IN THE MATTER OF THE APPLICATION OF PLAYBOY-ELSIMORE ASSOCIATES FOR A CASINO LICENSE

Decided: April 7, 1982
Approved for Publication by the Casino Control Commission:
April 8, 1988

SYNOPSIS

Playboy-Elsinore Associates ("PEA") applied to the Casino Control Commission for a casino license. PEA consists of two general partners, Playboy of Atlantic City and Elsub Corporation (the Elsinore entities). The Commission considered the qualifications of the two corporate entities separately, as well as those of certain individuals required to be qualified.

As a result of a hearing held by the Commission, all five Commissioners determined that the Elsinore entities and the Pritzker family had established their qualifications. Three Commissioners determined that Hugh Hefner and the Playboy entities qualified. One Commissioner found that both Hugh Hefner and the Playboy entities failed to establish their qualifications for licensure. One Commissioner determined Hugh Hefner did not qualify.

N.J.S.A. 5:12-73(d) provides that no casino license may be issued without the approval of four members of the Casino Control Commission. Accordingly, a casino license was issued to the Elsinore entities.

James F. Flanagan, III, Deputy Attorney General; Mitchell A. Schwefel, Deputy Attorney General; John Sheehy, Deputy Attorney General, and Gary A. Ehrlich, Deputy Attorney General, for the Division of Gaming Enforcement
Robert J. Genatt, General Counsel; David Arraij, Special Counsel & Director of Licensing; Thomas N. Auriemma, Deputy Director/Legal Division, and Ted M. Rosenberg, Assistant Counsel, for the Casino Control Commission
BY THE CASINO CONTROL COMMISSION:

I. INTRODUCTION

This matter has been brought before the Commission pursuant to the application of Playboy-Elsinore Associates ("PEA") for a casino license. The history of PEA's application, its acquisition of a Temporary Casino Permit in April 1981, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission, which is made a part of the record of this casino license hearing, and which is incorporated by reference in this Opinion.

This Opinion concerns itself only with those areas which were the subject of significant attention at the hearing in this case. Detailed findings with regard to other licensing criteria are contained in a separate Resolution.

The Division of Gaming Enforcement ("Division") issued two investigative reports which, as modified, have been stipulated and admitted into evidence. Both the Division's investigative report with respect to the Elsinore entities and its investigative report with respect to the Playboy entities outlined several areas of concern. All of the issues raised by the Division were fully explored during the course of this lengthy hearing. Obviously, as the Division has recognized, it is the Commission's responsibility to evaluate independently the entire record and determine the qualifications of the business entities and natural persons who must qualify. This has been done by each Commissioner.

Since the two general partners in PEA, Playboy of Atlantic City and Elsub Corporation, are subsidiaries that are owned by other business entities and persons, this Commission will separately evaluate the qualifications of the Playboy entities and the Elsinore entities.

II. THE QUALIFICATIONS OF THE ELSINORE ENTITIES

A. HISTORY OF THE PRITZKER FAMILY AND THEIR BUSINESS INTERESTS.

Despite being one of the more affluent families in the United States, the Pritzker family of Chicago, Illinois, has been able to insulate itself from much of the attention that frequently attaches to such financially prominent families. The Pritzker holdings include a
significant interest in all of the companies that comprise the Elsinore portion of the PEA general partnership. Accordingly, both the family and their financial holdings have been scrutinized during this licensure hearing.

In the early 1900's, Nicholas J. Pritzker formed a law firm that has continued in existence to the present time. All three of Nicholas J. Pritzker's sons, Harry, Jack, and Abraham Nicholas, eventually became associated with the family law firm. Originally engaged in the general practice of law, the firm subsequently specialized in the fields of commercial law and real estate acquisitions and reorganizations. Significantly, by the end of the 1930's the Pritzkers were no longer actively engaged in the traditional practice of law, but rather were exclusively involved in various entrepreneurial and investment activities.

