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BRITISH GAMING ACT OF 1968

JOSEPH M. KELLY*

I. INTRODUCTION

The Gaming Act of 1968 has been one of the most successful short-term pieces of legislation in British history. Its purpose was to reduce the number of casinos,¹ regulate gaming, curb excessive profits, eliminate mug or sucker bets, and minimize the influence of organized crime. The Act "was a far-sighted piece of legislation that radically changed the whole course of casino gaming"² by carefully delineating the procedures necessary for a license. It made "sensible relaxations in the law," while it "set up a whole new code for gaming and provided for control of commercial gaming, and certain forms of non-commercial gaming by regulation . . . , and by setting up of a control body in the shape of the Gaming Board"³ which was "a powerful and autonomous branch of the Home Office."⁴ The Government's main objectives in promulgating the Act were to eliminate organized crime and effectively control commercial gaming "by regulating the quality and the availability of gaming facilities."⁵ The Act's framework, however, has been described as "schizophrenic,"⁶ and its effectiveness in reducing the number of casinos has resulted in its being referred to as the "holocaust."⁷ Nevertheless, profits in the casino industry and other areas of regulated gaming in Great Britain have increased tremendously as a result of the Act.

It has been said that the Act created a regulatory board with pro-

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1. Casinos have been defined as "proprietary clubs licensed for gaming other than bingo." Address by Geoffrey B. Littman, Sixth International Conference on Gambling and Risk Taking in Atlantic City, N.J. (December 1984).

2. Kent-Lemon, *Significant Influences on the United Kingdom Casino Industry Since 1960*, 474 ANNALS 72 (1984).

3. J. FINNEY, GAMING, LOTTERIES, FUND-RAISING AND THE LAW 4 (1982).

4. The Times (London) July 4, 1977, at 8, col. e.

5. Miers, *Regulation of Commercial Gambling*, 11 J.L. & Soc'y 37 (1984).

6. THE MONOPOLIES AND MERGERS COMMISSION, A REPORT ON THE PROPOSED MERGER OF PLEASURAMA PLC AND TRIDENT TELEVISION PLC, AND BETWEEN GRAND METROPOLITAN PLC AND TRIDENT TELEVISION PLC, Cmd. 9108, at para. 9.37 (1983) [hereinafter MONOPOLIES COMMISSION REPORT].

7. The Times (London), Feb. 25, 1984, at 11, col. a.

cedures akin to those of the despotic seventeenth century Star Chamber Court.⁸ The Royal Commission on Gambling (Rothschild Commission) concluded that the Board's powers were "wide and arbitrary."⁹ This Board has been variously described as a body which was given powers that "were hard on the citizen,"¹⁰ and as a body which has made the regulated gaming industry "clearly reluctant even to risk incurring the displeasure of a body which has such wide powers to affect their livelihoods."¹¹

Often overlooked is the fact that the vast majority of Parliament and certain special interest groups would have preferred that the Labor Government establish an even more powerful and arbitrary board. In commenting on the Board's power to revoke employment certificates of casino employees, an opposition party spokesman concluded that "one does not like the Star Chamber atmosphere, or giving any body of people the power to deprive a person of his living, but in these circumstances it is right to do so."¹²

It has also been alleged that the Act was the result of the activity of anti-gaming elements. For example, in *Regina v. Metropolitan Police Commissioner ex parte Blackburn*,¹³ Lord Denning, Master of the Rolls, (M.R.), stated that the Act was the result of the activity of Raymond Blackburn, the *bête noire* of gaming, whose "case about gaming . . . led directly to the reform of the law by the Gaming Act, 1968."¹⁴ Although anti-gaming elements were very wary about what the Act might legalize, it was the reputable gaming community which was most supportive of the Act.¹⁵ If earlier laws which prohibited games of unequal chance, were enforced, argued anti-gaming spokesmen, any new Act was unnecessary.¹⁶

8. H. SKOLNICK, *HOUSE OF CARDS* 340 (1978), describes the Board as the most autocratic institution since the Star Chamber. At oral argument, the attorney for the applicants in *Regina v. Gaming Board for Great Britain ex parte Benaim*, also accused the Board of Star Chamber procedures. *The Times* (London), Mar. 17, 1970, at 4, col. g.

9. REPORT OF THE ROYAL COMMISSION ON GAMBLING, Cmd. 7200, at 280 (1978) [hereinafter *ROTHSCHILD REPORT*].

10. *Regina v. Gaming Board for Great Britain ex parte Benaim*. *The Times* (London) March 23, 1971, at 3, col. c (Parker, L.C.J. in oral argument).

11. *ROTHSCHILD REPORT*, *supra* note 9, at para. 19.23.

12. 766 *PARL. DEB.*, H.C. (5th ser.) 128 (1968).

13. [1968] 1 All E.R. 763 (C.A.).

14. *Regina v. Metropolitan Police Commissioner ex parte Blackburn*, No. 414/78 (C.A. Mar. 6, 1980) (available on LEXIS, Enggen library, Cases file). See also *Regina v. Metropolitan Police Commissioner ex parte Blackburn*, [1968] 1 All E.R. 763 (C.A.).

15. Interview with W. Rees-Davies, former Q.C., former M.P., at International Bar Association, Section on Gaming Law, in New York City (Sept. 9, 1986).

16. *The Times* (London), Feb. 6, 1968, at 9, col. e (letter to the Editor from Raymond Blackburn).

A. Widespread Illegal Gaming Before The 1968 Act

Gaming was not illegal at common law. Until Charles II, anti-gaming legislation was based primarily on pragmatic goals—the maintenance of archery and the prevention of lower class time-wasting.¹⁷ Beginning in the second half of the seventeenth century, parliamentary legislation tried to restrict gaming on a piecemeal basis, based primarily on a moralistic rationale. The Gaming Act of 1845 and other “grandmotherly laws,”¹⁸ attempted to eliminate gaming loopholes and, in effect, prohibited gaming. These acts made all gaming contracts void and established an easier burden of proof to discourage gaming houses. Rather than eliminating gaming, however, these acts drove much of the gaming business underground and consequently cost the police “much in money and manpower.”¹⁹ As a result of underground gaming, one would hear of “beautiful suitors luring debs to private parties, and daddy then being asked to pay her cheque because darling had broken the law.”²⁰ Thus, “[b]efore 1960 the greater part of the law controlling gambling in Great Britain was obscure, illogical and difficult to enforce.”²¹

Modern British gaming law is largely the result of the Betting and Gaming Act of 1960, and the Gaming Act of 1968. The Betting and Gaming Act of 1960 marked “the first great change in approach”²² since the 1845 Act. The 1960 Act legalized almost all forms of gaming except those games of unequal chance (e.g., roulette with a zero) or those held in public places. In order to placate *bona fide* member clubs, however, the Act allowed an exception of a fixed sum charge apart from the stakes for members and guests.

This exception for clubs opened the door to unique commercial gaming clubs which prospered throughout Britain, especially in the London area. Throughout the 1960's, gaming clubs were able to use legal loopholes so that between 1,000 and 1,200²³ casinos sprung up

17. FINNEY, *supra* note 3, at 1.

18. Rolph, *Fortune an Honest Woman*, 1967 NEW STATESMAN 897.

19. GAMING BOARD FOR GREAT BRITAIN, FIRST ANNUAL REPORT para. 33 (1969) [hereinafter BOARD REPORT (1969)].

20. *Gift to the Mafia?* THE ECONOMIST, Feb. 3, 1968, at 15, col. 2.

21. GREAT BRITAIN CENTRAL OFFICE OF INFORMATION, CONTROL OF GAMBLING IN BRITAIN 1 (London 1974).

22. FINNEY, *supra* note 3, at 4.

23. Bacon, *The Gaming Act, 1968, Takes Hold*, 53 POLICE J. 257 (1970), states that there “were upwards of 1,200 clubs”; that compared with the number of British betting shops was “a small number”; and “in comparison with other countries where gaming was permitted, it was an almost incredible number.” London alone had between 300-500 clubs. The Times (London), July 20, 1968, at 7, col. e. See also Miers, *supra* note 5, at 37.

"like weeds"²⁴ throughout Great Britain. There developed "a feeling that Britain was becoming Europe's offshore Las Vegas"²⁵ or the "gambling headquarters of the world."²⁶ To evade successful prosecution, casino owners began what the Government described as "cat-and-mouse games"²⁷ of litigation that made the enforcement of laws all but impossible.²⁸ As one Member of Parliament explained, "no matter what law we pass, if we try to put any definition in the Statute, then as sure as night follows day the experts will get round it within 24 hours."²⁹ Lord Denning, M.R., likewise regretted that gaming houses "always seem to be one device³⁰ ahead of the law"³¹ and that gaming law evasion was so successful "that the police had given up any efforts to enforce the law."³² Sir Stanley Raymond, the first Gaming Board Chairman, described the law before 1968 to be in "such a muddle," that the police were given "an almost impossible job."³³ Police officials said that "as fast as one method of play was held to be illegal, a new method was invented to take its place. . . ."³⁴

24. ROTHSCHILD REPORT, *supra* note 9, at para. 18.1.

25. BOARD REPORT (1969), *supra* note 19, at para. 14. The Colony Club, a London casino, was controlled by Meyer Lansky, who, seeing that ". . . things were getting too hot in Vegas he moved his operations to the Caribbean and into England. . . . The Colony was good for at least three to four million bucks a week in action. Unlike most casinos around the world, the Colony Club operated honest at the tables." TERESA, *MY LIFE IN THE MAFIA* 217-18 (1973).

26. R. CROSSMAN, 2 *THE DIARIES OF A CABINET MINISTER* 169 (1976).

27. 293 *PARL. DEB.*, H.L. (5th ser.) 855 (1968); Cline, *The Law, Uncertain Stakes*, *Spectator*, Feb. 16, 1968, at 198, col. 1 also described the situation as a "ceaseless cat and mouse game between the Courts and the Clubs."

28. See *Regina v. Metropolitan Police Commissioner ex parte Blackburn*, *Law Report*, *The Times* (London), Jan. 30, 1968, at 11, col. h.

29. 758 *PARL. DEB.*, H.C. (5th ser.) 1249 (1968). 4 W. BLACKSTONE COMMENTARIES *173, concluded: "The invention of sharpers being swifter than the punishment of the law which only hunts them from one device to another. . . ." *Id.*

30. Cline, *supra* note 27, at 198, col. 1, questioned Lord Denning's criticism of gamers using devices. "Either the law prohibits or it does not, and it is for the courts to say loud and clear what is not permissible, and if it fails to do so, even gaming club proprietors are entitled to pursue their smokey nocturnal ways undisturbed." *Id.*

31. *Regina v. Metropolitan Police Commissioner ex parte Blackburn*, [1968] 1 All E.R. 763, 766 (C.A.).

32. *Regina v. Gaming Board for Great Britain ex parte Benaim and Khaida* [1970] 2 Q.B. 417, 2 W.L.R. 1009, 114 Sol. J. 266; *sub nom Regina v. Gaming Board for Great Britain ex parte Benaim* [1970] 2 All E.R. 528, 529 (C.A.).

33. *The Times* (London), Apr. 9, 1970, at 2, col. g.

34. BOARD REPORT (1969), *supra* note 19, at para. 106.

B. Recognition of British Love of Gaming

Outright suppression of gaming by strict enforcement of the law was made impractical by the British love of gaming. The vast majority (94%) of adult Britains gamble, with 39% of them gaming on a regular basis.³⁵

Unlike the egalitarianism found in Nevada and New Jersey, a strong class/sex³⁶ division exists within British gaming. Certain London clubs are often the special playground of wealthy foreigners, while the arcades have been described as the working man's casino.³⁷ Betting shops are the neighborhood "preserves of men"³⁸ while over 80% of bingo club participants are working-class women,³⁹ with almost 90% of them over age thirty.⁴⁰ Illustrating these class/sex attitudes within Great Britain are the remarks of Viscount Massereene and Ferrard, who said that if the government tightened up on loitering at betting shops, it would be the "hero to many thousands of wives."⁴¹

35. Rothschild Commission findings, *quoted in* THE ECONOMIST, July 15, 1978, at 20, col. 3. Arthur Davidson said in Parliament "[t]here is in the British people a gambling itch. . . ." 758 PARL. DEB., H.C. (5th ser.) 1199 (1968).

36. An excellent example of class bias would be the remarks of Lawton, J. in *Regina v. Coral*, No. 1694/B2/82 (C.A. May 20, 1983) (available on LEXIS, Enggen Library, Cases file), in explaining why he was reducing the penalties of those convicted of allowing illegal gaming credit. "Parliament, . . . clearly did not want a situation where men could gamble away their inheritances by being allowed to gamble on credit over a long period of time." *Id.* Whatever purpose motivated the socialist government, the preservation of inheritance was not a factor.

37. The Times (London), July 25, 1984, at 11, col. a. There is also, unlike Nevada, a class division within casinos where the high rollers often have separate gaming rooms. It is perhaps an exaggeration to conclude as did Jerome H. Skolnick that in London "gaming casinos are not permitted in working class suburbs. Membership in the clubs must be sponsored, and is costly enough to bar the average industrial worker." SKOLNICK, A ZONING MERIT MODEL FOR CASINO GAMBLING 56 (1978). This observation may be true of the exclusive clubs such as Aspinall's and Crockford's but it is not true of the working-class casinos.

38. The Times (London), Mar. 3, 1984, at 11, col. c. Interestingly, betting shops are often more of a local "club" than casinos. Interview with Bob Greene, Managing Director, Mecca Bookmakers (July 15, 1985).

39. The Times (London), Mar. 3, 1984, at 77, col. a. The Reports of the Gaming Board indicate that 84% of bingo participants are female. GAMING BOARD FOR GREAT BRITAIN, FOURTH ANNUAL REPORT para. 54 (1972) [hereinafter BOARD REPORT (1972)]; GAMING BOARD FOR GREAT BRITAIN, EIGHTH ANNUAL REPORT para. 62 (1976) [hereinafter BOARD REPORT (1976)].

40. BOARD REPORT (1972), *supra* note 39, at para. 54.

41. 344 PARL. DEB., H.L. (5th ser.) 1655 (1973). A Labor peer responded that if the government were concerned with absenteeism caused by betting centers, they should consider Ascot. *Id.*

C. *Desire for Strict Control of Gaming*

A type of Cromwellian Puritan⁴² outlook toward gambling co-exists with the love of gambling in Britain. "England treats gambling rather like prostitution, recognizing its existence and allowing it as a necessary outlet for deep and dark desires but ensuring that nothing whatsoever is done to encourage it."⁴³ The Home Office in its Introduction to the Gaming Act, 1968, considered commercial gaming to be "a privilege to be conceded subject to the most searching scrutiny and only in response to public demand."⁴⁴ The judiciary has also joined in this negative attitude toward gaming. Lord Denning agreed that gaming was a "privilege" or a "franchise—to carry on gaming for profit, a thing never hitherto allowed in this country."⁴⁵ The modern judicial attitude toward gaming is perhaps expressed best as considering it "personally demoralising, domestically degrading and economically stultifying. . . ." ⁴⁶

D. *Roulette: "Cat and Mouse" Litigation*

One of the major complicating factors in British gaming was the number of "conflicting court decisions"⁴⁷ which attempted to define what constituted games of equal chance not prohibited by Section 32(1)(a) of the 1963 Act.⁴⁸ This explanation was crucial since casinos

42. This attitude is stronger on the left. The expression "semi-Cromwellian Puritans" used in the Act debated by Antony Buck, concerning Home Secretary Callaghan, described the Socialist government's overall gaming attitude. 766 PARL. DEB., H.C. (5th ser.) 368 (1968). Bob Melish's remarks would be more typical of Labor than the Tories. A decade after the Act, Melish, M.P., emphasized that "if every British casino closed, it would probably do Britain a great deal of good." Melish further argued that if casinos "scream for mercy, there is only one answer. They can shut up shop and go home." 972 PARL. DEB., H.C. (5th ser.) 84 (1979). Even the more moderate Social Democratic Party leader, David Owen, pledged that his party "would throw over the tables of what he dubbed the Conservatives 'casino society'". The Times (London), Jan. 4, 1987, at 1, col. 6.

43. Hamilton, *The Gambling Industry*, The Times (London), Feb. 25, 1984, at 11, col. a.

44. ROTHSCHILD REPORT, *supra* note 9, at para. 16.11.

45. *Regina v. Gaming Board ex parte Beniam* [1970] 2 All E.R. 528, 533 (C.A.).

46. *News of the World, Ltd. v. Friend*, [1973] 1 All E.R. 422 (H.L.) (Simon, L. J. dissenting).

47. 758 PARL. DEB., H.C. (5th ser.) 1270 (1968). Members of Parliament frequently blamed the courts for the loopholes. Quintin Hogg (now Lord Hailsham) states that in addition to other factors, the 1960 Act ". . . failed in detail precisely because of the way the Courts interpreted it." Hogg, *The Gaming Muddle*, PUNCH, Feb. 14, 1968, at 232, col. 1.

48. The statute provided that ". . . (i) the chances in the game are equally favourable to all the players; or (ii) the gaming is so conducted that the chances therein are equally favourable to all the players. . ." Betting, Gaming and Lotteries Act, 1963, ch. 2 § 32 (1) (a).

with no house "edge," could not make profits except by charging for use of facilities.

Roulette, which since the 1960's had been more popular than all other games of unequal chance combined, was the usual litigation testing ground for casinos.⁴⁹ In April 1966, Kursaal Casino, Ltd., offered the "bank" with its "edge" of a zero at regular intervals to "any player who chose to take it."⁵⁰ Only two of its members within a five and a half month period utilized this opportunity, and then at only a very limited amount.⁵¹ On December 19, 1967, the House of Lords reversed a Divisional Court decision and held that the practical realities of offering players the roulette bank with a zero did not overcome the prohibition against games of unequal chance.⁵²

Casino representatives such as the British Gaming Association indicated they would attempt alternate versions of roulette and predicted that further litigation would be in the offing.⁵³ Subsequent to the House of Lords decision, most London casinos continued "playing roulette, unmolested, in exactly the same way . . . as they were doing

49. Board statistics from Reports of 1973 through 1983 show American roulette at a low 50% in 1974, GAMING BOARD FOR GREAT BRITAIN, SEVENTH ANNUAL REPORT para. 19 (1975) [hereinafter BOARD REPORT (1975)], to a high 64.6% in 1982, GAMING BOARD FOR GREAT BRITAIN, FIFTEENTH ANNUAL REPORT para. 23 (1983) [hereinafter BOARD REPORT (1983)], and French roulette at a low .7% in 1982, BOARD REPORT (1983), *supra*, at para. 23, to a high 8% in 1976, GAMING BOARD FOR GREAT BRITAIN, TENTH ANNUAL REPORT para. 27 (1978) [hereinafter BOARD REPORT (1978)]. The difference between the games is minimal.

50. *Crickitt v. Kursaal Casino* (No. 2), [1968] 1 All E.R. 139. This practice, in effect, let the player assume the role of the house for a limited time.

51. *Id.*

52. *Crickitt v. Kursaal Casino, Ltd.* (No.2) [1968] 1 All E.R. 139, *rev'g* *Kursaal Casino v. Crickitt* (No. 2) [1967] 3 All E.R. 360. Even when one of the players held the bank, odds would still "not be equally favorable to all players." 118 NEW L.J. 3 (1968). In 758 PARL. DEB., H.C. (5th ser.) 1201 (1968), Arthur Davidson stated, "[o]ne of the most disreputable aspects about gaming over the last two or three years has been the constant evasion by the clubs of the regulations—the 1960 Act. First of all they tried to evade it by passing the bank round. Then it was discovered that no one would take a bank for a short period. Then they tried to evade it by giving out coloured chips and asking the customer to operate a voluntary levy, but that did not work very well." *Id.* It would seem, however, that these devices worked only too well, hence the litigation.

53. *The Times* (London), January 2, 1968, at 1, col. e. The Casino Association representing the so-called Big Five (Clermont, Crockford's, Curzon, Palm Beach, and Playboy), after deliberation announced they would play roulette without a zero. *The Times* (London), January 4, 1968, at 2, col. a. *The Times* (London), January 5, 1968, at 2, col. g. Home Secretary James Callaghan analogized future casino litigation to the "dance of the seven veils." 758 PARL. DEB., H.C. (5th ser.) 1166 (1968).

prior to Dec. 19, 1967."⁵⁴ The situation was further exacerbated by the London Assistant Police Commissioner's secret instructions in April of 1966 to interfere with gaming clubs only if there were allegations of cheating or if the club "had become a haunt of criminals."⁵⁵

As a result of police inactivity, Raymond Blackburn, a former Labor M.P., and one of the most vehement anti-gaming activists, applied for an order of mandamus to require the police to enforce the law prohibiting games of unequal chance. In *Regina v. Metropolitan Police Commissioner ex parte Blackburn*,⁵⁶ the Divisional Court dismissed his complaint on July 11, 1967, because gaming clubs were "in a very low place in the list of [law enforcement] priorities."⁵⁷ Counsel for the Commissioner predictably argued both the lack of jurisdiction⁵⁸ and the inapplicability of mandamus, since a commissioner had no duty to prosecute. During the appellate hearing in January of 1968, counsel for the Commissioner suddenly assured the court that the prior secret instructions would be officially revoked and unlawful gaming in London clubs would now be prosecuted.⁵⁹ Lord Denning commented that in this "unique"⁶⁰ case, some of the Commissioner's "policy decisions" were subject to court interference,⁶¹ and the threat of mandamus by interested parties might be the applicable remedy. He further stressed that the "policy decision" not to prosecute was most "unfortunate," and that for casinos, "the day of reckoning is at hand. No longer will we tolerate these devices. The law must be sensibly interpreted so as to give effect to the intentions of Parliament; and the police must see that

54. *Regina v. Metropolitan Police Commissioner ex parte Blackburn*, [1968] 1 All E.R. 763, 774 (C.A.).

55. *Id.* at 768. See also *Ex-MP Wants Police Ordered to Enforce Gaming Law*, *The Times* (London), Jan. 25, 1968, at 12, col. d.

56. [1968] 1 All E.R. 763 (C.A.).

57. *The Times* (London), January 25, 1968, at 12, col. d. However, Lord Denning considered the case "...so important—not only on *locus standi*, but also on police powers. . . ." DENNING, *THE DISCIPLINE OF LAW* 119 (1979).

58. "No appeal shall lie—(a) except as provided by this Act, the Administration of Justice Act, 1960 or the Criminal Appeal Act, 1968, from any judgment of the High Court in any criminal cause or matter; (b) from an order allowing an extension of time for appealing from a judgment or order." Supreme Court of Judicature (Consolidation) Act 1925, 15 & 16 Geo. 5, ch. 49, § 31 (1) (a) & (b).

