

BEFORE THE NEVADA GAMING COMMISSION

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A G E N D A

CLARK COUNTY SCHOOL DISTRICT BOARD ROOM  
2832 EAST FLANINGO ROAD  
LAS VEGAS NEVADA

Thursday, August 23, 1984  
9:05 A.M.

REPORTED BY: ERIC V. NELSON, CSR NO. 57

**COPY**

**COMMISSION MEMBERS PRESENT**

PAUL A. BIBLE, CHAIRMAN  
JERRY LOCKHART  
JACK C. WALSH  
KENNETH GRAGSON  
BOB J. LEWIS

**BOARD MEMBERS PRESENT**

JAMES AVANCE, CHAIRMAN  
RICHARD G. NYTE

**BOARD MEMBER ABSENT**

PATRICIA BECKER

**EXECUTIVE SECRETARY**

IRENE F. MORROS

**APPEARANCES**

For the Commission:

ROBERT A. CALLAWAY  
Deputy Attorney General

29. (Misc. Item #6)	
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30. (83-85)	
CHEYENNE GAMBLING HALL, INC.	120,137
31. (84-080)	
SIGMA, INC.	120

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cards. Just approve Nonrestricted Item 84-081 as approved and conditioned by the Board.

# ROLL CALL

SECRETARY MORROS:

MR. LOCKHART:	Aye.
MR. LEWIS:	Aye.
MR. GRAGSON:	Aye.
MR. WALSH:	Aye.
MR. BIBLE:	Aye.

28. (84-076)  
WENDOVER PROPERTIES  
29. (Misc. Item #6)

SECRETARY MORROS: On page 29, Item 28, 84-076 has been referred back to staff by the Board, and Item 29, Miscellaneous Item No. 6 has been removed from the agenda.

30. (83-85)  
CHEYENNE GAMBLING HALL, INC.  
31. (84-080)  
SIGMA, INC.

SECRETARY MORROS: On page 30, Item 30 has been set over to 1:30 this afternoon.

And item 31, 84-080 was removed from the June agenda of the Commission in the matter of the application of Sigma, Inc., of Tokyo, Japan. On June 20th, 1984, the Board recommended approval of the application as shown on your agenda.

CHAIRMAN BIBLE: Madam Secretary, I have had a



1 much.

2 CHAIRMAN BIBLE: Thank you.

3  
4 30. (83-85)  
5 CHEYENNE GAMBLING HALL, INC.

6 SECRETARY MORROS: The final item on the  
7 Commission's agenda today, Mr. Chairman, I will introduce it  
8 into the record.

9 CHAIRMAN BIBLE: Please.

10 SECRETARY MORROS: On page 30 of your agenda,  
11 Item No. 30, 83-85, which has been continued from the May  
12 Commission meeting at the applicant attorney's request.  
13 This is the application to license Frank Paul Silver as the  
14 president and director to hold 100 percent of Cheyenne  
15 Gambling Hall, Inc., dba Cheyenne Gambling Hall and Saloon  
16 in North Las Vegas.

17 On February 8th, 1984, the Board recommended  
18 denial of this application in accordance with its order of  
19 recommendation as filed with the Commission with prejudice.

20 CHAIRMAN BIBLE: Bob, would you introduce  
21 yourself, please?

22 MR. PECIOLE: Yes, Mr. Chairman, for the  
23 record, attorney Robert M. Peciole, appearing for the  
24 applicant, and present is Dr. Silver, who is applicant for  
25 the gaming license.

1           CHAIRMAN BIBLE: All right. How do you wish to  
2 proceed today, Bob? Let me, of course, remind you that we  
3 have volumes on this, and large transcripts from your  
4 various hearings before the Board and the Commission.

5           I know that it's been available to us for some  
6 time. And I don't see any need for you to go back through  
7 everything that you have done already. I might be of some  
8 assistance to you and direct you to areas where I have  
9 concerns and maybe ask the other Commissioners if they could  
10 ask you to go into areas where they have concerns, and that  
11 way you can address your presentation to the concerns rather  
12 than trying to shotgun it and hope you hit everybody's  
13 concern. Would that be all right with you?

14          MR. PECCOLE: Yes. That would be the proper  
15 procedure for us, yes.

16          CHAIRMAN BIBLE: The two areas where I'm  
17 concerned are the welfare problem, and the situation with  
18 the Ellis conviction, and by the situation with the Ellis  
19 conviction, I mean at the last time you appeared before the  
20 Commission you introduced a document which showed that  
21 Mr. Ellis had been convicted in justice court of assault and  
22 battery. When you got before the Board after we referred it  
23 back, the Board produced documents which showed that the  
24 Ellis conviction had been reversed in the district court,  
25 and the testimony and the questions by Patricia Becker to

1 Dr. Silver would indicate that Dr. Silver was present at  
2 that district court hearing, although not called as a  
3 witness. And when you introduced the exhibit to us he was  
4 present when you did so, and the impression was clearly left  
5 with me that the Ellis conviction was final in the courts as  
6 far as Mr. Ellis was concerned.

7 So I would like for my own satisfaction for you  
8 to go into those two areas, whichever order you want. I  
9 will ask other members of the Commission if there is areas  
10 that they would like you specifically to go into or else  
11 would you rather have him go into that now and take up these  
12 other areas?

13 COMMISSIONER GRAGSON: I think so because that  
14 is the two that I had.

15 CHAIRMAN BIBLE: Jack, is that all right?

16 COMMISSIONER WALSH: That will be fine.

17 CHAIRMAN BIBLE: Proceed, please.

18 MR. PECCOLE: I would have Dr. Silver address  
19 that question and let him explain.

20 CHAIRMAN BIBLE: May I have him sworn, please.

21 (One witness sworn: Dr. Silver.)

22 DR. SILVER: My name is Frank Silver.

23 Concerning the Gordon Ellis event, when the application was  
24 initially brought forward with the Gaming Control Board,  
25 after the investigation by all of the investigators, we

1 specifically asked if there were any problems, and I was  
2 told by all of the investigators what a cooperative  
3 candidate I was and how I cooperated with them and that they  
4 did not anticipate any problems of any note.

5 I think I was several hours before the Control  
6 Board hearing. Then I went to the Control Board hearing,  
7 and at that hearing Miss Becker, when I made the comment,  
8 and it's in the record, that I had never committed any,  
9 quotes, "major violation of gaming," Miss Becker then  
10 commented, and this is a quotation, "Beating someone up or  
11 having someone beaten up is a major violation of gaming."

12 I have since found out that that is not  
13 correct, that it is not a major violation of gaming.

14 Following this Miss Becker went on to say in a  
15 subsequent hearing, after I took a polygraph about not  
16 having this person beaten up, Miss Becker then said that she  
17 did not accuse me of that. Then she said that Avance  
18 accused me of that. Then Avance said he didn't, and then we  
19 were going back to the record, which Mr. Pascole was  
20 directing, and at that point in time Miss Becker said she  
21 didn't mean that.

22 So now we get to the point where the newspaper  
23 printed that I, local physician here in town, had someone  
24 beaten up. They did not print that Miss Becker didn't mean  
25 that, that she didn't say that and Mr. Avance didn't have

1 anything to do with that. But the record read that I had  
2 someone beaten up, which I did not have, and I have taken a  
3 polygraph to that, which addresses itself to that particular  
4 instance or allegation.

5 I would like you gentlemen to understand one  
6 thing, that a serious allegation like that I would think,  
7 particularly by investigating board, and particularly to  
8 someone who is in the profession of medicine, would look  
9 very poorly upon that individual.

10 I would think that before an allegation of that  
11 seriousness was made, and before it appeared in the  
12 newspaper, and being an incorrect comment, I would have  
13 thought that an investigative board would have used great  
14 care and would have known what they were saying before they  
15 made that allegation.

16 However, that was not done. There was no care  
17 used. And that has affected me in a very, very serious  
18 psychological way. Whether that is accepted as believable  
19 or not, that's the truth.

20 Now, following that my present general manager,  
21 Mr. Finneran, suggested that we get the information from the  
22 Searchlight Justice of the Peace. And we did. And in that  
23 information it noted that Mr. Ellis was arrested for drunk  
24 and violent and disorderly conduct, he was arrested by the  
25 security guards, he was taken to the Justice of the Peace,



1 he was tried before that judge in Searchlight. He was found  
2 guilty of disorderly conduct, fined. And that was the end  
3 of the story.

4 Now, I did not know that the Control Board  
5 would make such a serious allegation without having all that  
6 have information. I thought all of that information was in  
7 their hands. But it turned out it was not. And that was  
8 all material that was in a court. It was all public  
9 information.

10 But they had not gotten that information. They  
11 had made this serious allegation, and I paid them to do this  
12 investigation on me and they had not carried out a proper  
13 investigation and they had not done what I consider they  
14 should do before making a public statement, and then  
15 apologizing about it because Miss Becker finally said she  
16 didn't say that, and then she said she didn't mean that. I  
17 never saw that printed in the newspaper following the  
18 hearing.

19 Now, when I came before you, Mr. Bible, as the  
20 chairman, and the rest of the Commission, my main concern  
21 was that I was accused of having someone beaten up, which I  
22 had no part in, never had any part in, and that's clearly  
23 the established fact.

24 My concerns were not for the various kinds of  
25 mechanisms that can go through court hearings where someone

1 is accused of something, they are convicted of it, they are  
2 fined for it and I thought that justice was carried out.  
3 That was the end of the story. My main concern was not that  
4 Mr. Ellis was convicted, was that I had no one beaten up.  
5 That was my major concern.

6 Unfortunately, that comment I guess,  
7 investigation by ambush is a very good one because I did not  
8 understand that we had to go any further than the fact that  
9 I was unfairly accused of doing something, which was in fact  
10 untrue.

11 Now, following this Miss Becker, who for  
12 specific reasons I know exactly why this is being done -- I  
13 didn't know it at the time but now I have good basis for all  
14 of this, and my concern was that --

15 CHAIRMAN BIBLE: What do you mean by that,  
16 Doctor?

17 DR. SILVER: I do not feel that I have been  
18 given a fair and impartial investigation.

19 CHAIRMAN BIBLE: Why?

20 DR. SILVER: Because I feel that Miss Becker  
21 has conducted an investigation of some type of vendetta  
22 against me.

23 CHAIRMAN BIBLE: Why?

24 DR. SILVER: Based on the fact that my daughter  
25 has brought an action against her brother concerning his

1 practice of law, which I knew nothing about. I had nothing  
2 to do with that. Also I have --

3 CHAIRMAN BIBLE: Wait, wait. Stop. Back up a  
4 second.

5 Do you feel that Miss Becker has been unfair to  
6 you because your daughter filed an action against  
7 Miss Becker's brother?

