAN CROSBY: Thank you, sir.

COMMISSIONER MCHUGH: Thank you.

COMMISSIONER CAMERON: Thank you.

CHAIRMAN CROSBY: Who is next?

MR. ALBANO Mr. Carlino.

CHAIRMAN CROSBY: Okay.

THE WITNESS: Good afternoon.

CHAIRMAN CROSBY: Good afternoon.

COMMISSIONER CAMERON: Good
afternoon.

DIRECT EXAMINATION BY MR. ALBANO:

1 Q. Good afternoon. Mr. Carlino, I
2 think it would be helpful for you to fill the
3 Commission in on your background and on the company
4 background. I know that's somewhat of a broad
5 question, but I think that would be helpful.

6 A. If you've got the time, I certainly
7 have the desire to share that. I am Peter Carlino,
8 Chairman and Chief Executive Officer of Penn
9 National. And I have been chairman of this
10 company, to my great horror, I can tell you for 41,
11 42 years, a long time, going back to it's founding
12 as a little Penn National race course in
13 Harrisburg, Pennsylvania. I was president in 1972
14 when we opened, I was chairman by '74, and I pretty
15 much remained chairman all my life. Although there
16 was a hiatus of about 12 or 13 years where I was
17 not an executive chairman, I was off building
18 houses, doing other things. But returned to take
19 the company public in 1994, on what I thought was
20 going to be a lark, a part-time job, just to solve
21 some family and estate issues.

22 The president was up in Harrisburg,
23 I was happily in Wyomissing, Pennsylvania and I
24 thought this would just be kind of fun.

1 But we have, today, become the
2 largest regional gaming operator in the United
3 States with 28 facilities in 18 different
4 jurisdictions. And by an amazing alchemy, have
5 also become the largest operator of parimutuel
6 racing in the United States. Which by kismet leads
7 us to be here, now, looking at Plainridge because
8 it's right at the heart of what we do.

9 I might know -- because a lot of
10 this conversation clearly gets to probity, and
11 that's a subject that is near and dear to my heart.
12 And I want to make clear that everything that I
13 have done, and if I've done anything, frankly, it
14 has been to hire the best of the best.

15 I'll say categorically, Penn
16 National is the greatest gaming company in the
17 United States. Not quite the largest, there's some
18 Las Vegas based operations, MGM, Harrah's, of
19 course, that from the point of view of scale, but
20 there is nobody who has achieved what we have over
21 the last 20 years and there's nobody who does it
22 better.

23 We are in most states, and you can
24 pick up phones and I trust you'll do that, and find

1 that we are the gold standard for probity in just
2 about every place where we do business. The -- and
3 that process started -- it starts with people, with
4 people. Back at the time that Steve Snyder joined
5 us, had a search firm, found Steve, looking for a
6 finance guy, which clearly was his background, we
7 weren't a gaming company, we were a small racing
8 company.

9 We put gaming in our name, you know,
10 IPO in 1994 because I don't know, stuff was going
11 on somewhere. It probably took me 20 years to
12 realize that we were in the gaming business, that
13 is in the racing business. I thought it was a
14 sport. But it's a sport upon which people wager,
15 and a kind of light bulb went off one day and said
16 wow, there's gambling going on here.

17 And through the early 90s, you might
18 recall, the world of gaming opened in various
19 states, and states were looking for new revenue,
20 and I sort of had this notion in 1994. We went
21 public and put Penn National Gaming, but make no
22 mistake, we were a little race track in Harrisburg
23 doing, you know, maybe \$38,000,000.00 in business.
24 And only that because we had just opened a couple

1 of off track facilities, which are quite lovely,
2 but they had boost the business and upon that we
3 could do a little IPO, initial public offering,
4 which raised all of \$16,000,000.00, that's it.
5 That was the total IPO. And that would have put a
6 paper value of the company of about \$40,000,000.00.

7 When we had our sale to Fortress,
8 which some of you may know something about, that
9 cratered in the collapse of '07 and so forth, we
10 sold the company for over \$9,000,000,000.00. So,
11 we were able to achieve some very significant
12 things along the way. But the key to that is this,
13 as we bought our first gaming property and those
14 properties were in Mississippi, way back when we
15 were really too small to justify it, I looked
16 around to see what we could do, how do we get
17 gaming leadership. I didn't have a clue. I mean,
18 I knew what a slot machine was, I'm not a gambler,
19 still I'm not a gambler. We were very, very, very
20 fortunate to find Kevin Desanctis at that time.

21 Kevin, who had started with the New
22 Jersey State Police, I mean, literally on patrols
23 up and down the turnpike, and then went into
24 regulation and then, frankly, his career rose

1 working for such folks as Steve Wynn, Donald Trump,
2 and Saul Kerzner. I used to tell Kevin he should
3 pay me after he worked for those guys to -- because
4 working for me was a lot more fun and a lot easier
5 to do.

6 But Kevin came with a regulator
7 state of mind, he did. He was a killer in that
8 area, he brought great discipline, which is
9 precisely what I hired him to do. And set us off
10 on a path that led us to where we've evolved today.
11 One of the earlier things we did with Kevin is we
12 started to look at this whole compliance question
13 -- and this is maybe off what I really planned to
14 talk about, but having listened to the discussion I
15 think it might be germane, was to hire Steve
16 Ducharme, former head of the Nevada Gaming
17 Commission.

18 For me it was, how do we get the
19 best of the best. How do we get somebody beyond
20 criticism, somebody highly skilled, highly
21 experienced, who knows what we don't know and can
22 bring probity to this process for us. So Steve is
23 a great early effort, and he remains with us to
24 this day.

1 You know about Tom Auriemma,
2 probably the best recognized and toughest in his
3 time, gaming regulator in the United States. So,
4 when Tom retired he -- fortunately not for too
5 long, it was a thrill, and a tremendous coup, and
6 achievement for Penn to grab this guy and get him
7 to come with us. And to take, and do the things
8 that he's kind of outlined for you and bring it to
9 Penn National, which he did.

10 So, that's a little segue around
11 that issue, but I want to make it real clear, this
12 starts at the top. It starts with me, but in the
13 end it's about good people. Look, we're not
14 perfect, you'll see write ups for this or that and
15 there are some states who get amusement, frankly,
16 out of fining companies for the most absurd things,
17 sometimes serious things. It always kills me that
18 you can get fined for self-reported stuff. You
19 find something and oh, by the way, here it is and
20 you get spanked, but it's all part of the process.
21 I don't care how hard you try, you're never going
22 to keep every minor off the floor. Does any
23 responsible gaming company want kids on the floor,
24 of course not, but does it happen occasionally,

1 yes.

2 So, I would like to think that how a
3 company should be judged is between what happens to
4 them and what they do, what's the response. And I
5 think you'll find, if you look around the United
6 States, that Penn is well admired for who we are
7 and what we do. Along the way, this is a little
8 commercial, I think we were seven times on the
9 Forbes -- excuse me, the Fortune List of the
10 fastest growing companies in the United States. By
11 the way nobody, nobody, not Google or anybody, has
12 achieved that then or since, which is a nation
13 distinction. But in the end it's about building a
14 quality company.

15 I'm excited about the Plainridge
16 opportunity because it is in the sweet spot of what
17 we do. You know what, we've opened more casinos
18 over the last four years than any other company in
19 America, and these are not little places. Our
20 facility in Kansas City, Kansas is spectacular.
21 It's a 400 plus million dollar facility, it's
22 dazzling, it's wonderful, and I won't go in the
23 commercial about how we've taken one of the brands
24 we bought some years ago, Hollywood, and taken it

1 to a new level.

2 We've opened a spectacular urban
3 facility in Toledo. Talk to the mayor there, they
4 love us, and they should because we've done
5 wonderful things, Columbus and so it goes. We're
6 building two new, brand new race tracks with slot
7 machines in Ohio. They're under construction
8 today. Nobody does more of that on either side,
9 not more casinos, not more race tracks, than we.

10 And I'll talk a little bit about
11 racing because we haven't lost that focus. I mean,
12 that's where I spent the bulk of my life, running
13 race tracks. And I do say, with a straight face to
14 folks, that slot machines, in a perverse way, are a
15 very green activity, because when you go to a race
16 track, any race track in America, and you start
17 driving a couple of miles around, and you see white
18 fences and, you know, green fields, and little four
19 legged things running around it's because that race
20 track is there, and a multiplier effect from racing
21 in communities.