59. *Ex-MP Wants Police Ordered to Enforce Gaming Law*, *The Times* (London), Jan. 25, 1968, at 12, col. d; *No Legal Duty on Police to Prosecute*, *The Times* (London), Jan. 26, 1968, at 11, col. a.

60. *Id.*

61. *Gaming Clubs Are Facing 'Day of Reckoning'*, *The Times* (London), Jan. 30, 1968, at 11, col. h. See also *Regina v. Metropolitan Police Commissioner, ex parte Blackburn*, [1968] 1 All E.R. 763, 768, 770.

it is enforced.”⁶² This ruling was considered a “remarkable success”⁶³ for Blackburn in that he had persuaded the courts to reprimand the Police Commissioner. The police immediately began prosecution of many London clubs, resulting in further ingenious tactics by clubs seeking legal loopholes.⁶⁴ Victoria Sporting Club, Ltd., for example, requested successful roulette winners to return a “marker” chip among the thirty-six awarded them.⁶⁵ At a hearing, it was uncontested that the return of the marker chips were voluntary and that most players returned the chips to the club.⁶⁶ As a result, Victoria and one of its directors, were found guilty of violating the Act and fined £200 and £100, respectively.⁶⁷ The courts described the £100 penalty as “almost half an hour’s profit.”⁶⁸ As a result of alleged police inaction, light penalties and the apparent increase in the number of casinos, Blackburn again moved for injunctive relief. The police were apparently unable to

62. Regina v. Metropolitan Police Commissioner, *ex parte* Blackburn [1968] 1 All E.R. 763, 770. See also, *Why No Injunction To Stop Illegal Gaming?* The Times (London), July 20, 1968, at 7, col. e.

63. Cline, *Uncertain Stakes*, Spectator, Feb. 16, 1968, at 198, col. 2. Blackburn throughout 1968 and 1969 remained active in battles with whom he perceived were gaming supporters. He opposed the new “pool” system in roulette which required a £10 charge per session. The Times (London), Nov. 6, 1968, at 3, col. b. In December, of 1968, he took out private summonses against Playboy, Crockford’s and the Golden Nugget as well as various directors of the three casinos and the Chairman of the British Gaming Association. The Times (London), Dec. 16, 1968, at 3, col. f. He also sought a contempt action against Quinton Hogg, M.P., for his article in *Punch*, which had blamed the judicial system for the failure to prosecute casinos successfully. See *supra* note 47 and accompanying text. In Regina v. Metropolitan Police Commissioner *ex parte* Blackburn (No. 2), [1968] 2 All E.R. 319, Lord Denning stated this was “the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself.” *Id.* at 320.

64. The Times (London) Apr. 19, 1968, at 3, col. g; The Times (London), June 20, 1968, at 1, col. b. The gaming association explained that “[w]e must have a legal view on whether giving away one’s money at a casino makes it an unlawful game.” The Times (London), May 9, 1968, at 2, col. f.

65. Victoria Sporting Club Ltd. v. Hannan; Wynberg v. Hannan, [1969] 1 All E.R. 369; *sub nom.* Victoria Sporting Club v. Hannan; Wynberg v. Hannan, 113 Sol. J. 122.

66. *Id.*

67. The Times (London), May 9, 1968, at 2, col. f. The decision was affirmed by the Divisional Court in October 1968 by 2 to 1 since the odds were not “equally favourable” to all the players because “the reality of the position is that at any session of gaming it is conducted in such a way that the odds are thirty-five to one and not thirty-six to one. . .” (emphasis added). *Id.* Thus there was a violation of Section 32(1)(a)(ii) of the Betting, Gaming and Lotteries Act of 1963. The House of Lords in January of 1969 affirmed the decision in part on different grounds. Victoria Sporting Club Ltd. v. Hannan [1969] 1 All E.R. 369.

68. Regina v. Metropolitan Police Commissioner *ex parte* Blackburn, *Law Report*, The Times (London), July 20, 1968, at 7, col. f. (Salmon, L.J.).

curtail casinos since the January court decision.⁶⁹ At a hearing before the court, Blackburn claimed that parliamentary figures proved the clubs took in over "£2,500,000 a year in foreign currency alone. Something more than a £100 fine was needed."⁷⁰ Moreover, Blackburn complained that enforcement was delayed by six month trials and three month appeals; immediate relief was necessary. Lord Justice Salmon concluded that injunctive relief was appropriate, especially because gaming was a "public evil" and precedent allowed such relief when mere fines did not prevent the law from "being flouted."⁷¹

Lord Denning remarked that the prosecution had vigorously tried to enforce the law, but that most club owners ignored both the court warning in January and the notice of the Chief Metropolitan Magistrate's decision that marker chips in roulette were illegal.⁷² A £200 penalty was no deterrent, and imprisonment for a second offense was inapplicable since the "owners were limited companies, which had no body to be imprisoned and no soul to be damned."⁷³

Lord Denning believed that the appropriate remedy was a relator action by the Attorney General for an injunction, but the Director of Public Prosecution had earlier told Blackburn that injunctive relief was inappropriate "at this stage." Lord Justice Salmon, agreeing that the Commissioner had done all that was possible, was unsatisfied with the director's explanation that injunctive relief was inappropriate since otherwise "it was difficult to think when that stage would arise. Was it to be in another seven years, or seven months, or when?"⁷⁴ Lord Justice Davies also agreed that an injunction in the case at bar was appropriate since gaming evils were concededly "great, the profits accruing to the exploiters immense, the penalties normally imposed trifling and its suppression accordingly a matter of great public urgency."⁷⁵

69. The Times (London) July 20, 1968, at 7, col. e.

70. *Id.*

71. *Id.*

72. The Times (London), July 25, 1968, at 12, col. d. Lord Denning has stated, "[a]s to injunctive relief, you are quite right in thinking the Court was in fact only one step away from granting it. I myself was in favour of it." Letter from Lord Denning to the author (Aug. 19, 1985).

73. The Times (London), July 20, 1968, at 7, col. e. In *Huckerby v. Elliott*, 113 Sol. J. 1001 (Q.B. 1969), a director of a club where chemin de fer was played did not have the necessary license required by Section 13 of the Finance Act of 1966. The court held that a director had no duty ". . . to exercise some degree of control over what was happening; nor was it right to say that there was a duty to supervise the running of the company. . ." *Id.* at 193-194.

74. The Times (London), July 25, 1968, at 12, col. d.

75. *Law Not Powerless to Stop Illegal Gaming*, The Times (London), July 25, 1968, at 13, col. d. The motion was dismissed, but the court refused the Commissioner's request to assess costs against Blackburn. In October 1968, Blackburn requested the Attorney General grant him a fiat for injunctive relief against a casino located in Home Secretary Callaghan's constituency. The Times (London), Oct. 22, 1968, at 2, col. b; *Former MP seeks Gaming Inquiry*, The Times (London), Nov. 6, 1968, at 3, col. b.

Blackburn's lawsuits and the earlier *Kursaal* decision led some to speculate that a new gaming act was unnecessary. One Tory parliamentarian feared that the *Blackburn* decision of January 1968 had convinced the government that even reform of existing laws was unnecessary.⁷⁶ In fact, the proposed Act was published on December 19, 1967, the same day as the *Kursaal* decision, an event which anti-gaming supporters believed was "extraordinary ill luck."⁷⁷

The Government temporarily deferred the bill and there were reports that "anxious" consultations "were taking place with the police and doubtless their own legal advisors."⁷⁸ It was argued that if the police enforced the law, Britain's 1,000 casinos would face "virtual extinction."⁷⁹ Immediately after the *Kursaal* decision, James Callaghan, the Government Home Secretary, declared privately that the bill was now unnecessary because the whole picture was altered.⁸⁰ Shortly thereafter, at the end of January, Dick Taverne, Q.C., Under-Secretary at the Home Office, and the person regarded as *the* author of the bill, convened an informal conference of the chief constables of English cities. They predicted that if the laws against games of unequal chance were enforced, organized crime would benefit from the inevitable underground gaming.⁸¹ Thus, the Government decided to proceed with the bill as the less undesirable alternative between "outright suppression and a most rigorous control."⁸² Anti-gaming zealots thought that the

76. 758 PARL. DEB., H.C. (5th ser.) 1182 (1968).

77. The Times (London), Jan. 2, 1968, at 7, col. a. The bill was initially introduced as a private member's bill by William Rees-Davies. 755 PARL. DEB., H.C. (5th ser.) 1444 (1967).

78. *Examining the Home Office's Gambling Dilemma*, The Times (London), Feb. 2, 1968, at 9, col. e.

79. *Gaming Clubs are Facing "Day of Reckoning"*, The Times (London), Jan. 30, 1968, at 1, col. a.

80. Interview with Dick Taverne (July 19, 1985). The Times (London), Feb. 2, 1968, at 9, col. e.

81. Interview with Dick Taverne, (July 19, 1985). Mark Carlisle, M.P., a Tory, congratulated Taverne "whose brain child I suspect the Bill to be." 758 PARL. DEB., H.C. (5th ser.) 1210 (1968). As early as December 1966, the Labor Ministry discussed the need to "control the activities of this vast and dangerous new (gaming) industry." CROSSMAN, *supra* note 26, at 169.

82. 758 PARL. DEB., H.C. (5th ser.) 1169 (1968). Lord Denning credits Blackburn with being responsible for the 1968 Act. Not only was the Act the result of forces outside Blackburn, but it was his activity and the *Kursaal* decision which might have made the Act unnecessary. The Times (London) Feb. 14, 1968, at 1, col. g. G.N. Benson also agrees that as a result of Blackburn's efforts, the Home Secretary did at one time contemplate not proceeding with the Gaming Act. *Gaming Act, 1968*, 112 Sol. J. 978 (1968). After the

"choice" was "manifest nonsense."⁸³ Less biased observers concluded that the prospect of withdrawing the bill and driving gaming again underground would have resulted in "an inaugural gift from Mr. Callaghan" to organized crime with the consequences of "prohibition in Chicago in the 1920's."⁸⁴

II. THE GAMING ACT OF 1968

The Gaming Act of 1968 is divided into four parts and twelve schedules. Part I essentially deals with casinos, and "the general law restricting gaming."⁸⁵ Part II deals with games of chance, and a complex licensing system for proprietary clubs "controlled by the Gaming Board" and the registration of member clubs where gaming is only "a purely incidental activity."⁸⁶ Part III exclusively concerns gaming machines, their licensing and registration and Part IV consists of "Miscellaneous and Supplementary Provisions."⁸⁷ The Act also has twelve schedules for purposes of implementation. It was described by the Home Secretary as "a long Bill and a complicated one."⁸⁸

A. Casino Licensing

One of the Act's most crucial and innovative features was the procedure created for the licensing of proprietary gaming clubs. Throughout the debates, the overwhelmingly supported goal was to drastically

Blackburn decision, Callaghan invited Denning to discuss the reform of the proposed Bill. DENNING, *supra* note 57, at 122. In a letter to the author, Denning stated that at the meeting,

I did indeed explain the complexity of the situation to him and he put forward to me his proposals for a licensing system and I gave him my support, saying that I thought and hoped it would work well. I may add that it was very unusual for him as Home Secretary to discuss the position with me as a Judge, because in general we here are opposed to any discussions of the executive Government with the Judges. I am sure in the case the discussion was a help to him in framing his new legislation.

Letter from Lord Denning to the author (Aug. 19, 1985).

83. Letter from Raymond Blackburn to the Editor, *The Times* (London), Feb. 6, 1968, at 9, col. f. The *Solicitors Journal* listed the two choices as "oppression" or "most rigorous control." 112 Sol. J. 978 (1968). Hogg, considered the Bill as "the least unhelpful approach if we are not to return to virtual total prohibition." *Political Parley*, PUNCH, Feb. 14, 1968, at 232.

84. THE ECONOMIST, Feb. 3, 1968, at 15, col. 2.

85. BOARD REPORT (1969), *supra* note 19, at para. 4.

86. 758 PARL. DEB., H.C. (5th ser.) 175 (1968).

87. Gaming Act 1968, ch. 65, § 40 *et seq.*

88. 758 PARL. DEB., H.C. (5th ser.) 1180 (1968).

reduce the number of casinos by two-thirds or three-quarters.⁸⁹ The Government envisioned casinos eventually having to surmount a three "sieve" obstacle. First, the Gaming Board would have the power to deny certificates of consent. Second, the Board could oppose a license before local licensing justices, and third, the Board could appeal a license if it was granted over the Board's objections.⁹⁰ In effect, the Act created "a preliminary filtering conducted by the Board and a substantive determination by the licensing authority."⁹¹

First, the Board would pass on the "trustworthiness of all applicants and their financial sponsors."⁹² After "a great number . . . fall at the first hurdle,"⁹³ the remaining applicants would then go before the licensing justices where many would be rejected for unsuitability of premises, lack of demand or other reasons.⁹⁴

If, notwithstanding the Board's opposition, the justices granted a license, the Board would have "quite unprecedented" appellate powers.⁹⁵ "They will not be restricted in their appeals to cases where they have themselves appeared in the first instance, but will be able to take up and champion, on appeal, objections made by any other party whatsoever—for instance, the police, the local authority, the fire authority, residents' associations, or even single individuals."⁹⁶

1. Certificate of Consent

The prerequisite to obtaining a casino license is a certificate of consent from the Board. For this certificate, the Board requires only that applicants apply either for a bingo or casino license and that they satisfy the "absolute" statutory requirements of age, citizenship and residency.⁹⁷ In practice, "the Board [is] required to make unusually extensive inquiries not only into the capacity and diligence of all applicants, but also into their character, reputation, financial standing and *any other circumstances appearing to the Board to be relevant.*"⁹⁸ In

89. 293 PARL. DEB., H.L. (5th ser.) 905 (1968).

90. 296 PARL. DEB., H.L. (5th ser.) 461-462 (1968).

91. *Playboy Club of London, Ltd. v. Gaming Board of Great Britain*, No. SJ 216/8 (Q.B. July 14, 1980) (available on LEXIS, Enggen library, Cases file).

92. 296 PARL. DEB., H.L. (5th ser.) 460 (1968).

93. *Id.* at 461.

94. *Id.*

95. *Id.* at 462. The Board might approve an applicant's fitness, but oppose a license before local justices for different reasons, e.g. lack of unstimulated demand.

96. *Id.*

97. *Objection Sustained*, THE ECONOMIST, Jan. 17, 1970, at 21, col. 2.

98. *Rogers v. Secretary of State for the Home Department; Gaming Board for Great Britain v. Rogers* [1972] 2 All E.R. 1057, 1059 (H.L.); *aff'g sub nom. Regina v. Lewes Justices, ex parte the Gaming Board of Great Britain; Regina v. Lewes Justices, ex parte the Secretary of State for the Home Department*, [1971] 2 All E.R. 1126 (Q.B.); *sub nom. Regina v. Lewes Justices, ex parte Home Secretary*, 115 Sol. J. 306 (emphasis added).

addition to ensuring that the applicants have sufficient financial resources, available management expertise and good character, the Board must form an "opinion" as to whether applicants are "likely to be capable of, and diligent in, securing that the provisions of this Act and of any regulations made under it will be complied with, [and] that gaming on the premises will be fairly and properly conducted. . . ." ⁹⁹ A corporate applicant must also supply "statements of the assets and liabilities of its directors and of the nature of the shareholding."¹⁰⁰ The Board is especially concerned that an applicant not be a "front" for those who would otherwise be unacceptable.¹⁰¹

The Government explained in Parliament why standards for a certificate of consent were vague:

Formally, a person applying for a certificate of consent . . . is required to do no more than specify the premises concerned and say whether the application he intends to make to the justices will be for a bingo club license or another. But the Board will probably ask for other information bearing upon the applicant's record, experience, resources and backing. The nature of the information that will be sought is likely to vary in different cases. It would be unnecessary and perhaps hampering to the Board to attempt a comprehensive description.¹⁰²

Courts, however, would be able to review a Board decision only:

[I]f it appears that the laws of natural justice have been disregarded. This will mean, at the least, that if the Board were

99. Sched. 2, para. 4 (5) of the Gaming Act, 1968 provides:

Subject to sub-paragraph (4) of this paragraph, in determining whether to issue to an applicant a certificate consenting to his applying for the grant of a license under this Act in respect of any premises, the Board shall have regard only to the question whether, in their opinion, the applicant is likely to be capable of, and diligent in, securing that the provisions of this Act and of any regulations made under it will be complied with, that gaming on those premises will be fairly and properly conducted, and that the premises will be conducted without disorder or disturbance.

100. Miers, *supra* note 5, at 41.

101. GAMING BOARD FOR GREAT BRITAIN, SIXTEENTH ANNUAL REPORT para. 90 (1984) [hereinafter BOARD REPORT (1984)]. Should a significant change occur in a corporation's shareholders (5% or more), and should the Board not approve of the change, the license holder would face the grave probability of a non-renewal of his license. Interview with Geoffrey Littman, Esq., (Jan. 8, 1987).

102. 766 PARL. DEB., H.C. (5th ser.) 315 (1968); *The Times* (London) Aug. 7, 1969, at 2, col. a.

mind to refuse a certificate it would be expected, first, to give the applicant a general indication of the nature of the objections and an opportunity of answering them. It does not follow that it would have to reveal its sources of information, or that, in arriving at its decision, it would be bound by the same laws of evidence or proof as a court of law. While mitigated by the requirements of natural justice, the system will still remain essentially arbitrary.¹⁰³

Conservatives preferred a totally powerful Board. As one Tory explained, "many of us who are lawyers came to the view that [the Board] should be wholly arbitrary."¹⁰⁴ The Conservatives also agreed that "within the limits of natural justice, the Board will have the power to say, 'No, you shall not.' It will not have to state its reasons."¹⁰⁵ In fact, the opposition only asked that an applicant be allowed to make written representations to the Board before a decision.¹⁰⁶

The Board explained its procedure, which the Act had left for the Board's determination, before the hearing process for a certificate of consent was implemented. If its staff recommended an applicant be denied a certificate, the Board would then interview the applicant. When consistent with the Board's statutory duty and the public interest, the Board would make the applicant aware of the matters that were troubling it.¹⁰⁷ The Board would also allow a hearing in which the applicant could be represented by legal counsel or other experts. One such applicant brought twelve witnesses to a hearing, while another lasted seven hours.¹⁰⁸

The Board insisted it would not reveal information or sources which might endanger the obtaining of further information, nor would it permit an applicant to make a verbatim record of the hearing.¹⁰⁹ As one Board member explained, the Board's interviews of applicants were often an "alarming exercise" due to the "high proportion of people in the industry who are the possessors of a criminal past" and because "some [applicants] have been utterly dumbfounded that the Board should take an interest in their housebreaking expeditions 15 years ago."¹¹⁰ The Board also refused to give specific reasons for a de-

103. 766 PARL. DEB., H.C. (5th ser.) 317 (1968).

104. *Id.* at 320.

105. *Id.* at 318.

106. *Id.* at 320.

107. *The Times* (London), Jan. 14, 1970, at 3, col. b.

108. BOARD REPORT (1969), *supra* note 19, at para. 93.

109. Meirs, *supra* note 5, at 59 n.41.

110. Bacon, *supra* note 23, at 260.

nial of a certificate. If a decision was unfavorable, it was up to the applicants to decide "whether they want to make public the [controversial] issues."¹¹¹ Furthermore, any appeal could only be based on the grounds of a denial of "natural justice."

The initial test case for the Board's certificate of consent procedure was *Regina v. Gaming Board for Great Britain ex parte Benaim*,¹¹² which upheld the Board's denial of a certificate to Crockford's, England's largest casino and "the club that did the most to establish gaming in Britain."¹¹³ In their initial appearance before the Board on December 1, 1969, Crockford's joint-managing heads, Benaim and Khaida, were informed that the Board had "grave doubts about their application."¹¹⁴ After a four-hour meeting, the applicants claimed they were told that the Board was "quite satisfied" about their reputations, but that they could submit additional written relevant information. On January 9, 1970, the Board denied their application without giving any reasons. When Benaim and Khaida requested more information, the Board cited five factors which had troubled it, but refused to say which factors had been answered satisfactorily. The applicants then sought an order to quash the Board's decision and an order of mandamus requiring it to explain its reasons for refusal. On March 4, 1970, the Queens Bench Divisional Court denied the applicants' request and concluded "that it was unarguable that there should be any such judicial review."¹¹⁵ The Court of Appeal granted leave to appeal for an order of certiorari to quash the Board's decision.¹¹⁶

At the initial hearing, the applicants suggested that the Board utilized factors outside of those listed in schedule 2 paragraph 4(5),¹¹⁷ which emphasized that gaming on an applicant's premise be "fairly and properly conducted."¹¹⁸ The applicants claimed that the courts should give the Board "some general guidance" in order for the Board to carry out its obligations to be fair.¹¹⁹ The applicants further argued that if the Board prevailed, not only would their names be blackened, but it would be impossible for them to sell the premises to someone else. In addition, it was unfair not to indicate "the specific matters" of

111. *The Times* (London), Jan. 14, 1970, at 3, col. b. Cline, *Zero for Crockford's*, *Spectator*, Mar. 14, 1970, at 333, col. 1.

112. [1970] 2 All E.R. 528, (C.A.).

113. *The Times* (London), Apr. 1, 1970, at 8, col. d.

114. *The Times* (London), Mar. 5, 1970, at 14, col. d.

115. *Id.*

116. *Id.* Cline stressed that the appellate court insisted the matter was arguable. Cline, *supra* note 27, at 333.

117. *See supra* note 99.

118. *Id.*

119. *The Times* (London), Mar. 5, 1970, at 14, col. e.

dissatisfaction since otherwise applicants would be looking "for a needle in a haystack"¹²⁰ or "shadow-boxing, unable to answer a case which had not been put against it."¹²¹

Lord Justice Phillimore initially expressed concern "because obviously the Board [has] got a lot of information from all over the place—maybe police information. That information is not always right and it is very difficult, unless you know what it is that they are secretly accusing you of."¹²² In denying applicants' relief after three days of argument, Lord Denning, with the approval of the other two justices, concluded that the operation of a casino and other gaming was a privilege, "which required the applicants . . . to show that they are fit to be trusted with it."¹²³

In dicta, the *Benaim* Court stressed that the public policy of the Act necessitated coping with organized crime. The Board need only give the applicant an outline of its reservations and "their *opinion* as to the capability and diligence of the applicant."¹²⁴ The Court, however, concluded that the "matter was arguable and denied the Board's assertion that it had, in effect, unfettered discretion and thus could disregard the rules of natural justice."¹²⁵ Lord Denning emphasized that "the Board must be fair; [if not], these courts will not hesitate to interfere."¹²⁶ It was further emphasized that the principles of natural justice were applicable both to administrative proceedings and to the granting of licenses.¹²⁷ While it was impossible to lay down rigid rules concerning natural justice, or its scope and extent, natural justice encompassed a right to be heard and to be treated fairly.¹²⁸ In effect,

120. *Id.*

121. Cline, *supra* note 27, at 333, col. 1.

122. The Times (London), Mar. 5, 1970, at 14, col. e.

123. *Benaim*, [1970] 2 All E.R. at 533; The Times (London), Mar. 19, 1970, at 4, col. g.