8 DR. SILVER: Yes, I do.

9 CHAIRMAN BIBLE: What type of an action are you  
10 talking about?

11 DR. SILVER: It's an action pending before the  
12 Bar Association.

13 CHAIRMAN BIBLE: For legal malpractice or  
14 professional neglect or what?

15 DR. SILVER: Something like professional --  
16 accepting a fee and not doing the work or something like  
17 that.

18 CHAIRMAN BIBLE: Okay.

19 DR. SILVER: Now of course, I didn't know that  
20 Miss Becker had a brother, and I didn't know that my  
21 daughter had this action pending against, but as a  
22 physician, I saw at this initial Gaming Board hearing that  
23 this individual, and I am qualified to say when I think  
24 somebody comes out of the box with not an indifferent  
25 attitude but with a great hostility, I think that there is



1 something, that that is not an indifferent kind of an  
2 approach to the subject and that is not an unprejudicial  
3 evaluation of all of the information that's been presented.

4 I want to go forward now with this Ellis  
5 information because I don't believe you have ever really  
6 gotten all of the information. All you do is you get lead  
7 in for a trap and then somebody stands back and they look in  
8 their book and they say "Ah, you didn't say that." Well, I  
9 had no reason to mislead you about the appeal. My concern  
10 was that I never ever had anyone beaten up. That was the  
11 reason this whole thing went into the Ellis event.

12 Now, what was not mentioned to you, I'm sure,  
13 is that when that trial was held, and I was informed about  
14 it at the last minute, held in the district court here in  
15 Las Vegas, number one, the district attorney who had tried  
16 the case in Searchlight was not present. And that number  
17 two, the attorney or the district attorney who came forward  
18 to hear the appeal or to try it again, walked up to me,  
19 outside of the courtroom and said, "What do you know about  
20 this case?"

21 And I said, "You mean to tell me you are going  
22 to come in here and you are going to plead the case against  
23 this appeal and you haven't even -- you don't even know the  
24 names of the defendant?"

25 He said he knew nothing about the case.

1                   Now, he approached me and he said he'd like me  
2 to tell him about it, and then the door opened and they  
3 said, "Come in, the trial is going to start." Well, I was  
4 excluded as a witness. Dr. Brown, who is an eyewitness to  
5 this, was also excluded as a witness.

6                   I was never called to come into that courtroom  
7 to give any testimony, but interestingly enough, the  
8 information that you have not been given, I'm sure, is that  
9 the three people that testified at that particular  
10 overturning or appeal were: My partner, Dr. Myer, who I was  
11 having a problem with then, and two other individuals who  
12 are listed there as Lorne and Vicky Phoenix. Now those two  
13 people I discovered, well, one of them, was working without  
14 a workcard at the casino, and was also being paid under an  
15 assumed name. And I insisted that they immediately be  
16 terminated by the general manager. Believe me,  
17 Mr. Bible, I didn't make any friends by doing that. Those  
18 people were not even in the casino during this whole event  
19 and they went in and testified.

20                  Now, I did state and Dr. Brown also stated,  
21 that this man received \$6400 following the whole case. It  
22 was my impression, and it still is, that I have no concern  
23 over the fact that the county was negligent in not having a  
24 prepared kind of way to conduct that appeal and the fact  
25 that these other people came in, and you can see who they

1 were, and that the man was let off on a misdemeanor. I  
2 think -- I am not a lawyer, but I think misdemeanors are  
3 rarely appealed, I would think.

4 But in any event, it was not important in my  
5 mind to go through all of this, which I have just gone  
6 through now. The only thing I thought you wanted to hear  
7 about is did you have someone beaten up, and this has  
8 absolutely nothing to do with having someone beaten up.

9 CHAIRMAN BIBLE: Doctor, let me be very  
10 specific with what concerns me. The last time you appeared  
11 before us your counsel was given the documents from the  
12 justice court which showed that Mr. Ellis had been  
13 convicted. And he introduced those evidence and made a big  
14 thing of the fact that the man who supposedly you had beaten  
15 up was actually convicted in justice court in the same  
16 incident. And I know in my own mind that had a tremendous  
17 impact about what were the true facts of that particular  
18 incident.

19 Now, you stood before us at that time, and now  
20 that that conviction was not valid because it had been  
21 reversed, and did not volunteer or come forward in any way  
22 to say, "Now, wait a second, that conviction that my  
23 attorney has just introduced isn't the end of the matter."

24 In other words, I feel you had an affirmative  
25 duty to speak and that you let a false impression be left

1 with this Commission by the introduction of the document  
2 from the justice court in the absence of what happened on  
3 appeal. Now I'd like you to explain for me why you didn't  
4 say anything then to us or ask your attorney to say  
5 something to us that Mr. Ellis' conviction had been  
6 reversed.

7 DR. SILVER: Well, as I just said, I thought  
8 that the main problem we were talking about was did I have  
9 someone beaten up. I thought that that was --

10 CHAIRMAN BIBLE: I think it started out that  
11 way. Now I am concerned about whether or not you made a  
12 material -- you materially refused to speak in a situation  
13 where you had a duty to speak. You knew you had knowledge  
14 of that fact, and you made a nondisclosure in a situation  
15 where you had an affirmative duty to speak the entire truth  
16 to this Commission.

12 17 DR. SILVER: We get back to the same thing,  
18 Mr. Bible. I would not have even presented the thing from  
19 the justice court and suggested that we get that piece of  
20 information. My whole commentary on the whole event had  
21 very little to do with his being convicted, with his  
22 being -- his appeal being overturned, and with him getting  
23 \$6,000 in damages from the insurance company, who settled  
24 the affair without giving us a chance to reappeal.

25 My whole concern was that the major violation

1 that I was accused of, the major gaming violation, was that  
2 I had someone beaten up.

3 CHAIRMAN BIBLE: Okay. I'm no longer concerned  
4 about whether you did or did not have that man beaten up.  
5 Okay. Let's go the step beyond that.

6 DR. SILVER: Fine.

7 CHAIRMAN BIBLE: What I want to know is whether  
8 or not you misled us through the introduction of that  
9 conviction from justice court while you knew that that  
10 conviction was not valid.

11 DR. SILVER: The only thing I can say to you,  
12 Mr. Bible, is that I did not intend to mislead you because  
13 in my mind that had nothing to do with the subject. I did  
14 not feel I was hiding anything. I didn't know that the  
15 people from the Gaming Control Board didn't have all that  
16 information. That's public information from the court.

17 CHAIRMAN BIBLE: Yes, but you introduced a  
18 piece of information that was false in the sense that it was  
19 not complete. It was a conviction that had been reversed.  
20 And I know the impact on my mind when I saw that conviction,  
21 I said, "How could this man, how could Dr. Silver have had a  
22 guy beaten up who gets convicted of assault and battery  
23 arising out of the same incident."

24 Then I find out after you go to the Board  
25 after we referred it back, that the matter had gone to



1 district court, had been reversed in district court, and you  
2 stood silent before us and knew this information and didn't  
3 say anything to us.

4 DR. SILVER: Well, by the same token, prior to  
5 that information being discussed at the Gaming Control  
6 Board, Miss Becker, who started out on the same issue about  
7 having the person beaten up and then moving away from she  
8 didn't say that, eventually what happened is we come out, we  
9 make an allegation, there's an honest explanation for it,  
10 and then, there are other sideline events that came in that  
11 had nothing to do with the original allegation. My only  
12 concern --

13 CHAIRMAN BIBLE: But, Doctor, I am trying to  
14 judge your character. And I get a limited opportunity to do  
15 so when you appear before me or when I read your transcript  
16 or I read what you have done in your life.

17 Now, you appeared before us and said nothing  
18 when Bob Peccole introduced that conviction. You didn't  
19 say, "Wait a second, Bob, that conviction was reversed."  
20 You didn't say, "Members of the Commission, I want you to  
21 understand that the man went to court later on and it was  
22 thrown out by the district court." You left the impression  
23 with us that that man had been convicted. And that's what  
24 bothers me.

25 DR. SILVER: Well, my only defense for that,

1 Mr. Bible, whether it be character or noncharacter, is that  
2 there was no way for me to know that you didn't know all  
3 that information. There was no way for me to think that I  
4 was hiding something from you. That was obvious  
5 information. They had all the other information. There was  
6 no way for me to think that that in my mind was important  
7 because that was not the issue that I was talking about.

8 Now I can only tell you that I wasn't trying to  
9 hide anything. I am still not trying to hide anything and I  
10 still don't care that that thing was overturned because I  
11 know what happened. I know that that fellow -- Also,  
12 another interesting thing, you have gotten -- you don't have  
13 any information here.

14 Did you also know that this fellow that I was  
15 accused of beating up -- because you are not getting, it  
16 seems like, all the information; you only get the things  
17 that want to be passed in -- did you know also that that  
18 fellow that Becker said that I had beaten up, did you know  
19 that, number one, he is not allowed to drink in the present  
20 casino that he works in, and, number two, he is not allowed  
21 to go into the casino next door, and, number three, his wife  
22 divorced him because he beat her so severely and assaulted  
23 her that he almost caused permanent physical damage to her?  
24 You don't have that information.

25 All I am trying to get across to you is that

13  
1 this whole picture of this individual, and myself being  
2 accused of beating him up, all of the legal terms and all of  
3 the back to courts and out of courts and the fact that we  
4 have an attorney who comes in and doesn't know anything  
5 about the case, in spite of what you are saying, now, if I  
6 can think back, I had nothing to hide. I am not hiding a  
7 public issue that's out there.

8 All I was trying to get across to this  
9 Commission is I never had the gentleman beaten up, and  
10 that's still a fact. I never had the gentleman beaten up.  
11 And just because that appeal was overturned, it had nothing  
12 to do with me having the man beaten up.

13 And that's the only way -- I didn't want to  
14 hide it. I thought they knew all about it. They had all  
15 the information. This was not a secret document.

16 COMMISSIONER GRAGSON: Mr. Silver?

17 DR. SILVER: Yes, sir.

18 COMMISSIONER GRAGSON: Dr. Silver. If you  
19 thought that we had the overturn of the conviction in our  
20 possession or in our summary, why wouldn't we have the JP  
21 conviction in our summary, too?

22 DR. SILVER: I thought you had that, too,  
23 Commissioner.

24 CHAIRMAN BIBLE: We told you when we received  
25 it we had never seen it before. It is right in the



1 transcript.

2 DR. SILVER: When that was given to you, that's  
3 correct.

4 CHAIRMAN BIBLE: We said we had never seen this  
5 and it was clear from the arrest sheet and so forth how big  
6 a guy he was. All of the things you were seeing were right  
7 there. And here we are trying to decide did you beat the  
8 guy up or have him beaten up or not, and all of a sudden Bob  
9 Peccole introduces a conviction that shows that the guy that  
10 you supposedly beat up was convicted in a criminal court  
11 arising out of the incident.