22 If you remember in Pennsylvania, I
23 can speak to it plainly, the race tracks are part
24 and regulated by the Department of Agriculture

1 because, in the end, we are an agricultural
2 business. And that's something worth remembering,
3 preserving green space, preserving our racing
4 heritage, preserving this is phenomenally
5 important. Some states, most states get that.
6 There have been a handful that don't, that have
7 neglected their race tracks and kind of let them go
8 by the board, which is an incredible tragedy. But
9 most places have figured out that these places are
10 important, often part of a heritage that's been
11 there for many, many years.

12 So, that we could -- I could point
13 you in a dozen places where we have transformed
14 communities. Probably the most successful in the
15 United States is Charlestown in West Virginia,
16 where they had lost a referendum to put slot
17 machines at this race track, but it's been there
18 since 1933. We bought it, they were losing
19 millions a year. I was very clever because when I
20 bought it because we lost millions more. But we --
21 but we persuaded the voters, that are the largest
22 employers in Jefferson County, West Virginia, that
23 this was important. They had lost their referendum
24 before, I made that case personally. I lived

1 there, I ran a political campaign there, I had
2 never done that before, and we won in a landslide.

3 And in the years since then, which
4 was the mid-90s to this very day, that facility has
5 grown to be probably the largest race track with
6 slots -- well, it is, in the United States. Hugely
7 powerful. Revenues grow to a half a billion
8 dollars from a little decrepit race track. Racing
9 is utterly booming there, but more critically the
10 impact on Jefferson County, you know, there's a
11 general thought, you build a race track you're
12 going to steal all the -- restaurants are going to
13 close, crime is going to rise, prostitution --
14 that's always my favorite one and I say I'm still
15 looking for her. You know, it's all this silly
16 kinds of stuff. It is a business, it has had a
17 profoundly positive effect -- and by the way,
18 anybody who wants to call the Chamber of Commerce
19 in Charlestown, West Virginia, the chief of police,
20 and talk about crime, there's more crime in the
21 local shopping mall than there is if you look at
22 the demographics of these facilities. So that the
23 positive impact, the hotels that have been built,
24 the restaurants so forth, it's phenomenal.

1 So that's a brief case for why race
2 tracks with slots make sense. But let me give you
3 just a couple of statistics that might be helpful
4 and speak to Penn's racing background, and then
5 I'll answer anything you might have to say.

6 Penn has always been an innovator in
7 that area. In my era, Penn pioneered year around
8 thoroughbred racing and we do that, still, to this
9 day. We operated the first telephone wagering
10 accounts in the United States. We were the first
11 race track ever in America, in fact in the world,
12 to put live racing up on a satellite back in the
13 early 80s. No one had ever done it before. We've
14 built and successfully opened off track wagering
15 facilities that are upscale that have done
16 phenomenal -- provided phenomenal support for our
17 racing operations. And we have successfully
18 integrated racing and gaming.

19 The Chairman, sadly now deceased, of
20 the Pennsylvania Racing Commission, Fitz Dixon,
21 asked me to not neglect racing at Penn National.
22 We did the unprecedented thing, nobody else did it
23 in the state, of tearing down the race track that I
24 helped build in 1972 and built from scratch an

1 integrated facility, which is standard for the
2 United States, at Penn National in Harrisburg,
3 Pennsylvania. So, we didn't neglect racing, we
4 integrated it with gaming.

5 Oh goodness, we are the largest
6 operator of parimutuel facilities in the United
7 States. We have facilities in 11 jurisdictions, we
8 conducted over 1,100 live races last year, in 2012.
9 Thoroughbred, standard bred, quarter horse, and we
10 even had a little, tiny bit of greyhound down in
11 Florida. Over \$1,000,000,000.00 of wagering
12 through our facilities, and Penn National has been
13 recognized by the industry in Broad Horse Magazine.
14 A terrific article recently about Penn National and
15 what we've done to innovate.

16 A few more points and then I'll be
17 quiet. We introduced last year at Charlestown,
18 again, because of slot machines, the 1.5 million
19 dollar grade two Charlestown classic, which is the
20 richest race in North America for older horses.
21 This is a tiny, little race track in Charlestown,
22 West Virginia. We've been able to do that. We set
23 new wagering records there for three consecutive
24 years, adding wagering records in 2011 and 2012.

1 At Penn National itself, we began with the -- we
2 just opened the inaugural \$500,000.00 Penn mile and
3 established, by the way, all the -- the years that
4 we have been in business a new single day record
5 just this year at Penn National, the highest angles
6 ever wagered.

7 At Sam Houston, the \$400,000.00
8 Houston ladies class classic in Texas, of course,
9 the richest horse race in the state of Texas. I
10 could go on -- the \$2,000,000.00 in New Mexico,
11 breeders championship, and so on.

12 So, if I leave you a sense, this --
13 we are a dynamic, focused company that is both the
14 best of the best on the gaming side, but still do
15 one heck of a good job on the racing side. We have
16 not neglected our heritage and with that, I'll be
17 quiet. It's hard for me to do, but I'll be quiet.

18 CHAIRMAN CROSBY: All right.

19 MR. ALBANO: I have no further
20 questions.

21 CHAIRMAN CROSBY: Mr. Mackey?

22 MR. MACKEY: Just a few.

23
24 CROSS EXAMINATION BY MR. MACKEY:

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Q. Let me start back in 1997. Mr. Snyder had the opportunity to testify yesterday and he was talking about his -- the beginning of his association with --

A. Right.

Q. -- Penn National. And as he testified, he had conversations directly with you about his coming on board, I think originally as a consultant, and then ultimately as a full-time employee at the company. Would that be correct, he dealt directly with you?

A. Yeah. Oh, yeah, at that time exclusively with me, yes.

Q. And that was in 1997, thereabouts?

A. Close enough.

Q. And then at some point, as I understand the chronology, in 1998 he became -- even though he was still outside, he got the title vice president of development or words to that effect. And then in 2000 he became a full-time employee. Does that sound right?

A. Those dates sound approximately right.

1 Q. Approximately, I've captured the
2 essence of it.

3 A. Yes.

4 Q. So, were you -- were you aware, Mr.
5 Carlino, that when you brought him on board as a
6 consultant in 1997 that he had some significant
7 legal issues going on with the SEC at that point?

8 A. I realized he had legal issues going
9 on, how significant at the time, we weren't sure,
10 but yes. We found Steve -- he only recently
11 reminded me, through a recruiting firm. He was
12 from the Reading area, so it was kind of ideal,
13 Reading, Wyomissing, Pennsylvania, he was from that
14 area, sort of a hometown guy. Had a terrific
15 background. But I do recall that early on, I'm
16 sure at the initial interview, he said, but there
17 is this issue that I'm in the middle of, which he
18 did disclose.

19 Q. Do you recall if he disclosed to you
20 that he had been deposed on a couple of occasions
21 by the SEC?

22 A. Boy --

23 Q. Understanding this is quite some
24 time ago.

1 A. At that time I don't know. I mean,
2 I knew he had an issue, but how that was manifest
3 at the time I don't know.

4 Q. Did he disclose to you at that point
5 that his problems with the SEC had caused him to
6 dissolve the financial consulting firm that he had
7 set up, advising municipalities and the like?

8 A. I only vaguely know he had a
9 partner, I think he did. And that that -- I can't
10 recall. I mean, I really don't remember that.

11 Q. At some point, were -- I'm going to
12 make reference to Bureau Exhibit 4, just to kind of
13 set a date and time. On April 23, 1998, the SEC
14 instituted a formal investigatory proceeding
15 against Mr. Snyder. Did you become aware of that
16 at the time?

17 A. I -- the answer is I can't recall,
18 but I'm sure I must. Let's assume that I was aware
19 that this was an ongoing issue.

20 Q. Do you recall if he told you about
21 it or how you learned about --

22 A. I'm sure he did or he would have.

23 Q. Did you read the administrative
24 charge?

1 A. I suspect that I did because, I
2 mean, clearly we needed to understand what that
3 issue was. And subsequently we did look very hard
4 at that, but you've got to lead me where you want
5 to go on that issue.