124. [1970] 2 All E.R. at 535 (emphasis original).

125. *Id.*

126. *Id.*

127. *Id.* at 533. In later analyzing this case Lord Denning stressed its importance as a decision which subjected administrative decisions to judicial review. DENNING, *supra* note 57, at 92-93.

128. In *Regina v. Herrod*, [1976], 1 All E.R. 273, 280 (C.A.), Lord Denning said that the Act had a provision:

enabling the local authorities in some circumstances to pass policy resolutions declaring that they would issue no more permits in respect of premises of a specified class. Such resolutions can be passed by the local authorities without hearing the persons affected and without giving them any right of appeal. In short, the local authorities are authorized to pass resolutions by which they can give a 'blanket' refusal to grant or renew a permit without hearing the applicant and without any appeal from their decision. This would seem to be contrary to natu-

gaming applicants' rights were analogized to those of an immigrant at a deportation hearing.¹²⁹

The need for nondisclosure by the Board was further strengthened by the House of Lords' unanimous decision in *Rogers v. Home Secretary; Gaming Board for Great Britain v. Rogers*.¹³⁰ That decision established that the public interest required information received by the Board about applicants to remain undisclosed. Otherwise, disclosure to an applicant would have a chilling effect on the Board's information sources.¹³¹

Courts reached results similar to those in *Benaim* in *Regina v. Gaming Board for Great Britain ex parte Wise*¹³² and *Penthouse Clubs (International) Ltd.*¹³³ In *Penthouse*, the Board denied a certificate after four or five meetings with the applicant. On appeal, the applicant alleged unfairness and inadequate notice of the matters to be discussed. *Penthouse* argued that if it had been aware of the specific areas of Board concern, it could have given detailed responses.¹³⁴ In February of 1979, when the Divisional Court refused to quash the Board's decision, another unsuccessful appeal was made to the Euro-

ral justice, even in the application for the 'grant' of a permit. All the more so where it is the refusal to 'renew' an existing license.

In *McInnes v. Onslow Fane and Another*, [1978] 3 All E.R. 211, Sir Robert Megarry, V.C., explained the difficulty of utilizing 'natural justice' as a test. "The suitability of the term 'fairness' in such cases is increased by the curiosities of the expression 'natural justice.' Justice is far from being a 'natural' concept. The closer one goes to a state of nature the less justice does one find." *Id.* at 219.

129. [1970] 2 All E.R. 532-535 (C.A.). When leave to appeal to the House of Lords was denied, *Crockford's* closed from March, 1970 until it was reopened by new owners in May, 1971. *The Times* (London) May 26, 1971, at 1, col. e.

130. [1972] 2 All E.R. 1057 (H.L. 1973).

131. Parliament, moreover, specifically exempted the Board from the requirements of The Rehabilitation of Offenders Act 1974 (exceptions) Order 1975, which would treat a rehabilitated person as if he had never committed the offense, and therefore remove any convictions from his record. GAMING BOARD FOR GREAT BRITAIN, SIXTH ANNUAL REPORT para. 14 (1974) [hereinafter BOARD REPORT (1974)]; Board Report (1975), *supra* note 49, at para. 11.

132. Q.B. Div'l Ct. February 25, 1975, as cited in, BOARD REPORT (1975), *supra* note 49, at para. 42.

133. GAMING BOARD FOR GREAT BRITAIN, ELEVENTH ANNUAL REPORT para. 38 (1979) [hereinafter BOARD REPORT (1979)]. *The Times* (London), July 19, 1979, at 36, col. c.

134. A different solicitor who succeeded in obtaining a certificate of consent was nevertheless bitter after its hearing procedure. During a fifteen-minute interview, his client was informed he had been seen in his car with "a certain character of alleged ill repute." Not only had the applicant sold his car, but also proved that it was another person who had a general appearance and a Jaguar similar to the one mentioned by the Board. "If my client was refused his certificate, his £80,000 business would have been virtually worthless with no right of appeal." England, *Gaming Board*, 114 Sol. J. 391 (1970).

pean Commission of Human Rights.¹³⁵

Contrary to *Benaim*, the Court in *Regina v. Gaming Board for Great Britain ex parte Fenton, et al.*,¹³⁶ distinguished earlier rulings whereby natural justice or fairness meant only that the Board disclose non-confidential information. As a result of the decision, the Board adopted a policy of indicating by letter the topics which were of concern to it. While the Board, prior to *Fenton*, revealed as much of the information from confidential sources as consistent with its need to protect its sources, it was observed that:

the Board will mention a name or an event at the hearing without any prior notice to which the applicant is expected to respond. He may not have the slightest knowledge of the person or event; or, if he does, he may not have ready to hand the material upon which he can satisfactorily answer the Board's inquiry. And since it may not reveal the motive to its bald inquiry, it is hard for the applicant to know how to deal with the Board's misgivings, whatever they may be.¹³⁷

At a minimum, *Fenton* required that: "(i) prior notice ought to be given indicating clearly the areas of complaint; (ii) the proceedings should be so conducted that justice should not only be done but seem to be done; and (iii) the view of the Board that no irregularity had occurred should not be the decisive factor."¹³⁸

135. Penthouse Club International Ltd. Eur. Comm'n H.R. 5 (Application No. 8847/80, 1981). Benjamin Baker, the solicitor for Penthouse, insisted that "had we any idea of their objections which concerned remote activity in Spain, we would have been able to answer the questions satisfactorily." Interview with Benjamin Baker (July 16, 1985). Penthouse, as a result of the *Benaim* decision, decided that further appellate review within Great Britain would be "futile." Penthouse Club International Limited Case, Eur. Comm'n. H.R. 5 (Application No. 8847/80, 1981). Instead, Penthouse argued that the British decisions violated Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in that it was a violation of civil rights or obligations. On May 5, 1981, the Commission concluded Article 6 was inapplicable to Gaming Board proceedings. *Id.*

136. Financial Times, Feb. 5, 1979, at 10, col. c.

137. "The Europeans have traditionally regarded it as axiomatic that every decision of a court of law or an administrative tribunal should be fully articulated and reasoned." *Safeguards for the Gaming Board*, Financial Times, February 5, 1979, at 10, col. c. *Regina v. Gaming Board of Great Britain ex parte Fenton et al.*, held that natural justice necessitated full disclosure and prior notice of all matters of concern to the Board. The Court's decision on natural justice has been interpreted therefore as having the potential of "stav[ing] off some applicants' trips to Strasbourg." *Safeguards for the Gaming Board, supra*. As a result of *Fenton*, the Board now discloses to applicants, in advance, what it will discuss at the hearing for a certificate of consent.

138. *Gaming: Revocation of Certificate*, 129 NEW L.J. 148 (1978). The decision is especially significant since the issue was the withdrawal of certificates of approval by the Board of Casino executives. Parliament had been especially critical of any due process rights concerning the withdrawal of these certificates.

Unfettered Board discretion was further criticized in *Playboy Club of London, Ltd. v. Gaming Board of Great Britain*.¹³⁹ For nine months, until the appellate court had decided issues concerning possible revocation of the Victoria Sporting Club's license, the Board refused to transfer a certificate of consent to Playboy. It also refused to hold a hearing on whether the license of the embattled Victoria's Sporting Club could be transferred to its purchaser, Playboy.¹⁴⁰

The Divisional Court held that irrespective of Board discretion and the concept that gaming was a privilege, once a certificate or license was granted, the Act "contemplates" a certificate upon compliance, therefore, it would be an "absurdity" for the Board to "confer on itself a wholly unfettered discretion, forming no part of the enacted scheme, by the simple expectant of refusing to listen to an application at all."¹⁴¹ Even if the Act were silent, the Board had an implied duty to decide based on sched. 2, para. 4(3), which specifically lists those applications on which the Board need not act, "thereby inferentially suggesting that other types of applications must at least be considered."¹⁴² *Benaim*, was cited as authority "that the Board is under a duty to act, and to act fairly, when a consent application is received."¹⁴³

2. License Application and the "Mirror Image" Requirement

During the time between having obtained a consent certificate and the license hearing, an applicant often had to face another potentially serious obstacle. It had been common practice by lawyers for competing gaming interests to "kill an application" by "technical objections" relating to procedural irregularities in complying with required notice publication.¹⁴⁴ These objections have become less frequent since courts no longer insist upon "mirror image" compliance. The incentive to remove a potential competitor has also been reduced by a change in law

139. No. SJ 216/80 (Q.B., July 14, 1980) (available on LEXIS, Enggen library, Cases file).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Gaming: Gaming Board's Duty*, 130 NEW L.J. 1009-1010 (1980). See GAMING BOARD FOR GREAT BRITAIN, TWELFTH ANNUAL REPORT para. 10 (1980) [hereinafter BOARD REPORT (1980)]. Shortly thereafter, the Board issued Playboy a certificate of consent, *The Times* (London), July 22, 1980, at 3 col. c; *Gaming: Gaming Board's Duty*, *supra*, at 1010. "That went far beyond the bounds of matters which could properly be taken into account by the Board where making a procedural decision whether a substantive decision should be made now or at a later date." *Id.*

144. *Kent-Lemon*, *supra* note 2, at 77.

which permits granting quarterly license applications.¹⁴⁵ A successful objector may no longer automatically eliminate a potential competitor for at least a year, imposing on him the additional burden of re-applying for a consent certificate.¹⁴⁶

Early decisions invalidated applications when a published notice included the entire application (a common practice in liquor licensing) instead of only the required statutory material.¹⁴⁷ In *Regina v. Bournemouth Gaming Licensing Committee ex parte Dominion Leisure Ltd.*,¹⁴⁸ a license was denied because the notice "was displayed outside the proposed entrance to the premises rather than outside the existing entrance" to the relevant premises.¹⁴⁹ A gaming application was also rejected when the applicant sent the cutting instead of "a copy of that newspaper" to the licensing committee thirteen days from the time of publication, instead of "not later than seven days after the publication."¹⁵⁰ In 1976, two license applications were dismissed without a hearing. In both cases, the applicants utilized "the *Premises* known as 'The . . . Casino' instead of 'a *Club* named' the . . . Casino" pursuant to sched. 2 (6)(2).¹⁵¹ In its annual report for 1977, the Board further emphasized that "at least 10 applications" were denied for technical defects.¹⁵²

Recent judicial decisions have tended to discard the mirror-image requirements for what, in effect, amounts to substantial compliance. In *Regina v. Brighton Gaming Licensing Committee ex parte Cotedale*,¹⁵³ competitors objected to a notice which included the name and address of the applicant's secretary. This, it was argued, was a violation of sched. 2(5)(4) and 2(6)(4), which prohibited in the notice "any matter which is not required. . . ." ¹⁵⁴ In allowing the applicant's mandamus request, Lord Denning emphasized that the objection "was a most

145. The Gaming Act, 1968, as amended by Act of April 28, 1982.

146. FINNEY, *supra* note 3, at 130.

147. *Regina v. Leicester Gaming Licensing Committee ex parte Shine*; [1971] 1 W.L.R. 1648 (Q.B.); *aff'g* [1971] 1 W.L.R. 1216; (Div'l Ct.). "Any departure from the code *prima facie* rendered ineffective a step in the procedure in which an error was made." *Case Notes*, 121 NEW L.J. 502 (1971).

148. Divisional Court, (Oct. 18, 1978) (interpreting scheds. 2(6), and (7) of the 1968 Act). See FINNEY, *supra* note 3, at 130.

149. *Id.* at 131.

150. *Regina v. Pontypool Gaming Licensing Committee ex parte Risca Cinemas* [1970] 3 All E.R. 241. (Div'l Ct.)

151. BOARD REPORT (1976), *supra* note 39, at para. 39 (emphasis original).

152. GAMING BOARD FOR GREAT BRITAIN, NINTH ANNUAL REPORT para. 39 (1977) [hereinafter BOARD REPORT (1977)].

153. [1978] 3 All E.R. 897 (C.A.).

154. *Id.* See also, FINNEY, *supra* note 3, at 131.

technical one," that nobody "has been misled" and that "the requirements [were] fulfilled in substance."¹⁵⁶ Sir David Cairns also stressed that sched. 2(5)(4) should not be construed so as to allow "purely formalistic objections."¹⁵⁶

3. Substantive Requirements

(a) Showing Unsatisfied Demand

After having obtained a certificate of consent, which now is considered by "most serious applicants" to be the "simple part" in obtaining a license,¹⁵⁷ and after complying with statutory notice requirements, the applicant must next obtain a license from the relevant local justices. As with the requirements for a certificate of consent, Parliament made the licensing requirements a difficult obstacle to overcome if the authorities were negative.¹⁵⁸

The appropriate application hearing before the justices might take as little as a day or as long as three weeks. Often the applicant will have as many as twenty professional gamblers testify:

that they wish to gamble in the casino being proposed and for various reasons do not wish to play in other casinos in London. These reasons may include overcrowding, unsuitability, bad atmosphere, type of ownership, wrong location, the mix of facilities available in competitor casinos, etc. This positive and forceful evidence, which is often hard to challenge by the opposition, will almost inevitably be the crux of any new license application.¹⁵⁹

At the hearings, the Gaming Board, in practice, appears as an ad-

155. [1978] 3 All E.R. at 899. See also *Regina v. Newcastle-upon-Tyne Gaming Licensing Committee ex parte White Hart Enterprises* [1977] 3 All E.R. 961. The issue was whether the statutory "displayed" outside necessitated being "affixed" outside. *Regina v. Newcastle-upon-Tyne Gaming Licensing Committee ex parte White Hart Enterprises, Case Notes*, 127 *NEW L.J.* 791 (1977). The *White Hart* court held that a notice which was visible to outside passers-by, but appeared inside, was sufficiently "displayed" so as to be in compliance with sched. 2 (6)(3).

156. *Regina v. Brighton Gaming Licensing Committee ex parte Cotedale*, [1978] 3 All E.R., 897, 900.

157. *Kent-Lemon*, *supra* note 2, at 77. *Miers*, *supra* note 5, considers the certificate to be "the most substantial hurdle." *Id.* at 40.

158. 269 *PARL. DEB., H.L.* (5th ser.) 462 (1968). See also *KENT-LEMON, A PRACTICAL GUIDE TO NEW CASINO LICENSE APPLICATIONS IN THE UNITED KINGDOM* 3-8. (1984).

159. *KENT-LEMON*, *supra* note 158, at 5. The witnesses are subject to cross-examination and their testimony is taken most seriously by local magistrates. Interview with Nigel Kent-Lemon (July 15, 1985).

versary to the applicant.¹⁶⁰ However, unlike the oft-criticized secrecy of the certificate procedure, the Board will inform the applicant with specificity as to its intentions and information.¹⁶¹ As part of this procedure, the justices must take into account the Board's advice.¹⁶²

Normally, "the crucial test" for the applicant at the hearing "is proving the existence of unsatisfied demand."¹⁶³ Yet, it was not until 1972 that the Board felt it had the expertise to decide whether existing facilities had already met the demand.¹⁶⁴

The first significant "test" case concerning "demand" was *Regina v. Manchester Crown Court ex parte Cambos Enterprises*,¹⁶⁵ where the Divisional Court reversed the Crown Court's decision to deny a bingo license to an applicant. The Court in *Cambos* affirmed the necessity for local analysis not only of the quantity, but also of the quality of facilities and remanded the matter to the Crown Court which then allowed a license.¹⁶⁶ As a result of *Cambos*, the Board instructed licensing authorities "to take into consideration the standard of the facilities" proposed, which will encourage a licensee "to improve the quality of the amenities provided for their patrons."¹⁶⁷

The "demand" issue still has not been resolved definitively by the courts. In 1974, the Board, after analyzing a Scottish decision denying a bingo license, concluded it was "glad to have judicial support for our contention that ability to create demand (which is sufficient to make a

160. The Board, in deciding a certificate does not take into account structural suitability of the proposed premises, but only the character and reputation of the applicant. "This distinction has produced some odd quirks, since the Board has found itself unable to withhold a certificate from the proprietor of a tatty "dive" on account of his blameless character while refusing one to a shady person running a lavish, Ritz-like casino." Bacon, *supra* note 23, at 259. See also BOARD REPORT (1969), *supra* note 19, at para. 8.

161. In the opinion of an expert, the Board "will leave few stones unturned in trying to upset an applicant's case." KENT-LEMON, *supra* note 158, at 7.

162. One Tory expressed reservations about an applicant only being shown the advice given to the justices by the Board in that all advice should be "public, published and available to ensure predictability." 758 PARL. DEB., H.C. (5th ser.) 1255, 1256 (1968).

163. MONOPOLIES COMMISSION REPORT, *supra* note 6, at para. 2.15. Proving unsatisfied or unstimulated demand was the test set up by the Betting and Gaming Act of 1960 for off-track-betting. A bookmaker, to get a license, had to prove demand and usually existing area bookmakers objected. KENT-LEMON, *supra* note 158, at 3.

164. In 1972, the Board concluded it had the ability to assess demand. GAMING BOARD FOR GREAT BRITAIN, FIFTH ANNUAL REPORT at paras. 32-33 (1973). [hereinafter BOARD REPORT (1973)]; BOARD REPORT (1972), *supra* note 39, at para. 51.

165. 117 Sol. J. 222; The Times (London) Mar. 5, 1973, at 14, col. a (Q.B. Div'l Ct. 1973). Lord Widgery described schedule 2 as not "altogether easy to understand" and that paragraph 18 is "in a somewhat odd form with slightly odd phraseology." *Id.*

166. FINNEY, *supra* note 3, concluded that instead of clarifying para. 18, *Cambos* was "in a sense, all things to all men." *Id.* at 136.

167. BOARD REPORT (1973), *supra*, note 164, at para. 15.

proposition commercially profitable) is not to be counted as satisfying the conditions of already existing demand."¹⁶⁸ In 1979, however, the Crown Court, upheld by the Divisional Court, reversed a Brighton licensing justice's decision to deny a casino license.¹⁶⁹ The licensing authorities, supported by the Board and competitors¹⁷⁰ of the applicant, concluded that the applicants had not provided the necessary proof for the demand of an additional club in the area. In its decision, the Crown Court placed determinative emphasis on "respective 'up-market' and 'down-market' characteristics of existing casinos in the area."¹⁷¹

(b) Suitability

A licensing authority may also refuse a license for other factors, such as the unsuitability of the premises under sched. 2(20)(1)(a). As a result of parliamentary changes in the bill, the Board may appear as an adversary even though it has granted a certificate of consent.¹⁷² The Government clearly had envisioned that local authorities could review all casinos for suitability.¹⁷³

Where the applicant has received permission from the appropriate planning body, local authorities have enjoyed only mixed success in denying a license on grounds of unsuitability. The Westminster City Council has declared its extreme reluctance to grant planning permission for casinos.¹⁷⁴ Chelsea and Kensington have adopted a policy of a general presumption against area casinos because of potential traffic increases and a general detrimental impact on neighborhood amenities.¹⁷⁵

Occasionally, citizens groups alone will be able to delay a casino license and place restrictions upon the casino's operation. When "the mighty Lonrho group" tried to move its casino, it was initially denied permission, notwithstanding lack of opposition from either the Board

168. BOARD REPORT (1974), *supra* note 131, at paras. 62-66.

169. BOARD REPORT (1979), *supra* note 133, at para. 46.

170. Competitors may appear and give evidence concerning either the lack of demand, or if there is a demand, it is already satisfied by existing casinos. Kent-Lemon, *supra* note 2, at 77. See also, *The Times* (London), Jan. 7, 1981, at 1, col. 6.

171. BOARD REPORT (1979), *supra* note 133, at para. 46.

172. 766 PARL. DEB., H.C. (5th ser.) 329 (1968). "The Board will build up general experience over a period and will have valuable advice to give, I trust, to local justices on the proper layout and character of gaming rooms." *Id.*

173. 296 PARL. DEB., H.L. (5th ser.) 461 (1968).

174. MONOPOLIES COMMISSION REPORT, *supra* note 6, at para. 3.34.

175. *Id.* Two applicants with planning permission had to appeal to the Secretary of State to obtain a license. *Id.*

or its competitors.¹⁷⁶ Local residents “had successfully prevented the move both on the grounds of unsuitability of the premises and demand. This was a very unusual decision and in this case reflected on the highly competent way in which the objectors put forward their case.”¹⁷⁷ While Lonrho succeeded on appeal, it had to agree to bus its staff, and provide off-street parking for patrons.¹⁷⁸

Mayfair residents, “despite environmental objections” were unable to prevent a transfer of a casino license to Park Lane where the former Playboy Club was reopened by Lonrho after three years delay.¹⁷⁹ The Victoria Sporting Club was also granted a license despite the objections of 112 local residents who signed a petition, fearing “a sort of miniature Las Vegas” and excessive noise.¹⁸⁰ The only major victory of citizens’ groups has been a Kensington decision which was not appealed.¹⁸¹

(c) The Applicants’ Fitness and Propriety

The licensing authority may also refuse to grant a license because the applicant is not a “fit and proper person.”¹⁸² In practice, there is no limit as to what factors may be introduced before the licensing body. For example, in opposing an extension of Playboy’s London Club’s license before the Westminster Gaming Licensing Committee, Raymond Blackburn asked the committee to examine Playboy magazine centerfolds, “arguing that it would be wrong to grant a license to a club that got members by its ‘Playboy philosophy.’”¹⁸³ Until 1979, when Playboy and the police objected to the renewal of three of Ladbroke’s casino licenses, the fitness and propriety of a license holder was rarely tested.¹⁸⁴

4. Appellate Review

If an applicant receives a certificate of consent and a license, without Board approval, the Board has the right to appeal to the Crown Court. This court includes a judge and four magistrates who were not

176. Kent-Lemon, *supra* note 2, at 278.

177. KENT-LEMON, *supra* note 158, at 3.

178. Interview with Nigel Kent-Lemon (July 15, 1985).

179. The Times (London), Jan. 18, 1984, at 22, col. a.

180. The Times (London), May 8, 1970, at 9, col. f.

181. Interview with Nigel Kent-Lemon (July 15, 1985).

182. The Gaming Act, 1968, sched. 20(1)(b).

183. The Times (London), May 1, 1970, at 4, col. b.

184. Miers, *supra* note 5, at 48; Miers, *The Management of Casino Gaming*, 21 BRIT. J. OF CRIM. L. 79-86, at 82 (1981).

involved in the initial hearing.¹⁸⁵ An appeal to the Crown Court requires the production of all evidence from the licensing court, and allows the introduction of additional evidence.¹⁸⁶ In practice, however, the Crown Court "does pay heed to the decision of the justices."¹⁸⁷

In one unusual appeal, the Board took the "unprecedented step" of appealing the granting of a casino license to Aspinall's, notwithstanding the Board's failure to object at the original licensing hearing.¹⁸⁸ The Board Secretary explained that the reason for the appeal was the Board's inability to "cross-examine witnesses at the original hearing because it had not registered an objection."¹⁸⁹ On another occasion, after the Board "had bungled the filing of its own objections (against Ladbroke's) and was barred from participating in the proceedings," it was dependent upon Playboy, a competitor of the applicant, to litigate on its behalf concerning the license revocation it sought.¹⁹⁰

The Act indicates that the decision by the Crown Court shall be final for the applicant.¹⁹¹ In *Tehrani v. Rostron*,¹⁹² Lord Denning concluded that finality in the 1968 Act did not include an error on a point of law. In order to appeal a decision from the Crown Court to a higher court, there must be a finding that there is an arguable point of law.¹⁹³ Ladbroke, for example, convinced a Divisional Court to allow an appeal from a Crown Court decision denying its license renewal by insist-

185. KENT-LEMON, *supra* note 158, at 8.

186. FINNEY, *supra* note 3, at 89.

187. *Id.* "I would hesitate, and I would expect any Chairman of quarter sessions to hesitate long before differing from the local justices who had dealt with the matter in their locality with the greatest care." *Regina v. Knightsbridge Crown Court et al. ex parte Aspinall Curzon Ltd. No. Co/957/82 (Q.B. 1982)*, *The Times (London)* Dec. 16, 1982, at 5, col. f.