12 Well, it completely blew away any belief on my  
13 part that you had this guy beaten up if he was convicted in  
14 justice court. I mean, you devastated that argument that  
15 was being made about you having him beaten up by introducing  
16 this conviction.

17 But yet -- and it had that impact. But yet,  
18 you knew that the conviction wasn't valid, had not been  
19 upheld. That's what bothers me.

20 DR. SILVER: Well, we go back to the same  
21 thing. You start out and we start with a false accusation,  
22 which is defended, and then we add all of the things that go  
23 around it, and I am sorry. To me, the main and important  
24 part of this whole thing was that there was a false  
25 accusation made. That's the only thing I can tell you. And

1 that all of the other legal -- and I said the man received  
2 damages. I would think that how could someone convicted of  
3 a crime, if we were hiding something, could have received  
4 damages. I'm not trying to make after the fact excuses.  
5 But I tried to give the information involving what happened  
6 and the fact that I had nothing to do with that gentleman  
7 being beaten up, that was my main concern.

8 And all of the other things that attached  
9 themselves, I would think that when you start out with a  
10 false premise and you go along the road, that anything else  
11 you gather after that cannot be too valid.

12 COMMISSIONER GRAGSON: Dr. Silver, my point is  
13 having the guy beat up, the guy sounds like he was told that  
14 somebody should have rapped him, probably. He should have  
15 been sent out, the way he was acting. I don't think that  
16 myself I would -- I didn't -- I think you kick a guy out and  
17 he's going to fight you, you are going to have somebody take  
18 him out forcibly.

19 DR. SILVER: I think that is fine,  
20 Commissioner, you are saying that. But I am not going to  
21 come back and say in a public meeting and put it in the  
22 newspaper you had the guy beaten up. I think that's quite  
23 different now.

24 COMMISSIONER GRAGSON: I am not saying that.

25 DR. SILVER: What you are saying is you could

1 accept that. But that wasn't presented to me that way and I  
2 have patients that came into the office and would say, "Ah,  
3 you are beating people up."

4 I don't think that's fair. I think that's an  
5 unfair advantage to take of me. And all I said to you was  
6 that my main concern was not all this legal baloney where he  
7 get appeals and the guy is convicted. That to me didn't  
8 matter. The only thing that mattered to me is that I told  
9 the truth. I did not have anyone beaten up. And I still  
10 stand by that. I never tried to hide that. And I tried to  
11 give you that information.

12 And all of these other things that came along  
13 now, we forget the issue that we went out for, which is  
14 being falsely accused of doing something, having that put in  
15 the newspaper, and then the newspaper not printing a  
16 retraction that I didn't have somebody -- where are my  
17 rights now? Where do I stand now?

18 COMMISSIONER GRAGSON: The only thing that  
19 seems that is the big fault here, in my mind, is what the  
20 chairman said, basically trying to pull the wool over our  
21 eyes that there is a conviction when it was overturned.

14 22 MR. PECCOLE: Could I make a point right now?  
23 I would direct the Commission's attention to Exhibit 4 that  
24 was introduced before the Board the last time we were there.  
25 And it has to do with an examination, polygraph examination

1 dated February 2nd, 1984.

2 Dr. Silver, based upon this problem, went to a  
3 polygraph operator and had the question brought forward as  
4 to whether or not his intent when he didn't disclose this  
5 information, whether this intent was to deceive or mislead  
6 the Gaming Commission.

7 This is the way the report reads. "Purpose of  
8 the examination: The purpose of the examination was to  
9 determine if Mr. Silver thought he had intent to deceive or  
10 mislead the Gaming Commission when he neglected to include  
11 in information given to the Commission that a conviction of  
12 Gordon Ellis for battery upon the premises of the Crystal  
13 Palace was later appealed."

14 "The pre-test interview: Mr. Silver stated he  
15 felt that he was adequately defending himself from  
16 allegations that he had instructed a customer to be beaten  
17 when he stated that the customer who is allegedly beaten on  
18 the property was taken into custody, convicted and fined the  
19 following day. He stated that his initial purpose of  
20 defending himself of the allegation was suitably met by  
21 revealing the details of the incident and to have further  
22 elaborated upon the efforts of another owner, Dr. Myer, to  
23 appeal that conviction in order that their own casino might  
24 become financially liable would further confront the  
25 Commission with facts not necessarily related to his defense

1 in the primary issue of having a customer beaten. He denied  
2 any willful attempt to mislead the Commission and stated  
3 that he had never instructed any person, including Gordon  
4 Ellis, to be beaten up." The examination followed.

5 The following relevant questions were asked  
6 during the examinations along with selected control  
7 questions to protect the truthful person. Mr. Silver's  
8 vocal responses were as follows: Question 2: "Regarding  
9 your forthrightness in knowingly withholding information  
10 from the Gaming Commission, did you intend to answer my  
11 questions about that truthfully?"

12 "A Yes."

13 Question 5: "Did you have intent to mislead  
14 the Commission by withholding information about the Ellis  
15 appeal?"

16 "A No."

17 "7: Do you think the appeal relates to your  
18 defense that you did not have Mr. Ellis beaten up?"

19 "A Yes."

20 "Did you have Mr. Ellis beaten up?"

21 "A No."

22 "Analysis: After careful analysis of the  
23 polygraph data no deception is indicated. Conclusion: In  
24 the opinion of this examiner, Mr. Silver was truthful in the  
25 above noted statements," and this polygraph examiner was



1 Mr. Ronald D. Slay, who has done in the past work for the  
2 Gaming Control Board and Commission.

3 Again, I think what we are getting to is the  
4 intent, a question of whether Dr. Silver intended to mislead  
5 or deceive the Commission. I don't think that intent was  
6 there. I think he --

7 CHAIRMAN BIBLE: Bob, let me ask this question.  
8 If you had known that that conviction was reversed by the  
9 district court, would you have put in only the district  
10 court document and withheld that reversal?

11 MR. PECCOLE: No, I would have put in the whole  
12 thing because as far as I'm concerned, the district court  
13 overruling had nothing to do with the issue, really. The  
14 issue was one of whether or not, as Dr. Silver has  
15 explained, whether or not he had had anybody beaten up. And  
16 in my opinion, it was a red herring that was created, a red  
17 herring that followed throughout every one of these  
18 hearings. The question being did he have anybody beat up.  
19 And Miss Becker did make the remark in the record that this  
20 was a major violation.

21 CHAIRMAN BIBLE: Let's not try Miss Becker  
22 here.

23 MR. PECCOLE: No, I am trying not to. That is  
24 the way it all started.

25 CHAIRMAN BIBLE: We have a fairly narrow issue,

1 and you just answered the question that if you had the  
2 reversal available to you, you wouldn't have only submitted  
3 the one document. You would have submitted them both.

4 MR. PECCOLE: That is correct. I would have  
5 put the whole matter in.

6 CHAIRMAN BIBLE: To be complete. Obviously,  
7 you didn't know about it because you didn't submit both  
8 documents.

9 MR. PECCOLE: I did not know about it.

10 CHAIRMAN BIBLE: So then, and I notice that  
11 this was gone into by the Board, your client obviously  
12 hadn't informed you of the reversal in your preparation for  
13 the hearing before us.

14 MR. PECCOLE: No, he had not. I still think it  
15 comes down to did he intend to mislead this Commission or  
16 deceive this Commission, and in my own mind and opinion, he  
17 did not, and obviously, the polygraph examiner did not feel  
18 that he intended to mislead or deceive this Commission.

19 CHAIRMAN BIBLE: Do you want to talk about the  
20 welfare situation? I see you brought Renny Ashleman.

21 MR. PECCOLE: Yes, Mr. Ashleman handled the  
22 matter before the state. He can bring out all the  
23 information that is required.

24 MR. ASHLEMAN: Good afternoon, Mr. Chairman and  
25 members of the Commission. My name is Renny Ashleman. I am

1 an attorney. I think I am probably here more in the nature  
2 of a witness than I am a counsel. So, if now or at any  
3 point the chairman would like me sworn, that will certainly  
4 be agreeable with me because I will talk about some factual  
5 matters as well as what was legally involved.

6 I am going to begin by trying to be very brief.  
7 In light of the past discussion, that's not to leave  
8 anything out if this Commission might like to know about.  
9 It is very long and complicated in this case, Medicaid, and  
10 I am sort of guessing at what you might want to know about.  
11 I am happy to go into any detail you might want to have. I  
12 brought my file with me.

13 As I understand it, there has been some sort of  
14 a very vague and general allegation not necessarily asserted  
15 in the public hearing but a memo that might be available to  
16 the Commission that I have not seen, that perhaps the doctor  
17 was in some way accused of fraud in his handling of Medicaid  
18 reimbursement.

19 That is clearly not the case. He's not been  
20 accused of fraud. He wasn't in my opinion -- I have  
21 certainly examined all the records available to me -- in any  
22 way guilty of fraud. The state didn't claim fraud. The  
23 deputy attorney general from the state is here who handled  
24 the case. I think he would concur with me it was not a  
25 fraud case.



1           The facts of the matter so far as I understand  
2       them are as follows: The doctor, over a substantial period  
3       of time, was involved in what I would call an erroneous or  
4       mistaken billing procedure. And if it is the pleasure of  
5       the chairman, I would like to actually show you some  
6       billings because I think that will make the reason why we  
7       say that this was not a culpable matter clearest to the  
8       Commission in the shortest possible time. If I might have  
9       your permission, I would like to distribute some exhibits.

10           CHAIRMAN BIBLE: Do you have a copy for each of  
11       us?

12           MR. ASHLEMAN: Yes, I do.

13           CHAIRMAN BIBLE: You are probably the only one  
14       that understands these, Jack. Go ahead, Renny.

15           MR. ASHLEMAN: Thank you, Mr. Chairman. What  
16       the case essentially was about was whether or not the doctor  
17       was billing Medicaid and attempting to receive fees for  
18       laboratory work when in fact he had no laboratory and in  
19       fact the laboratory work had been submitted to outside  
20       vendors.

21           If you will look at the form in front of you,  
22       which is an example of the doctor's actual forms, and I have  
23       just taken these from his file. I have asked the state for  
24       their evidence and files repeatedly. They haven't given  
25       them to me. They described what it was about. So I had to

1 go to the doctor's file and dig out what they described to  
2 me.