The Pritzker family has been able to accumulate vast financial and real estate holdings throughout the world. Significant among these holdings are the Marmon Group and the Hyatt Corporation ("Hyatt"). All of the common stock of Marmon is owned by the G.L. Corporation, which, in turn, is owned by the Pritzker family trusts.¹ Operating as a diversified international conglomerate, the Marmon Group is expected to have sales this year in the $2.5 billion to $3 billion range.

Hyatt currently operates, primarily through long-term leases or management contracts, approximately 60 hotels and two motels located throughout the United States.² Effective February 5, 1979, a reorganization of Hyatt was consummated. The Pritzker family, formerly the controlling shareholders of the publicly-traded Hyatt, purchased all of the outstanding shares of Hyatt from the public shareholders.³ In exchange for their shares, the public shareholders received cash and a specified number of shares of the common stock

¹Since the mid-1930's, the Pritzker family has extensively utilized irrevocable trusts as asset management devices. Currently, the overwhelming majority of the Pritzker family holdings are held in trust for the lineal descendants of Nicholas J. Pritzker.
²Hyatt's worldwide hotel affiliate, the Hyatt International Corporation, operates a chain of approximately 35 hotels outside the continental United States. In February of this year, Hyatt International became a privately-held corporation as a result of the Pritzker family's purchase of the remaining 5 percent public share in the company.
³All of the common stock of Hyatt is now owned by HG, Inc., which, in turn, is owned entirely by three Pritzker family trusts.
of Elsinore Corporation ("Elsinore"). As a result of the reorganization, Elsinore, formerly a wholly-owned subsidiary of Hyatt, was spun-off and is currently a publicly-traded corporation. Through HCC Corporation, a wholly-owned and controlled non-operating subsidiary of Hyatt, the Pritzker family currently holds approximately 22 percent of the common stock of Elsinore.

Elsinore presently owns and operates the Four Queens Hotel and Casino in Las Vegas, Nevada. Additionally, a wholly-owned subsidiary of Elsinore owns the Hyatt Lake Tahoe Hotel and Casino in Incline Village, Nevada. Another wholly-owned subsidiary of Elsinore is Elsub Corporation, a New Jersey corporation. As a general partner in PEA, Elsub owns approximately 46 percent of the partnership venture in Atlantic City.

Other members of the Pritzker family who have played significant roles in the family business dealings include the three children of Abraham Nicholas Pritzker, Jay, Robert, and Donald, who died in 1972.

B. AREAS OF CONCERN IDENTIFIED BY THE DIVISION

In that portion of its opening statement dealing with the Elsinore entities, the Division voiced concern over a series of financial transactions between the Teamsters Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and the Pritzkers, Hyatt, and Elsinore, respectively. The Division's investigative report with respect to the Elsinore entities, more specifically identified eight such financial relationships extending from the late 1950's through the mid-1970's. During the course of the Elsinore portion of this hearing, substantial testimony and documents were produced concerning the involvement of the Pritzker family and its business entities with the Pension Fund.

At the close of the evidentiary phase of this hearing, the Division in its summation indicated that it would have no objection to the licensure of the Elsinore entities if the following two conditions were imposed by the Commission:

... number one, there is no more dealing in any way, shape or form with any Division or subdivision of the Teamsters fund.

Secondly, that the Pritzker family make efforts to insulate or extricate themselves from existing ties that they may have with the Teamsters fund or funds in any way, shape or form ...
In summarizing the Elsinore portion of this hearing, the Division focused on certain aspects of the above financial transactions which it found particularly troublesome. These areas of concern will now be addressed below.

1. *The 1959 Loan*

On June 11, 1958, Jay Pritzker, on behalf of his family, entered into a joint venture agreement with several other individuals for the purchase and operation of what would later become the Hyatt House in Burlingame, California. The initial financing for the project had been obtained through a mortgage banker but soon proved inadequate due to a series of construction overruns. After an unsuccessful attempt to secure additional financing from the mortgage banker, Jay Pritzker approached Stanford Clinton, then counsel to the Pension Fund⁴ and an individual who had been closely associated with the Pritzker family for some 30 years, to inquire whether the Pension Fund would be interested in providing additional financing for the venture.