188. *The Times (London)*, Oct. 15, 1982, at 2, col. a.

189. *Id.*

190. *The Times (London)*, Sept. 3, 1980, at 17, col. d.

191. The Gaming Act, 1968, sched. 2 (29)(4) states:

The court of quarter session may by its order allow or dismiss the appeal, or reverse or vary any part of the decision of the licensing authority, whether the appeal relates to that part of it or not, and may deal with the application as if it had been made to the court of quarter session in the first instance; and the judgment of the court of quarter session on the appeal shall be final.

Sched. 7(11)(4) states:

The court of quarter session may by its order allow or dismiss the appeal and may deal with the application as if it had been made to the court of quarter session in the first instance; and the judgment of the court of quarter session on the appeal shall be final.

192. [1971] 3 All E.R. 790 (C.A.); *rev'g.* [1971] 2 All E.R. 304 (Div'l Ct.). Denning, however, stressed the importance of local discretion on gaming matters even if local authorities were "at variance" in their interpretation of the 1968 Act. 3 All E.R. at 794, 796.

193. *Id.* at 794, 796.

ing that the Crown Court had refused to consider its corporate restructuring; the Divisional Court agreed that Ladbroke raised an "arguable legal point."¹⁹⁴

5. License Renewal

Surprisingly, while the Act gives licensing authorities wide discretion to either cancel or refuse a license renewal; there is no halfway measure, such as suspension.¹⁹⁵ If an applicant obtains a license, irrespective of Board opposition, it may still face Board opposition at the time of license renewal. For example, the Board objected to the renewal of the license for Hollier's Casino Club, Manor Casino Ltd. (Isle of Wight), on the grounds that it "was not a fit and proper person."¹⁹⁶ When the justices refused to renew the license (May 5, 1983), the licensee appealed, but withdrew its appeal on the first day of the hearing (September 26, 1983), and the casino closed that day.¹⁹⁷

The one major restriction of the Board's power over casinos is the due process protection against Board revocation of a certificate as opposed to objecting to a license renewal. The parliamentary opposition urged either that the Board be allowed revocation power "where gaming on premises is not being fairly and properly conducted" or that Britain follow the Nevada example and allow the Board "to close a club within 24 hours."¹⁹⁸

The Government insisted, however, that allowing the Board to have full revocation power if there were a violation of licensing conditions "would be too far-reaching" inasmuch as:

194. The Times (London), Dec. 19, 1979, at 3, col. d. "Irrespective of finality," a reviewing court will look beyond the lower court order. What can be regarded as being the record in the transcript has been liberally interpreted by the courts. In *Regina v. Knightsbridge Crown Court ex parte International Sporting Club*, [1981] 3 All E.R. 417 (Q.B.), it was emphasized, in a decision concerning the cancellation of club gaming licenses, that the Board was incorrect in claiming that the reviewing court could not look at the lower court's final order "and not at the reasons that the Court gave for making the order." *Id.*

Modern authorities show that the judges have relaxed the strictness of that rule [concerning the record] and have taken a broader view of the 'record' in order that certiorari may give relief to those against whom a decision has been given which is based on a manifest error of law. *Id.* Yet, in *Westminster City Council v. Luntpalm Ltd.* (Q. B. Div'l Ct.), *Law Report*, The Times (London), Dec. 10, 1985, at 25, col. b, the court held that Section 28 of the Supreme Court Act, 1981, together with sched. 9 of the Gaming Act, 1968, prevented an appeal, irrespective of a council resolution containing a double negative.

195. Kent-Lemon, *supra* note 2, at 76.

196. BOARD REPORT (1983), *supra* note 49, at para. 18; Littman, *supra* note 1, at 240.

197. Littman, *supra* note 1.

198. *Id.*

[T]he justices will be entitled to refuse renewal of a license or to cancel it, . . . which could satisfactorily be dealt with at a hearing in open court. If the Board could decide these issues at its sole discretion this would encroach on the proper jurisdiction of the courts, and would leave the license-holder—and all his employees—in constant peril of arbitrary process. It would also involve a substantial transfer of responsibilities of enforcement from the police to the Board's inspectors, who could not be recruited in sufficient number properly to assume them.¹⁹⁹

One of the most complicated problems the Board faces, arises when a licensee is denied renewal on the grounds he is not a fit and proper person²⁰⁰ and, while the casino remains in operation during an appeal to the Crown Court, the licensee sells his interest to a third party. During the appellate process for a license revocation, the defendant casino will often seek to sell out to a third party or drastically overhaul its corporate structure. In 1979, the Police Commissioner and the Board requested that the appropriate licensing committee cancel the licenses of three London casinos controlled by Coral Leisure Group, Ltd. After cancellation, Coral sold the casinos to Lonrho, Mecca and Aspinall.²⁰¹

199. 766 PARL. DEB., H.C. (5th ser.) 338 (1968). Certification, unlike licensing, need not be renewed and may be revoked only on limited grounds. Gaming Act, 1968, sched. 2(34); sched. 2 paras. 3-7, 19, 42-43. Cancellation of certification is extremely serious since the justice may issue a disqualification order for up to five years. Gaming Act, 1968, § 24(2). The Board has rarely revoked a casino certificate because the grounds are so narrow it would be almost impossible. Interview with R. Creedon, Civil Servant with the Gaming Board (July 18, 1985).

200. The Gaming Act, 1968, sched. 2(20)(1) states that “. . .the licensing authority may refuse to grant or renew a license under this Act . . . (b) [where] the applicant is not a fit and proper person to be the holder of a license under this Act. . . .”

201. In *Regina v. Crown Court at Knightsbridge ex parte Marcrest*, [1983] 1 All E.R. 1148 (C.A. 1982), the appellate court affirmed the Divisional Court's refusal to allow corporate restructuring to change its decision to cancel and disqualify the casino's certificate of consent. In *Regina v. Knightsbridge Crown Court ex parte International Sporting Club*, [1981] 3 All E.R. 417 (Div'l Ct.), the Divisional Court concluded it was an error of law for the Crown Court not to have considered the corporate restructuring of the casino. International Sporting Club, a subsidiary of Lonrho, was granted a license at the Crown Court hearing. GAMING BOARD FOR GREAT BRITAIN, THIRTEENTH ANNUAL REPORT para. 9 (1981) [hereinafter BOARD REPORT (1981)]. Mecca received a new certificate of consent and a license. *Id.* Aspinall's had also applied for a new certificate and license, but the Board appealed the license to the Crown Court. In *Regina v. Knightsbridge Crown Court ex parte The Aspinall Curzon* (Q.B. Div'l Ct.), *The Times* (London), Dec. 16, 1982, at 5, col. a, Aspinall's appeal was dismissed because of a lack of unstimulated demand, irrespective of both Lonrho and Mecca having obtained licenses.

B. Other Provisions of the Act

1. Geographical Restrictions

The Board concluded that, in addition to vetoing applications for a certificate of consent, other means were necessary if it were to accomplish the parliamentary goal of drastic reduction in the number of casinos. It decided geographical restrictions were the only viable way to reduce the number of casinos to the level necessary to carry out its parliamentary mandate.²⁰² The first major criticism of Board power resulted from its regulatory attempt on July 31, 1969, to drastically reduce the number of casinos by restricting them to thirty-one areas (including two Welsh and three Scottish areas and essentially "the wicked square mile"²⁰³ in London). The criticism was exacerbated because the regulation, which would result in costly losses by casinos in those excluded areas, was promulgated while Parliament was in recess.

Members of both major parties criticized the area restriction as having given "an unreasonable competitive advantage to holiday resorts. . . ." ²⁰⁴ This regulation was also denounced as an improper delegation of ministerial power. "The Regulations," explained Enoch Powell, were an "example of abuse and should be rejected on that ground."²⁰⁵ It was further denounced as not contemplated by anyone,²⁰⁶ as both "arbitrary" and monopolistic,²⁰⁷ and as *ultra vires* since demand was the responsibility of licensing authorities and not the Board.²⁰⁸

Surprisingly, the Government responded that the choice of thirty-one selected areas should not be regarded as "immutable"; they were

202. BOARD REPORT (1969), *supra* note 19, at paras. 41-47, app. III. The Gaming Clubs (Licensing) Regulations 1969 [S.I. 1969, No. 1110]; The Gaming Clubs (Licensing) (Scotland) Regulations 1969 [S.I. 1969, No. 1115 (S 88)]. BOARD REPORT (1969), *supra* note 19, at app. VI.

203. Bacon, *supra* note 23, at 265.

204. 791 PARL. DEB., H.C. (5th ser.) 1251 (1968).

205. *Id.* 1256; The Times (London), Nov. 19, 1968, at 4, col. h.

206. 791 PARL. DEB., H.C. (5th ser.) 1258 (1968). This was incorrect, for Lord Stonham did emphasize that enacted regulations:

certainly could be used, for instance, to forbid any clubs being opened in a rural area, or indeed in any predominantly residential area. . . . To take an extreme, they could even be used to restrict gaming clubs to spas and holiday resorts, on the French pattern, although so long as the chief demand is in the large industrial centres that would not be a very sensible proposition.

296 PARL. DEB., H.L. (5th ser.) 464 (1968).

207. 791 PARL. DEB., H.C. (5th ser.) 1254, 1262 (1968).

208. 791 PARL. DEB., H.C. (5th ser.) 1251, 1264 (1968). Carlisle said that before the regulation there were only 702 applicants for certificates of consent for non-bingo gaming. *Id.* at 1267.

only temporary until July 1970, when the Act would be fully implemented.²⁰⁹ The Government's decision to add six more areas did little to blunt opposition criticism of the Board's assessment of "demand." When the Conservatives took office in 1970, they declared that future licenses would be determined by a "general formula," and in February 1971, after consultation with the Board, it amended the regulations to permit the licensing of gaming in any borough having a population of 125,000, as well as in those areas already licensed for gaming.²¹⁰

2. Games of Unequal Chance

Of course the tremendous time and money required for a license for gaming would be valuable only if a casino were allowed to profit reasonably from games of unequal chance. Undoubtedly, the Government must have realized that licenses would have minimal value if casinos were limited to sessional charges or entry fees. Since it would be unprofitable to operate roulette, gaming would be driven underground where it would once again be thriving, illegal, unregulated and untaxed.²¹¹

Gaming opponents, who believed that police enforcement of existing laws would destroy the profit motive behind casinos, tried to reassure themselves that Section 13 of the Act "clearly" prohibited games of unequal chance and that it was only "possible" that the Board might allow their existence under Section (13)(2).²¹²

The most bitterly disputed issue concerning games of unequal chance was whether a zero should be allowed in roulette, the game

209. 791 PARL. DEB., H.C. (5th ser.) 1272 (1968); *The Times* (London), Nov. 19, 1969, at 4, col. h.

210. GAMING BOARD FOR GREAT BRITAIN, SECOND ANNUAL REPORT para. 34 (1970) [hereinafter BOARD REPORT (1970)]; *The Gaming Clubs (Permitted Areas) Regulations 1971* [S.I. 1971, No. 1538]; *The Gaming Clubs (Permitted Areas) (Scotland) Regulations 1971* [S.I. 1971, No. 2029]; GAMING BOARD FOR GREAT BRITAIN, THIRD ANNUAL REPORT para. 34, app. I (1971). [hereinafter BOARD REPORT (1971)]. The immediate impact of the regulations was to add thirteen areas. BOARD REPORT (1972), *supra* note 39 at para. 12. The importance of boroughs was eliminated by the Local Government Act of 1972 which was effective April 1, 1974. "The existing permitted areas were frozen and none have since been added." ROTHSCHILD REPORT, *supra* note 9, at para. 18.36.

211. See generally, *THE ECONOMIST*, Feb. 3, 1968, at 15, col. 2. "If unequal chance gaming were banned, the only beneficiary would be the real crooks—those compiling files on compulsive gamblers and waiting for the day when gaming is driven underground." *Id.* The Government refused to have the Act prohibit games of unequal chance. "Our object is not to pass judgment on different kinds of games as such, but to regulate the manner in which profits may lawfully be made." 758 PARL. DEB., H.C. (5th ser.) 1176 (1968).

212. *The Times* (London), Aug. 9, 1968, at 7, col. e.

which had been the litigation testing-ground for casinos prior to the Act. Throughout the parliamentary debate, the governmental policy was equivocal. It admitted that it was "possible that a single zero would be allowed under certain conditions," but deferred any decision to the proposed Board.²¹³

The Government consistently refused, however, to allow any interim relief to casinos, whose parliamentary spokesmen insisted that during the period of uncertainty they were in a "deplorable situation."²¹⁴ Their only alternatives, argued parliamentary sympathizers, were to close, operate at a loss, or continue litigation.²¹⁵ The Government response rejected a suspension of the law during the interim period since casinos had operated illegally in allowing games of unequal chance. Thus, the Government refused to "legalize illegality by Act of Parliament."²¹⁶

Approximately one year after Royal consent to the bill, and "after a great deal of heart searching," and exhaustive statistical study, the Board concluded that a single zero would be a less undesirable alternative than either a participatory charge or a levy on winnings.²¹⁷ Thus, it recommended the zero's legalization along with the legalization of other specified games of unequal chance.²¹⁸ When the Home Secretary announced his support of the Board's recommendation, anti-gaming supporters concluded that the Government had "sacrificed" the Board's best weapon for curbing gaming while simultaneously rewarding lawbreakers.²¹⁹

3. Live Entertainment

The success of gaming interests in having the Board determine the legality of games of unequal chance seemed to be matched by the Government's willingness to defer to the Board on a decision whether live

213. 296 PARL. DEB., H.L. (5th ser.) 430 (1968).

214. *Id.* at 422.

215. *Id.* at 422, 423.

216. *Id.* at 427. Undoubtedly the continuing litigation of Blackburn must have discouraged any slacking of police enforcement of gaming laws. 112 Sol. J. 980 (1968).

217. Bacon, *supra* note 23, at 262.

218. BOARD REPORT (1969), *supra* note 19, at paras. 60-61. The house edge with a zero meant that it would take one-half of the amount bet. *Id.* at paras. 56, 67-70, app. IX (1968). Similar types of regulations were formulated for other games of unequal chance, e.g., appendix VIII pertained to "Blackjack—Proposed Modified Rules." The recommendations were adopted by the Home Secretary in the Gaming Clubs (Bankers Games) Regulations 1970 [S.I. 1970, No. 803], (as listed in BOARD REPORT (1970), *supra* note 210, at app. I). The House advantage in craps "win" bets, for example, was 1.4%, while "big six" or "big eight" bets were prohibited, along with other mug or sucker bets.

219. The Times (London), Nov. 22, 1969, at 7, col. a.

entertainment should be permitted in casinos. The Government originally declared its objective was "to exclude gaming *altogether* from night clubs and similar clubs and establishments. . . ." ²²⁰ During committee hearings where the Government proposal was "opposed by practically everybody," ²²¹ the Government agreed to issue regulations in the matter only after receiving Board advice. ²²²

One factor which undoubtedly influenced the Government was that clubs in Northeastern England, which provided entertainment and gaming, were the major sources of live entertainment, and were similar to bingo clubs rather than "hard" London-style gaming. ²²³ The Government, while admitting that gaming subsidized "high-class cabarets," rejected an opposition proposal which would have prohibited licensing authorities from denying a license "on the grounds that the premises are used for purposes other than gaming." ²²⁴

The Board decided that "the mix of dancing, cabaret, drinking and gaming created an undesirable temptation to young people and an unnecessary confusion." ²²⁵ Moreover, the demand for gaming was stimulated by "big name attractions of artistes and the availability of inexpensive meals and dancing. Las Vegas was a warning in this respect." ²²⁶ In July of 1969, the Government accepted a Board recommendation whereby a casino could be licensed "only on condition that they do not provide any form of live entertainment." To prevent evasion, a condition precedent for a license was that there be "no direct access from any other premises" to a casino. ²²⁷

Efforts to dissuade the Government from adopting Board recommendations were futile. The British Gaming Association argued that while major entertainers such as Sammy Davis, Jr., might be excluded from gaming clubs, there was no reason to prohibit limited live entertainment within a casino. ²²⁸ The Cabaret Clubs Federation warned that the Government prohibition would become a "charter for the crooks" by driving gaming underground. ²²⁹

220. 758 PARL. DEB., H.C. (5th ser.) 1171 (1968) (emphasis added).

221. 766 PARL. DEB., H.C. (5th ser.) 85 (1968).

222. *Id.*

223. *Id.*

224. *Id.* at 81. See also *id.* at 93.

225. BOARD REPORT (1969), *supra* note 19, at para. 7.

226. 766 PARL. DEB., H.C. (5th ser.) 422 (1968).

227. Gaming Clubs (Licensing) Regulations [S.I. 1969, No. 1110]; Gaming Clubs (Licensing) (Scotland) Regulations [S.I. 1969, No. 1115, § 881, (as listed in BOARD REPORT (1969), *supra* note 19, app. VI)]. No such prohibition was enacted for bingo clubs.

228. The Times (London), Aug. 7, 1969, at 2, col. a.

229. The Times (London), July 30, 1969, at 2, col. a. There is a general consensus among casino executives that the live entertainment ban has been a positive factor. There is no desire to reinstitute it. At most, casinos would desire that a pianist be permitted in the dining area instead of the present "piped-in" music. Interview with Max Kingsley, Chairman, London Clubs, Ltd. (Dec. 31, 1986).

Licensing authorities occasionally granted gaming licenses to "mixed" clubs notwithstanding Board regulations or recommendations that mixed clubs were "unsuitable." Several successful appeals were made from denials of licenses because there was casino access from private premises.²³⁰ The Board warned, however, that in those cases, it would consider "whether to oppose renewal of the license in the light of the actual operation of the premises where they were licensed."²³¹

4. Advertising

The Government did not defer to the Board decisions concerning casino advertising, cashing of checks and whether tourists should be exempt from the 48-hour waiting period for gaming. In the long run, gaming sympathizers were unable to change or significantly modify the Section 42(1) prohibition against gaming advertising.²³² During consideration of Section 42, the House of Commons Standing Committee eliminated the prohibition against advertising clause by an 8-7 vote. In the committee vote, one Labor M.P. deserted the Government and three abstained, including one Labor member who felt the Government ban was "stark, staring bonkers" in that it would be totally ineffective.²³³ The Government, in arguing successfully to reinsert the clause, stated that even if gaming were legal, "[t]hat does not mean that we should assist its propagation,"²³⁴ especially since a casino would have to prove demand as a precondition to licensing. A Tory amendment which would have allowed merely a notice of the name, address and nature of games played was easily defeated irrespective of the argument that the prohibition will result in "innumerable borderline cases" and a "rich harvest for the lawyers."²³⁵

Since passage of the Act, Section 42 has created considerable interpretation difficulties. In February of 1970, the Board issued an opinion on the section for the benefit of inspectors and trade associations.²³⁶ It urged that the key factor to consider was the

230. BOARD REPORT (1970), *supra* note 210, at para. 6.

231. *Id.* at para. 35.

232. The Times (London), Aug. 13, 1970, at 8, col. f.

233. The Times (London), Apr. 3, 1968, at 5, col. a.

234. 766 PARL. DEB., H.C. (5th ser.) 49 (1968).

235. *Id.* at 58. The Government allowed some flexibility for licensing authorities to fix a later date for the routine notice advertisement, thus letting a new club better compete.

236. BOARD REPORT (1970), *supra* note 210, at para. 13.

advertisement's "true purpose and effect."²³⁷ In employee recruitment ads, ordinarily neither the name of the club nor its address should be shown. Unless the advertisement was in the classified or situations vacant column, prospective employees should be directed to a blind post office box or telephone number. Clubs may circulate their own membership, but not by postcards.²³⁸ The 1971 Board Report criticized club "cocktail parties or opening receptions," the use of annual reports and statements at annual meetings in order to publicize gaming interests, and repeated its warning about non-renewal of licenses for offenders.²³⁹

When the *Evening Standard* ran two casino press releases, it was prosecuted for having informed the public both of gaming facilities and membership information.²⁴⁰ The court held that Parliament could not have intended to eliminate all references to gaming and that newspapers should be able to comment on lawful gaming.²⁴¹ Despite the acquittal in that case, routine interviews or articles concerning casinos are often granted only on the condition that the casino be unnamed since management is "fearful" of "crossing" the Board and its strict ban on advertising.²⁴²

237. *Id.* at app. II, paras 3, 4, & 12.

238. *Id.* at app. II, para. 12.

239. BOARD REPORT, (1971) *supra* note 210, at paras. 65-68. Casino representatives often show their proposed annual report to the Board, which indicates what material it considers objectionable. Interview with Philip Tarsh, Director at Lohrno (July 17, 1985).

240. *Pitts v. The Evening Standard Company, Ltd.*, (July 17, 1972 Div'l Ct.) (unreported).