3 But I believe this covers the situation. If  
4 you will look at the form coming down your left-hand side,  
5 members of the Commission, you will see that the doctor said  
6 "Address the facility where service is rendered, National  
7 Health Lab, Phoenix, Arizona." Certainly nothing there to  
8 mislead a pair of bills that the doctor was performing the  
9 service in his own office.

10 If you will look across from where it says  
11 that, under item 22, the question is asked, "Was laboratory  
12 work performed outside your office?"

13 You will see the asterisk in the box or near  
14 the box "Yes." Couldn't be anything clearer than that.

15 If you will come down to the procedures  
16 provided, you will see "Urinalysis, National Health Lab.  
17 Urine culture," and of course the little marks to indicate  
18 that was ditto, and so on and so forth for the various  
19 examinations. They were all done by the outside lab.

20 The doctor in fact charged fees that were  
21 consistent with the price allowed for handling fees. Now  
22 not all of these are reimbursed. A handling fee is the fee  
23 that you charge for the taking of a sample, the packaging of  
24 a sample, the paperwork with the sample and forwarding it to  
25 the laboratory. There is a separate charge from what you

1 would charge for laboratory work.

2 It is in fact, in all of the cases that I have  
3 examined in this case, substantially less than any  
4 laboratory and specifically the doctor's laboratory charged.  
5 All of that was regular. All of that would have caused no  
6 trouble.

7 However, the person that prepared the bill used  
8 the 800 series in billing. If you will look at the little  
9 numbers under item C, you will see after the first one,  
10 which was the exam -- it has nothing to do with this  
11 issue -- a series of 800 numbers. Those numbers indicate  
12 laboratory work instead of handling work. That's where the  
13 error was made.

14 And in fact, there were cases in the bills  
15 where that resulted in an overcharge. Not nearly as much as  
16 laboratory work would have been, but more than a handling  
17 fee that would have been paid.

18 We have submitted consistently that that was an  
19 error certainly rather than an effort to in any way  
20 fraudulently mislead because it's quite clear to anyone that  
21 reads these documents that in fact the work went to an  
22 outside lab, and it's quite clear to anyone knowledgeable  
23 with the prices the doctor was not endeavoring to charge  
24 laboratory prices. In a given case you would have had much  
25 larger charges than these for any laboratory work.

1           We had a couple of examples that we put in in  
2           our handwriting since these were prepared. If you look to  
3           the right, the \$5 urinalysis had been twelve and a quarter  
4           from the lab. The urine culture that was \$10 and 9.50 was  
5           paid by the state, would have been 13.60 from the lab.  
6           Sickle cell, he had \$5. We have \$7.48 is from the lab. So  
7           they were substantially off in that regard.

8           The present status of the case is as follows:  
9           We had met with the state and discussed various numbers in  
10          detail. We ran our own audits of the amount that we thought  
11          the state had overpaid us based upon these errors. And we  
12          paid that. And a sum arrived at with the state to reimburse  
13          them for their investigative efforts.

14          The state sought the resignation of the doctor  
15          from the program. The doctor gave that resignation. The  
16          matter is essentially settled with the State of Nevada.

17          I might add, incidentally, that the resignation  
18          from the program should not be taken in any way as an  
19          indicia of guilt. None was admitted in any way other than  
20          the fact that we made some erroneous claims.

21          Medicaid reimbursement is so poor that the  
22          doctor two years before had applied to withdraw from the  
23          program and was asked by the department to stay in because  
24          at that time there was a scarcity of providers and in fact,  
25          little discussion went through as to his obligations on the

1 Hippocratic oath and so on. It wasn't to his financial  
2 advantage. Certainly wasn't worth continuing the beef, as  
3 it were. So we resigned.

4 I have, if the Board wishes them, other  
5 examples that are similar. I think they are probably  
6 cumulative. I don't want to take your time up with those.  
7 So that you will know there were some 73 cases cited where  
8 the laboratory said they had never received the specimen.  
9 The state views that as a more serious charge than the  
10 other.

11 I might add from our viewpoint that charge has  
12 absolutely no more seriousness than the other of the  
13 misceding because our effort plainly was to charge a  
14 handling fee. It is quite clear if you look at this  
15 document that no effort was made to mislead anyone that the  
16 doctor was doing the laboratory services at his own place.

17 Of course, he would have been entitled to the  
18 handling fee whether or not the specimens ever got to the  
19 lab or whether they lost one, whether they failed to keep  
20 track of them. We are talking over this period of time  
21 quite literally specimens and laboratory fees in the total  
22 of many thousands from the doctor and this program in fact  
23 in the total of many many thousands. So, the fact that the  
24 lab could not on a verbal check trace 73 is not entirely  
25 shocking to us.



1 We would have had no way to know they either  
2 didn't receive or didn't process them or if they did, they  
3 coded or put them down wrong in their bookkeeping because  
4 ordinarily the only thing that the lab brings to the  
5 doctor's attention are abnormal findings. Not the normal  
6 findings. So there isn't any feedback here.

7 That is basically the situation as far as the  
8 state is concerned. The state is satisfied. The matter is  
9 over with. I have a stipulation signed by the applicable  
10 state department. We have not signed off.

11 Mr. Hollingsworth and I and other lawyers are having some  
12 fun with some of the language that is not related to basic  
13 settlement, that is the amount and the fact of his  
14 reservation.

15 The Inspector General has been in contact with  
16 us. The Inspector General is and has been since December of  
17 last year designated as a representative of the secretary of  
18 HHR. His duty is to decide whether or not there was a  
19 violation of something called the Civil Penalties Act. The  
20 Civil Penalties Act addresses itself to whether or not the  
21 provider knew or should have known that a billing was  
22 erroneous. It is one step further, one step less serious  
23 than the state charge in terms of the standard improvement  
24 culpability.

25 The federal government has expressly declined

1 to state whether having listened to my explanations, our  
2 demonstration of some facts and so on, they intend to  
3 proceed at all. The next step in that case will be a  
4 conference between myself and attorneys for the federal  
5 government.

6 In any event, that is a civil statute that  
7 assesses a fine that is equivalent to the fine that is paid  
8 for negligence in the preparation of a tax return or other  
9 things that you would provide. It isn't a fraud statute at  
10 all. It isn't a criminal statute at all. That is the only  
11 one the federal government is interested in inquiring about.

12 There is a lot more detail to these discussions  
13 that I could supply if the Commission wants. I don't want  
14 to dwell on things that are not necessary to your decision.

15 CHAIRMAN BIBLE: Renny, what was the total sum  
16 of money that the overpayment amounted to?

17 MR. ASHLEMAN: Right around \$21,000. We think  
18 the overpayment was 13 or \$14,000. The state thought it was  
19 about 14. There was a range of their expenses for the  
20 investigation. Given that range and the fact that they were  
21 happy with a \$21,000 settlement as a negotiated figure, we  
22 thought that was reasonable and settled on that basis. We  
23 did not actually define exactly how much was overpayment,  
24 and exactly how much was payment for the investigation. The  
25 state was satisfied with the gross sum of 21,000. Our

1 finding was about 14. Their finding was about 18. Both of  
2 those I think were pretty quickly done. We just had the  
3 bookkeeper run back through it so they could be right, we  
4 could be right.

5 CHAIRMAN BIBLE: On the form that you provided  
6 to us that has a total charge of \$85, what should the charge  
7 have been?

8 MR. ASHLEMAN: The \$50 at the top wouldn't have  
9 been in dispute at all. The portion of the other dollar  
10 amounts that Medicaid would reimburse would have been in  
11 dispute.

12 It would look to me in this particular bill as  
13 though the \$5 for sickle cell might have been the erroneous  
14 charge. He would have been entitled to 9.50, \$10, something  
15 in that range for handling of these specimens and  
16 examination. So that wouldn't have been out of line. He  
17 wouldn't have been entitled to any more than that unless he  
18 actually ran the test himself.

19 CHAIRMAN BIBLE: So the total amount instead of  
20 being 85 would have been what?

21 MR. ASHLEMAN: Total amount instead of being 85  
22 should have been substantially less, but the way these work,  
23 you don't get all you ask for anyway. He should have been  
24 paid \$5 less on this one, Mr. Chairman.

25 CHAIRMAN BIBLE: So instead of billing 85 he



1 should have billed 80?

2 MR. ASHLEMAN: That is one way to look at it.  
3 If they would have had the codes outright, they would have  
4 been billing a little less than that. Some of these things  
5 the state never reimburses. It is just part of the service  
6 performed and nobody expects or gets reimbursement on them.

7 CHAIRMAN BIBLE: What was the time period  
8 involved? When did it commence and conclude?

9 MR. ASHLEMAN: The time period was, if I recall  
10 correctly, a year-and-a-half to two years.

11 DR. SILVER: Two and-a-half years.

12 MR. ASHLEMAN: Doctor says two and-a-half  
13 years. I haven't discussed a period that long with the  
14 state, but I certainly accept his word on it. It was,  
15 although there were 1900 some of these particular kind of  
16 errors, it was the same one each time. It was exactly the  
17 same problem, that he should have been labeling under the  
18 900 series instead of the 800 series.

19 Other than the possibility that it may or may  
20 not have been called to his attention in a general way by  
21 general bulletins sent to all providers, there was nothing  
22 given the doctor to specifically let him know this was being  
23 done in a mistaken fashion.

24 The other place where the data might be  
25 available, if you were to study it, you look at your CRVS

1 codes very carefully and your 900 ranges, I am told you  
2 might discern there is a limitation. These are pretty hard  
3 to follow. These mistakes are not uncommon, by any means.

4 CHAIRMAN BIBLE: You indicated that there is  
5 someone here from the attorney general's office.

6 MR. ASHLEMAN: Yes.

7 CHAIRMAN BIBLE: Would you come forward and  
8 identify yourself, please? I'd like to ask you a couple  
9 questions.

10 MR. HOLLINGSWORTH: Daniel D. Hollingsworth,  
11 deputy attorney general, legal counsel to the welfare  
12 division.

13 CHAIRMAN BIBLE: You have had an opportunity to  
14 hear what Mr. Ashleman has told us about the matter. Is  
15 there anything that you would disagree with or any facts  
16 that you would wish to embellish?

17 MR. HOLLINGSWORTH: The only -- I did take  
18 notes. The only thing I'd make a difference is we never did  
19 say, "Fraud." We used the word "abusive billing." Number  
20 one.

21 CHAIRMAN BIBLE: Abusive billing?

22 MR. HOLLINGSWORTH: Yes, sir.

23 CHAIRMAN BIBLE: You didn't use the word  
24 "fraud," you used the word abusive billing?

25 MR. HOLLINGSWORTH: Yes, sir. Since you are an

1 attorney you know the difference. The fraud would be a  
2 criminal sign of wilfull and knowingly. Where we use under  
3 the CFR abusive billing, it's not that high a standard or  
4 the state would not have to prove that much to remove a  
5 doctor from Medicaid privileges.