Owing to the nature of the reservations expressed by the Division in its summation, it is necessary to digress at this point in order to amplify the Clinton-Pritzker relationship. After graduating from law school, Clinton accepted a position in June 1931 as an associate with the law firm of Pritzker and Pritzker. Thereupon he embarked upon a legal career that spanned nearly four decades. When the Pritzkers abandoned the traditional practice of law in 1936, they gave Clinton all of their active files and permitted him to continue to use the Pritzker offices and support services. Thereafter, Clinton maintained his own clientele, but he continued to do legal work for the Pritzker family and occasionally was invited to invest in Pritzker business ventures.⁵

One such opportunity that Clinton took advantage of was the Burlingame hotel project referred to above. Although there is some ambiguity in the record as to the exact percentages involved, it appears that Clinton had either a five percent or a ten percent equity partici-

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⁴Clinton was appointed counsel to the Pension Fund during 1959 and continued in this capacity until his retirement in 1967.

⁵Eventually, Clinton’s representation of certain individuals came to be viewed by the Pritzkers as incompatible with their commercial interests and the above relationship was severed.
pation in the project." Nevertheless, both Abraham Nicholas Pritzker and Clinton testified during these proceedings that the latter made a capital contribution to the venture out of his personal funds.

Since Clinton was counsel to the Pension Fund at the time that he was approached by Jay Pritzker regarding the possibility of seeking additional financing for the Burlingame venture from such Fund, Clinton faced a twofold conflict of interest. His thirty-year association with the Pritzker family and his equity interest in the project necessitated that he recuse himself during the loan application process. Before withdrawing as counsel on this loan, Clinton went to the Executive Committee of the Board of Trustees of the Pension Fund and fully disclosed his involvement with the project. Upon the recusal of Clinton, Frank J. McGarr, presently Chief Judge of the United States District Court for the Northern District of Illinois, was retained by the Pension Fund to represent its interests in negotiating and ultimately closing the Burlingame mortgage loan transaction. On August 31, 1959, the predecessor of the present Hyatt Corporation obtained a $2,000,000 first mortgage loan from the Pension Fund at an annual interest rate of six percent, with repayment due in 1979.

In its summation, the Division conceded that it "had been unable to uncover any evidence which would demonstrate any impropriety on the part of either Mr. Clinton, the Pritzkers, the Hyatt, [or] the Pension Fund in this matter". Notwithstanding this assertion, the Division expressed concern over how Stanford Clinton initially acquired his interest in the Burlingame project and how his interest was later reduced from a ten percent to five percent holding.

We have carefully reviewed the relevant testimony and numerous exhibits with regard to this loan and based upon such review we find that the circumstances of the above transaction do not adversely reflect on the character, integrity, or honesty of either the Pritzkers or the Elsinore entities.

2. The 1960 Loan

On March 15, 1960, another Hyatt financing proposal was sent to the Pension Fund and was directed to the attention of its Executive

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*The discrepancy as to Clinton’s percentage participation was referred to by Jay Pritzker in his testimony before the Commission. Apparently, Clinton had purchased a ten percent share of the original Pritzker investment in the venture. Since the original Pritzker investment was a fifty percent interest, Clinton most likely had a five percent investment in the total project.*
Secretary, Francis J. Murtha. In this proposal, Hyatt offered to sell to the Fund subordinated debentures in the principal amount of $4,000,000 bearing interest at the rate of 6 1/4 percent per annum and maturing on March 31, 1979. This financing was to be used by Hyatt for the expansion of its hotel chain and for the acquisition, development, and construction of real estate projects.

Stanford Clinton again withdrew as counsel for the Pension Fund and the firm of Thompson, Raymond, Mayer, Jenner and Bloomstein was retained in order to render legal advice to the Trustees of the Fund and to execute the appropriate legal documents. Pursuant to the original proposal, only Rockwood and Company, a Hyatt-related entity, would be obligated to guarantee unconditionally the first $500,000 in principal and interest payable under the loan. After difficult negotiations, and Trustees of the Pension Fund approved a revised proposal that personally obligated Abraham Nicholas and Jay Pritzker for the first $1,000,000 in principal and interest payable under the loan. The final agreement was executed on June 24, 1960.