241. FINNEY, *supra* note 3, at 203-4.

242. *The Times* (London), Feb. 25, 1984, at 11, col. a. BOARD REPORT (1984), *supra* note 101, at para. 68, states:

The Board will be bound to consider in individual cases whether there are grounds here for objecting to the renewal of a license for particular premises. But they derive some comfort from their understanding, following a meeting with representatives of the bingo trade associations, that it is no longer the practice to include in an advertisement a membership application form; and they hope that their views on the more extreme examples of advertising inducements will be borne well in mind by the industry, and that the need for objections on their part will not arise in this context.

The *Guidelines for Accepted Practice*, found in the 1984 Board Report have regulated and clarified permissible advertising. In effect, casinos may finance sporting events and charity functions, as long as the casino is not identified. BOARD REPORT (1984), *supra* note 101, at app. III. There are still some gray areas. For example: May casinos utilize match boxes with their name, since they may circulate outside the casino? Interview with Leonard Steinberg (Jan. 7, 1987).

5. Gaming Debts and Check Cashing

Pursuant to the Act, gaming debts were made enforceable for the first time since the early eighteenth century.²⁴³ An attempt was also made to prohibit any check-cashing in casinos when Lord Nunburnholme, one of the most vehement opponents of gaming, unsuccessfully tried to eliminate all check cashing in casinos to protect "the young and inexperienced gambler" and eliminate any "strong-arm" collections.²⁴⁴

The Act requires that all gaming checks given to a casino be cashed within two banking days.²⁴⁵ Until recently a gambler could not exchange any checks cashed at a casino during an evening for one total check.²⁴⁶ Checks had to be for the amount of chips received, and post-dating or other forms of credit were prohibited. Originally, the Government accepted an amendment that changed the time in the bill from two to four days "or such longer period as may be prescribed."²⁴⁷ However, a House of Lords amendment eliminating any regulation variance power and shortening the period to two banking days was later accepted by the Government. The Tory spokesman in Commons concluded it was a "fantastic change-round" by the Government.²⁴⁸

In 1968, Britain like Nevada in 1983, repealed all parts of previous gaming acts which made gaming debts unenforceable.²⁴⁹ The opposition in Parliament hailed the enforcement of casino check-cashing as a lessening of potential strong-arm collection methods and supported the prohibition of a postdated check as "self-evidently right."²⁵⁰ As a result of this repeal, one gambler who lost £1,020,000 in a British casino within four hours in 1979 was ordered in 1982 to pay £1.5 million which included interest and court costs.²⁵¹ The Board concluded that the litigation of gambling debts was "rare, presumably because of the

243. The Gaming Act, 1968, § 16 (3) states:

[W]here the holder of a license under this Act, or a person acting on behalf of or under any arrangement with the holder of such a license, accepts a cheque in exchange for cash or tokens to be used by a player in gaming to which this part of this Act applies, he shall not more than two banking days later cause the check to be delivered to a bank for payment or collection.

244. 296 PARL. DEB., H.L. (5th ser.) 431-2, 447, 449 (1968). In October, proponents of the exclusion of compulsive gamblers again attempted a division unsuccessfully. *Id.* at 1390.

245. The Gaming Act, 1968, § 16 (3), *supra* note 243.

246. Gaming (Amendment) Act, 1986.

247. 770 PARL. DEB., H.C. (5th ser.) 749 (1968).

248. *Id.*

249. The Gaming Act, 1968, § 16 (3), *supra* note 243.

250. 776 PARL. DEB., H.C. (5th ser.) 122 (1968).

251. The Times (London), Apr. 1, 1982, at 3, col. h.

cost involved, the financial standing of the player, and the publicity which such proceedings might attract."²⁵²

Ironically, the legality of accepting further checks after a dishonor, an issue which later became crucial to casino interests and resulted in the most serious breaches of the Act, was not especially stressed either during the debates or during the period of the implementation of the Gaming Act. Playboy, one of the Board's major targets in this matter, repeatedly asked the Board, during the 1970's, to issue regulations on this issue. It was only in 1976 that the Board declared it did not understand how a license holder "can justify his continuing to accept cheques when one has been dishonored and the debt remain outstanding."²⁵³ The Board concluded that "all license holders" should adopt the policy followed by some of the license holders, that "to grant cheque facilities to a player while holding his dishonoured cheques is in effect the granting of unlawful credit. . . ." ²⁵⁴ The Board concluded in its 1979 Report that casino "malpractices," especially check redemption, resulted "mainly from the desire to attract and retain the wealthy punter who, through his losses, contributes substantially towards the club's profits."²⁵⁵

The major factor behind the loss by Playboy and others of their casino licenses was their violation of the credit section of the Act. Between 1975 and 1977, Playboy club members "habitually" wrote checks on non-existent banks with Playboy's knowledge. The courts rejected Playboy's rationalization that while it accepted £2,000,000 in "bad" checks from a member, it honored £16,000,000 from the same gambler.²⁵⁶ In *Playboy, Coral* and most other casino prosecutions, the basic violation of the Act consisted of the concealment of bad checks.²⁵⁷

The courts have generally interpreted the credit sections of the Act most strictly. In *Ladup Ltd. v. Shaikh*,²⁵⁸ a casino was denied judgment when they cashed a check for £45,000 drawn on another bank, but retained a £7,500 check from a previous debt. In *Ladup Ltd. v. Siu*,²⁵⁹ the Court of Appeal allowed the defendant to set aside a default judgment for the casino for £29,000 in dishonored checks when the defendant claimed to have received the chips before he had signed

252. BOARD REPORT (1976) *supra* note 39, at para. 35.

253. *Id.* at para. 36.

254. *Id.*

255. BOARD REPORT (1979), *supra* note 133, at para. 125.

256. *Playboy Club of London Ltd. v. Gaming Board of Great Britain*, 216 Sol. J. 80 (1980).

257. Miers, *The Management of Casino Gaming*, *supra* note 184, at 79-86.

258. [1982] 3 W.L.R. 172 (Q.B.); *The Times* (London), Feb. 3, 1982, at 10, col. e.

259. *The Times* (London), Nov. 24, 1983, at 20, col. a.

the checks. The court insisted a jury must determine the factual dispute, despite the fact that the defendant waited approximately eight months before attempting to set aside the judgment. At trial, Crawford P.J. rejected defendant's defense that the checks were not exchanged for chips or that plaintiff extended credit to defendant. The court, however, excluded defendant from liability on five of eight documents, which were in effect house checks, because "they were not cheques at all."²⁶⁰ To be valid as a check the documents must identify a banker and a payee. Most of the documents, however, were blank except for the customer's name, account number, and blank spaces. Thus, the casino was unable to obtain judgment on the "house" checks.²⁶¹

Courts do not, however, expect the impossible from casinos. In *Aziz v. Knightsbridge Gaming*,²⁶² the court rejected a gambler's assertion that four checks written within four days were unenforceable because they were not cashed within two banking days. The court emphasized that the gambler had drafted checks upon the non-existent "Egyptian Bank, Khazar at Nile, Cairo" and it took the casino more than two days to realize, upon arrival in Egypt, that there was no such bank.²⁶³

6. The "48 Hour" Requirement

Impromptu or impulsive gaming was discouraged by the so-called "48-hour rule,"²⁶⁴ whereby all but bona-fide guests²⁶⁵ of a licensed club member must wait 48 hours after application before becoming eligible to gamble.²⁶⁶ The need for an exception to allow tourist dollars was argued by gaming advocates, especially for overseas visitors with a

260. *Id.*

261. *Id.*

262. *Aziz v. Knightsbridge Gaming and Catering Services and Supplies Ltd.*, *The Times* (London) July 6, 1982 at 9, col. d.

263. *Id.*

264. The Gaming Act, 1968, § 12 (3) states:

. . . a member of the club specified in the licence is eligible to take part in the gaming at any particular time if . . . (b) since becoming a member of the club he has given notice in writing in person on those premises to the holder of the licence, or to a person acting on behalf of the holder of the licence, of his intention to take part in gaming on those premises, and at that time at least forty-eight hours have elapsed since he gave that notice.

265. *Mackley v. Ladup Ltd.*, 139 J.P. 121 (1974), has narrowly interpreted what may constitute a bona fide guest by utilizing factors such as the number of guests introduced by a member and whether the member received payment. See FINNEY, *supra* note 3, at 259.

266. In seeking admission to "night clubs" for non-members, this test has been applicable for almost seventy years. It was usually ignored. Rolph, *supra* note 18, at 897.

valid passport. The Government denied that it either intended or desired "that the United Kingdom should be the Mecca of international gamblers."²⁶⁷ Lord Foley, a Crockford's director, stated in Parliament that even though "junkies" were undesirable, the 48-hour rule should be dealt with by the Board.²⁶⁸ The Government, however, made no exceptions since it especially wanted to "discourage the junketing gaming trips organized from the United States."²⁶⁹

7. Slot Machines

In addition to regulating casinos, the Act was concerned with many other aspects of gaming, especially slot-machines.²⁷⁰ It proposed to continue the 1960 Act's allowance of only two²⁷¹ "jackpot" or unlimited slot machines²⁷² with a limited maximum insertion.²⁷³ Although the proceeds could now be used for private gain, the Act, allowed these machines in licensed gaming clubs or in a member's clubs²⁷⁴ as a matter of right, only if registered by licensing justices pursuant to Part III

267. 766 PARL. DEB., H.C. (5th Ser.) 120 (1968). Gaming interests continue to deny the need for inclusion of tourists with valid passports. See ROTHSCHILD REPORT, *supra* note 9, at paras. 18.24 -18.33.

268. 293 PARL. DEB., H.L. (5th ser.) 892 (1968). In Parliament, an interested director may argue and vote on a measure once he has declared his interest.

269. 293 Parl. Deb., H.L. (5th ser.) 907 (1968). Throughout the debates, there was a fear that Britain would become another Las Vegas. *Id.* at 105. "[T]he Colony was knocking down six hundred to nine hundred grand on just one of my junkets. You know, you bring thirty to forty high rollers, people who love to gamble and have money to burn in a casino like that and they'll lose an average of twenty-five to forty grand apiece in a week. That adds up fast." TERESA, *supra* note 25, at 219.

270. The annual turnover from slots in 1974 was £260 million compared with £225 million from casinos and £200 million from bingo. POLICE REVIEW, July 30, 1976, at 962, col. a.

271. "Why two? A close scrutiny of what our legislators have said on this point in 1960 and more recently, reveals no particular reason." Lowe, *Gaming Machines and the New Law*, 118 NEW L.J. 791, (1968). See also Spanier, *The Chips Are Down for the "Big Drop"*, The Times (London), July 12, 1985, at 10 col. a.

272. The Gaming Act, 1968, § 31 (2) states, "[that] not more than two machines to which this Part of this Act applies shall be made available for gaming on those premises."

273. Licensed clubs were automatically allowed two machines as of right, but their operation was strictly regulated. Member clubs must apply to licensing justices for a Part III registration for slot machines. Unlike Nevada, where upwards of five slot insertions are common, in Britain the maximum insertion for unlimited jackpots is restricted. Moreover, the Board has successfully pressured the casino associations into agreeing to a £100 maximum jackpot.

274. *Tehrani v. Rostron*, [1971] 3 All E.R. 790 (C.A.), held that the Act did not automatically disqualify a proprietary club from being registered for two jackpot machines, but it was a matter of discretion for local authorities. *Id.* at 794.

of the Act. Throughout the debates, the Government repeatedly refused to allow any deviation from the two permitted jackpot machines. Undoubtedly it was influenced by organized crime's activity in North-east England; it may have been influenced by a *Wall Street Journal* article which claimed that organized crime first became interested in Britain after the legalization of slot machines, because "they had thousands of machines left over after their retreat from Havana."²⁷⁵

It was argued that member clubs should be allowed more than two machines,²⁷⁶ but the Government responded that "possibly two is at least one too many."²⁷⁷ The Government rejected a Tory attempt to allow the Board to increase the number for member clubs, because gaming machines were:

a great deal more profitable than those who framed the 1960 Act ever expected. A great mass of vested interest has built up behind their supply and use, and their commercial and gaming use has so developed as to make the controls in Part III of the Bill imperative. As for the permitted number of machines, it is, the Government realizes, too late to turn the clock back, but an ordinary club should be well content with the profits which two machines can bring it. In many cases, it is appreciated that those profits already subsidize a large part of a club's activities.²⁷⁸

Some members of the House of Lords moved that the number of machines be increased or decreased pursuant to a Board order instead of adhering to the "arbitrary" two.²⁷⁹ Opponents emphasized that the machines were addictive, beastly, and a "general nuisance."²⁸⁰ According to the Lord Chancellor, they "represent unequal chance gaming in its most addictive and least justifiable form," and should have been "completely illegal."²⁸¹ Their use "has given rise to more crude criminality than almost any other form of gaming."²⁸² If the Board were permitted to make variations, it "would simply expose the Gaming Board and the Government to continued pressure by the machine

275. *The Times* (London), Nov. 9, 1968, at 5, col. c; *Wall St. J.*, Nov. 8, 1968, at 1, col. 1.

276. 293 *PARL. DEB.*, H.L. (5th ser.) 873 (1968).

277. *Id.* at 901 (1968).

278. 766 *PARL. DEB.*, H.C. (5th ser.) 174 (1968).

279. 296 *PARL. DEB.*, H.L. (5th ser.) 1393-1394 (1968).

280. *Id.* at 1395.

281. *Id.*

282. *Id.*

interests."²⁸³

Unlike jackpot machines, amusement-with-prize (AWP) slot machines are not restricted to two and are regulated by Section 34 of the Act. They may be permitted, by licensing authorities, in amusement arcades, pubs, cafes, pleasure fairs and at entertainment functions.²⁸⁴ The Act does not limit the number of Section 34 machines, but there are strict limits to payouts.²⁸⁵ It is also impermissible to have both Section 34 and Section 31 machines since the provisions are "mutually exclusive."²⁸⁶

The Act required that all slot machine retailers and suppliers be certified by the Board as fit and proper persons.²⁸⁷ All profit-sharing with suppliers irrespective of the type of machine, is prohibited by Section 28. These provisions were considered a "very striking and novel feature" of the Act.²⁸⁸ Furthermore, "machines may be emptied only by the club authorities or employees, not by the retailers."²⁸⁹ A Tory member observed that these measures were an "unusual prohibition, to write a contract between two parties which is not often found in our law."²⁹⁰ They were primarily the result of racketeering in North-east England where club and cafe owners often allowed slot machines to avoid possible violence that might follow if they refused.²⁹¹

While the bill was in committee, travelling showmen's fairs were exempted from the leasing requirements. An attempt was made to allow a similar exemption for restricted payout on slot machines in pubs

283. *Id.* at 1396. Interestingly, the Rothschild Commission recommended an increase in this number without the machines being "installed in ranks in the way they are in Las Vegas casinos. . . ." ROTHSCHILD REPORT, *supra* note 9, at para. 18.76. Provincial casinos are strongly in favor of increasing the number of machines from two to six. Interview with Leonard Steinberg (Jan. 7, 1987).

284. See The Gaming Act, 1968, § 34. See also FINNEY, *supra* note 3, at 112.

285. FINNEY, *supra* note 3, at 95; Variation of Monetary Limits Order 1981, [S.I. 1981 No. 2]. Most of the AWP provisions had their origin in the Betting, Gaming and Lotteries Act, 1964. See generally, ROTHSCHILD REPORT, *supra* note 9, at paras. 16.5-16.9.

286. FINNEY, *supra* note 3, at 95; Shine and Another v. Nicholson, 112 Sol. J. 880 (Q.B. 1968). Unlike jackpot machines, on AWP machine's payout may be influenced by the players skill.

287. The Gaming Act, 1968, § 27 states:

(I) . . . no person shall, whether as principle or as a servant or agent, seal or supply a machine to which this Part of this Act applies unless . . . (a) he is the holder of a certificate issued for the purposes of this subsection by the Board which is for the time being in force. . . .

288. There are approximately four times as many AWP machines as jackpot machines. Most of the British slots "are in pubs." *Treble Chance*, THE ECONOMIST, Mar. 12, 1977, at 120, col. 1; Vine, *Gaming Machines*, POLICE REVIEW, July 30, 1976, at 962, col. 1.

289. 758 PARL. DEB., H.C. (5th ser.) 1178 (1968).

290. *Id.* 1189.

291. *Id.* at 1190, 1192. 1967 NEW STATESMAN, 897.

since they contained most of Britain's licensed slots. The Government opposed the exemption of pubs because it claimed the exemption would allow suppliers to have a continuing interest in the amount of use of the machine.²⁹²

The Board, in interpreting the Act, advised a supplier that a contract in which the supplier received the entire profit was in violation of the Act.²⁹³ One supplier was fined £3,200, and received a suspended prison sentence for thirty-two multiple violations of the Act.²⁹⁴ This seemingly severe penalty was imposed because the machines were leased on an even-profit-sharing basis instead of a fixed rental basis.²⁹⁵

The Board has a simple but thorough remedy for dealing with violations of Section 28. Rather than prosecuting, the Board revokes the supplier's certificate without any hearing or explanation. Members of Parliament had attempted to allow suppliers an appeal directly to the Home Secretary from Board decisions to revoke or refuse to renew a certificate for gaming machines. It was argued that, "where somebody has been holding a certificate I think it is questionable, whether, behind closed doors, the Board should be able to revoke or refuse to renew a certificate, thereby quite possibly removing a person's means of livelihood."²⁹⁶ It was further argued that the unfairness of the situation was exacerbated by the lack of cross-examination of a complainant, especially if he were a competitor.²⁹⁷

The Government rejected the proposed amendment on grounds that it would allow machine owners' rights which were denied to "gaming managers, supervisors and operatives. . ." and that there had been "as much, if not more, racketeering in the supply of machines as in the conduct of gaming clubs."²⁹⁸ Furthermore, appellate authority is less necessary where there is one "single body"—the Board, which has made the decision; "the weight of responsibility tends with the passage of time to pass to the appellate authority."²⁹⁹

Shortly after the Royal Assent (October 25, 1968), some members of the House of Lords attempted to hold the Board, rather than the local authorities, responsible for gaming machines in amusements ar-

292. 766 PARL. DEB., H.C. (5th ser.) 170 (1968); THE ECONOMIST, March 12, 1977, at 120, col 1.

293. BOARD REPORT (1974), *supra* note 131, at para. 104.

294. The Times (London), July 17, 1974, at 2, col. a.

295. *Id.*

296. 296 PARL. DEB., H.L. (5th ser.) 501 (1968).

297. *Id.* at 502.

298. *Id.* at 503-04.

299. *Id.* The government did agree not to allow forfeitures of a machine by an owner "without [his] being heard." *Id.* at 483-484.

cares and pubs.³⁰⁰ The Government said that the Board, if given the power, would then have to rule on a certificate of consent; if the certificate were successful, the licensing justices would then have to follow with a "thorough examination." The result would be "an unjustified burden of work on the Gaming Board and the licensing Justices," who should deal primarily with the Act's important matters.³⁰¹

8. Gaming Employees

The Act gave the Board authority to certify gaming employees,³⁰² and slot machine suppliers,³⁰³ as well as all casino and bingo clubs over

300. 300 PARL. DEB., H.L. (5th ser.) 629-630 (1969).

301. *Id.* at 635, 637. Machines in pubs would also be left to the discretion of licensing justices which "is a new departure." *Id.* at 637.

302. Section 19 (1) of The Gaming Act, 1968 states:

Where gaming to which this Part of this Act applies takes place on premises in respect of which a license under this Act is for the time being in force, no person shall in pursuance of any service agreement perform any function to which this subsection applies unless a certificate has been issued by the Board, and is for the time being in force, certifying that he has been approved by the Board under this section in respect of the performance of that function on those premises.

Section 19 (2) of the Act enumerates the functions of an individual to which Section 19(1) shall apply. It provides:

Subsection (1) of this section applies to any function which is performed on the premises in questions and consists of—

- (a) taking part in the gaming as a player, or
- (b) assisting the gaming by operating or handling any apparatus, cards, tokens or other articles used in the gaming, or
- (c) issuing, receiving or recording cash or tokens used in the gaming or cheques given in respect of any cash or tokens or in respect of sums won or lost in the gaming, or
- (d) watching (otherwise than as manager, organiser or supervisor) the gaming or the performance by any person in pursuance of any service agreement of any function falling within paragraph (a) to (c) of this subsection.

Schedule 5 (3) of the same Act provides the standard by which the Board must apply in its exercise of the authority granted pursuant to Section 19. However, the standard is very general, and gives the Board much discretionary power. Schedule 5 (3) states: "In determining whether to issue a certificate on any such application, the Board shall have regard only to the question whether, in relation to the premises specified in the application, the applicant is a fit and proper person to perform the function or act in the capacity so specified."

303. Section 27 of the 1968 Act states, in part:

- (1) Except as provided by subsections (2) to (4) of this section, no person shall, whether as principal or as a servant or agent, sell or supply a machine to which this Part of this Act applies unless—
 - (a) he is the holder of a certificate issued for the purposes of this subsection by the Board which is for the time being in force,

which it had an effective veto power. In matters concerning gaming

- or of a permit in respect of that machine which had been granted for the purposes of this subsection by the Board and is for the time being in force, or
- (b) where he sells or supplies the machine as the servant or agent of another person, that other person is the holder of such a certificate or permit.
- (2) The preceding subsection does not apply—
- (a) to the sale of machines of any description to a person who carries on a business which consists of or includes selling or supplying machines of that description;
- (b) to the sale or supply of a machine to a person buying or agreeing or proposing to buy it under a credit-sale agreement, or to the supply of a machine to a person as being hiring or agreeing or proposing to hire it under a hire-purchase agreement, where (in any such case) the person who is or is to be the seller or owner in relation to the agreement has at no time had possession of the machine and became or becomes the owner of it only for the purpose of entering into the agreement;
- (c) to the sale or supply of a machine as scrap, or
- (d) to any transaction whereby the premises in which a machine to which this Part of this Act applies in installed are sold or let and the machine is sold or supplied to the purchaser or tenant as part of the fixtures and fittings of the premises.
- (3) Subject to the next following subsection, subsection (1) of this section does not apply to the sale or supply of a machine for use exclusively at a travelling showmen's pleasure fair or for use exclusively on premises used or to be used—
- (a) wholly or mainly for the provision of amusements by means of machines to which this Part of this Act applies, or
- (b) wholly or mainly for the purposes of a pleasure fair consisting wholly or mainly of amusements, or
- (c) as a pleasure pier.
- (4) The Secretary of State may by order direct that subsection (3) of this section shall cease to have effect, or shall have effect subject to such exceptions as may be specified in the order.

Schedule 6, like schedule 5 (3), provides the scope of the Board's authority in the issuance of a certificate for the purposes of subsection (1) of Section 27 of the Act. In pertinent parts, schedule 6 provides:

2. In determining whether to issue or renew any such certificate, the Board shall have regard only to the question whether the person applying for it is a fit and proper person to perform the relevant functions.