6 CHAIRMAN BIBLE: How privileged are the kind of  
7 errors that we see in this billing with the use of the 800  
8 number rather than the 900 number in the system, to your  
9 knowledge?

10 MR. HOLLINGSWORTH: One moment. I need to see  
11 the billing. What is your question now?

12 CHAIRMAN BIBLE: How prevalent is it with other  
13 physicians who are participating in this --

14 MR. HOLLINGSWORTH: It isn't. It isn't very  
15 often done.

16 CHAIRMAN BIBLE: Doesn't happen very often.

17 MR. HOLLINGSWORTH: Or else we wouldn't have  
18 gone on Dr. Grabberin. I do want to explain there are two  
19 number systems. Except for the blood specimen, the handling  
20 charges are allowed for blood specimens. All other  
21 specimens, like culture, urinalysis, pap smears, et cetera,  
22 are included in the regular examination, and that is  
23 referred to the 9907 through 9909 of the CRRS.

24 So, other than the blood specimens, there  
25 wouldn't be a handling charge. There have been general

1 bulletins out. Renny asked me to see if I could locate  
2 them. I have asked my client and they are looking for those  
3 bulletins to show that bulletins have been sent out on that.

4 CHAIRMAN BIBLE: Now the \$21,000, that includes  
5 your investigative fee and the estimated amount of the  
6 overcharge?

7 MR. HOLLINGSWORTH: Some of the investigative  
8 fees, yes. \$21,091.

9 CHAIRMAN BIBLE: And that is an amount that the  
10 doctor will repay to your organization?

11 MR. HOLLINGSWORTH: Yes. I don't know whether  
12 he's completed the payment or not. But we are in the  
13 process. What we are doing is that he has had some bills  
14 that were submitted to the Nevada State Welfare Division  
15 prior to July 5th of 1984, and after they go through the  
16 bills and determine which ones the state will pay, that is  
17 attributed against the \$21,091.

18 CHAIRMAN BIBLE: I see.

19 COMMISSIONER GRAGSON: How many people,  
20 doctors, are on this program? They indicated that  
21 Mr. Ashleman indicated that they -- the doctor wanted to  
22 withdraw from handling the Medicaid.

23 MR. HOLLINGSWORTH: I don't know how many  
24 doctors are on the program at this time. I cannot respond  
25 to whether they did request the doctor to stay on or not. I

1 didn't know that was going to be asked; so I didn't have a  
2 chance to ask my client. So I can't respond to that  
3 question.

4 COMMISSIONER GRAGSON: There must be a  
5 shortage, is that right?

6 MR. HOLLINGSWORTH: Not at this time, no. I  
7 don't know when this request was made a couple years ago.  
8 It was before my time. So I'd have to check with my client.

9 COMMISSIONER LOCKHART: Let me ask you one  
10 question. Since these are jumping around, 18,000, 15,000,  
11 the 21,000, what did the state propose originally? It seems  
12 like you settled for 21,000. What was the original amount  
13 you were asking?

14 MR. HOLLINGSWORTH: What was the original  
15 proposal?

16 COMMISSIONER LOCKHART: For abusive charges.  
17 Seems like you came to an agreement of 21,000. What was the  
18 original abusive charges?

19 MR. HOLLINGSWORTH: Under NRS 400--- one second  
20 and I will even give you the statute. Under NRS 422.402(a),  
21 whatever we determine the amount is the statute allows us to  
22 triple the damages. So, I remember the first figure we had  
23 talked about was 50,000. Isn't that correct, Renny?  
24 Including the triple of damages. So, the original figure  
25 that the state -- the original figure was about \$50,000 and



1 that included three times whatever the amount was plus some  
2 investigative fees.

3 The only difference, the reason why the Nevada  
4 State Welfare Division came down from there is that the only  
5 way you can get those triple damages under NRS 422 was to  
6 bring a civil action in state court for the amount. And so  
7 because of that, the cost of that, the division decided the  
8 cost of that, they were offering 21 was close enough and  
9 therefore, we didn't have to bring the action.

10 COMMISSIONER LOCKHART: So you are saying it  
11 was going to cost you 25 or 26, \$27,000 to bring the action?

12 MR. HOLLINGSWORTH: No. The welfare division  
13 looks at the overall process. What they really wanted was  
14 for Dr. Silver to resign and promise never to return to the  
15 Medicaid program. He, in the agreement, that's what we  
16 received was that he would not apply, reapply or -- one  
17 second. Let me get the exact wording for you.

18 That he will not apply, reapply or seek  
19 reinstatement as a medical provider for any type of service.  
20 The reason is it is too costly for the state of Nevada to  
21 handle and deal with these abusive billing techniques, when  
22 there are so many of them, and in this case there was 1956  
23 over a two and-a-half year period. The cost of, number one,  
24 discovering them, number two, going through and checking  
25 them and looking at them, it is so costly to do that, it was

1 just not to the advantage to the state to keep him on the  
2 program.

3 COMMISSIONER LOCKHART: How did you come about  
4 it in the first place?

5 MR. HOLLINGSWORTH: There is in the Nevada  
6 State Welfare Division, it's required by the federal  
7 government that the investigators, we have an investigative  
8 unit that they do review medical records. And so, what was  
9 happening is they were just going through a formal review  
10 and they select each doctor periodically and they came  
11 across Dr. Silver, and they pulled some examples of  
12 billings. They saw a trend. And so then what they did on  
13 this case is they went through and got a computer printout  
14 and then checked every laboratory billing. There is two  
15 aspects of the billing that we were concerned about. Renny  
16 talked about one of them.

17 We were concerned about two of them. If you  
18 will give me one moment. After the instruction about not  
19 leaving anything out, I want to be exact here.

20 CHAIRMAN BIBLE: If you are in doubt about  
21 telling us, tell us.

22 MR. HOLLINGSWORTH: Well, I respect your  
23 comment. But if we were in reversed roles and we hadn't  
24 completed the stipulation, I am sure that the Gaming  
25 Commission would be very concerned about giving information

1 to the Nevada State Welfare Division.

2 CHAIRMAN BIBLE: It seems to me the doctor has  
3 waived any of the protections that might exist. He is not  
4 trying to hide anything. So, at least I would seem to think  
5 that that would be the case.

6 MR. HOLLINGSWORTH: What we were concerned  
7 about in the abusive billings were two things. One billing  
8 to Medicaid for laboratory services when Dr. Silver did not  
9 have a certified laboratory nor have the outside laboratory  
10 billed for those services; and these billings resulted in  
11 double payments being made.

12 The other issue that was concerned about is  
13 billing for urinalysis with indication of referral to an  
14 independent laboratory when the test was never done by the  
15 independent laboratory.

16 CHAIRMAN BIBLE: And the results of each?

17 MR. HOLLINGSWORTH: Under the second one,  
18 basically what it was is that a bill was sent to the Nevada  
19 State Welfare Division stating that Dr. Silver had paid the  
20 laboratory for urinalysis, and yet, when the investigators  
21 went to the independent laboratory, they presented all the  
22 records to us and on their records it never showed that they  
23 had ever done a urinalysis.

24 CHAIRMAN BIBLE: And the first instance?

25 MR. HOLLINGSWORTH: Okay. In the other

1 instance, the first part of that statement is that he billed  
2 as though he had done laboratory services within his own  
3 agency, within his own practice, and he had been put on  
4 notice years before, approximately in 1977, that he had to  
5 have a certified laboratory and he was not a certified  
6 laboratory. Or as an alternative, or the other alternative  
7 is where he said that the -- if he did submit them to an  
8 outside laboratory, he claimed that they billed Dr. Silver  
9 and then he billed us for the service. So we paid them and  
10 then the laboratory billed us. So then when we got into  
11 this we had to go back and see that we had billed outside  
12 laboratories and Dr. Silver.

13 CHAIRMAN BIBLE: Did that occur?

14 MR. HOLLINGSWORTH: Pardon me?

15 CHAIRMAN BIBLE: Did your investigation reveal  
16 that that occurred?

17 MR. HOLLINGSWORTH: Yes. This is one of the  
18 reasons we said there was abusive billings.

19 CHAIRMAN BIBLE: I see. Further questions?  
20 Any further questions from members of the Commission? Yes.

21 MR. HOLLINGSWORTH: One moment. I was going to  
22 check. The time frame that you requested was approximately  
23 two and-a-half years. It was from January of 1981 to May of  
24 1983 is the actual investigation. That time period is the  
25 period that Nevada state welfare looked at.

20

1 Again, there were 1956 claims, and as Mr.  
2 Ashleman mentioned, Dr. Silver over that period of time sent  
3 many many more claims. 1956 is just one line item. So on  
4 that bill, so the example that was given to you, that would  
5 be considered six claims. Although it is on one claim, that  
6 is six line items. So, you can imagine that over two  
7 and-a-half year period with Dr. Silver's large practice,  
8 that he did submit a lot of claims, a lot.

9 CHAIRMAN BIBLE: Any idea what 1956 is by way  
10 of percentage of the whole?

11 MR. HOLLINGSWORTH: No, sir, my client didn't  
12 give that to me. 1956 to our client, because of the cost of  
13 the process of billing, then finding the billing, then  
14 tracing it back and taking the money back, was too costly.

15 CHAIRMAN BIBLE: Further questions for this  
16 gentleman?

17 Thank you. You may -- if you don't mind, wait,  
18 in case something else comes up. I appreciate it.

19 MR. ASHLEMAN: May I, Mr. Chairman?

20 CHAIRMAN BIBLE: Go ahead, Renny.

21 MR. ASHLEMAN: First of all, Mr. Hollingsworth  
22 apparently didn't hear me. I certainly mentioned the fact  
23 that they talked to the lab and the lab said she had not  
24 received certain studies and that is why they don't have a  
25 record. I clearly brought that up for you.



1           CHAIRMAN BIRLE: I think you both brought it up  
2           in different fashions.

3           MR. ASHLEMAN: Secondly, the doctor never  
4           submitted any document that indicated he was paying the lab.  
5           The only documents the doctor submitted, and he didn't  
6           personally submit those, these were done by staff, they were  
7           initialed, all done by staff, not by the doctor. The only  
8           document he submitted clearly said on it that he was sending  
9           the work to outside labs, clearly had a charge that did not  
10          represent a lab fee. What this is was an aborted attempt to  
11          get a handling fee. He was entitled in almost all of these  
12          cases to a \$10 handling fee. The net effect of what was  
13          done was that he would get 12, 13 or 14 or \$15 because of  
14          the way these were handled.