6 Q. All right, fair enough.

7 A. I won't volunteer.

8 Q. Let me just ask you this, were you
9 aware, as Mr. Snyder testified yesterday, that the
10 filing of the administrative charge caused him to
11 resign from the state tuition account program
12 advisory board?

13 A. I have no recollection of that at
14 all.

15 Q. So, initially a consultant and then
16 outside, but with a title of vice president for
17 development, then hired as an employee in 2000.

18 A. Right.

19 Q. And then he left the company, as I
20 understand it in 2001, I believe that was his
21 testimony yesterday.

22 A. Right.

23 Q. Now, when he was hired in 2000 as a
24 full-time employee do you recall -- did you make

1 that decision to bring him on board full time?

2 A. I did, with the Board. I mean, we
3 are a public company and that would have been a
4 Board decision as well. And all the issues
5 surrounding that would have been discussed with the
6 Board at that time.

7 Q. Now, do you recall at the time he
8 was brought on as a full-time employee, vice
9 president of development in 2000, further review of
10 the pending matter with the SEC?

11 A. Yeah. I mean, you always hate this,
12 forgive me, but, you know, let me -- let me jump to
13 where you want to go. I know we said just get
14 right at that.

15 Q. That's fine. I might jump back, but
16 --

17 A. And you can jump back where you
18 want, but I -- you know, let's -- let's answer that
19 question because I get it from the tenure of
20 questions asked before. What do we do to examine
21 this issue, what did we know about it, how do we
22 consider it and so forth. The issue at the time
23 was yield burning.

24 Now, I didn't have any notion at

1 all, and I'm sure most of us here had no idea of
2 what this yield burning thing was. Steve said he
3 had this issue. He, I'm sure told me at the time
4 what the SEC was wanting, to get this issue
5 settled, you know, I'm scratching my head. Maybe,
6 and I can't even tell you if that was the case, but
7 maybe that's why we carried on as a consultant, and
8 I'm only surmising that because I don't remember,
9 while we sort of examined this issue. And Steve,
10 you may have to correct me later, but while we
11 examined this issue and decided, is it a big issue,
12 is it a little issue, does it matter, does it not.
13 I went to our then law firm, Mesirov Gelman, and
14 they've since merged with -- years back with
15 Ballard Spahr and I asked them, what is this stuff,
16 what does it mean. And I know along the way we
17 talked with Al Dandridge, a former SEC lawyer who
18 was then on the staff at Mesirov. And now, by the
19 way, I understand the chancellor of elect of the
20 Philadelphia Bar Association. He's a much esteemed
21 guy. Talked to Al and the firm and said, what is
22 this, does it matter, is it serious.

23 And I'll give you now what my
24 understanding of the issue was. You all know that

1 it was an industry practice, it wasn't just Steve's
2 company or Steve. It was what the whole industry
3 was doing to -- and I -- it's over my head, but to
4 price these bonds in a manner that was competitive
5 but apparently -- and later, because it had been
6 going for quite a while, the federal government
7 decided we don't like this practice. So, they --
8 they -- they instituted lawsuits against every
9 major firm. I mean, we found this out, you know
10 that perfectly well, in the United States,
11 everybody.

12 Now, my sense of this was that Steve
13 had the grave misfortune to have left his company
14 before this issue came to the fore and he was left,
15 kind of high and dry. Whereas mostly everybody
16 else in America covered by this, and there were
17 lots, were covered by the settlements of their
18 companies for their employees, fines were paid by
19 the companies, and so on and so forth. And so
20 Steve was alone.

21 The critical issue, as I recall
22 and I have not talked to Steve much about this at
23 all, I asked him this morning because I figured
24 you'd ask me this question. The principal issue in

1 Steve's mind was their requirement that he admit
2 wrongdoing. And quite candidly to his credit, and
3 I'll stand on that to this very day because we
4 fought to get Steve back, he would not admit
5 wrongdoing. He would not admit willful wrongdoing
6 because he didn't commit it, didn't feel that he
7 had, he had done what was appropriate and he wasn't
8 going to do that. And by the way, I've got to say,
9 I think if you believe that and you're willing to
10 stand up for that, then you do what you do.

11 So, after talking to Mr. Dandrige,
12 the Mesirov people, and so forth, basically they
13 said, look -- and this is my loose paraphrase --
14 this isn't the coolest thing that could be
15 happening right now, but it was an industry issue,
16 a fairly complex one, and we think you're okay to
17 go ahead and hire this guy. We can't find any
18 evidence of crime, or misdeed, or so on and so
19 forth. And that was a fairly exhaustive process,
20 and I don't -- it went on over a fairly long period
21 of time.

22 So yes, it ultimately came to me.
23 We reached that conclusion, I'm sure -- I can't
24 recall precisely, the Board would have reached that

1 conclusion and we said, yes, let's hire Steve,
2 bring him on. To the -- go ahead.

3 Q. No, I was just -- and that -- what
4 you're describing there is the process in 2000 when
5 he was brought on as a full-time employee?

6 A. Yes.

7 Q. So, the SEC charges are pending at
8 that point?

9 A. Yeah.

10 Q. Then in March 2000 when he left the
11 company --

12 A. He did.

13 Q. -- and it was -- was that a decision
14 that you made that you had to part ways?

15 A. It was much worse than that. It was
16 -- it was a decision forced on us by our
17 acquisition of the Carnival gaming assets, which
18 were essentially two assets, Carnival Cruise lines
19 had an interest in this company. But it was run --
20 it was a Miami based business that owned the casino
21 that we've happily owned for many years in Baton
22 Rouge, Louisiana. And a very interesting contract
23 to run the largest destination casino resort in
24 Canada, which we still run to this day by the way,

1 Casino Rama.

2 There was a particular regulator
3 there, their top cop if you will, who saw this
4 issue and maybe not unreasonably said, well how
5 about it, I don't like this. But he said to me, he
6 came to my office and said, look we'll approve you
7 guys, but this guy, Steve, has got to go. He's got
8 to go in whatever it was, 15 days, 30 days, he's
9 gone. I said, well but, but, but -- and he said, I
10 mean, gone. And you can't talk to him, you can
11 have no correspondence with him, you can't do e-
12 mails with him, you must sever -- where this all
13 came from I have no idea, but it was like the guy
14 had leprosy and he's got to go.

15 So I was stuck in a position,
16 running a public company, where right or wrong no
17 longer mattered, Steve had to go. I had that
18 responsibility to my shareholders, we had a pending
19 acquisition that had to close. So, I kind of shook
20 Steve's hand, we did what we had to do, signed an
21 agreement and he went off into the sunset.

22 But I will tell you I didn't take
23 that very favorably at all. I mean, it was
24 required, it was okay, but the agreement was that

1 he would settle his issue with the SEC, and if it
2 was favorably enough settled, we'd find out whether
3 the world thought and regulators thought it was
4 serious enough to prevent him from joining our
5 company at maybe some future date. But I had no
6 certainty, no thought at all that we'd get there.

7 But over a period of time Steve did
8 get his situation settled with the SEC, by the way
9 not admitting any wrongdoing, if I think I have it
10 right, which I think was critical. But settled it
11 and it went away. And of course, then the process,
12 the tough process of what next. We chose -- I
13 think the company chose New Jersey because New
14 Jersey -- I had never met Mr. Auriemma, know him,
15 didn't even know about him at the time -- was, and
16 still to this day, probably the toughest
17 jurisdiction in the United States. The most
18 thorough, the most thoughtful, the most, pick all
19 the adjectives you might like, place. But also
20 sophisticated to consider these complicated issues
21 and to make a judgment. And if he could get
22 licensed there the reasoning was well, maybe we can
23 go elsewhere with it. But again, it was kind of
24 the end of the game.

1 So, we -- Steve did apply in New
2 Jersey and shortly that tale eventually was found
3 suitable. All this is public record, you would
4 know that. And we then went around the United
5 States and secured other approvals to the point
6 where we had every approval in the United States,
7 took that back to Canada it was quite -- Canada
8 really had not too much to say because it's pretty
9 obvious that that issue was settled, he was
10 licensable and found licensable, virtually,
11 everywhere else. And he was properly found
12 licensable in Canada.

13 And low these many years -- in
14 fact, I haven't heard this issue from any
15 jurisdiction or any place in what, 13 or more
16 years. So, this is -- that's essentially the
17 history of it.