9(1) In determining, for the purposes of this Schedule, whether a person is fit to perform the relevant functions, where he carries on a business which consists of or includes those functions, regard shall be had in particular to the way in which the business is conducted by him and by any persons employed by him or acting on his behalf in connection with the business.

- (2) Without prejudice to the preceding sub-paragraph, for the purposes of

employees and bingo managers, the Board was empowered to grant, deny or revoke, without any appeal, certificates of all employees immediately connected with gaming³⁰⁴ by using the vague standard of whether the employee is "a fit and proper person to perform the function so specified."³⁰⁵

Interestingly, it was a committee recommendation which convinced the government to remove the Home Secretary's right to review a Board decision and thus presumably remove any political pressure.³⁰⁶ Conservatives accepted the need for extraordinary Board power largely because of the difficulty in proving malfeasance, such as cheating.³⁰⁷ Therefore, "[w]hat both sides of the House recognize is the necessity for a form of relatively arbitrary rule which would not be permitted in any other respect, purely because of the dangers inherent in gaming and gambling."³⁰⁸ As one member of the House of Commons noted:

By the Amendment the serious step is taken of saying that such a person has no right of appeal against a decision by the Board that he should not be allowed to operate as a croupier. . . . My first predilection is against giving anybody arbitrary powers to deprive someone of the right to earn his livelihood. That is my basic prejudice, and I imagine that it is shared by the Home Secretary, but after deep thought I take the view that in the exceptional circumstances with which we are dealing here it is right to arm the Board with this consider-

this Schedule a person shall not be taken to be a fit and proper person to perform the relevant functions if those functions are, or if the certificate in question were issued or renewed would be, performed by him as servant or agent of, or otherwise for the benefit of, a person who would himself be refused a certificate as not being a fit and proper person to perform those functions.

304. Schedule 5 (6) of the 1968 Act explicitly vests the authority to revoke certificates on the Board. It provides:

The Board may at any time revoke any such certificate if it appears to the Board that, in relation to the premises specified in the certificate, the person to whom the certificate relates is not a fit and proper person to perform the function or act in the capacity so specified.

Schedule 6 (4) vests on the Board the same authority in the renewal of certificates.

Where the Board seeks to revoke any such certificate, the Board, under Schedules 5 (7) and 6 (5), must serve a notice on the person seeking the certificate that the certificate will be revoked after twenty-one days from the date of the service.

305. The Gaming Act, 1968, sched. 5 (3); *see also* Littman, *supra* note 1, at 9. Schedule 5 of the Act became effective June 1, 1971. The Times, May 11, 1971, at 4, col. i.

306. 766 PARL. DEB., H.C. (5th ser.) 123-24 (1968); 293 PARL. DEB., H.L. (5th ser.) 856 (1968).

307. 766 PARL. DEB., H.C. (5th ser.) 124-26 (1968).

308. *Id.* at 127.

able power.³⁰⁹

In practice, the Board allows personal representations by an employee and it indicates to the employee the issue which had disturbed the Board.³¹⁰ For several years, because of lack of investigative manpower, the Board put the onus of responsibility for an employee on the prospective employer since if the Board revoked an employee's certificate, it would be a factor in deciding not to renew a gaming license.³¹¹

Irrespective of the finality in the statutory language allowing Board termination after twenty-one days, revocation of certified employees has become subject to judicial review. In March of 1978, the Board revoked certificates of approval of a managing director, club secretary, and a gaming manager who had been accused of wrongdoing by a terminated employee. At the hearing before the Board, matters were discussed which were outside those specified in the complaint. In the appeal, the Board Chairman's affidavit stated the extraneous matters had not been taken into account. At the end of the year, the Queen's Bench Divisional Court in *Regina v. Gaming Board for Great Britain ex parte Fenton*,³¹² allowed an order of certiorari and concluded that the three applicants had been denied certain procedural due process.

[They] had not been given adequate notice of certain matters which were discussed at interviews which each of them had had with the Board, justice had still been done, but had not necessarily been seen to have been done. Certificates of approval were restored to the applicants.³¹³

Thus the principle of natural justice is relevant despite specific parliamentary prohibition of any appeals.

9. Bingo

While the Parliament's attitude toward "hard" gaming was somewhat hostile, nearly everyone would have agreed with the Home Secretary's description of bingo "as a harmless and innocent game."³¹⁴ Bingo

309. *Id.* at 128.

310. BOARD REPORT (1971), *supra* note 210, at para. 14; BOARD REPORT (1974), *supra* note 131, at para. 5.

311. BOARD REPORT (1972), *supra* note 39, at para. 81. Parliament clearly foresaw that if an employee's certificate was withdrawn the authorities "should have power" to refuse license renewal. 766 PARL. DEB., H.C. (5th ser.) 333 (1968).

312. Financial Times (London), Feb. 5, 1979, at 10, col. c.

313. BOARD REPORT (1979), *supra* note 133, at para 37. See also *Safeguards For the Gaming Board*, Financial Times, February 5, 1979, at 10, col. c.

314. 758 PARL. DEB., H.C. (5th ser.) 1168 (1968).

was a relatively recent phenomenon in England. Since the 1960 Act approximately 13,000 bingo halls had sprung up. The 1968 Act empowered the Board to grant certificates of consent as the first step towards licensing of bingo clubs. The Board was also given power over mechanized cash bingo, which involves a complicated apparatus and many players.³¹⁵

The 1968 British Gaming Association Report unsuccessfully advocated a £10,000 nightly prize, and that both gaming and bingo be permitted in the same club on the condition that the rooms be completely separate.³¹⁶ The most debated bingo issue concerned the maximum permitted in "linked" bingo, where a number of bingo clubs would simultaneously hold one bingo game for a huge prize.

The opposition argued strenuously that the proposed limit of £1,000 would effectively "kill" linking and that the Board should "be fit to determine the size of a linked bingo kitty."³¹⁷ The Government was unreceptive to the supposed benefits of "linking" and retained the £1,000 maximum to eliminate "constant pressure" to increase the amount by regulation.³¹⁸

The first Board regulation recommendation was separation of local gaming from bingo in licensed bingo clubs because "surprisingly, some of the less desirable gaming" arose from games played before and after sessions of bingo, and in the interval between them.³¹⁹ Rank Leisure, Ltd., which controlled sixty-eight licensed premises, attempted to circumvent the low limits and remedy decreasing attendance by holding a Bonanza or special game on the premises. The winners' competition included free participation in its Bonanza Regional Final, which distributed a £20,000 single prize. The court insisted bingo licenses required gaming to be conducted under strict rules and under Gaming Board supervision. Rank Leisure, therefore, could not escape supervision "by hiring unlicensed premises and relying on its club status."³²⁰

315. *Regina v. Herrod*, [1976] 1 All E.R. 273, 279 (Fam. Div. 1975).

316. *The Times* (London), March 5, 1968, at 2, col. e.

317. 766 PARL. DEB., H.C. (5th ser.) 144 (1968). At the Second Reading, the Government wanted to prohibit linked bingo. *Id.*

318. *Id.* at 133.

319. BOARD REPORT (1969), *supra* note 19, at para. 11

320. *Loch v. Rank Leisure, Ltd.*, 148 J.P. 340 (Q.B. 1984).

The Act prohibited club proprietors from subsidizing prizes beyond an aggregate sum of £1,200 per week.

C. Legislative and Public Reaction to The Gaming Act of 1968

The bill debates³²¹ were generally characterized by a lack of partisanship, although the Tories did "have the feeling that Her Majesty's Government perhaps consider[ed] gambling to be evil of itself. We feel that only uncontrolled and dishonest gambling is evil. We hope that the Gaming Board will make the same distinction that we do."³²²

The Act was also examined and debated carefully in both houses. Lord Derwent, the Conservative leader in Lords, said the Act "received the sort of parliamentary examination which very few pieces of legislation receive," *i.e.*, a second reading, a committee hearing, a report stage, "a special experimental Public Bill Committee upstairs," and a third reading.³²³

In the House of Commons, the bill was not only discussed thoroughly by the House, but also received a "thorough scrutiny"³²⁴ by a "standing Committee" which was described by the opposition "as a working party of both sides of the House trying to improve the Bill."³²⁵ As a party-sponsored measure, the Government, of course, won all

321. It has long been argued that the parliamentary history of statutes "should not be referred to by judges as an aid to the construction of [British] statutes." *ROBISON & WATCHMAN, JUSTICE, LORD DENNING AND THE CONSTITUTION* 20 (1981) (*quoting* Davis v. Johnson, [1978] 2 All E.R. 1132). Recently, this "literal" approach has not been followed. In citing Hansard's Parliamentary Debates concerning the Betting, Gaming and Lotteries Act of 1963 (which strengthened local authorities' power to ban slot machines in arcades) Lord Denning said:

Some people think that the judges should have no regard to the legislative history of an enactment. I do not take this view. It has led judges, only too often, to put a wrong interpretation on statutes. These Gaming Acts are an outstanding example . . . so I make no apology for setting out the legislative history on the matter.

Sagnata Industries, Ltd. v. Norwich Corp., [1971] 2 All E.R. 1441, 1444 (C.A.) (Denning, L.J., dissenting). Admittedly, as Lord Denning wrote to this author, "I am afraid that I am very much in a minority. The House of Lords have rejected my views on it." Letter from Lord Denning to the author (Aug. 19, 1985).

322. 296 *PARL. DEB.*, H.L. (5th ser.) 1408 (1968). The Home Secretary concluded the opposition spokesman wanted to "clean up gaming" while the Government also wanted to "control it." 766 *PARL. DEB.*, H.C. (5th ser.) 68 (1968). The Lord Chancellor stated that the Government's goal was "to purge every form of gaming and profiteering and dishonesty and to put a stop to the insidious process by which commercial gaming . . . has come to be spoken of as though it were some form of beneficial fund-raising activity in support of live entertainment, a sociable life or the balance of payments." 296 *PARL. DEB.*, H.L. (5th ser.) 1401 (1968).

323. 300 *PARL. DEB.*, H.L. (5th ser.) 630 (1969).

324. Eddy, *Timetable For New Act*, 118 *NEW L.J.* 1022 (1968).

325. 766 *PARL. DEB.*, H.C. (5th ser.) 67 (1968). The Home Secretary said that "there was spirit almost of camaraderie between members of the Committee in their efforts to improve the Bill." *Id.* at 367.

House divisions. Occasionally, it would allow Tory amendments or reconsider points raised either by Tory members or their own backbenchers. Over one hundred amendments were considered, most of which were proposed by the Government.³²⁶ Irrespective of a change in the minister primarily responsible for the bill in the House of Commons, there were very few partisan snags.

The bill was enthusiastically received by almost all parties and factions within Great Britain. In fact, as the government observed, there had "not been a single speech which [was] opposed to the introduction of the Bill. . . ." ³²⁷ The two main reservations about the bill, according to the Government, were public ownership of gaming³²⁸ and, the argument advanced by both sides, that the Board should have more power.³²⁹ As was noted:

The Government rejected frequent attempts to leave everything to be decided behind closed doors by an independent body—the Gaming Board—over whose actions Parliament would have no control. This is because we believe that an autocratic system of that kind, although superficially attractive, not only would run contrary to commonly accepted conceptions of justice but would prove to be a blunt and cumbersome instrument, compared to the far more delicate and precise controls which can be applied through the Bill as it now stands.³³⁰

Instead of advocating a centralized system, the bill attempted to combine local control, such as local licensing of betting shops and pubs, with "a single central direction as with the casinos and gaming houses in France and Nevada."³³¹ "We have blended the two methods with great care, so as to produce what we believe to be a particularly potent mixture."³³² The Home Secretary admitted that by advocating some control of gaming through local authorities, he was in a

326. POLICE REVIEW, July 5, 1968, at 1, col. 2.

327. 758 PARL. DEB., H.C. (5th ser.) 1262 (1968).

328. This was not seriously debated in Parliament, perhaps because of the determination of a socialist government that nationalization was impractical. Nationalization of gaming was popular, however, within certain intellectual circles. See Rolph, *supra* note 18, at 898. Some Labor members also preferred nationalization. See 758 PARL. DEB., H.C. (5th ser.) 1241 (1968).

329. 758 PARL. DEB., H.C. (5th ser.) 1262 (1968); 293 PARL. DEB., H.L. (5th ser.) 856 (1968). Lord Stonham in the House of Lords' debate described the pivot as "a strong linchpin, and this we have provided in the Gaming Board of Great Britain." *Id.*

330. 296 PARL. DEB., H.L. (5th ser.) 464 (1968).

331. *Id.* at 855.

332. *Id.*

minority.³³³

Almost every interest advocated a strong gaming board. "[W]e on this side of the House," argued a Conservative spokesman, "are anxious to give the Board the maximum degree of power."³³⁴ Even croupiers, hoping to obtain union representation, wished to have a union obtain for them from the Board some type of licensing system with minimum qualifications.³³⁵ Once unionized, they later looked to the Board for relief in a dispute with casino employers.³³⁶

The British Gaming Association Report urged that all licensing of gaming clubs be granted *solely* by the Board.³³⁷ Likewise, the anti-gaming "Church's Committee on Gambling Legislation" concluded the Board alone should be responsible for gaming club licenses.³³⁸ Similarly, in an editorial, the anti-gaming *Times* also advocated that the Board have direct licensing authority.³³⁹

Anti-gaming parliamentarians unsuccessfully argued that the Board alone should be allowed to revoke a gaming license since local justices "must be deeply sensitive to local pressures" and the need for gaming revenue.³⁴⁰ Pro-gaming advocates hoped the bill would allow the Board discretion to increase the number of jackpot machines beyond the statutory two. They also wanted the Board to have the power to regulate the gaming of overseas visitors. Anti-gaming supporters wanted the Board to regulate and certify all slot machines, including those with prizes.³⁴¹

333. 758 PARL. DEB., H.C. (5th ser.) 1208 (1968)

334. 766 PARL. DEB., H.C. (5th ser.) 98 (1968)

335. *The Times* (London), June 1, 1968, at 3, col. c.

336. In 1974, about seventy-four employees were terminated by the Casanova Club. During the course of the strike, Labor M.P.s attempted to enlist Board participation. Although the Board had indicated earlier that it had no objection to the unionization of gambling employees, it refused to become involved in industrial relations disputes. BOARD REPORT (1974), *supra* note 131, at para. 22-24 (1974). The Board did, however, take cognizance of the fact that the dispute existed and that it might have a detrimental effect upon the proper conduct of gaming on the premises. *Id.* at para. 25. The Conservative Government also rejected the notion of Board involvement in gaming industrial relations or the issuance of a report on the strike. 883 PARL. DEB., H.C. (5th ser.) 383-4 (1974) 884 PARL. DEB., H.C. (5th ser.) 26-28 (1975).

337. *The Times* (London), Mar. 5, 1968, at 2, col. e.

338. *The Times* (London), June 5, 1968, at 4, col. d. *See also* remarks of Lord Stonham, 293 PARL. DEB., H.L. (5th ser.) 857 (1968). The Bishop of Chester had also wanted the Board to decide where casinos would be located. *The Times* (London), Aug. 23, 1969, at 7, col. c (letter to the editor).

339. *The Times* (London), Aug. 23, 1969, at 7, col. c.

340. 296 PARL. DEB. H.L. (5th ser.) 489 (1968). Those who expressed concern over the possibility of an all-powerful Gaming Board were extremely rare, *e.g.* Buckwell, *Gaming—the Certificate of Consent*, LAW SOCIETY'S GAZETTE, Feb. 1969, at 111.

341. *The Times* (London), Nov. 22, 1969, at 7, col. a.

One of the most striking factors throughout the discussion of the bill was the lack of any desire to weaken Board power. Antony Buck "echo[ed] the sentiments on both sides that it should be the Gaming Board which has greater powers and an enhanced role."³⁴² In the Commons Committee, the Board was given what amounted to veto power concerning casino licenses. Under-Secretary Taverne announced that the committee desired "rough justice" by allowing a Board veto.³⁴³ A Conservative committee member wanted the Board to have "the power to determine the character of applicants and the nature of premises,"³⁴⁴ while a Labor member stated the Board must make a "ruthless selection"³⁴⁵ in order to reduce gaming clubs. Parliament, especially the Tory opposition, expressed concern that the Board was not given additional powers, such as the enforcement of all British gaming laws.³⁴⁶ One Tory analogized the Board to a statutory "Jockey Club" and stressed that it, and not Parliament, should have regulated Parts II and III of the bill.³⁴⁷ Furthermore, it was argued that the Board, and not Parliament, should have regulated contract requirements between gaming-machine suppliers and the clubs or casinos.³⁴⁸ Another Conservative emphasized that while it was preferable for the Board alone to license casinos, he had "rather more confidence" in the bill once the Government explained that local justices would be able to license, but only after they were "advised by the National Gaming Board,"³⁴⁹

Members stressed that the Board should have "free hands" and that "the Board must be arbitrary. It must be autocratic. No reason must be given."³⁵⁰ The Board should make rules and not be tied down by the government. It should also be the licensing authority and not have the courts "cluttered up with prosecutions as to how gaming is being conducted."³⁵¹

The Home Secretary, during the debates, stated that the Board had been given powers "unprecedented . . . for a statutory body."³⁵² Not only did the Board have enumerated powers, but it also had an

342. 758 PARL. DEB., H.C. (5th ser.) 1255 (1968).

343. *The Times* (London), Mar. 3, 1968, at 3, col. d.

344. *Id.*

345. *Id.* A Tory emphasized that Board "expertise" should prevent the casino experts' ingenuity from circumventing the law. 758 PARL. DEB., H.C., (5th ser.) 1243 (1968).

346. 758 PARL. DEB., H.C. (5th ser.) 1196 (1968).

347. *Id.* at 1189.

348. *Id.*

349. *Id.* at 1205.

350. 758 PARL. DEB., H.C. (5th ser.) 1243, 1241 (1968).

351. *Id.* at 1242.

352. 766 PARL. DEB., H.C. (5th ser.) 364 (1968).

enforcement discretion."³⁵³ Under-Secretary Taverne also emphasized that the Board would be "an extremely powerful body and that a general atmosphere will be created in which clubs must comply and keep on the right side of the Gaming Board or else."³⁵⁴

While the Under-Secretary defended the need for local justices to utilize "local considerations," he indicated that, "the Board will be there to stiffen any justices who may need their backbones stiffened."³⁵⁵ Immediately before the third reading of the bill, Home Secretary Callaghan emphasized that as a result of debate, "the powers of the Board had been greatly increased" and they have been given powers "of an absolute and arbitrary nature" resulting from the need to control the peculiar characteristics of gaming.³⁵⁶ As Taverne explained further, "[i]f there is any hint of trouble, the possibility of getting on the wrong side of the Board will be very much in the minds of those who run the clubs."³⁵⁷

Legitimate casinos which were represented by casino associations were unopposed to the bill.³⁵⁸ They, like other gaming interests, became susceptible to pressure for protection from criminal elements and the fear of "arranged" fights in a casino that would not pay protection money.³⁵⁹

Gaming advocates, such as the Casino Association, were unsuccessful in removing or seriously minimizing the prohibition on gaming advertising, or in allowing casinos more than two bank days to cash checks. They were also unsuccessful in having the Board exercise dis-

353. The right to regulate its own procedure. Gaming Act, 1968, ch. 5, sched. 1 (7).

354. 758 PARL. DEB., H.C. 1269 (1969). One of the most recent scholarly analyses reconfirms Taverne's opinion of the Board power. "To put it simply, if one incurs the displeasure of the Gaming Board for Great Britain, the possibility of carrying on one's operations without intervention is unlikely. Recent experiences have made it clear that the legislation only complements, but does not supersede, the spirit and intention of Parliament when it framed the Act." Littman, *supra* note 1, at 2.

355. 758 PARL. DEB., H.C. (5th ser.) 1265 (1968).

356. 766 PARL. DEB., H.C. (5th ser.) 364 (1968). Antony Buck was reassured by the power of the board to "veto" a casino applicant. *Id.* at 369-72.

357. 758 PARL. DEB., H.C. (5th ser.) 1269 (1968).

358. Quinton Hogg commented that "the Bill is warmly supported by the Casino Association." 758 PARL. DEB., H.C. (5th ser.) 1181 (1968). W.E. Garrett also said, "[t]here is no doubt that the proposals for tighter control on casino type gambling will be welcomed by the legitimate owners of the major casinos." *Id.* at 1191. R. Paget responded to casino support of the Bill "*Timeo Danaos et dona ferentes*" [Beware of Greeks bearing gifts]. *Id.* at 1240. The Earl of Arran who was one of the few parliamentary extremists against gaming declared that the Gaming Association was "clearly looking forward" to the Bill in hope "it would allow games of unequal chance, in particular, roulette with the zero." 296 PARL. DEB., H.L. (5th ser.) 1413 (1968).

359. Controlling Casinos, *The Economist*, June 17, 1967, at 1210, col. 2.

cretion concerning the following matters: removal of the 48-hour waiting period before foreigners could begin gaming; increasing the number of jackpot slot machines beyond two; and increasing the betting amount total in link-up bingo beyond £1,000 per week.

Gaming interests would have preferred the Board, not the justices, to license casinos. However, there was minimal opposition to absolute Board power to license or remove gaming employees. Efforts to allow appeals from Board decisions revoking certification of a machine supplier were also unsuccessful.

The Gaming Association was unsuccessful in developing any viable appellate process after Board rejection or, in effect, developing a better appellate process for licensing rejections. On the most crucial question—allowing games of unequal chance—the Association won a major victory when the Government effectively delegated that decision to the Board.³⁶⁰

The Association, however, lost on the issue of the Board's selection process for casinos and won only a temporary victory when the government deferred to the Board the decision whether to separate gaming from casino entertainment. Nevertheless, for the first time since the eighteenth century, gaming debts were made enforceable.

Some members of Parliament wanted to all but prohibit gaming; others, occasionally casino directors or representatives, wanted to minimize gaming controls or let the Board make those decisions. The Act ultimately satisfied neither extreme within Parliament.