15                 But there isn't any intent in this and there  
16                 isn't any misrepresentation that he is paying anybody.  
17                 There is no such thing as submitting a phony receipt or  
18                 another document or anything else. What you see is what  
19                 they got. What causes this sort of thing to happen is the  
20                 State of Nevada has elected the cheapest method of handling  
21                 the payment of claims through intermediaries and that is  
22                 basically there is no real human check or auditing at their  
23                 level. They have decided it is cheaper to use a fraud  
24                 action to center on some of the cases. If human beings had  
25                 been auditing these on a random basis it is right there.

1           It is not at all hard to see what the mistake  
2       is. It is clear the numbers are wrong, the people that are  
3       knowledgeable in this area. The other place where I would  
4       dispute Mr. Hollingsworth a little bit -- although I think  
5       he and I are talking about two different things -- it is  
6       unusual to have this many errors from one provider but it is  
7       all one area. He is a large volume provider who made the  
8       same mistake over and over again. If you put the number one  
9       in the computer and hit the other number for a bill, you  
10      will get one bill once that are wrong.

11           He didn't make a wide variety of errors. His  
12      record for a man that was investigated for a year was, as a  
13      matter of fact -- and I have been involved in a number of  
14      these cases -- unusually clean. This is the only thing that  
15      was wrong. It is not true if you got the impression that  
16      these billing errors are not common. These billing errors  
17      are exceptionally common. There are tens of thousands if  
18      not hundreds of thousands of them a year. There is an awful  
19      lot of these claims.

20           And there is an awful lot of disputes over what  
21      proper coding is, et cetera, et cetera, et cetera. It's  
22      unusual to have one error, to have that many errors in one  
23      case. But that's because the volume he handles. He was one  
24      of the largest providers, a long time span, and because it  
25      was the same error on a very common item. This happens in

1 almost every claim that there would be an examination.

2 COMMISSIONER LOCKHART: Let me ask you a  
3 question. I can understand what you are saying to me. But  
4 as a business person, what kind of threw me off some of  
5 these items on this bill that never happened. I mean that  
6 is the way I am reading it. I am reading you got like the  
7 last one, maybe the test was never performed.

8 MR. ASHLEMAN: No. That isn't true.

9 COMMISSIONER LOCKHART: Which ones --

10 MR. ASHLEMAN: What happened here was that he  
11 did all of the things to get the specimen available to  
12 package it, put it in tubes and safeguard it, keep it  
13 sterile and so on, to set up the paper trail and send it to  
14 the laboratory. The doctor did everything. He doesn't get  
15 reimbursed for all of this. Some of these items aren't  
16 reimbursable and nobody thinks they are and the state didn't  
17 pay for them. It wasn't a question of overpayment. The  
18 state tries to take the position that this document would  
19 lead you to believe that the doctor was running his own lab  
20 and you were paying on that basis.

21 I say that no reasonable person reading this  
22 document would read the conclusion that the doctor was  
23 trying to tell the state that, to make them believe that.  
24 You would not try to tell the state that you were doing your  
25 own lab work by putting on the document in eight or nine

1 different places that it went outside. And by charging the  
2 wrong amount for lab work.

3 It's just plainly in error. It's just dumb.  
4 It isn't creaked. It isn't an effort to cheat. It wouldn't  
5 even be a significant number except for the fact that he is  
6 a very high volume practitioner and we had a very long time  
7 period. The amount of error compared to his overall  
8 practice and gross income was very small per annum.

9 COMMISSIONER GRAGSON: Renny, the attorney  
10 general indicated that there were some cases that for  
11 urinalysis that there was no billings. They were never  
12 handled. They were never done.

13 MR. ASHLEMAN: There were 73 examples out of  
14 several thousand submissions. We don't know the exact  
15 number. But the number that he would have done in this  
16 period of time would have been probably eight or 10,000,  
17 where the lab couldn't trace that they had sent a bill to  
18 the state for. And we don't know whether the lab lost the  
19 urinalysis, whether the mail did, whether in a given case  
20 the doctor's staff out of these many thousands didn't  
21 transmit one, whether there was a mistake in the number. It  
22 was done over the phone.

23 This isn't a case where we went out and went to  
24 the lab and said, "Gee, here is the rest of the batch  
25 numbers, the one before and back. Shall we trace these?"

1 That was never resolved as to what happened with those  
2 seven.

3 That would not have affected the doctor's  
4 reimbursement in any way. He had no motive to lie about it  
5 because his effort was to retrieve a fee for taking the  
6 sample. There isn't any doubt the sample was taken. The  
7 patients exist. The records -- they always take the urine  
8 sample. The records of them taking that and of the nurses  
9 doing the work and putting it in the charts are all there.  
10 There isn't any question the doctor did the part that he  
11 thought he was and ought to have been billing for. The  
12 problem was he billed under an improper code.

13 COMMISSIONER GRAGSON: Okay. How many  
14 urinalyses did you say that he probably sent in?

15 MR. ASHLEMAN: I would say eight to 10,000.  
16 It's many times this. The Medicaid practice was only a  
17 small part of the doctor's practice. Every patient gets a  
18 urinalysis, practically. It is a very, very big number. It  
19 would have been -- if there are 1950 claims, it would have  
20 been on all or virtually every claim. We didn't hand check  
21 them. We have never gotten anything from the state to see  
22 which ones they are talking about specifically. But that's  
23 something you almost always have.

24 COMMISSIONER LOCKHART: So are you trying to  
25 make this analysis, you are saying that because the doctor's



1 business is so large he really doesn't need these welfare  
2 cases in the first place? Is that what you are trying to  
3 say?

4 MR. HOLLINGSWORTH: No. The doctor has had a  
5 very large practice for a very long time, including this two  
6 and-a-half year period. If you look at what he submitted,  
7 it is obvious nobody did this on purpose to try to  
8 fraudulently get a sum, that the sum was not large in  
9 relation to the practice. So he had no way of looking there  
10 and saying, "Why am I getting so much extra money." In my  
11 law practice, 10 or \$20,000 would show up.

12 It wouldn't mean very much in the doctor's  
13 gross billings. Doctor's bills are much larger than  
14 physicians, for example, and his is exceptionally large. He  
15 is a very successful practitioner. It isn't something he  
16 can eyeball and tell. That is all I am saying about that.  
17 It is not -- it is an insignificant sum. It is. It is not  
18 something you would know by instinct was wrong.

19 COMMISSIONER GRAGSON: Well, one thing. You  
20 stated that your figures came to about 14,000?

21 MR. ASHLEMAN: Correct.

22 COMMISSIONER GRAGSON: And the state's came to,  
23 the way he stated there, about 16,000 something.

24 MR. ASHLEMAN: Sixteen or eighteen, yes.

25 COMMISSIONER GRAGSON: If it was sixteen it

1 would come to fifty.

2 MR. ASHLEMAN: Ken, I am not sure anybody has  
3 got the exact numbers.

4 COMMISSIONER GRAGSON: I can see where over two  
5 and-a-half years if he is going to fraud, he is going to  
6 fraud heavy, but maybe there are others. I don't know.

7 MR. ASHLEMAN: I didn't hear the last part,  
8 Commissioner.

9 COMMISSIONER GRAGSON: Where there is smoke  
10 there may be a little fire. Is there anything else that  
11 they came on?

12 MR. ASHLEMAN: The state and federal  
13 investigators told me that they investigated over a year and  
14 went over it with a fine tooth comb, and with this  
15 exception, the rest of his records were exceptionally clean.  
16 I will say that. This basically is a case, out of a number  
17 that I have consulted on where there weren't other kinds of  
18 errors, it's a bizarre case. The coding is wrong. The rest  
19 of the form is absolutely impeccable. It's an obvious  
20 clerical error.

21 And I have never seen a case without other  
22 things show up or out of other allegations from the state.  
23 The state is always saying, "You overutilized or did  
24 unnecessary tests. You did this or you did that." There is  
25 nothing of that kind in this case. And they tell me they

1 have intensely investigated it.

2 Their original estimate was they spent \$50,000  
3 on the investigation. We settled for less. Maybe the  
4 investigators were a little exuberant in the conversation.  
5 Maybe I misunderstood the complicated formulas. But they  
6 made it very clean and it was a highly intensive  
7 investigation and it is very plain that's all they found.

8 When the federal people rechecked and they and  
9 I met, they concurred. I got the very same story from them.  
10 When I raised the issue that it's pretty obvious that this  
11 wasn't done intentionally, that was when they decided before  
12 they made any recommendations I would sit down and meet with  
13 their counsel and that is what I am going to do on the  
14 federal level.

15 CHAIRMAN BIBLE: Further comments or questions  
16 for Mr. Ashleman? Thank you, Renny. Bob.

17 MR. PECCOLE: Just an observation. Obviously,  
18 this never resulted in any kind of criminal charges.  
19 Another point I would make is the doctor himself does not  
20 prepare these. These go through their billing people. He  
21 doesn't do any of this. So code problems, clerical errors,  
22 obviously, he would not even been aware of. He doesn't sign  
23 these or anything. He never sees them.

24 COMMISSIONER LOCKHART: I might understand that  
25 but he is still responsible for it.

1 MR. PECCOLE: Here again, I am just trying to  
2 point out the way he does it.

3 CHAIRMAN BIBLE: You say he doesn't sign them.  
4 The form here has Dr. Silver's signatures on it.

5 MR. PECCOLE: It is a signature with initials.  
6 I believe it is the girl who signs it.

7 MR. ASHLEMAN: That's right. Some of these are  
8 signed with the initials. The others are signed by the way  
9 the old forms used to do, signature on file. There is no  
10 issue that he personally prepared these.

11 CHAIRMAN BIBLE: Go ahead, Bob. I am sorry.

12 MR. PECCOLE: As far as this area, unless there  
13 are any other questions, whatever other areas that you want  
14 to pursue.

15 CHAIRMAN BIBLE: Let me ask the other members  
16 of the Commission. Bob, you weren't here this morning when  
17 we announced that we have got to vacate this room by -- was  
18 it 4:15 p.m., Irene?

19 SECRETARY MORROS: 4:00 p.m., 4:15 at the  
20 latest.

21 CHAIRMAN BIBLE: If we continue until then, we  
22 are going to have to move over to the Board offices and you  
23 know where they are.

24 MR. PECCOLE: Yes. We have no objection to  
25 that.

1           CHAIRMAN BIBLE: Would you tell me how much  
2           time you think you will be? Do you think we can finish here  
3           within the next 45 minutes?

4           MR. PECCOLE: It's hard for me to estimate. We  
5           are trying to answer or respond to whatever kind of  
6           questions you have of us. Obviously, we have covered a lot  
7           of ground in the past. I don't know how much of that we  
8           have to recover.