18 Q. Let me stop you there because I want
19 to ask a few questions about Mr. Donaghue's hiring
20 as well. But there are sort of three data points
21 here of you bringing Mr. Snyder on board as a
22 consultant in '97.

23 A. Right.

24 Q. And then making him a vice president

1 for development, and '98 and then a full-time
2 employee in 2000 while these SEC charges were
3 pending. Understanding that and understanding that
4 he had to dissolve his financial advisory service
5 because of this, and there was a state tuition
6 board that he had to remove himself from in the
7 year -- that caused issues for licensing in Canada.
8 Did anybody during this period of time in the
9 company say to you, you know, a great guy, a
10 talented guy, a terrific businessman, but this, you
11 know, we just don't need this right now, there's
12 just too many questions associated with this
13 pending charges that it is a heavily regulated
14 industry. This just isn't the right personnel --

15 A. Well, let me say this. At that
16 time, and the company is very different today as
17 you probably now recognize than it was then.
18 Because we did not have the same pool of people who
19 would have come on later. So, I can't even
20 remember who our general counsel was at that time
21 or -- it was a very tiny, little group. But the
22 answer probably is, no. And that decision would've
23 fallen to me.

24 Look I'll be honest with you, I

1 don't care a lot about appearances. I really
2 don't. That may not be the answer you like. I
3 care about truth, facts, honesty and decency, and
4 whatever. And I'll fight forever on an issue in
5 the end if I think it's right and fair. I made the
6 judgment that this is a good guy, an honest and
7 honorable guy who was caught in a difficult
8 situation, subsequently proved right, by the way,
9 by the facts and circumstances, that's abundantly
10 clear.

11 So, you know, and in America I used
12 to understand that one is innocent until proven
13 guilty, and I'll stand by that, and that was my
14 general view.

15 If he was found to be at fault, then
16 maybe that's something we have to deal about, but
17 at the time it wasn't critical. To the appointment
18 as a vice president, we simply had to put something
19 on the guy's business card so we can let him call
20 people, and represent that he could speak for the
21 company. But I'd point out even at banks you have
22 a lot of vice presidents who are not officers of
23 the company. He was not an officer of the company.

24 Q. Let me just ask you a few questions

1 about Mr. Donaghue's hiring. Fast forward ten
2 years in time here. Mr. Donaghue was hired as a
3 chief compliance officer in July 2011, thereabouts.

4 A. Right.

5 Q. Do you recall being interviewed by
6 investigators from Spectrum in connection with the
7 Ohio due diligence proceedings several months after
8 -- after Mr. Donaghue was hired, this is in January
9 2012?

10 A. Vaguely, I mean, I know I was, but I
11 don't remember.

12 Q. All right. Let me -- I think Mr.
13 Albano is finding the reference now, it's page 281
14 of the suitability report.

15 A. Yes, sir.

16 Q. And just the first paragraph there,
17 on January 23, 2012 in connection with his due
18 diligence investigation for the Ohio Casino Control
19 Commission, Spectrum interviewed Penn National
20 officials at the company's corporate headquarters
21 in Wyomissing, Pennsylvania. Does that sort of
22 refresh your recollection?

23 A. I'm sure they did. I don't
24 recall, but I'm know they did.

1 Q. All right. And that would have been
2 -- if that was January 23rd, so that would have
3 been about six months or so after Mr. Donaghue was
4 brought on board, correct?

5 A. Okay.

6 Q. So, down to the last paragraph of
7 that page, Peter Carlino, Chairman and Chief
8 Executive Officer of Penn National was interviewed
9 regarding this issue. This is the issue that, you
10 know, we've been hearing a lot about with the Grand
11 Jury. Carlino responded that he was generally
12 familiar with Grand Jury investigation and knew
13 that a report had been issued, but he was not
14 familiar with the details of the report. Does that
15 sound like an accurate summary of what you would
16 have reported to investigators?

17 A. It probably is. It says so, so --

18 Q. Is it consistent with your
19 recollection now?

20 A. I have no recollection, I really
21 don't. I see the words, so I'll accept them.

22 Q. All right. Did you read the Grand
23 Jury report when it came out?

24 A. No.

1 Q. You were generally familiar with it,
2 so are these accounts or discussions with other --

3 A. Yeah, my knowledge of that situation
4 was largely that of any citizen, just what was
5 appearing in the press, was aware it was out there.

6 Q. Fair to say that it got a lot of
7 play in the local press?

8 A. It got a lot of play in local press.

9 Q. So, let me read the last two
10 sentences of that paragraph. He, and referring to
11 your statements to the investigators, stated the
12 investigation was discussed with other officers at
13 Penn National in general terms, but that he,
14 meaning you, did not place any serious significance
15 on the investigation or the report because he did
16 not have confidence that the proceedings would
17 result in an accurate reflection of the operations
18 of the PGCB. He added that he did not place any
19 weight on the report, nor did it play any
20 significant role during Donaghue's hiring process.
21 He did not question Donaghue about the Grand Jury
22 during any interviews.

23 A fair summary of your statements to
24 the investigators at that point?

1 A. If that's what they said I said,
2 then I'll assume I said it.

3 Q. You don't have a recollection today
4 --

5 A. No, I really don't.

6 Q. -- with regard to this?

7 A. I don't.

8 Q. Okay. Why didn't you have
9 confidence that the Grand Jury report would be an
10 accurate reflection of the operations of the
11 Pennsylvania Gaming Control Board?

12 A. Is this -- is this a public record?

13 Q. It is. In this case, it is.

14 A. I, obviously, I say that -- yes, no,
15 I understand. Look, the perception of the time was
16 -- and I won't go into any detail of -- my meager
17 thoughts on the subject is that look, this was a
18 highly -- shocking Massachusetts, of course, but it
19 was a highly political event. As various factions
20 were pushing different points of view, so there was
21 more to it. I don't know this Denaples fellow,
22 never heard of him even until this gaming thing
23 came up. He could be a bad guy, an evil guy, that
24 for me wasn't the issue, but rather let's wait and

1 see what comes out of this. And I think the
2 general view was that this was an activity that may
3 or may not lead to some result. Again, I'll wait
4 until I see what the outcome would be.

5 The key point is this, I met with
6 Frank before he was hired, just to, I guess, you
7 know, do the usual things you do because I had not
8 physically met him before, make sure he doesn't
9 drool on his tie, and comports himself in a manner
10 that we'd be pleased with. And -- but as -- and
11 pleased, too, with the kind of background, the
12 regulatory background that I thought he would bring
13 to this process, and in his outreach then to other
14 states, like to you folks, and other places where
15 we do business. Those are the reasons why he
16 would've been highly attractive to me.

17 Now, but my conversation about this
18 would have been with our general counsel. You met
19 Jordan yesterday, he's educated, for better or
20 worse, in this state at Harvard as a lawyer. He's
21 a terribly bright and extraordinary fellow and
22 capable guy, I can promise you that.

23 So, my conversation -- and that I do
24 remember with Jordan is, Jordan what's up. Is

1 Control Board and your sense that it should place
2 -- that you would place no weight on the report in
3 connection with Mr. Donaghue's hiring, that was
4 communicated to you from Mr. Savitch to whom you
5 would --

6 A. And there is other people as well.
7 I mean, look, there's been retrospectives. In
8 fact, someone was just showing me in the back
9 there, but the Pennsylvania process. With its
10 minor -- Pennsylvania got it right. And, by the
11 way, has been the most successful state generating
12 more revenue for any state in the United States
13 than anybody in America. Not Nevada, not New
14 Jersey, not anyplace.

15 So, here you're finding this out, to
16 get this industry up and running, and to do it
17 right, and to do it perfectly is not an easy task.
18 And I think all in balance the Pennsylvania process
19 was an exceedingly good one.

20 Now, again, I can't speak for the
21 whole Denaples question. But I'll say this, again,
22 that was a citizen, they been trying to get that
23 guy on something for a while. State police have
24 tried, everybody sort of tried. But in fairness,

1 again -- and I say to myself, maybe this guy is an
2 angel. I don't know, but nobody's been able to pin
3 anything on him, which is -- you've got to scratch
4 your head and say why, they've certainly tried hard
5 enough.