The Division in its summation noted some complimentary language used by James R. Hoffa in referring to the Pritzker family at a Board of Trustees Meeting of the Pension Fund. This reference may have been to the fiscal responsibility of the Pritzkers. Nevertheless, no evidence was presented during the current proceedings to suggest any wrongful involvement by anyone in connection with this loan transaction.

3. 1966-1970 Loans

From April 1966 until December 1970, a series of three loans was made by the Pension Fund to entities controlled by the Pritzker family in order to finance the expansion needs of the San Jose Hyatt House. On April 1, 1966, Motel San Jose, Inc., ("MSJ") received a first leasehold mortgage loan on the San Jose Hyatt House in the principal amount of $2,450,000 with interest payable at the rate of 6 1/2 percent per annum, with repayment due on May 1, 1986. On November 25, 1968, MSJ received a second leasehold mortgage loan from the Pension Fund in the principal amount of $737,000 with interest payable at the rate of 7 percent per annum, with repayment

Since Stanford Clinton was still counsel to the Pension Fund at the time that this loan application was pending before the Board of Trustees of the Pension Fund, Frank J. McGarr, Esq., was again retained to represent the interests of the pensioners.
due on May 1, 1986. During this licensure hearing, no evidence was introduced that suggests any wrongful involvement or impropriety in connection with either of these first two San Jose Hyatt House loan transactions. We find, therefore, that the foregoing transactions do not adversely affect the qualifications of any applicant.

Since the Division, in its summation, focused on several aspects of the third loan transaction, the chronology of that financial arrangement must be examined further. By letter dated October 8, 1968, Francis J. Murtha, Executive Secretary of the Pension Fund, advised Abraham Nicholas Pritzker that his request for an additional loan of $1,300,000 had been formally denied by the Steering Committee of the Board of Trustees at their meeting held on September 26 and 27, 1968. In response to that denial, Mr. Pritzker wrote a letter dated November 26, 1968, to Allen Dorfman, an individual of dubious character and reputation who had at that time significant influence over the affairs of the Pension Fund, in which he requested Dorfman's assistance in getting the loan application approved. A second letter written by Mr. Pritzker to Dorfman, dated January 28, 1969, makes reference to a prior conversation between the two individuals at which time Dorfman allegedly told Pritzker that he would reconsider the loan request. The January 28 letter also contains another request for the additional financing.

Moreover, a letter written by Jay Pritzker to Murtha dated July 17, 1969, indicates that by that date the Steering Committee of the Board of Trustees had tentatively approved the loan request for $1,300,000. In the July 17 letter, Jay Pritzker proposed increasing the loan from $1,300,000 to $2,000,000 in order to finance additional expansion of the facility. Although the Board of Trustees of the Pension Fund approved the loan package by the end of August 1969, the closing did not occur until the middle of December of that year. At closing, Hotel Equities, the successor to MSJ, received a third leasehold mortgage loan from the Pension Fund in the principal amount of $2,000,000 with interest payable at the rate of 9 1/2 percent per annum, with repayment due in 1986.

The concern expressed by the Division centers on the relationship between Abraham Nicholas Pritzker and Allen Dorfman and when any improper influence was brought to bear on the Pension Fund's decision to reinstitute the loan package that had been formally denied by the Steering Committee in September 1968. Although the Division draws attention to the "Dear Al" salutation used by Abraham Nicholas Pritzker in his two letters to Dorfman, we are not troubled
by this after having heard the testimony of Mr. Pritzker whom we find to be a very credible and forthright witness. He testified that he first met Dorfman while vacationing at his summer home in Eagle River, Wisconsin. Over the course of his 86 years, Pritzker has met Dorfman only three or four times. Furthermore, when questioned about the salutation used in the two letters, Pritzker stated that his choice of words “didn’t indicate any particular love or affection or friendship or respect”. Moreover, no evidence introduced at this hearing suggests that there were any bribes, kickbacks, or other wrongful conduct in connection with this third loan transaction.