9           CHAIRMAN BIBLE: Let me find out from the other  
10          Commissioners if there is other areas that you'd like to  
11          direct Dr. Silver and Mr. Peccole to go into. Jerry, are  
12          there any you have?

13          COMMISSIONER LOCKHART: No. I think that's  
14          pretty much it.

15          CHAIRMAN BIBLE: Bob?

16          COMMISSIONER LEWIS: Mr. Chairman, I will  
17          abstain from voting on this issue because I have not had the  
18          opportunity to read all of the background material and  
19          obviously, do not have the historical background that the  
20          remainder of the Commission has.

21          CHAIRMAN BIBLE: I can't imagine why. You got  
22          the job Monday and you only had 1400 pages to read in three  
23          days.

24          MR. PECCOLE: We are sorry we made the record  
25          so long.



1 CHAIRMAN BIBLE: We are going to have to change  
2 tape.

3 CHAIRMAN BIBLE: Jack and Ken, is there  
4 anything else you want in any other areas you want to go  
5 into?

6 Then Bob, if you'd like to go into whatever you  
7 think is necessary to wrap it up, go ahead and do so. Is  
8 that one of your witnesses in the back of the room that  
9 wants to speak?

10 MR. PECCOLE: Yes. Dr. Brown --

11 CHAIRMAN BIBLE: No. I was indicating the  
12 gentleman standing behind you.

13 MR. PECCOLE: No, Mr. Grubb, no.

14 MR. GRUBB: I'd like to comment on this,  
15 please, Mr. Chairman.

16 CHAIRMAN BIBLE: Are you a witness or a patient  
17 of doctor's?

18 MR. GRUBB: I'm a resident of North Las Vegas.  
19 I'm a member of the Mayor's Task Force on Gaming and Liquor.

20 COMMISSIONER GRAGSON: The what Task Force?

21 MR. GRUBB: Gaming and Liquor.

22 COMMISSIONER GRAGSON: You said Paris Task  
23 Force.

24 MR. GRUBB: Mayor's Task Force.

25 COMMISSIONER GRAGSON: I thought you were from

1 France.

2 MR. GRUBB: I think I have an interest in this.  
3 I think I should be able to speak.

4 CHAIRMAN BIBLE: What is your interest, sir?

5 MR. GRUBB: A citizen of North Las Vegas,  
6 taxpayer and long-time resident.

7 CHAIRMAN BIBLE: Are you familiar with this  
8 case?

9 MR. GRUBB: I am. I have been here every time  
10 it's been on. I wonder why it's taken so long to come to  
11 conclusion.

12 CHAIRMAN BIBLE: Mr. Peccole, do you wish this  
13 gentleman to speak as a witness on your behalf?

14 MR. PECCOLE: No, not on our behalf.

15 MR. GRUBB: I don't want you to close this  
16 before I speak. That's all.

17 CHAIRMAN BIBLE: Go ahead and take the  
18 microphone, identify yourself and whatever it is you want to  
19 say. Go ahead.

20 MR. GRUBB: My name is Larry Grubb. 1700  
21 Woodard, North Las Vegas.

22 I have been interested in the affairs of North  
23 Las Vegas for the last 15 years. I have attended most every  
24 council meeting and gaming and liquor are two things which I  
25 am very much interested in.

1 I have been to every meeting that you have had  
2 here concerning Dr. Silver. I came here to state that  
3 Dr. Silver has a good reputation in North Las Vegas. In  
4 fact, I think several years ago he operated on my wife.

5 But I want you to know if he is granted this  
6 license he will be a credit to North Las Vegas.

7 He wants to have a gaming casino and bar, and  
8 I'd like to see that he has this. But I certainly wish I  
9 hadn't come today because I didn't want to hear these  
10 things. I didn't know it. But before there was quite a bit  
11 of talk about bankruptcy. I have heard nothing about that  
12 today. I don't think that a person should be permitted to  
13 have a gaming license, a new one, when the last I heard at  
14 these meetings, that there was bankruptcy proceedings  
15 against Dr. Silver. Has that been settled?

16 CHAIRMAN BIBLE: Well, you are just making a  
17 statement. It is not our job to answer your questions, sir.

18 MR. GRUBB: Okay. I hope that that will be.

19 CHAIRMAN BIBLE: We have a lot of matters that  
20 have been submitted to us that we didn't rehash today.

21 MR. GRUBB: Well, and at the last meeting here  
22 you made a statement which was very confusing to me. You  
23 said, "I have information, and it may become public later,  
24 but I am not going to tell you today." Is that true?

25 CHAIRMAN BIBLE: Well, that's what

1 Mr. Ashleman just finished explaining. That was the  
2 information.

3 MR. GRUBB: I am wondering what that was for  
4 the last three months.

5 CHAIRMAN BIBLE: That's what it was, right.

6 MR. GRUBB: But I would like to see Dr. Silver  
7 have that casino down there. I know the people in North Las  
8 Vegas have a very fine opinion of Dr. Silver.

9 But there is a problem in the fact that  
10 Dr. Silver applied for a gaming license under an old  
11 ordinance. Now under this old ordinance he would not have  
12 been required to build a hundred room hotel, recreation and  
13 restaurant. Now, if he is granted a license, according to  
14 Mr. Wolf, our city attorney, he can go back under the old  
15 ordinance. Under the new ordinance he would have to provide  
16 a hundred room hotel, restaurant, recreation. And it makes  
17 a difference in the city of 30,000 that he would have to pay  
18 for his license, liquor license, under the new ordinance.

19 Now, to me that's enough to pay --

20 COMMISSIONER GRAGSON: Mr. Grubb, I think that  
21 is a matter for North Las Vegas to handle. If he gets his  
22 license, they are going to have to approve the zoning and  
23 that matter. We don't have anything to do with that. And  
24 that shouldn't be addressed here today.

25 MR. GRUBB: All I would like to know is when he

1 can apply for a license. He has applied. When his  
2 license -- when he should be allowed to apply for a license.  
3 It makes a difference to our city down there.

4 CHAIRMAN BIBLE: As Commissioner Gragson just  
5 indicated, that's not for the Nevada Gaming Commission to  
6 determine. That's for the people in North Las Vegas. But  
7 we certainly appreciate your comments, and I'm sure that Dr.  
8 Silver appreciates them as well.

9 MR. GRUBB: But will that --

10 CHAIRMAN BIBLE: We can't answer that question  
11 because we are not the right jurisdiction.

12 MR. GRUBB: I would like to state that  
13 Dr. Silver appeared before the council on this this year and  
14 asked for a waiver. We have a 15-foot distance between  
15 bars, and he applied for a waiver whereby he could put this  
16 near four other bars. The council denied him that waiver.  
17 I hope that he will be able to get the license. Thank you.

18 CHAIRMAN BIBLE: Thank you. Bob, did you wish  
19 to try and wrap matters up for us, please?

20 MR. PECCOLE: Just going along with the spirit  
21 of what North Las Vegas wants, I have a couple letters here  
22 I would like to read into the record and then present them  
23 to the Commission. This is from the City of North Las  
24 Vegas.

25 "To whom it may concern: Dr. Frank Silver of



1 Silver State Development has acquired property in the City  
2 of North Las Vegas on which is located a recreational  
3 vehicle park and a motel. When he acquired the property  
4 both the park and the motel contained many code violations.  
5 Silver State Development has continued to make efforts to  
6 correct the violations and improve the property. Very truly  
7 yours, Bonnie J. Moore, Urban Planner, Community Planning  
8 and Development." That is city of North Las Vegas.

9 Also a letter to whom it may concern:

10 "Re: Dr. Frank Silver. Since Dr. Frank Silver  
11 bought the Cheyenne 7 Motel on February 2nd, 1983, he has  
12 upgraded the property by recommending numerous code  
13 violations. It is my understanding that Dr. Silver has  
14 plans to further improve and expand upon the facilities at  
15 that location if he can get the necessary approvals from the  
16 appropriate agencies. In my opinion, Dr. Silver's operation  
17 of and future plans for the Cheyenne 7 Motel reflect good  
18 business judgment and will be beneficial to the City of  
19 North Las Vegas. Sincerely, Roy Woofter, City Attorney,  
20 North Las Vegas."

21 I would like to go ahead and present those and  
22 put those in.

23 CHAIRMAN BIBLE: They will become part of the  
24 record, Bob.

25 MR. PECIOLE: Thank you. Other than that, if

1 the Commission and Mr. Chairman want me to summarize at this  
2 point, I will go ahead and do that. I just don't know what  
3 other issues —

4 CHAIRMAN BIBLE: I think that would be a good  
5 idea. We have been at it for about five months and if you  
6 could summarize this thing for us it would be helpful.

7 MR. PECCOLE: I would like to point out at the  
8 last time that we appeared before the Commission, Mr.  
9 Lockhart made a very good observation. He had asked Dr.  
10 Silver, "Do you have a business plan for the Cheyenne  
11 operation?"

12 And Dr. Silver at that point had answered,  
13 "No."

14 Taking the advice of Mr. Lockhart, they have  
15 adopted a business plan. It was introduced as Exhibit E  
16 before the Gaming Control Board. It is an extensive plan.  
17 It was — it contains everything that is necessary for  
18 financial projections, market analysis, marketing strategy,  
19 overviews of the organization. I am sure that it would meet  
20 with your approval. It's again Exhibit E. It is a part of  
21 the record.

22 CHAIRMAN BIBLE: Yes. It was furnished to us,  
23 Bob.

24 MR. PECCOLE: You already have it.

25 CHAIRMAN BIBLE: Yes.

1           MR. PECCOLE: Just to show you that this is a  
2 man that when he's told something, he listens and he tries  
3 to do it.

4           There were some other comments that were made.  
5 There were some issues that were raised at the last Board  
6 meeting which I in my own estimation and opinion it was  
7 mainly a rehashing of all the issues that had come before  
8 the Commission. So I don't think I am making any  
9 misstatement when I say that. There was some question as to  
10 this Chapter 11, and whether the Chapter 11 was a reason to  
11 vote to deny a license.

12           Mr. Hyta felt it was. He spent quite a bit of  
13 time discussing why the Chapter 11 he felt was improper.

14           I don't think that that is a policy matter for  
15 the Board to even consider. I think that is strictly a  
16 Commission policy matter. As we all know, there are four or  
17 five major hotels in Chapter 11's right now and if that  
18 became a reason to deny a license, it certainly would be a  
19 reason to revoke a license.

20           Certainly we are not looking along those lines  
21 here in the State of Nevada to go out and deny licenses or  
22 revoke licenses because of Chapter 11's. That is how we  
23 keep many of these businesses going.