6 Q. And let me just, with respect to Mr.
7 Donaghue, the same question I asked with respect to
8 Mr. Snyder. You have the Grand Jury report,
9 understand you haven't read it, but you are aware
10 of it, and you know that Mr. Savitch, Mr. Ducharme,
11 Mr. Auriemma, and others involved in Mr. Donaghue's
12 hiring, a number of people are familiar with the
13 report. Did a single person ever say to you or did
14 you ever hear a single person say, gee there's
15 something here that we actually should consider and
16 give some weight to?

17 A. I think they did. I mean, of course
18 they did. They did. They looked at it. I mean,
19 they never charged with anything, it's a report.
20 Nobody was accused of any wrongdoing, least of all
21 Mr. Donaghue. So, I mean, where is the problem in
22 that? I hear where you're going, but, in the end,
23 where is the problem?

24 There clearly wasn't one. So, I

1 mean, I'll stand on that, but the research was
2 clearly and thoroughly done by our team of folks.

3 MR. MEYERS: I have no further
4 questions.

5 COMMISSIONER MCHUGH: I have just a
6 couple of issues. You've talked, Mr.
7 Carlino, about the culture of compliance
8 that Penn has demonstrated since the
9 beginning, a culture that you've described
10 in some detail. You said, also, if I'm
11 quoting you correctly, that you find it
12 amusing that a company self-reporting then
13 gets spanked. Could you help me understand
14 what you meant by that?

15 A. Well, yeah. I mean, look, what I
16 think is you do the things you have to do, but it
17 is sort of discouraging sometimes to have done
18 everything precisely right. In other words, things
19 occur you just can't stop. All you can do is find
20 them and report them.

21 Sometimes the response that one gets
22 -- it depends on the state and the general
23 attitude, I think some of them view it as a revenue
24 raiser. I am actually being serious about that,

1 but it strikes me that it's one thing to be charged
2 with something that you have missed and are caught
3 at, quite another in a situation where you self-
4 report a problem -- where you have done it all
5 right, but yet there is a problem. And I mean, so
6 I kind of don't appreciate the ultra criticism
7 when, in fact, we have done everything we should
8 do. And maybe that is muddled, but if you get the
9 idea.

10 COMMISSIONER MCHUGH: If you've done
11 everything that you should do, then the fact
12 that the violation occurred is not your
13 fault, is that it?

14 A. Often the case, yes, absolutely. I
15 mean, if for example, you have got tough -- like an
16 embezzlement, for example. You can do it all
17 right, but I guarantee you banks get embezzled
18 every day, no matter how thorough you are. And I
19 promise you, no matter how hard you try, there will
20 be underage folks that will get on the floor. Our
21 problem sometimes is state to then not charge those
22 underage people with a -- with a crime and
23 prosecute them for having done that is a deterrent,
24 obviously, to others.

1 COMMISSIONER MCHUGH: Do you believe
2 that the imposition of a fine, even for a
3 self-reported thing may constitute an
4 incentive to find ways to do it better?

5 A. In our case I would say probably --
6 it doesn't help because we're doing it better every
7 day. And I am not being smart about that, we
8 really, really, really work hard to be like a zero
9 defects company. We take this very seriously, but
10 you are dealing with tens of thousands of people
11 through, you know, multiple states and so forth.
12 And people being people, you are going to have a
13 small measure of this stuff. But as I say, and I
14 mean this quite honestly, I think a company always
15 should be judged. You know, it is not, kind of,
16 what happens to -- it's how you respond to the
17 problem. Do they fix it, do they take it
18 seriously, do they -- are these people serious
19 about their commitment, and indeed we are.

20 COMMISSIONER MCHUGH: That's why I
21 asked you about the amusing part.

22 A. Well, maybe amusing is not the right
23 word. As I say, it is sometimes frustrating.
24 Maybe that's a better choice of words. But -- you

1 know, but make no mistake those issues are
2 inevitable and we're as good as it gets. You'll
3 have that and you'll deal with it when the time
4 comes.

5 COMMISSIONER MCHUGH: Let me ask you
6 another question on a different subject, but
7 really along the same line. You said that
8 when you are exploring with eminent counsel
9 in Philadelphia, Mr. Snyder's issues with
10 the SEC, that part of his explanation to you
11 was that everybody in the industry was doing
12 it. And, in fact, the exhibit submitted by
13 you, by your team, reflects that. Goldman
14 Sachs was doing it, Lehman Brothers, Merrill
15 Lynch, Morgan Stanley, Paine Webber, all of
16 them were doing it. To what extent do you
17 think that the fact that an entire industry
18 is doing it makes it right?

19 A. My recollection of that was that it
20 really was no more than an interpretive issue. I
21 mean, obviously, these companies as a group did not
22 blatantly violate the law.

23 COMMISSIONER MCHUGH: How do you
24 know that?

1 A. Well, that was our judgment at the
2 time.

3 COMMISSIONER MCHUGH: Do you realize
4 that they admitted knowing and willful
5 violations of the law?

6 A. Well, because that's how you get
7 these things settled. That's how you get them
8 settled. I mean, let's be honest, that's how the
9 process works.

10 COMMISSIONER MCHUGH: Not -- Mr.
11 Snyder got it settled.

12 A. But he was -- we've already
13 established was out there on his own and had to
14 deal with it in a very different manner.

15 COMMISSIONER MCHUGH: But these
16 companies were out there on their own as
17 well, and they admitted knowing and willful
18 violation.

19 A. Well, but these were -- again,
20 there's not a debate that -- I am not trying to
21 debate with you.

22 COMMISSIONER MCHUGH: I am not
23 trying to debate with you either. I am
24 trying to get at the extent to which you

1 believe that industry standards are a norm
2 of -- that trumps violations of the law.

3 A. Let me say this, I personally, and
4 I'm speaking just for me, find it hard to believe
5 that responsible companies as a group, somehow all
6 nine or ten of the people involved, conspired to do
7 something wrong. I think that -- I genuinely think
8 that it was an interpretation of how that -- that
9 rule was applied, that the federal government then
10 decided that it was not appropriate. And they
11 smacked the -- but, you know, this is not a hidden
12 event.

13 COMMISSIONER MCHUGH: Right.

14 A. This was public and open and
15 notorious, if you will. I believe it was an
16 activity that everybody knew about. So, obviously
17 somebody thought that it wasn't a bad thing. It
18 subsequently was interpreted to be a bad thing, the
19 issue was settled and it went away. So, that's the
20 only distinction I'm making.

21 COMMISSIONER MCHUGH: And what views
22 on what they did is one thing, but to what
23 extent do you believe that if everybody in
24 the gaming industry is doing things a

1 certain way, the conformity with that norm
2 is a sufficient basis for Penn National's
3 policy?

4 A. If we believe it to be right, I'll
5 stand by that. That is to say if we believe that
6 what we're doing is correct, and it happens to be
7 -- this is so hypothetical. But if we believe that
8 it's the right thing to do, we're going to always
9 do the right thing and nothing else.

10 Look, we are in a highly regulated
11 industry, about that we're not confused. A gaming
12 license and losing a license in one place would be
13 tantamount to losing a license every place. So,
14 police don't get the notion at all that we do not
15 take this with ultimate seriousness, we do. We do.

16 I mean, remember, this is all
17 revolving around the situation of yield burning and
18 Steve Snyder. That's a very unique situation, 13
19 or 14 years in the past. But I mean, that's what
20 we're talking about.

21 COMMISSIONER MCHUGH: I'm -- I'm --
22 I understand that and I'm trying to extrap
23 olate
24 from

1 your
2 approa
3 ch to
4 this
5 what
6 your
7 approa
8 ch to
9 --

10 A. I don't think you can extrapolate,
11 that's what I'm trying to suggest. Please, don't
12 do that because I don't think it's an appropriate
13 extrapolation.

14 COMMISSIONER MCHUGH: All right.
15 I hear you, thank you.

16 COMMISSIONER CAMERON: My questions
17 have been asked and answered.

18 COMMISSIONER STEBBINS: A couple of
19 quick questions. And at least from my
20 understanding, a lot of Mr. Snyder's
21 background was in municipal finance,
22 municipal financing instruments, but yet he
23 was charged with being vice president of
24 corporate development. And what was it that

1 you saw in his background that you thought
2 made him the best candidate, starting out as
3 a consultant and an eventual hire, to do
4 some of that corporate development work?