Accordingly, based upon the record before this Commission, we are satisfied that none of the three loan transactions described above reflect adversely on the good character, honesty or integrity of the Pritzker family or the Elsinore entities.

4. The 1974 Transaction

On June 24, 1969, Donald N. Pritzker entered into an agreement to purchase the Dallas Cabana Hotel, which was then being administered by a trustee in bankruptcy. At that time, two competing groups were claiming beneficial ownership of the property. In view of this cloud over the title, the trustee also executed a lease under which the hotel would be leased to Donald N. Pritzker pending consummation of the sale under the sale agreement. Pritzker thereafter assigned his interest under the sale agreement and under the lease to Rockwood and Company, a Pritzker controlled entity. The litigation over the ownership question became quite protracted and remained unresolved until 1974.

On July 11, 1974, Rockwood and Company purchased the hotel subject to, but without assuming, the existing Pension Fund mortgage with a then outstanding principal balance of $2,065,236. In exchange for the Pension Fund’s granting a stretch-out of the mortgage payments until 1994, Rockwood and Company agreed to increase the interest payable to 8 1/2 percent per annum. A new note and security documents were then executed which together established a non-recourse first mortgage lien on both the real and personal property. Additionally, Hyatt guaranteed all funds due under the note and the deed of trust.

Despite Hyatt’s operation and management of the facility, the Dallas venture ultimately proved unprofitable and subsequently was sold. The buyer purchased the property subject to the Pension Fund mortgage at its then current outstanding balance.
The Division, in its closing statements, expressed no reservations in connection with this transaction. From our examination of the record, we find that the financial background of this acquisition does not negatively impact upon the qualification of either the Pritzkers or any of the Elsinore entities.

5. The 1975 Loans

At the Hyatt Board of Directors meeting held in August 1974, there was considerable discussion as to how the company could obtain additional working capital in order to meet the cash flow requirements of its ambitious expansion program that was then occurring. Melville Marx, Sr., a member of the Hyatt Board of Directors, was requested by the Board to investigate the possibility of obtaining a loan from the Pension Fund. Apparentl, this decision was motivated by Marx's experience in effectuating the private placement of debt obligations and equity securities and his familiarity with various Trustees of the Pension Fund and with the Pension Fund's Asset Manager, Alvin Baron.

Marx's testimony before this Commission indicated that he had first met Baron while vacationing at the LaCosta resort in California. During subsequent vacations at LaCosta, Marx had occasional social contacts with Baron. Shortly after the August 1974 Board meeting, Marx contacted Baron and inquired whether the Pension Fund might be interested in making a long-term loan to Hyatt. Marx also suggested the possibility of structuring a financial package that would include the long-term loan and the acquisition by Hyatt of a facility known as the King's Castle. In response to Marx's proposals, Baron indicated that it would not be appropriate for him to comment because the King's Castle property was then the subject of ongoing negotiations between the Pension Fund and another company. After these negotiations proved unsuccessful, Baron contacted Marx and expressed an interest in pursuing the Hyatt proposal. Marx thereafter arranged for Baron to meet Jay Pritzker, who subsequently took the lead role in negotiating the deal on behalf of Hyatt.

*At that time, Marx was also First Vice President of Dean Witter & Co. Baron, an individual of questionable character, has been the subject of scrutiny by various law enforcement agencies.  
Located at Lake Tahoe, Nevada, the King's Castle Hotel and Casino had previously been acquired by the Pension Fund in lieu of a foreclosure action and was not in operation at the time.
State of New Jersey

In re Playboy-Elsinore Casino Application
Cite as 10 N.J.A.R. 465

By letter dated December 21, 1974, Nathan Wolfberg, counsel to the Pension Fund, indicated that Baron had instructed him to inform Allen Turner, an attorney representing the Pritzker interests in these negotiations, that the Pension Fund no longer wished to pursue this proposal. In his testimony before the Securities and Exchange Commission ("SEC") on June 8, 1978, Abraham Nicholas Pritzker stated that this impasse was due to the temperament of the attorneys involved in these negotiations. None of the other witnesses who testified before this Commission had an independent recollection of the reasons why these negotiations were terminated.