24           As far as Dr. Silver is concerned, I think that  
25 he clearly has the ability to run and operate a gaming

1 establishment. Now the one in North Las Vegas, the  
2 Cheyenne, is a very small operation. It's not some gigantic  
3 casino and it's not some huge operation like we see on the  
4 strip or even in Reno, the large casino. This is a very  
5 very small operation. Certainly he can handle that.  
6 Certainly the economy in North Las Vegas needs that kind of  
7 money. That doesn't hurt at all and it puts people to work.

8 I frankly don't see anything that would cause  
9 reason for him to be denied a license. He holds a license  
10 out in Laughlin. This Commission is fully aware of that.  
11 Testimony, I can bring forward, one of the other partners in  
12 the establishment in Laughlin. Those partners have resolved  
13 their differences. They are moving ahead. They have made  
14 some great business decisions out there. And I am told that  
15 they have had one of the most profitable years they have had  
16 since they have been in operation.

17 It seems to me that if they can iron out those  
18 kind of problems, and that's what created Dr. Silver's  
19 initial problems before this Commission, I think if those  
20 things can be ironed out, it's a clear showing of what this  
21 man is capable of doing.

22 I would point out, and I would just finalize  
23 with Exhibit H that was presented to the Gaming Control  
24 Board. This was a letter written by Mr. Jeffrey Jolcover,  
25 and he directs it to the members of the Gaming Commission,

1 dated January 4th.

2 CHAIRMAN BIBLE: He is the accountant, Bob?

3 MR. PECIOLE: Yes. I would like to read this  
4 because I think it really hits home.

5 "I am currently a Nevada Certified Public  
6 Accountant and currently hold a nonrestricted gaming  
7 license. I formerly served as a member of the Gaming  
8 Control Board's Audit Division and graduated summa cum laude  
9 from the University of Illinois. I have known Dr. Frank  
10 Silver in a business relationship for approximately two  
11 years. During that time I found Dr. Silver to handle  
12 himself upright and display an acumen for business as well  
13 as being an excellent member of the community at large. I  
14 am aware of no circumstances that would tarnish Dr. Silver's  
15 character in any manner whatsoever.

16 "Further, I feel Dr. Silver is and will  
17 continue to be an asset to the State of Nevada and its  
18 gaming industry. Dr. Silver's insight and imagination  
19 coupled with the necessary knowledge and foundation to turn  
20 ideas into successful reality is essential to the continued  
21 growth of our industry. Dr. Silver is a welcome and needed  
22 member to the gaming industry and well deserves to continue  
23 as such. Very truly yours, Jeffrey N. Jolcover."

24 The point being, there are people that feel he  
25 is capable. This is a man that had to make those kind of



1 decisions with regard to other licensees in the past.

2 In my own opinion, I would ask that the license  
3 be granted.

4 If this Commission has any reservation, I would  
5 ask for a probationary type license or a limited license,  
6 and let's find out if he's capable of running an operation  
7 like this. I just don't think that it's fair on the  
8 evidence that we have before the Board and the Commission  
9 that he be denied a license at this time.

10 CHAIRMAN BIBLE: Thank you, Bob. All right. I  
11 will call for comments from members of the Commission,  
12 unless there are any questions that you have for either Mr.  
13 Peccole or Dr. Silver. Jerry?

14 COMMISSIONER LOCKHART: Mr. Chairman, I think  
15 Attorney Mr. Peccole said the word I was going to say. I am  
16 kind of in favor of Dr. Silver but for a period of time,  
17 like one year, and see what happens, after that one year.

18 CHAIRMAN BIBLE: I am not going to convince you  
19 guys on these limited licenses, am I?

20 COMMISSIONER LOCKHART: I'm not in favor of  
21 them, but I'd like to give him a chance. I am in favor of  
22 him right now. The way I am going to vote, I am going to  
23 vote for him. But I'd like to put one condition that it be  
24 for one year.

25 CHAIRMAN BIBLE: Ken?

1           MR. PECCOLE: I might make a comment along that  
2 line. I am the attorney that handled the case on the  
3 limited licenses before Judge Thompson, and within the past  
4 week Judge Thompson has indicated he is going to reconsider  
5 whether or not we are entitled to judicial review on a  
6 limited license. So you may not have any concern at all, as  
7 far as I can see, on a limited license.

8           CHAIRMAN BIBLE: Bob, I am aware of the recent  
9 hearing that you had. If Judge Thompson's initial ruling is  
10 right, though -- and I don't know the answer, I have got my  
11 own viewpoint on it -- a limited license causes us lots of  
12 problems. You weren't here this morning when I went through  
13 my monthly limited-anti-limited speech. But I can't see it  
14 did any good so maybe I am going to stop talking about it.

15           MR. PECCOLE: Mr. Chairman, there may be in  
16 those sections, I think you have the right to issue a  
17 probationary license.

18           CHAIRMAN BIBLE: Yes, we do.

19           MR. PECCOLE: And maybe you would want to do it  
20 that way.

21           CHAIRMAN BIBLE: What is the difference between  
22 a probationary and a limited license. It is semantics.

23           MR. PECCOLE: Evidently -- I don't know. There  
24 is really a lot of question about it. But I do think that  
25 it's well within the jurisdiction of this Commission to

1 I don't believe that the doctor -- and it averages out to  
2 about \$6,666 a year -- he would jeopardize himself to  
3 defraud the state and the government out of that money. I  
4 don't -- to me, that is not a point. I think his business  
5 probity may be in jeopardy on something like that. But I  
6 don't think that he did that.

7 I think that's my feelings right now. I am  
8 sold on one and against on the other one.

9 CHAIRMAN BIBLE: Jack.

10 COMMISSIONER WALSH: I believe I'd go for a six  
11 months. Jerry said a year. I'd go for a six months on this  
12 thing. I am like Ken. I kicked it back and forth. I grew  
13 up with the thing. I feel like now I have had it so long.

14 COMMISSIONER LOCKHART: I am not going to  
15 challenge the six months. Fine.

16 COMMISSIONER WALSH: What?

17 COMMISSIONER LOCKHART: Six months is fine. We  
18 will get him going and see what he can do with it.

19 CHAIRMAN BIBLE: Bob and Dr. Silver, I told you  
20 my concerns at the outset of the hearing, and I mirror what  
21 Ken said. I think, at least in my own mind, I believe one  
22 thing as a result of the document that was produced to us  
23 concerning the Ellis conviction, and I felt that there was  
24 an affirmative obligation, knowing that that information was  
25 not accurate, to speak up and come forward.

1 grant them.

2 CHAIRMAN BIBLER: There is no question, and I  
3 think there is a time when it is appropriate. And I  
4 understand where Jerry is coming from. This is a case that  
5 is not clear-cut black and not clear-cut white. It's in the  
6 area of gray. To try and do the right thing in those areas  
7 sometimes is a difficult task and the limited license is a  
8 nice vehicle to compromise your own questions, and then you  
9 hope that things work out for the period of limitation.

10 The trouble is, for example, he spends the  
11 money, he gets the people employed, he gets all of the  
12 things, especially with a start-up type casino, that are  
13 involved, and then comes back before us with a limited with  
14 problems, and we recognize the tremendous financial outlay,  
15 and the people that we would be dislocating, and it's not  
16 easy to do what we did in the Cloud's Cal Neva. Especially  
17 when you know that that was the principal employer for that  
18 particular geographic region in the state.

19 Well, enough said. I have talked about limited  
20 licenses, and obviously, I am not getting anywhere. Ken.

21 COMMISSIONER GRAGSON: I'm bantering back and  
22 forth on my vote. I tend to -- I had some concerns, mainly  
23 as I expressed before, with pulling the wool over our eyes  
24 on the judge. I don't feel on the other hand, I don't feel  
25 on the other problem that they brought up with the Medicaid,

1           We all have duties under circumstances to speak  
2 when silence is the same as an affirmative action. I think  
3 that we were misled.

4           I don't have the ability to look into his mind  
5 and determine whether that misleading was intentional or  
6 otherwise. We have very little in the way of knowing a  
7 person when we sit here to really determine their true  
8 character. So you have to use what indicia come before you  
9 in evaluating.

10           I think the welfare thing is a little more  
11 serious, though, than Ken does. I think that we are dealing  
12 with a sister agency of the state, even though we are  
13 dealing with employees who improperly fill that out. We all  
14 have employees and we are responsible for their actions.  
15 And the buck, as far as their actions, stops at our desk as  
16 employers.

17           So, because of those two factors, I think a lot  
18 of the rest of it was smoke, and I think that probably the  
19 overwhelming factor in my mind was the way that the Ellis  
20 conviction was handled. I think absent that, I would be  
21 inclined to support the application. But with it I'm not.  
22 That's the way I am going to vote on the matter. You can  
23 make a motion, Jerry and we will get the matter over with.

24           COMMISSIONER GRAGSON: It takes one vote.

25           CHAIRMAN BIBLE: One vote.



1 COMMISSIONER WALSH: No, three.

2 CHAIRMAN BIBLE: It is a denial from the Board.

3 COMMISSIONER WALSH: It takes us all then.

4 CHAIRMAN BIBLE: It takes unanimous.

5 COMMISSIONER LOCKHART: Mr. Chairman, I make a  
6 motion that we approve Nonrestricted Item 83-85 for a  
7 six-month limited period.

8 CHAIRMAN BIBLE: For six-months' limited  
9 license.

10 COMMISSIONER LOCKHART: Six-month limited  
11 license.

12 SECRETARY NORROS: Mr. Lockhart.

13 COMMISSIONER LOCKHART: Can I say one item  
14 before I vote?

15 CHAIRMAN BIBLE: Certainly.

16 COMMISSIONER LOCKHART: He never was misled on  
17 the -- I don't like being misled either, but it was kind of  
18 a pausing note. It worked out in the best way being misled.  
19 Misled is misled, but it worked out in his best interests.  
20 I just wanted to say that point. I am ready to vote now.

21 COMMISSIONER GRAGSON: In other words, in a  
22 way, he probably retaliated to the investigation is what he  
23 is doing.

24 SECRETARY NORROS: I will call the roll,  
25 Mr. Chairman.

**ROLL CALL****SECRETARY MORROS:**

<b>MR. LOCKHART:</b>	<b>Aye.</b>
<b>MR. LEWIS:</b>	<b>Abstain.</b>
<b>MR. GRASSON:</b>	<b>No.</b>
<b>MR. WALEH:</b>	<b>Aye.</b>
<b>MR. BIBLE:</b>	<b>No.</b>

**CHAIRMAN BIBLE:** Gentlemen, thank you. Are there other matters to come before the Commission?

**SECRETARY MORROS:** I have nothing further, Mr. Chairman.

**CHAIRMAN BIBLE:** The meeting is adjourned.

(Meeting adjourned at 3:55 p.m.)