5 A. Again, back to context, we were a
6 much, much, much, smaller company at that time. We
7 hadn't had a single -- we hadn't purchased a single
8 gaming company, we were just a race track business.
9 I think I bought one other race track by the time
10 Steve joined us. We needed some financial muscle
11 because we were in the finance markets and so
12 forth, precisely the kind of things that Steve was
13 good at.

14 We did go to a search firm, an
15 outside firm. He wasn't a friend of mine, I had
16 never met him before. They said, look we have a
17 guy in your market who is highly capable, well
18 respected, so forth, would you talk to him. And,
19 of course, I interviewed him in that context. I
20 did check around town, I knew -- I talked, in fact,
21 with the chairman of Meridian Bank, his former
22 employer at the time, got glowing recommendations.
23 And he seemed like the right guy at that time for
24 us.

1 Plus, he was right in town, it's
2 not easy to get people to come to Wyomissing,
3 Pennsylvania, by the way. So, Steve was a very,
4 very strong candidate and we were pleased to have
5 him at the time.

6 COMMISSIONER STEBBINS: Obviously,
7 the questions that we've had over the past
8 two days are with respect to the hiring
9 process for obviously two pretty key
10 employees. What role does your senior VP
11 of HR, and I know he's not here, but his
12 title says, you know, recruitment. What
13 role does your senior VP of HR have in
14 looking and assessing candidates for, you
15 know, what are obviously, kind of, the C
16 level sweet positions?

17 A. I mean, he's got the primary first
18 role. So, if we announce we want to hire for a
19 particular position, normally it would go through
20 HR to find candidates, to vet candidates, and do
21 all the preliminary checks and, you know, criminal
22 backgrounds if it gets that far, and all the
23 detailed stuff that would happen. Now, for
24 somebody else, somebody at a higher level, of

1 course, then it goes to the next level, which
2 starts there. It does start there, but then it
3 goes quickly to the office of general counsel, to
4 the compliance, to all the appropriate people that
5 would consider such a person. So, it goes through
6 many filters along the way.

7 And by the way, there are many --
8 Tim, I'm sure, can talk about it even better than I
9 because he deals with it day-to-day. You know,
10 many are called, but few are chosen. I mean, we go
11 through a lot of people, but there are many
12 declined in our business, many declined. We're
13 tough. It's very difficult to get a position with
14 us at any level.

15 COMMISSIONER STEBBINS: Thank you.

16 CHAIRMAN CROSBY: This has been, for
17 everybody I think, exhaustive and
18 exhausting. But I found it useful and
19 informative. I came into this largely with
20 two different concerns. There were three
21 appointments that had been made, that as I
22 read the reports, struck me as odd. One was
23 Mr. Edens' appoint of Mr. Mudd, one was your
24 appointment of Mr. Snyder, and one was your

1 appointment of Mr. Donaghue. And I had two
2 problems with them.

3 One is, it seemed to me that there
4 might have been hires of people of suspect
5 character and professional integrity. And
6 secondly, though, if they -- if they weren't
7 of suspect character and integrity, there
8 was an appearance problem. And what process
9 would one -- what process would your
10 company, and in this case also Fortress,
11 what was the process that permitted you to
12 make that judgment that from my standpoint
13 looked like, easy, shooting yourself in the
14 foot from a PR standpoint. So, that's where
15 I started on this conversation.

16 I won't comment on whatever I
17 thought I had on Mr. Mudd. My comment on
18 Mr. Snyder on the issue of the, you know, I
19 think you guys present yourselves well, and
20 I don't walk away with this sense of -- I,
21 you know, I can really appreciate the
22 complicated issues and how a professional --
23 a CEO like you could come to the conclusion
24 that these were men of integrity,

1 fundamentally men of integrity.

2 I am still troubled by the wisdom of
3 the appointment, nevertheless. In the case,
4 you know, in the case of Mudd, Mr. Edens,
5 this is relevant only because Mr. Edens is
6 on your Board. And Mr. Edens asked
7 everybody and apparently and said, what do
8 you think if we hire this guy Mudd. He just
9 -- he's disgrace from the Fannie Mae, but
10 what do you think we -- and he was advised,
11 you know, no problem, hire him. Well, he
12 was wrong, they had to fire him.

13 You said to everybody, what do you
14 think about Mr. Snyder. They said it's not
15 a big deal, everybody was doing it, I think
16 it's okay. They were wrong, you had to fire
17 Mr. Snyder. But nobody said to you, you
18 know, you might now want to think about
19 hiring Mr. Snyder because I'm not sure the
20 regulatory agencies are going to be
21 comfortable with this guy. Had somebody
22 said that, they would have been right.

23 And then in the case of Mr.
24 Donaghue, nobody in the process said it

1 looks odd to me, you know, this doesn't feel
2 right. He's a terrific guy, but how can we
3 hire a guy when we're in the gaming
4 business. Anyway, there might be regulators
5 like this one who says, wait a second, this
6 just doesn't -- there wasn't anybody.

7 So, what I walk away from this is,
8 it's not to be -- not a federal case, but
9 it's a little bit in the nature of what
10 Commissioner McHugh was getting at, you
11 know, as sort of where was your mind at. I
12 don't know who lives in the alternate
13 universe, we, in Massachusetts or you in
14 Pennsylvania.

15 In the world that we live in, the
16 ethics parameters under which we operate,
17 the scrutiny under which we operate, the
18 press environment under which we operate, it
19 would be unthinkable to make an appointment
20 like that without just really thinking
21 through the appearance side of it because
22 appearances matter. And I remain puzzled
23 that that didn't seem to be an issue, that
24 perspective didn't seem to be an issue for

1 you all.

2 You're welcome to comment on that,
3 but that's, sort of, my net effect.

4 A. Well, let me take a lame effort
5 at least. In Steve Snyder's case, we weren't even
6 in the gaming business at the time he joined us.
7 We were in the racing business, a whole different
8 level of probity there. We were looking for a
9 finance guy. It was not even a licensable position
10 at the time, no it -- it just wasn't. So, it was
11 pretty straightforward. We subsequently bought
12 some casinos and by the -- and that still was not a
13 problem. We bought the first two casinos in
14 Mississippi, the first we ever bought.

15 The problem came up in Canada, and
16 maybe it was an inevitable problem, but we didn't
17 contemplate at the time Steve joined us where that
18 might lead, but I had confidence in the person. I
19 did. I stood firm with that, and boy, have I been
20 rewarded over the many years that I have remained
21 loyal to Steve and he to us. He's been a great
22 hire, admired by all, and every and all places
23 where he and we do business, of that I have
24 absolute confidence.

1 In the situation with Frank, I'm not
2 sure I perceived the -- I mean the -- what you have
3 described is the magnitude of the issue. I think
4 it could have been a really serious issue, but as
5 it was only a report -- and maybe I don't
6 understand, even though I've talked to counsel
7 about it, you know, what the potential impact was.
8 But I, frankly, didn't see it as a potential threat
9 to our reputation.

10 Look, obviously, I would never hire
11 someone who would be a threat to our reputation or
12 a -- or a black mark on the company. I mean,
13 you've probably gathered here that I've built a
14 tremendous amount of passion of what we do as a
15 business, I care hugely about this. I'm the
16 largest shareholder. I've been in this business my
17 entire life. So, again, I do care. You may be
18 right that we missed it, look at Frank for a
19 minute, but this is the first time it has come up
20 and he is licensed in all those other
21 jurisdictions.

22 Now, again, this is here, that's
23 there and you can care or not one bit about it, but
24 we've been rewarded, so to speak, by -- in our

1 judgment to date and I hope that you'll come to the
2 same conclusion that unbalanced, this is a good
3 guy, a skilled, capable, solid, good guy that Penn
4 should be proud to have. You know, maybe we missed
5 something, but please don't leave with the thought
6 that we don't take this seriously and that we don't
7 passionately care about doing the right thing.
8 There is no company in the United States that cares
9 more than we about being the best, doing the best
10 and living up to our responsibilities.

11 And again, you can pick up the phone
12 and call -- and talk to some of the places we've
13 been for a long time. And I have great confidence
14 that they'll say the Penn guys are good guys and
15 they do what they say. So, that's the only way I
16 can answer, sir.