III. THE GAMING BOARD

A. *Initial Reliance on Regulations and Memoranda of Advice*

There was no disagreement in Parliament that the Act would be enforced through the issuance of regulations and orders. There was only minor concern over prior parliamentary approval of any regulations. One opposition spokesman stressed that regulations should be published by the Home Secretary before passage of the Act:

It is vital that we get this business right. If the regulations are wrong, the matter will either be pushed under the carpet again, making it hard, perhaps impossible, for many clubs to make a profit, or it will go the other way and the issue will be as *ad lib* as it is now. This does not mean that there must be enormous delay in the preparation of the regulations. Ample time has already been at the disposal of the Home Secretary in which to

360. See 296 PARL. DEB., H.L. (5th ser.) 1413 (1980). See also *The Times* (London), Nov. 22, 1969, at 7, col. a.

have an idea of what the position will be.³⁶¹

Another Tory who also expressed concern over the content of unknown regulations admitted that with the Home Secretary relying on Board expertise to explain regulations before the creation of the Board, certain problems did arise.³⁶²

The only major issue was whether regulations should be made by the Board or by the Home Secretary.³⁶³ It was decided that the Home Secretary must consult the Board before issuing regulations, but not before issuing orders.³⁶⁴ In order to emphasize the power of regulation in the gaming field, the Government stressed that "the ultimate weapon, the *clincher*; . . . [is] the regulation-making powers conferred by sub-section (3)."³⁶⁵

Pursuant to parliamentary discussion, the Board made recommendations through "Memorandum of Advice to Licensing Authorities" or through "letters of advice" to various interest groups. As in the regulation-making procedure, there were a few members of Parliament who expressed concern. Antony Buck, for example, said:

[F]or the first time, a statutory lay body will be advising a judicial or quasi-judicial authority. It is unprecedented for any outside body to advise the courts, and I am not happy about this proposal. There is a great strength in the contention made tonight that it may be better to put this matter of licensing under the Board itself, perhaps with appeal to the courts. I am not happy about a statutory board giving advice to the courts. At the moment the only person who dares to write to or to influence the courts is the Lord Chancellor, who from time to time sends memoranda for the guidance and advice of magistrates.³⁶⁶

In its first Memorandum of Advice, the Board stated that it as-

361. 758 PARL. DEB., H.C. (5th ser.) 1257 (1968).

362. *Id.* at 1209.

363. The Times (London), Mar. 13, 1968, at 3, col. a.

364. 296 PARL. DEB., H.L. (5th ser.) 456 (1968).

365. *Id.* at 463. Lord Stonham was referring to Section 51(3) of the 1968 Act which he believed gave the Board "infinitely wide" powers. *Id.* (emphasis added).

366. 758 PARL. DEB., H.C. (5th ser.) 1255 (1968). Lord Denning, in a letter to the author, agreed with Buck's statement. "As to the board advising justices on licensing, I agree that Antony Buck's fear was justified. I do not think that any outside body should advise the Courts of Law, nor do I think the Lord Chancellor should do so himself. I know the Home Secretary does send out memoranda, but these are not binding at all and I deprecate it myself. It is most important in our system that Judges and Magistrates should be quite independent of the executive government." Letter from Lord Denning to the author (Aug. 19, 1985).

sumed authorities would look to it for advice on matters of a "technical or specialised nature or which involve consideration of regional or national factors. . . ." ³⁶⁷ Concerning gaming, the Board concluded that less than 200 consent certificates should support the necessary demand, and that licensing authorities should feel free to restrict particular games, especially chemin de fer, baccarat and craps. The Board also concluded that: licensing authorities should refuse a license if casino access could be obtained from other private premises; "it is undesirable that a bar, a television set or any other similar amenities should be situated within the gaming area itself;" licensing authorities consider the Board's "Table of Standard Minimum Floor Areas for Casino Games;" card room gaming be separate from casino gaming; and that bingo membership or facilities be in a totally separate club from hard gaming. ³⁶⁸

In 1970, in response to inquiries from local authorities and police, the Board again published a Memorandum of Advice interpreting Section 6 of the Act. ³⁶⁹ In summary, the Board strongly discouraged bingo or card games with a "kitty" in pubs, but had no objection to licensing authorities allowing small stakes bridge. ³⁷⁰ In its 1980 report, the Board hinted strongly that "despite the closure of three casinos," there was still "space capacity in London for all games." ³⁷¹ In its letter of advice of March 1982, the Board informed licensing authorities that because London casinos had decreased from twenty-four to fifteen since 1979, "there may be room for no more than one or two." ³⁷²

In the first year after the signing of the Act, sixteen gaming license denials or restrictions were appealed. In every case, the appellate court's attention "was drawn to the Board's Memorandum of Advice to Licensing Authorities." ³⁷³ Licensing restrictions on hours were removed in two cases, and in eight cases restrictions which separated hard gaming from either live entertainment or bingo were reversed. ³⁷⁴ In sixteen bingo license appeals, thirteen were at least partially successful. ³⁷⁵

Board expertise in deciding what games are permissible has not always been followed by the courts. In April of 1972, for example, the

367. BOARD REPORT (1969), *supra* note 19, at app. X.

368. *Id.* at paras. 8-26.

369. BOARD REPORT (1970), *supra* note 210, at app. V.

370. BOARD REPORT (1980), *supra* note 143, at para. 9; BOARD REPORT (1981), *supra* note 201, at para. 13.

371. BOARD REPORT (1980), *supra* note 143, at para. 14.

372. GAMING BOARD FOR GREAT BRITIAN, FOURTEENTH ANNUAL REPORT para 14 (1982) [hereinafter BOARD REPORT (1982)].

373. BOARD REPORT (1970), *supra* note 210, at para. 40.

374. *Id.* at para 40.

375. *Id.* at paras. 6-7.

Board requested that the licensing authorities revoke a gaming license because the club had allowed a game not authorized by Board regulations.³⁷⁶ When the court held that the club should be given the benefit of the doubt, the Board appealed to the Divisional Court which upheld the lower court stating it was "wholly impossible to say the justices were perverse in saying that it was not proved beyond reasonable doubt that this game could not fall within the description of American or French roulette."³⁷⁷

In addition to "memoranda" or "letters", the Board, through the Home Secretary, quickly regulated various aspects of gaming. Some of the earliest important regulations restricted gaming to thirty-one areas, prohibited access from private premises into casinos and regulated the permitted charges for gaming.³⁷⁸ In 1970, the Board issued detailed regulations on bankers games, such as a 50 pence maximum for bingo, allowance of both American and French roulette, maximum hours for hard gaming—from 2 p.m. to 4 a.m.³⁷⁹—and a prohibition of tipping on the basis that its assessment of the house advantage in unequal chance-gaming assumed no tipping.³⁸⁰ In 1970, the Board regulations enlarged the permitted geographical areas for hard gaming.³⁸¹ The Board also issued regulations encouraging the diversity of bingo and the prohibition of live music and dancing.³⁸² In 1973, the Board, after

376. BOARD REPORT (1972), *supra* note 39, at para. 9.

377. *Id.*; BOARD REPORT (1973), *supra* note 164, at paras. 8-9.

378. BOARD REPORT (1970), *supra* note 210, at para. 18-19.

379. The Gaming Clubs (Hours and Charges) Regulations 1970 [S.I. 1970, No. 799]; The Gaming Clubs (Hours and Charges) (Scotland) Regulations 1970 [S.I. 1970, No. 781, S. 58].

380. The Gaming Clubs (Prohibitions of Gratuities) Regulations 1970 [S.I. 1970, No. 1644]; The Gaming Clubs (Prohibitions of Gratuities) (Scotland) Regulations 1970 [S.I. 1970, No. 1658, S. 38]; BOARD REPORT, 1970, *supra* note 210, at para. 37; Maudling, H. C. Debs., Vol. 804, col. 263-64 (July 24, 1970). Concerning tipping proceeds, "it was usual for a large percentage to be retained by the House and designated to defraying overheads. In some cases managements budgeted to meet the whole of the wages bill of the staff employed at the tables from their proportion of the tips." Bacon, *supra* note 23, at, 262.

Most casino advocates had originally opposed the prohibition of tipping gaming employees but now agree that the prohibition has worked since now croupiers et al. have no vested interest in the games outcome.

381. BOARD REPORT (1970), *supra* note 210, at para. 35.

382. *Id.* Bacon, *supra* note 23, at 265, states it was up to the licensee whether to permit alcoholic drinks to be served at the gaming tables. In practice, no local justice would license a casino unless it agreed to prohibit the drinking of alcohol in the gaming area. Casino entrepreneurs are adamant in their belief that the lack of alcohol on the gaming floor makes sense for numerous reasons, such as the elimination of the possible claim of lack of capacity from drunkenness. Alcoholic beverages, therefore, are not served within the gaming areas.

consultation with the Home Secretary and others, advised its inspectors that if racing rooms were provided in casinos, they were in violation of Section 1 of the Betting, Gaming and Lotteries Act of 1963 since Parliament did not want a mixture of betting and gaming.³⁸³

B. Increasing Emphasis on Informal Agreements with Regulated Industries

1. Slot Machine Trade Associations

The most complicated and time-consuming regulatory area for the Board was that of slot machines. As the date for commencement for Part III approached,³⁸⁴ there was much "uncertainty" within the gaming machine industry as to exactly what various sections of the Act prohibited, especially Section 34.

Instead of trying to fill gaps by regulations, the Board Chairman agreed to meet with representatives of the Amusement Trades Association and "offered to issue guidelines on the interpretation of . . . Section 34 on condition that the manufacturers and operators of machines would undertake to abide by them."³⁸⁵ After several meetings "guidelines" were issued on October 12, 1970, which prohibited Section 34 machine progressive jackpots, "Hold-and-Draw" features, Replay Credit Meters, a machine which would allow a 50 pence to be inserted and other devices which made slot machines more attractive. The guidelines also allowed a grace period until December of 1970 for machines already in operation to comply with the guidelines.³⁸⁶

In 1971, a similar interpretation of the law was made for jackpot, or Section 31 machines, with the gaming machine trade associations again promising compliance. The Board promised that where there was a specific device of uncertain legality (*i.e.*, Double-Treble Quits), the Board inspectors would take no action for the time being.³⁸⁷ In 1972, the Board claimed all machines were subject to Part III of the Act, unless winning "depended solely on skill and no chance enters into it."³⁸⁸ Thus "pin-table" and other machines were included irrespective

383. BOARD REPORT (1973), *supra* note 164, at para. 21. BOARD REPORT (1974), *supra* note 131, at paras. 18-20.

384. BOARD REPORT (1969), *supra* note 19, at para. 11. July 1, 1970 was the date when both Part II of the Act and Part III which deals with gaming machines would come into force.

385. BOARD REPORT (1970), *supra* note 210, at para. 45.

386. *Id.* at app. VI. See also, BOARD REPORT (1984), *supra* note 101, at para. 43.

387. BOARD REPORT (1971), *supra* note 210, at para. 43.

388. BOARD REPORT (1972), *supra* note 39, at 32.

of whether they were subject to excise duty or even used for gaming.³⁸⁹ In 1973, the machine industry representatives "agreed not to manufacture or supply machines having features which the Board considered illegal or objectionable."³⁹⁰

The most troublesome area concerning slot machines was the issue of what minimum percentage was mandatory for jackpot machines and whether a regulation to that effect was necessary pursuant to Section 31(6).³⁹¹ The Board, in 1973, "agreed" with the trade association that the average payoff of jackpot machines should be approximately 80%.³⁹² As a result of a survey, the Board concluded that a majority of machine suppliers who had paid less now agree to a 75% payoff. Thus, the Board concluded regulations were unnecessary because "all but a very few licensees" accepted the Board's recommended minimum.³⁹³

While the Board certainly could "prescribe" percentage minimums pursuant to the Act, it took the unusual step of expressing concern at jackpot machines paying up to £250. In 1978, in response to Board persuasion, the trade association agreed to recommend to manufacturers that "no machine be made with jackpots in excess of £100."³⁹⁴

At the request of Parliament, the Board agreed to consider minimum percentage payouts for Section 34 machines. In 1976, the Board reported that the trade association "Code of Conduct for Manufacturers" should give prizes of no less than 70% and in 1984 BACTA's Code of Conduct required all machines be manufactured to pay out a sum of 70%.³⁹⁵

The other troublesome issue concerning slot machines was their failure to pay off a winning player. In both 1974 and 1979, Board reports seemed to say that the first time a machine failed to pay off it was a player's misfortune, but that no prosecution would commence if the player were given a prize when the machine was initially defective.³⁹⁶ It did warn the industry that rigid, expensive regulations would

389. *Id.* at paras. 94, 107.

390. BOARD REPORT (1973), *supra* note 164, at para. 63.

391. The Gaming Act, 1968, § 31 (6).

392. BOARD REPORT (1973), *supra* note 164, at para. 66.

393. BOARD REPORT (1974), *supra* note 131, at paras. 92-93. As a result of Value Added Tax and other factors the Board has accepted a 71% return as a minimum, BOARD REPORT (1979), *supra* note 133, at para. 89. In 1974, the various gaming machine trade associations amalgamated in BACTA.

394. BOARD REPORT (1977), *supra* note 152, at paras. 65-70; BOARD REPORT (1978), *supra* note 49, at para. 60.

395. BOARD REPORT (1976), *supra* note 39, at para. 40; BOARD REPORT (1984), *supra* note 101, at para. 83; BOARD REPORT (1983), *supra* note 49, at para. 46. The Board required a 70% return and a certificate to that effect for licensed bingo club machines.

396. BOARD REPORT (1974), *supra* note 131, at para. 40; BOARD REPORT (1978), *supra* note 49, at para. 61; BOARD REPORT (1979), *supra* note 133, at para. 85.

be made unless "more effective supervision" were exercised by the industry to ensure proper payments.³⁹⁷ Warned by the Board that failure to prevent their practices verged on "unfair trading," the trade association recommended to manufacturers that their machines have a warning light when there was insufficient funds.³⁹⁸

2. Casino Associations

In a manner similar to that of the machine suppliers trade associations, the Board, rather than issue regulations, reached informal agreements with the British Casino Association which would "facilitate our communication and consultation with the industry."³⁹⁹ The Board strongly endorsed the association's urging of its membership to return to the player all monies on a winning "21" hand, or the remaining one-half "imprisonment" amount in roulette, instead of letting casinos encourage patrons to leave the amount as a side bet. It also urged the association to enforce uniform minimum accounting procedures and to adopt the Board's views on "the whole question of promotions" such as free buffets.⁴⁰⁰ Similar arrangements were made with the Bingo Association for the legal advertisement of entertainers in bingo clubs and for rules concerning the mechanization of cash bingo, as the Board was especially concerned with housewives competing at these quick bingo associations. The Board also sought the association's approval of a "Code of Conduct" for mechanized cash bingo.⁴⁰¹ The Board was also instrumental in effectively encouraging casinos to regulate their affairs to prevent further governmental intervention. In 1980, the British Casino Association promulgated a "Code of Conduct" which required adherence "to the spirit and intention of the Gaming Act, 1968, as well as to the letter of the law."⁴⁰² It required access by players to all club rules, notice of "maximum and minimum stake limits," prohibition of overseas junkets and prohibition of "payments in cash or kind to persons properly in other employment . . . as reward for directing busi-

397. BOARD REPORT (1978), *supra* note 49, para. at 61.

398. *Id.*

399. BOARD REPORT (1973), *supra* note 164, at para 13.

400. BOARD REPORT (1976), *supra* note 39, at para, 29; BOARD REPORT (1979), *supra* note 133, at para. 26; BOARD REPORT (1983), *supra* note 49, at para. 115.

401. BOARD REPORT (1976), *supra* note 39, at para. 65; BOARD REPORT (1980), *supra* note 143, at para. 60.

402. Code of Conduct, British Casino Association, March 1980, at 2. Casino executives consider informal agreements between the Board and the casino associations as mutually beneficial whereas written regulations often cause problems. Interview with Leonard Steinberg (Jan. 7, 1987).

nesses to particular casinos for the purpose of gaming."⁴⁰³ It also required disclosure to the Board of corporate share transactions of more than 5% by another party, and that audited annual accounts be provided to the Board.⁴⁰⁴ Individual casino codes are even stricter than that of the Association. It is common practice for casinos to terminate an employee if one is seen leaving in a cab with a club member, or if the employees have associated with club members either in a private, business or social capacity.⁴⁰⁵

In 1981, the British Casino Association requested that the Board provide authoritative guidelines for Section 16, which governed check cashing. The Board declined since there were cases *sub judice*.⁴⁰⁶ In the Knightsbridge Sporting Club appeal, the Divisional Court upheld the denial of a license renewal because the casino had engaged in unlawful check transactions.⁴⁰⁷ Finally on June 14, 1984, "Guidelines for Accepted Practice," *Acceptance of Cheque* (No. 1), was issued by the British Casino Association; it was the Board's responsibility to "watch the operation of these guidelines."⁴⁰⁸ In brief, this guideline stated that no casino would accept additional checks from a player who had writ-

403. Code of Conduct, *supra* note 402, at 2-3.

404. *Id.* At the end of 1976, 85 of 121 licensed casinos belonged to the Association and the views of those who did not belong had "no striking divergence" from the views of those who belonged. ROTHSCHILD REPORT, *supra* note 9, at para. 289. By 1984, 110 of the 120 licensed casinos belonged to the BCA. Steinberg, *Running a Betting Shop Group and a Casino Group in the United Kingdom*, Sixth International Conference on Gambling and Risk Taking, *supra* note 1, at 289. The earlier 1974 casino code of conduct was largely ignored by members. Kent-Lemon, *Significant Influences*, *supra* note 2, at 76.

405. *Hadjioannau v. Coral Casinos Ltd.*, [1981] I.R.L.R. 352 (Employment Appeal Tribunal), upheld a casino employee's termination because he had various outside business ventures with club customers. "We would fire an employee immediately if he left our casino in a taxi with a customer." Interview with Philip Tarsh (July 17, 1985).

Some casinos have handbooks which mandate precautions to prevent the appearance of impropriety. For example, London Clubs, Ltd. (Mecca) distributes a handbook to each employee stating that an employee is subject to immediate dismissal for fraternization with members or players, including accepting gifts. The handbook specifically discourages tipping by stating:

a) Accepting gratuities or gifts.

All forms of gratuities or gifts are illegal in the United Kingdom. Any gratuity or gift offered whether across the table or in any other part of the Casino or off the Casino premises must be politely refused and returned. Should any attempts be made by persons to tip staff away from the table or off the Casino premises, not only must they be refused, but immediate notification to Management must be made of the incident.

London Clubs, Ltd., Staff Charter 6 (July 1, 1984).

406. BOARD REPORT (1981), *supra* note 201, at paras. 25, 29.

407. BOARD REPORT (1982), *supra* note 372, at para. 24.

408. BOARD REPORT (1984), *supra* note 101, at para. 12.

ten a previously dishonored check or allow a player to go beyond the casino check-cashing limits except in "specified circumstances" with "prescribed procedure." Moreover, all debts must be settled in full without any compromise in the amount due. Additional precautions should also be taken for "known defaulters" and "new members if the check is £2,000 or more."⁴⁰⁹

3. Significance of Board Advice or Suggestions

In addition to overseeing the gaming industry, the Board also advises the Government on such uncertain issues as the date of an "instant lottery" ticket since if it were any but the date it was "scratched off" there would be a violation of law.⁴¹⁰ In Parliament, a government spokesman declared that he had spoken to the Board chairman "and he assured me that the Board intends to clarify the doubt that exists. . . ." ⁴¹¹ The Board also advised that in the determination of the value of a lottery prize, "the best course seems to be to take the normal retail price, including taxes," ⁴¹²

It is crucial to an understanding of Board power to be aware that its "suggestions" to those regulated are regarded as commands and "are implemented without question."⁴¹³ During the initial period for casino certification, the Board "was known to disapprove of attractions which could make the small gambler raise his stakes. So the bunny girl croupier and drinks at the table will lose marks."⁴¹⁴ Board Chairman Sir Stanley Raymond chastised various club owners for permitting sexual "immorality" or for "using scantily dressed croupiers to attract the gullible."⁴¹⁵ He also commented that he had the obligation to protect Britain's half-million bingo players, 98% of whom he said were women, from being exposed to "rather sleazy roulette wheels. I have seen women lose a lot of money on them."⁴¹⁶

409. *Id.* at paras. 3,6, app. II.

410. 925 PARL. DEB., H.C. (5th ser.) 267 (1977).

411. *Id.* at 1367.

412. BOARD REPORT (1977), *supra* note 394, at para 70.

413. The Times (London), July 4, 1977, at 8, col. e.

414. *Objection Sustained*, THE ECONOMIST, January 17, 1970, at 21, col. 2.

415. The Times (London), December 29, 1969, at 19, col. b.

416. The Times (London), June 21, 1969, at 3, col. d. Concerning roulette variations, Bacon agreed, "Women are apt to find such irresistible" and thus "the house-keeping money together with the insurance and hire-purchase dues, was in jeopardy." Bacon, *supra* note 23, at 263.

4. Criticism of Board Implied Threats of Unsolicited Legal Advice

The Board has made "implied threats" to revoke a casino certificate of consent if a club became involved in overseas gaming.⁴¹⁷ The aura of the Board power is so important that an Employment Appeals Tribunal even suggested that before an employee was terminated for having "foolishly altered" two check dates and having cashed more than the casino-allowed number of checks, the Board should have been consulted:

In the circumstances, . . . the employers might have gone to the Gaming Board. It is true . . . that there was not any evidence as to whether the Board would have listened to them or given them any advice. But it is an expression of what the industrial tribunal are saying, namely, that '[i]n our view, a reasonable employer might also have gone to the Gaming Board and to see what their reaction was.'⁴¹⁸

Most striking is the Board's occasional expression of an opinion to the press when it believes the publication has erroneously printed legal advice concerning the Act, especially when the publication's readers included many policemen.⁴¹⁹ When *Police Review* concluded slot machine tokens could be accumulated in order to be exchanged for goods, the Gaming Board objected through an unsolicited letter:

As Secretary of the Gaming Board for Great Britain I must strongly disagree with the answer given to the question on gaming machines in *Police Review* of December 24, 1982, where you stated that tokens could be accumulated. This is not so, as the Home Office publication "Introduction to the Gaming Act 1968" states categorically that tokens cannot be accumulated and exchanged for a single prize. It is, however, possible for a number of tokens to be saved and exchanged at the same time for a number of prizes, none of which exceed £2 in value, but not for a single larger prize such as a bottle of whiskey. If this is done the proprietors commit an offense under Section 8 of the 1968 Act.⁴²⁰

Police Review responded by emphasizing that, not only did the Board Secretary cite the wrong statutory sections (Section 34 is the correct

417. ROTHSCHILD REPORT, *supra* note 9, at para. 19.23.

418. *Coral Strand Casino v. Heath*, No. 94/80 (Employment Appeal Tribunal 1980).

419. Interview with R. Creedon (July 18, 1985), who stressed that the Board offers unsolicited advice only on very rare occasions.