Marx testified that upon learning of this difficulty, he called Baron to ascertain the exact nature of the problem. Baron's response was that he had had second thoughts regarding the proposed deal and would be willing to speak to Marx after the upcoming New Year's holiday. During his New Year's vacation at LaCosta, Marx met Frank Fitzsimmons,\(^\text{11}\) who had been a social acquaintance and an occasional golf partner of Marx's. Having previously spoken to Fitzsimmons about the proposed financial deal between Hyatt and the Pension Fund, Marx initiated a conversation with the labor leader and determined that Fitzsimmons did not know that the negotiations had been discontinued. Additionally, Fitzsimmons assured Marx that the Pension Fund intended to proceed with the transaction. An internal Hyatt memo dated January 17, 1975, indicates that negotiations had resumed by that date.

The financial package that had been proposed originally in broad terms by Marx was finally agreed upon in 1975. On February 27, 1975, the Elsinore Corporation borrowed $30,000,000 from the Pension Fund by issuing a debenture which was secured by Elsinore's ownership interest in its Four Queens Hotel and Casino. The Four Queens Hotel and Casino is located in Las Vegas, Nevada, and had been purchased by Elsinore in January 1973 for a total price of $17,600,000. Bearing interest at the rate of 8 1/2 percent per annum, this debenture will mature in 2007. In a related transaction, Hyatt Tahoe, Inc. acquired the King's Castle Hotel and Casino from the Pension Fund for a stated purchase price of $19,250,000 payable in the form of a non-recourse purchase money note for that amount with interest payable at the rate of 6 percent per annum, with repayment due on August 1, 2007.

\(^{11}\)Fitzsimmons succeeded James R. Hoffa as President of the International Brotherhood of Teamsters Union.
In its summation, the Division expressed reservations about two aspects of these loan transactions. The Division's initial concern was that the applicant failed to explain adequately why the negotiations were terminated in late December 1974 and later reinstated in early January 1975. Although it is undeniable that none of the witnesses who testified on behalf of the applicant at the hearing have any present recollection of why these negotiations were terminated, we find Abraham Nicholas Pritzker's testimony at the SEC proceeding on June 8, 1978, to be persuasive. In attempting to effectuate a deal of such magnitude, it seems reasonable that personalities and interests of the principal agents might clash, precipitating a temporary break in the negotiations. It is also undeniable that no witness testified as to the reasons why the negotiations later resumed, although the testimony of Fitzsimmons may have had a role in persuading Baron to reconsider his earlier decision to abandon the negotiations. In any event, the failure of the witnesses to recall specific details of this incident some seven years ago does not demonstrate wrongful conduct or impropriety in connection with these loan transactions.

The Division also expressed concern over a fee paid by Hyatt to Dean Witter & Company that ultimately resulted in a bonus being paid to Marx by his employer. On February 2, 1975, the Hyatt Board of Directors agreed to pay $150,000 to Dean Witter & Company as a brokerage commission for the professional services that Marx rendered in connection with these loan transactions. In recognition of his efforts, Dean Witter & Company gave Marx a $30,000 bonus. Marvin Tepperman, who was general counsel for Hyatt at the time of the Board decision to pay the brokerage commission to Dean Witter & Company, testified here that he initially was concerned that such a payment to an individual who was also a member of the Board of Directors might be improper. He subsequently concluded, however, that Marx's efforts were beyond the normal duties of a director and that such a fee therefore would be appropriate. Full disclosure of this payment was made by Hyatt to the SEC, the Internal Revenue Service ("IRS"), the Nevada Gaming Control Board, and to this Commission. Although we express no opinion as to the propriety of such a practice, we find that the payment by Hyatt of the finder's fee to Dean Witter & Company does not negatively reflect upon its qualifications or the qualifications of the Pritzkers.
C. CONCLUSION WITH REGARD TO THE PRITZKER FAMILY AND THE ELSINORE ENTITIES.