17 CHAIRMAN CROSBY Fair enough.

18 Anybody else?

19 COMMISSIONER MCHUGH: That was very
20 helpful.

21 COMMISSIONER CAMERON: Thank you.

22 CHAIRMAN CROSBY: Thank you, Mr.
23 Carlino.

24 THE WITNESS: I -- sometimes. I

1 apologize.

2 CHAIRMAN CROSBY: I have a radical
3 suggestion to make. I would not want to
4 deprive our last guest of an opportunity to
5 take center stage, but I don't know that
6 it's necessary unless you all feel that it's
7 necessary. But I just -- let me put
8 that out as a suggestion. I don't know
9 that -- certainly from my standpoint,
10 there's nothing that I need to talk to Mr.
11 Wilmott about that I haven't already
12 covered.

13 MR. MEYERS: We have no objection to
14 that, if --

15 MR. ALBANO: May I have just one
16 moment.

17 CHAIRMAN CROSBY: Sure.
18 I'm sorry you had to come all this way, but
19 --

20 MR. CARLINO: He's the smartest guy
21 in the -- anyway -- that you were the best.

22 Okay, we're have the all clear. I
23 guess we are content to leave poor Mr.
24 Wilmott in the back. I have been asked if

1 we would be permitted to make about a five
2 minute closing statement.

3 CHAIRMAN CROSBY: Absolutely. You
4 have -- you have that right in any event,
5 and whoever wants to do it may do it. No,
6 you're -- you're entitled to an opportunity
7 to make a closing statement of whatever wish
8 you want -- you like. You only just risk
9 the wrath of the Commission if it's very
10 long.

11 MR. ALBANO: My -- my plan was --

12 CHAIRMAN CROSBY: Was that on the
13 record? Sorry, Commissioners.

14 MR. ALBANO: Let me grab my notes to
15 make sure I will be brief.

16 CHAIRMAN CROSBY: Just to make
17 clear, you have the right to make a closing
18 statement of whatever length or content you
19 wish, without prejudice.

20 COMMISSIONER CAMERON: It's the long
21 hours.

22 MR. ALBANO: Thank you, and I will
23 be brief. I did want to thank, not just the
24 Commission, but also the staff, and inside

1 and outside counsel for all of the work
2 that's been quite obvious to us that we've
3 seen a grueling couple of days for, as we
4 were talking about earlier. And I know many
5 grueling days behind you and ahead of you.
6 And on behalf of Penn, I do sincerely want
7 to thank you for the time to consider the
8 witnesses that we brought here.

9 When I read the Raynham decision
10 that the Commission issued, I couldn't help
11 but notice the quote from the New Jersey
12 decision about how to define character. And
13 that court held that character is the sum
14 total of an individual's attributes, the
15 threat of intention good or bad, that weaves
16 its way through the experience of a
17 lifetime. And it says that we should judge
18 a person's character by evaluating his words
19 and deeds as they appear from the testimony,
20 and from all of the evidence in the record
21 before us. To focus on those attributes of
22 trustworthiness, honesty, integrity and
23 candor which are relevant to our inquiry.

24 In essence, I would suggest that is

1 a practical approach that looks at the
2 totality of the evidence, the totality of
3 the company, the totality of the people who
4 came before you here. The totality of the
5 circumstances, we suggest, shows here
6 clearly and convincingly that the company
7 and all of the qualifiers meet the statutory
8 definition of suitability under Chapter 23K.
9 I would suggest that the dedication to
10 compliance to high standards of performance
11 was compelling, was pervasive, and I think
12 there are a couple of solid pieces of
13 evidence that one can look at here.

14 It is not an accident that the
15 applicant and these qualifiers have been
16 licensed in so many jurisdictions so many
17 times over so many years. It is not an
18 accident that not one of them ever has been
19 denied a suitability determination. And
20 it's not an accident that in some of those
21 jurisdictions those determinations were made
22 based, in part, on an investigation done by
23 a highly respected and professional expert
24 firm, Spectrum, that did the investigation

1 here, and that in those cases the outcome
2 was all the same. That there was a
3 suitability determination.

4 I know that the company recognizes
5 that the questions that have been raised
6 here in these past two days by the
7 Commission are important ones. And, in
8 fact, I know they have been taken much to
9 heart and considered, and will be considered
10 moving forward. I would ask, however, that
11 those questions be viewed in context.

12 And here, I would say, that one
13 highly relevant and important measure of
14 whether the processes used by a company to
15 select its executives is sufficiently
16 diligent, sufficiently exhaustive, is to
17 look at the product, the people who got
18 hired, and to judge the character, the
19 integrity, the honesty of the people who
20 survive that process. So again, it is not
21 an accident that Penn became an industry
22 leader. It's not an accident that they are
23 an industry model of financial stability,
24 and it's not an accident, although we only

1 heard a bit of testimony about this, that
2 they make the kinds of contributions they
3 make to the communities they're in.

4 All of those results are the direct
5 product of the hiring process because you
6 only achieve those results from the people
7 whom you have hired. And so, could the
8 processes be better, yes, they could be.
9 Are the people all perfect, no, they're not.
10 But in fairness, no question from Mr. Mackey
11 or from the Commission suggested that that
12 was the expectation or the standard, that we
13 would produce perfect people from this
14 process.

15 But I do say this, that if we're
16 measuring did the process work, then one
17 really ought to look at who has come here
18 before you over the last two days and judge
19 their integrity, their character, their
20 honesty.

21 And the other explicit factors, and
22 here I will refer to the statute, that are
23 in Section 12, beyond what those witnesses
24 honesty. Do the applicants bring financial

1 stability and a history of compliance with
2 gaming licensing requirements in other
3 jurisdictions, yes. Do they have the
4 business practices and the business ability
5 to establish and maintain a successful
6 gaming establishment, well, absolutely.
7 That seems to be all they do and they've
8 done it for quite some time successfully in
9 so many jurisdictions. So yes, the
10 statutory factors we say are met.

11 When you consider the circumstances
12 of Mr. Snyder's hire, Mr. Mudd's hire, and
13 Mr. Donaghue's hire, there are certain
14 things I would ask you to keep in mind. One
15 is -- let me start with Mr. Snyder.
16 Obviously, a complex area of the law. I can
17 say why the applicants submitted that list
18 of all of the organizations in the industry
19 who ran into similar yield burn problems.
20 And I can -- it was definitely not an
21 attempt to mount an argument of everybody
22 does it, so therefore it must have been
23 okay. What it was an attempt to do, was to
24 support Mr. Snyder's testimony that as a

1 young man in that industry, when he looked
2 around at how people had tried to solve this
3 problem that is created by the confluence of
4 IRS regulations that say, municipality, thou
5 shalt not make a dime more than you would
6 have made on the first financing or the tax
7 exemption explodes and everybody is very
8 unhappy. And the SEC regulations that say,
9 in the end, thou shalt not calculate yield
10 based on the portfolio because you get some
11 crazy outcomes on some securities, so do it
12 on a per security basis.

13 That exhibit merely shows that if we
14 try and go back in time and figure out 17 to
15 20 years ago what was in Mr. Snyder's head,
16 how was he trying to deal with this in a
17 company that supported it, where he used the
18 company software to come up with the proper
19 markup, that that's a harder decision --
20 that was a harder position to be in than it
21 appears today when new regulations have made
22 it absolutely clear how to handle that
23 situation.

24 Of course, it's also true that the

1 incident occurred -- that the transactions
2 occurred 17 to 20 years ago. It was
3 important to him that he admitted no
4 wrongdoing. The guy was left a bit on his
5 own. He lost his job, he had to defend
6 himself, he won it back only by subjecting
7 himself to what, at the time, was considered
8 the most rigorous licensing process and
9 known in the country. And he went through
10 that and he passed, and he's passed every
11 time he's been reviewed since then.

12 From Penn's perspective -- I mean,
13 what the evidence showed, Mr. Carlino
14 mentioned, we're in the 1990s -- okay,
15 again, remember we're in the 1990s. This is
16 a different company in the 1990s than it is
17 today. But we're in the 1990s and he goes
18 to seek outside counsel about how to assess
19 the situation that Mr. Snyder presents. And
20 as Mr. Savitch said, after the departure of
21 Mr. Snyder and his return, Mr. Savitch went
22 to the Ballard firm, again, to assess the
23 situation.