420. *Police Review*, February 14, 1983, at 333, col. 3.

section), but the Secretary's comment was "ludicrous" since:

[T]he legislation is far from clear and it is a question of fact for a court to decide. What we need is some brave person to commit what you allege to be an offence so that you can test it in the courts. We certainly cannot suggest, however, that any police officer should report a person who takes two or more tokens to be exchanged for cash or goods at the end of a period playing Section 34 machines, instead of rushing to cash each one individually. The word 'accumulates' is not used in Section 34 and appears to be purely the invention of whoever paraphrased the Gaming Act of 1968 in the 'Introduction.'⁴²¹

Another controversial example of Board advice was its opinion that Lottamatic, a coin operated lottery type machine, was a gaming machine and thus subject to Part III of the 1968 Act.⁴²² This necessitated restrictions such as its being retailed only by those holding a Board certificate, having a limit of 10 pence per play, and having any type of profit-sharing prohibited.⁴²³

Lottamatic had been marketed as a lottery machine. Thus, the manufacturer assumed it was subject only to the Lotteries and Amusements Act of 1976 and exempted from the 1968 Act by Section 52(3). As Lottamatic explained:

Both counsel and Queen's Counsel were unanimous in their agreement that this was possible providing the provisions of the Lotteries Act were adhered to. The only stipulation was that it must remain within Section 4 relating to private lotteries and not society or local lotteries, as vending machines were banned under regulations of 1977. All information by us was submitted to the Gaming Board which took its own legal opinion and, incidentally, refused to tell us what questions they asked of its legal counsel, or what answers it received.⁴²⁴

The Board sent a letter to BACTA expressing its belief that Lottamatic was subject to the 1968 Act, and also requested that the Board "be notified of any instances of unlawful supply or operation of the machine so that the police may take appropriate action."⁴²⁵ BACTA then sent a circular to all its members, stating that the Board viewed

421. *Id.*

422. *Gaming Board Ruling Upsets Lottamatic*, *Leisure Play*, Oct. 1984, at 9.

423. *Id.*

424. *Lottamatic Hits Back*, *Coin Slot*, Sept. 21, 1984, at 9.

425. *Gaming Board Ruling Upsets Lottamatic*, *Leisure Play*, Oct. 1984, at 9.

Lottamatic as a gaming machine.⁴²⁶

On various occasions the Board has refused to fill gaps either by regulation or by informal advisory opinions. Throughout the 1970's the Board refused to answer questions from casinos whether they should be allowed to cash additional checks once a check has been dishonored. It was not until the Rothschild Commission hearings that the Board finally stated that further checks after dishonor should be prohibited and that casinos should not release a third party of "any part of its debt from a dishonored check since otherwise, in effect, the result was the giving of credit."⁴²⁷

In *In re de Keller's Application*,⁴²⁸ an applicant had asked the Board whether his newly developed game, Aquarius, which was similar to roulette, was in compliance with Section 31(1) of the Act and Regulation 803. The Board, after corresponding with de Keller, refused to issue any such ruling.⁴²⁹ Casinos, fearful of being prosecuted as in the *Gorleston*⁴³⁰ matter or perhaps of displeasing the Board, refused to use de Keller's game without Board approval. He then sought a writ of mandamus to compel the Board to render an opinion.⁴³¹ The Divisional Court held that the Board had the power to express a viewpoint on Aquarius' legality, but could not make a definitive ruling. There was not, however, "any even remote possibility of an argument that the Board has a duty to make this declaration."⁴³²

C. Evaluation of the Board

1. Initial Pessimism Toward The Board

There was considerable concern whether the Act would accomplish its twofold goal: the reduction of overall "hard" gaming, primarily by a drastic lowering of the number of casinos, and the elimination of organized crime, primarily by ensuring that the remaining gaming was strictly controlled.

During parliamentary debates, members were often pessimistic, largely because of their perception of Board weakness. An anti-gaming

426. Lottamatic insisted it could operate the machines on grounds that something is "legal until it is declared illegal" and that it had asked the Divisional Court for a ruling on the matter since it "was too complex for a ruling by a magistrate's court." *Id.*

427. BOARD REPORT (1976), *supra* note 39, at para. 30-37. ROTHSCHILD REPORT, *supra* note 9, at para. 18.61-67.

428. The Times (London), Apr. 28, 1983, at 23, col. g.

429. *Id.*

430. *Gorleston Ltd. and Another*, 1973 CRIM. L. REV. 300. See also, BOARD REPORT (1972), *supra* note 39, at 9; BOARD REPORT (1973), *supra* note 164, at 8-9.

431. The Times (London), April 28, 1983, at 23, col. g.

432. *Id.* BOARD REPORT (1983), *supra* note 49, at 14.

spokesman feared that "we may find ourselves with more gaming clubs than we had before the 1963 Act. . . ." ⁴³³ A moderate concluded the Board was given an "impossible task" in trying to reduce the number of gaming clubs. ⁴³⁴ Continuing roulette litigation throughout July of 1968 resulted in parliamentary fear that the matter of a Chairman's appointment was "becoming increasingly urgent." ⁴³⁵

Dismay concerning the Board increased considerably upon the announcement that the Government had appointed as Board Chairman, Sir Stanley Raymond, former Chairman of British Railways as Board Chairman. All sides attacked the appointment because: (i) it had been assured that the Board would be chaired by someone "who knows a fair amount about gaming . . . instead of somebody totally without experience" in gaming; ⁴³⁶ (ii) the appointment was "political" and it was "a tragic error" for such a chairman "to be given for the first time in parliamentary history completely autocratic powers;" ⁴³⁷ and, (iii) the nominee was so "totally unfit," it was reminiscent of Caligula's horse. ⁴³⁸ The salary of the part-time chairman and Board inspectors was further criticized as insufficient to withstand temptations. ⁴³⁹

Members of Parliament also accused the Board of acting "discourteously to applicants" who were "treated as dirt; they are not allowed to talk or put their cases and they are treated officiously." ⁴⁴⁰ The Board's second annual report was criticized by the Chairman of the British Gaming Association as being "irresponsible and hysterical." ⁴⁴¹ There were also numerous complaints from individuals adversely affected by Board decisions. One former casino boss who had lost his gaming certificate when the Board discovered he had gambled illegally while off the job "bemoaned his loss of £10,000 a year and a company car for *one* offence after sixteen years in the business and there's no appeal. Do you call that fair?" ⁴⁴²

433. 296 PARL. DEB., H.L. (5th ser.) 496 (1968).

434. *Id.* at 459.

435. 769 PARL. DEB., H.C. (5th ser.) 984 (1968).

436. 770 PARL. DEB., H.C. (5th ser.) 741-743 (1968).

437. *Id.* at 743-744.

438. *Id.* at 746.

439. *Id.* at 761.

440. 791 PARL. DEB., H.C. (5th ser.) 1263 (1968).

441. Eric Morely, Chairman of the British Gaming Association *as quoted in*, POLICE REVIEW, June 11, 1971, at 749 col. 1.

442. Harris, *The Illegal Gamblers*, 1983 NEW SOCIETY 316.

2. Overall Success of The Board

Ironically, even those who dislike the Board admitted its success. Outside of Sir Stanley Raymond, the other Board members, including a former M.P., a past-president of the Institute of Actuaries, a Solicitor, and a former deputy commissioner, aroused little controversy. The initial Board inspectors were chosen from 3,000 applicants and received a fifteen-week intensive training in gaming matters.⁴⁴³ Most of the other Board personnel were within the British civil service and thus immune to almost any allegation of self-serving or incompetence.⁴⁴⁴ Within a short time the Board attempted to insure that, as far as possible, all British gaming was "strictly controlled"⁴⁴⁵ and that the Board became aware of "all except the most minor alterations"⁴⁴⁶ in gaming. Almost immediately the Board began to promulgate time schedules to implement the Act and met with as many governmental, gaming and law enforcement bodies as possible.⁴⁴⁷

Most observers would agree with *The Times* analysis that the Board "has shown that supervision by a statutory body can provide a better form of control" than an act of Parliament with its almost inevitable loopholes.⁴⁴⁸ Similarly, the Rothschild Commission, which had harsh criticism of certain Board practices, concluded that the gaming scene "has in almost every respect improved" since the establishment of the Board.⁴⁴⁹ One of the best indications of Board success was the response by the new Conservative government, to persistent parliamentary inquiries, that there was general satisfaction both with the Act and the Board.⁴⁵⁰

Another indication of the success of the Act is reflected in the paucity of remedial legislation since 1968. It was not until 1973 that the first major amendment to the Act allowed member clubs to charge up

443. *The Times* (London), May 21, 1970, at 2, col. e.

444. Lord Allen, who replaced Sir Stanley Raymond as Chairman from 1977 until 1984 had been (as Sir Philip Allen) the permanent secretary of Home Office and thus "had a kind of proprietorial interest in the operation of this statutory creature." *Safeguards for the Gaming Board*, *Financial Times*, February 5, 1979, at 10, col. c.; Lord Allen has made few if any inflammatory remarks. Unlike Nevada, the Board personnel, except for inspectors, are under civil service and expect to be transferred to some other department.

445. Littman, *supra* note 1, at 4.

446. *Id.*, at 4.

447. BOARD REPORT (1969), *supra* note 19, at paras. 9, 11, 29.

448. *The Times* (London), Mar. 10, 1972, at 15, col. 3.

449. ROTHSCHILD REPORT, *supra* note 9, at para. 16.16.

450. 805 PARL. DEB., H.C. (5th ser.) 1240 (1970). 856 PARL. DEB., H.C. (5th ser.) 285 (1973).

to 5 pence for games such as whist or bridge.⁴⁵¹ The Board was given further responsibilities to enforce the Pool Competitions Act of 1971 and the Lotteries Act of 1975, whereby the Board had regulatory responsibility for all lotteries of local authorities and societies with a turnover in excess of £5,000 (now £10,000), a task which the Board "ordinarily . . . would have preferred not to undertake."⁴⁵²

(a) Reduction of Casinos but an Increase in Overall Gaming and its Centralization Within London

The effectiveness of the Board in curtailing gaming has been exaggerated. Certainly, the number of casinos had been so drastically reduced, from about 1,000 to about 120 during the 1970's, that the Board chairman conceded the "gaming industry had been shaken-up, perhaps more than we would have wanted."⁴⁵³ Nevertheless, while the Board's control over gaming was praised and the number of casinos was reduced far beyond most realistic parliamentary predictions,⁴⁵⁴ overall gaming, including that of casinos, increased dramatically. The Interdepartmental Working Party on Lotteries' Report, for example, concluded there was "no country, certainly in the Western world, where the opportunities for gambling are so prolific as they are here."⁴⁵⁵ The most startling increase occurred in London, which by the mid-1970's had over twenty active casinos—more than "any city in the world except Las Vegas."⁴⁵⁶

Ironically, while Parliament strongly indicated that it did not want Britain to become the world Mecca of gaming, once "Sterling was on its knees, . . . together with other political factors such as the Lebanese unrest, London became even more attractive to foreign gamblers than ever before."⁴⁵⁷ "If we had to rely on Englishmen" one key London casino manager confided, "we'd close tomorrow."⁴⁵⁸ Arabs,

451. BOARD REPORT (1973), *supra* note 164, para. 16.

452. BOARD REPORT (1975), *supra* note 49, para. 3.

453. Lord Allen, *quoted in* The Times (London), Mar. 15, 1981, at 4, col. a. In *Regina v. Coral*, No. 1694/B2/82 (C.A., May 20, 1983) (available on LEXIS, Enggen library, Cases file), the Court of Appeal took note of the fact that only seventeen London casinos remained.

454. Bacon, in 1970, had predicted the number of casinos "will certainly increase" after 1970. Bacon, *supra* note 23, at 265.

455. 887 PARL. DEB., H.C. (5th ser.) 551 (1975).

456. The Times (London), Dec. 4, 1979, at 12, col. c. Although London has only approximately one-sixth of all British casinos, they account for about 73% of the total amount bet and "are on the average more than five times as profitable per table as those in the provinces." The Times (London), Feb. 21, 1985, at 3, col. c.

457. The Times (London), Dec. 4, 1979, at 12, col. d.

458. *The High Rollers*, The Times (London), Feb. 25, 1984, at 11, col. a.

Iranians, Nigerians and Hong Kong citizens, together with American and European tourists, provided "perhaps 85%" of London casino profits.⁴⁵⁹ Although casino profits suddenly leveled off in 1979, the 1983 Board Report expressed "little doubt that the upsurge in [London] business was due mainly to the relatively small number of high staking players from abroad."⁴⁶⁰

(b) Effective Curtailment of Organized Crime

The Board was more successful in eliminating organized crime than in decreasing gaming.⁴⁶¹ Most Britains would have echoed the statement of Lord Reid in *Rogers v. Secretary of State*,⁴⁶² that "by 1968 it had become notorious that the control of many gaming establishments was passing into the hands of very undesirable people."⁴⁶³ The public was shocked by the finding of a bullet-riddled body of a gambler known as Buggy, who had been involved in protection rackets.⁴⁶⁴ On December 5, 1968, the *Daily Mail* claimed there was significant organized crime involvement in London casinos as well as other British gaming.⁴⁶⁵

American gangsters could wind up owning London Already it is thought the Mafia has quietly acquired interests in several London casinos It's only a few weeks ago that a Mafia take-over tried to get hold of one of our big entertainment companies made the front page headlines.⁴⁶⁶

When Associated Leisure, Ltd., a slot machine manufacturer, sued the *Daily Mail* for libel, the jury concluded after a twenty day trial, that Associated was involved with organized crime.⁴⁶⁷

During debates on the bill, sporadic references to organized crime were made, usually by the minority of members who emphasized the wickedness or insidiousness of commercial gaming. On November 8,

459. The Times (London), December 4, 1979, at 12, col. d. The Times (London), July 4, 1977, at 8, col. e. See also, Kent-Lemon, *Significant Influences*, *supra* note 2, at 79.

460. BOARD REPORT (1983), *supra* note 49, para. 21.

461. This is partially due to the fact that police were given "unrestricted rights of entry" into the commercial clubs and "far-reaching investigatory powers." ROTHSCHILD REPORT, *supra* note 9, para. 16.13.

462. [1972] 2 All E.R. 1057 (H.L.).

463. *Id.* at 1059.

464. THE ECONOMIST, June 17, 1967, at 1210, col 2.

465. The Times (London), July 20, 1971, at 2, col. a.

466. Associated Leisure, Ltd., et al. v. Associated Newspapers, [1970] 2 All E.R. 754, 756 (C.A.).

467. The Times (London), July 20, 1971, at 2, col. a.

1968, the *Wall Street Journal* predicted that organized crime was analyzing British gaming law before making a move to take control. They had reportedly offered £625,000 for a 30% interest in a London casino, whose owners were "thinking hard" about it.⁴⁶⁸ Organized crime reportedly viewed London gaming as a lucrative investment because of its tremendous growth, the fact that "there are no special taxes as there are in Nevada," and because the British, unlike the Americans, were inexperienced "in dealing with organized crime."⁴⁶⁹ Based on the *Wall Street Journal* article, members continued to ask the Government about what action, it had planned in order to thwart alleged American gangster takeovers.⁴⁷⁰

In 1971, Scotland Yard reports still discussed new attempts by organized crime to seize control of casinos.⁴⁷¹ The British Gaming Association, on the other hand, responded to press allegations of criminal involvement "with a hollow laugh."⁴⁷² The Government, however, deprecated organized crime involvement by rhetorically explaining how the Act had frustrated the "brain drain in reverse of [criminal] types" entering England. "It is our politics that stopped the [racketeers] not theirs."⁴⁷³

One unforeseen result of the Act was the development of various unlicensed clubs for gaming where considerable drug trafficking occurred. Most of the illegal clubs catered to immigrants, especially Chinese who preferred games of unequal chance which were totally dissimilar from those allowed.⁴⁷⁴ Ironically, the judiciary complained that there was no legally satisfactory method of closing these clubs until they were licensed.⁴⁷⁵

Another unforeseen result of the Act was that because of the tremendous profits from games of unequal chance, casinos had less inter-

468. *Mobsters Abroad*, *Wall Street J.*, Nov. 8, 1968, at 1, col. 1. The article states: "[i]t is not likely that the [1968] law will deter the syndicate from moving in. . . ." *Id.*

469. *The Times* (London), November 9, 1968, at 5, col. c.

470. 777 PARL. DEB., H.C. (5th ser.) 1549 (1969).

471. *The Times* (London), May 3, 1971, at 1, col. a.

472. *Id.*

473. 801 PARL. DEB., H.C. (5th ser.) 195-196 (1970).

474. Dixon, *Illegal Gambling and Histories of Policing*, *The Society for the Study of Gambling Newsletter* at 1, (April, 1983) points out that the "Chinese community's illegal gambling is tolerated with minimal interference." The Board, the Casino Association and a select parliamentary committee have recommended against permitting the Chinese to establish their own licensed casinos with their own games. BOARD REPORT (1971), *supra* note 210, at para. 60, states 45 of 94 prosecutions for illegal gaming in unlicensed clubs involved Chinese.

475. *The Times* (London), Jan. 12, 1977, at 4, col. a. The Act, however, has been utilized to jail card tricksters who prey on tourists. See *The Times* (London), Aug. 22, 1985, at 3, col. a; *The Times* (London), Aug. 24, 1985, at 3, col. a.

est in providing "soft-gaming" facilities. Poker players claim they were often driven into "illegal" clubs. Perhaps stringent Board regulations, such as allowing a maximum charge per hour and prohibiting any levy on winnings, helped dissuade London casinos from providing necessary facilities. Perhaps poker players preferred playing without having to terminate the game at 4 a.m.⁴⁷⁶

While organized crime has been virtually eliminated from licensed gaming, which has been brought under strict Board control, other problems remained unresolved by the Act, and the efforts of the Board. One major concern was the increasing tendency of a few publicly held corporations to dominate the London gaming market. It has been debated whether the increased tendency toward monopolization was ironic or whether it was the result of a deliberate policy to prevent competition. This concept of monopolization was rarely discussed in Parliament.⁴⁷⁷

The Board was concerned early with the increasing degree of casino concentration "in the hands of a small number of public companies," and believed that anything "approaching monopolization in the field must arouse public concern."⁴⁷⁸ The Rothschild Commission was aware of the increasing concentration of London casino ownership, but saw in this "nothing inimical to the public interest."⁴⁷⁹ When Pleasurama attempted to merge with Trident, the Board stressed that concentration had increased since the Rothschild Commission and that it preferred "to see a mixture of small and large operators." It therefore opposed the merger "not simply [on] a matter of market share . . . but on principle."⁴⁸⁰ The Board warned that if the Monopolies and Mergers Commission permitted the merger, it would have affected eleven of the nineteen casinos in London at the time.⁴⁸¹

476. BOARD REPORT (1969), *supra* note 19, at para. 75-76; BOARD REPORT (1971), *supra* note 210, para. 60, concluded that illegal gaming was primarily confined to poker. Harris, *The Illegal Gamblers*, 1983 *New Soc'y* 316, states that only Aspinall's, alone among the London casinos, still provides poker facilities. The Board disagrees with this conclusion that there is only one casino providing poker. The Board emphasized that poker players often prefer not to quit at 3:00 or 4:00 a.m. Interview with R. Creedon (July 18, 1985).

477. Miers, *supra* note 5, at 39. "We had so many issues to discuss in the Gaming Act that the question of monopolies never arose." Interview with Sir Antony Buck, (July 17, 1985). David Weitzman said it was erroneous "to say that what we ought to establish here is a monopoly of gaming clubs. . . ." 766 *PARL. DEB., H.C.* (5th ser.) 88 (1968).

478. ROTHSCHILD REPORT, *supra* note 9, at para. 18.14.

479. *Id.*

480. MONOPOLIES COMMISSION REPORT, *supra* note 6 at paras. 8.6 and 8.8.

481. Views of the Board, *reprinted in* MONOPOLIES COMMISSION REPORT, *supra* note 6, at paras. 8.3, 8.4, 8.8.

IV. CONCLUSION

One problem for the Board has been the need to reevaluate its mission in light of its success in reducing casinos and in minimizing or eliminating the influence of organized crime in legal gaming. The Rothschild Commission has strongly suggested that the Board formula for casinos is outdated and that decisions for new areas for casinos should be left to licensing authorities. "We think," said the Commission, "the time has come to scrap the permitted areas and rely on the good sense of local licensing authorities backed by the advice of the Gaming Board."⁴⁸² The Commission also suggested that the Board change its emphasis from crime-busting to increasing its supervision over lotteries and slot machines.⁴⁸³ Unfortunately, the vast majority of the Rothschild Commission's recommendations have not been followed by either Parliament or the Board.

Perhaps the most important long-range Board problem is its increasing reliance upon informal agreements with regulated trade or special interest groups. The Rothschild Commission harshly criticized these "bluff" agreements as being no longer necessary.⁴⁸⁴ The relative lack of regulations, and reliance instead on informal agreements and excessively vague standards, "exemplifies" the "difficulties which regulating agencies face when endeavoring to give specific content to open-ended performance standards."⁴⁸⁵

The *Fenton*⁴⁸⁶ decision, while creating further procedural due process, also reemphasizes the British need "for an effective administrative court [to] readily assum[e] the power to investigate and review the decisions of public bodies. Such a court would not hamper public administration. On the contrary, by ensuring that administration is fairly carried out, it would make executive decisions more acceptable to a sorely tried public."⁴⁸⁷

Yet, there has been a near universal conclusion that the Board and the Act have been successful. Participants as diverse as Lord Denning, Rev. Gordon Moody, Philip Tarsh, Max Kingsley, Sir Antony Buck, Q.C., M.P., Mark Richard Carlisle, Q.C., M.P., Dick Taverne, former Under-Secretary, and William Rees-Davies, Q.C., former M.P., have been generally pleased with the results of the Act.⁴⁸⁸ Moreover, it is

482. ROTHSCHILD REPORT, *supra* note 9, at para. 18.45.

483. *Id.* at paras. 16.26, 18.76.

484. *Id.*

485. Miers, *supra* note 5, at 50.

486. Financial Times, Feb. 5, 1979, at 10, col. c.

487. Cline, *Zero for Crockford's*, Spectator, Mar. 14, 1970, at 334, col. 2.

488. Rev. Moody was an active supporter of Blackburn. All have informed the author that they are pleased with the Act and the Board. Telephone interview with Rev. Moody

inconceivable that there is any viable alternative to present controls over British gaming.

(July 16, 1985). Letter from Lord Denning to the author (Aug. 19, 1985); Interview with Philip Tarsh (July 17, 1985); Interview with Max Kingsley (Dec. 31, 1986); Interview with Sir Antony Buck (July 17, 1985); Interview with William Rees-Davies (Sept. 9 1986); Interview with Dick Taverne (July 19, 1985); Letter from Mark Carlisle to the author (Mar. 26, 1986). As always, there is some disagreement with the overall success of the Act and the Board; *e.g.*, Kent-Lemon, *supra* note 2 at 79, states "One more major scandal might lead to the government's deciding to pull the plug out of the industry by nationalization or by repeal of the 1968 Act."