After having carefully reviewed all of the documentary and testimonial evidence presented during this hearing, the Commission is satisfied that the Pritzker family and the Elsinore entities have established by clear and convincing evidence their qualifications for licensure. Both Abraham Nicholas and Jay Pritzker provided this Commission with credible testimony that aided us in arriving at our conclusions. Moreover, the testimony of the other witnesses and the exhibits provided by both the Division and the applicant were responsive to the areas of concern identified by the Division.

During its summation, however, the Division opined that the Commission should direct the Pritzker family and Elsinore to have no more financial dealings with the Pension Fund and should also direct them to make efforts to extricate themselves from the financial arrangements that they currently are involved in with the Pension Fund. At the present time, however, no sound reasons have been offered as to why such directives are essential. Absent evidence to the contrary, New Jersey's casino regulatory process would not seem to benefit by the imposition of such conditions. In making this determination the Commission is aware that there is now substantial supervision of the administration of labor pension assets, including those of the Teamsters Central States, Southeast and Southwest Areas Pension Fund. Accordingly, the Commission finds it unnecessary to impose any conditions at the present time with regard to these loans. If, in the future, however, the Division believes that some action is necessary with regard to these Teamsters Pension Fund loans, the Commission will entertain an appropriate application with supporting documents.

III. THE QUALIFICATIONS OF THE PLAYBOY ENTITIES

A. THE DEVELOPMENT OF THE PLAYBOY ENTITIES AND THE ROLE OF HUGH M. HEFNER WITH RESPECT THERETO.

Any attempt to chronicle the development of the Playboy

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1 Throughout this Opinion, the name "Playboy" is used to refer collectively to Playboy Enterprises, Inc. ("PEI") and its subsidiaries. When it is necessary to distinguish between the parent company and its subsidiaries, the parent is referred to as "PEI" and the subsidiaries by their full names or abbreviations.
tities must logically commence with a brief examination of the individual, Hugh M. Hefner, who has been publicly identified as the personification of its various business ventures. Since his elementary school days, Hefner has had a keen interest in journalism. After a series of positions in magazine publishing and marketing, Hefner launched in December 1953 what would later become Playboy Magazine, publishing the first two issues from his apartment with an initial capitalization of $6,000. Appealing to a young and affluent male readership, the magazine's circulation increased steadily as the periodical became nationally known.1 As editor and publisher of the magazine, Hefner was the individual most singularly responsible for its meteoric success. Anxious, however, to concentrate on editorial and broad policy matters, in 1958 Hefner hired Robert S. Preuss, a college roommate and C.P.A., to supervise the financial operations of the company. In 1971 Preuss became Chief Operating Officer of Playboy. He left the company several years later.

Toward the end of the 1950's Hefner and his associates concluded that the nightclub business would be an appropriate avenue for the expansion of the company's business interests. By the time its first club opened in Chicago in 1960 Playboy had organized a separate corporation to conduct the affairs of this venture. Since its formation in 1959 Playboy Clubs International ("PCI") has become the company's largest and most important subsidiary. Much of the early success of PCI can be traced to the efforts of two individuals, Victor A. Lownes, III and Arnold Morton, neither of whom are employed by the company today. Lownes originally joined the Playboy staff in 1955 and thereafter participated in a variety of promotional and entrepreneurial activities on behalf of the company. Morton, an experienced restauranteur, joined Playboy in 1957 and ultimately became responsible for the operation of the domestic Playboy Clubs.