24 Now, we can think of, and I think

1 many people did over the course of the last
2 two days, how one might have otherwise
3 structured the review. But I would say that
4 it -- it can't be suggested that those
5 processes were in any way cavalier. And
6 that there is a match, I would say, between
7 the statutory factors that the Commission
8 applies and the factors that, somewhat more
9 colloquially, Mr. Carlino talked about
10 because he was talking about assessing Mr.
11 Snyder's integrity, his character, his
12 honor, and there does need to be room for
13 that, even in a highly regulated, maybe
14 particularly in a highly regulated industry
15 for those types of judgments to be made.

16 Unfortunately for Penn, if this REIT
17 transaction -- I shouldn't say, if, or
18 people will start having coronaries behind
19 me, but if the REIT transaction moves
20 forward, Penn gaming loses in a sense, Mr.
21 Snyder because he will be moving over to the
22 REIT. But still it's -- he's a qualifier
23 and it's highly relevant to the Commission's
24 determinations. The same is true of Mr.

1 Edens, by the way. Mr. Edens would move
2 over the REIT.

3 Here's what I wanted -- what I'd ask
4 you to think of when you consider the
5 Fortress situation and Mr. Mudd. We did
6 make a decision, I think it was the
7 appropriate one. Now, we, now, I'm talking
8 about us three, we made a decision that we
9 probably shouldn't try to use these
10 proceedings to determine the cause of the
11 financial crisis.

12 To bring out the statements made by
13 Alan Greenspan about the strength of the
14 sub-prime market minutes before it implodes,
15 or the FCIC Commission report that after, I
16 think, they -- 700 witnesses and millions of
17 documents said Fannie Mae and Freddie Mac
18 were not the cause of the financial crisis,
19 and if you compare the default rates of
20 Fannie Mae and Freddie Mac's servicing
21 average citizens, the default rate of their
22 sub-prime package to the default rate of the
23 private banks, that it is somewhere -- the
24 GFC's default rate is somewhere six. The

1 default rate of the private banks are
2 somewhere around 28 percent.

3 So, what's the old saying? We
4 decided to pass over that in silence, I
5 guess, until -- until now, and deal with
6 what seems to me to be quite a proper issue,
7 how did Fortress handle the situation where
8 a member of its Board and an officer of the
9 company was sued by the SEC in a civil
10 action. And what the record shows is that
11 he was almost instantly put on leave of
12 absence, and within 30 days they had his
13 resignation. That -- I think that
14 chronology is -- bears the most on that
15 issue, which again to put in context, is the
16 issue of how a Board of another company --
17 not Penn, another company that has no role
18 in the management of Penn, handled the
19 removal of a Board member who was sued in a
20 civil action.

21 And so that is what I'd ask you to
22 consider when you think about and determine
23 the relevance of Fortress' decisions with
24 respect to Mr. Mudd.

1 That leaves Mr. Donaghue. Mr.
2 Donaghue, although a young man at the time
3 of his service on the Board, does in fact --
4 did, in fact, have a long and distinguished
5 career in law enforcement, public service.
6 What the evidence shows is that Mr. Donaghue
7 made a reasoned, legal judgment when asked
8 to give his advice as chief counsel to the
9 Board. When the issue arose in the context
10 of a Grand Jury investigation, he cooperated
11 fully, he held nothing back, he was one of
12 about 20 agency employees -- apart from
13 other witnesses, hauled before that Grand
14 Jury. Not charged with any wrongdoing, not
15 civilly, not criminally, and what did Penn
16 do.

17 Well, once all the evidence came in
18 it became clear that what Penn did was have
19 its general counsel read the Grand Jury
20 report to people in their -- their most
21 senior compliance people who -- what was the
22 evidence. I think it was somewhere like 65
23 years or something of combined experience,
24 read the Grand Jury report, analyze what is

1 there and what is not there. And then we
2 learn that Mr. Savitch actually talked to
3 some other people, too in the course of the
4 investigation. And I would suggest that
5 what those folks saw when they read the
6 Grand Jury report was what I believe we saw
7 when we heard Mr. Donaghue testify, that it
8 was not reasonable, fair, or just to have
9 Mr. Donaghue's testimony before that Grand
10 Jury be in any way, considered an impediment
11 to his career. I would suggest that what
12 you saw in Mr. Donaghue was a lawyer who
13 made a call.

14 I don't know any lawyer who has
15 never lost a case. I certainly have.
16 Sometimes -- I don't like to say this, but
17 sometimes probably because I was out
18 lawyered, but I know I've lost some. I know
19 I drive -- I can be driving alone in the car
20 and say out loud to myself, why didn't I
21 think of that argument in a case that was
22 tried in 2005. So yes, you can make
23 mistakes, but at least I can say to myself
24 in those situations, I know I tried, I know

1 I did my best. And so can Mr. Donaghue and
2 so did he, when he testified here and when
3 he made the judgment that he made.

4 I -- I was and am proud to have
5 represented him in this case, and for Penn
6 to apply their standards that again, I think
7 do mirror some of the statutory standards.
8 That they say, we will look beyond the
9 report, the facto -- report, and actually
10 study, what does it tell us about Frank
11 Donaghue. And what it told them and what
12 the Commission learned is that there is this
13 implication that Mr. Donaghue had made an
14 order that he said he didn't make. We
15 learned today, not only didn't he make the
16 order, but until today he was never asked in
17 any proceeding about his side of the story
18 about what happened at that meeting, because
19 even the Spectrum report acknowledges that
20 there is no indication that Mr. Donaghue was
21 ever given that opportunity during the Grand
22 Jury hearing, and he confirmed that to you.

23 So on Mr. Donaghue's hire, I say if
24 you apply the suitability standards of the

1 statute that -- that you will be doing, in
2 essence, what the company did and said, what
3 is important here is not to sacrifice
4 someone because of a headline, which is the
5 decision Penn made. But what is important
6 is to assess his honesty, his integrity, and
7 his character. And he satisfies, more than
8 satisfies those standards.

9 That's why, in the end, we are
10 asking based on largely, of course,
11 Spectrum's report, but also what he will
12 have to decide is you -- you will judge
13 those witnesses. But our position is that
14 they did satisfy the statutory standards for
15 suitability. And we ask what this
16 Commission do what all those other
17 jurisdictions have done, not because you
18 must defer to those other jurisdictions,
19 because you need not, but because it is as
20 the hiring decisions were, the right, fair,
21 just thing to do based on an assessment of
22 the honesty and integrity of the people who
23 are here before you.

24 And so for that reason we do ask for

1 a favorable suitability ruling on the
2 applicant and all of the qualifiers. And
3 greatly appreciate the time. And I guess, I
4 was not as brief as I promised I would be,
5 so that is a mark against me, not against
6 them. Thank you.

7 COMMISSIONER MCHUGH: Thank you.

8 CHAIRMAN CROSBY: Yeah, thank you
9 very much, Mr. Albano. Are we all set?

10 COMMISSIONER MCHUGH: Yeah.

11 CHAIRMAN CROSBY: Anything else
12 anybody? Do we need a motion to adjourn?

13 COMMISSIONER MCHUGH: Sure.

14 CHAIRMAN CROSBY: How would you like
15 to do that?

16 COMMISSIONER MCHUGH: I move that we
17 adjourn.

18 COMMISSIONER STEBBINS: Second.

19 COMMISSIONER CAMERON: Second.

20 CHAIRMAN CROSBY: Is there any
21 discussion? All in favor?

22 COMMISSIONER MCHUGH: Aye.

23 COMMISSIONER CAMERON: Aye.

24 COMMISSIONER ZUNIGA: Aye.

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COMMISSIONER STEBBINS: Aye.

CHAIRMAN CROSBY: Thank you very
much.

MR. ALBANO: Thank you very much.

COMMISSIONER CAMERON: Thank you.

(Proceedings concluded at 4:52 p.m.)

C E R T I F I C A T E

I, Pauline L. Bailey, an Approved Court Reporter,
do hereby certify that the foregoing is a true and
accurate record of the proceedings.

I Pauline L. Bailey, further certify that the
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I, Pauline L. Bailey, further certify I neither am
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parties to the action in which this hearing was
taken and further that I am not financially nor
otherwise interested in the outcome of this action.

Proceedings recorded by Verbatim means, and
transcript produced from computer.

WITNESS MY HAND, this 23rd day of September,
2013.

PAULINE L. BAILEY
Notary Public



My Commission Expires
November 7, 2014