During the 1960's and into the 1970's, Playboy further diversified within the entertainment and leisure fields. Through a subsidiary of PCI, Playboy entered the British casino industry with its acquisition in 1966 of the Playboy Club of London ("PCL"). Subsequently, further acquisitions were made in British gaming, including the Cler-

1From an initial press run of 70,000 copies, the monthly sales of the magazine reached 1,000,000 copies by 1959, 3,000,000 copies by 1965 and a peak of 7,000,000 copies in 1972. Currently, monthly circulation ranges between 5,000,000 and 6,000,000 copies.
mont Club, two smaller casinos in the provinces of Portsmouth and Manchester, and finally the Victoria Sporting Club.

On February 11, 1971, Playboy consolidated its operations under the name of Playboy Enterprises, Inc. The company became publicly-traded in November 1971. The proceeds of this public offering were used primarily to fund the development of a Playboy resort hotel in northern New Jersey which has been sold recently. It should be noted that while the company is publicly traded, as of October 31, 1981, Hefner owned approximately 65.9 percent of the common stock of PEI.

Within the last few years, PEI has consolidated its holdings and has sought to divest itself of most of its unprofitable ventures. In addition to publishing *Playboy* and *Games* magazines, the company operates and has franchised clubs throughout the world. The licensing and merchandising of Playboy products continues to be a growth area for the company. Continuing efforts are being made to revitalize its book publishing and book club operations. Although Playboy has recently sold its British gaming operations, a subsidiary of the company continues to operate a casino in the Bahamas, which is owned by the Bahamian government. Through a wholly-owned subsidiary, PEI currently owns approximately 85 percent of a limited partnership known as Playboy of Atlantic City ("PAC").¹⁴ That entity, in turn, owns approximately 54 percent of Playboy-Elsinore Associates. PEI thus effectively owns approximately 46 percent of PEA.

Accompanying the consolidation of Playboy's business ventures was a restructuring of the senior management function and the addition of certain key executives. The September 1976 appointment of Derrick J. Daniels as President and Chief Operating Officer of the company marked a significant milestone in Playboy's history. Hefner formally delegated the operational responsibilities of the company to Daniels and assumed the positions he currently holds, Chief Executive Officer and Chairman of the Board of Directors. Two other significant appointments were those of Marvin Huston as Chief Financial Officer in 1977 and Frank DiPrima as General Counsel in 1978.

**B. AREAS OF CONCERN IDENTIFIED BY THE DIVISION**

In its opening statement to the Commission, the Division outlined

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¹⁴ The limited partners and their respective interests in PAC are respectively: Dorothy M. Whitner, 5.665 percent; William C. Whitner, 4.388 percent; William E. Craver, Jr., 2.304 percent; and Milton N. Zic, 3.350 percent.
its major areas of concern with respect to the Playboy entities and its principal shareholder, Hugh M. Hefner. The role of several key Playboy officials, including Hefner, in the events leading up to the New York State Liquor Authority investigation in the early 1960's was identified as an important area of concern to the Division. Similarly, the Division's opening statement made it clear that a substantial portion of this hearing would also be devoted to a review of the events that eventually culminated in the October 1981 decision by a committee of British magistrates that casino licenses for the Playboy Club of London and the Clermont Club would not be renewed. A third area of concern to the Division was the 1974 and 1975 Drug Enforcement Administration investigation into the alleged use of and trafficking in narcotics by certain Playboy personnel. Also of concern to the Division was the relationship between certain Playboy employees and various individuals of questionable character in connection with the establishment and operation of Playboy facilities in Miami, New Orleans, and the Bahamas. Finally, the Division raised questions regarding Hefner's 1978 retention of an attorney named Sidney R. Korshak.

During the course of this lengthy hearing, other issues relevant to the qualifications of the applicant were explored. At the close of the evidentiary portion of this hearing, the Division, in its summation, focused on its two major areas of concern: the New York State Liquor Authority investigation and the British magistrates' decision not to renew the casino licenses of the Playboy Club of London and the Clermont Club. The Division then voiced its position with respect to the licensure of Hefner and the Playboy entities.

...it is the opinion of the Attorney General of this state and the Division of Gaming Enforcement that Hugh M. Hefner and the Playboy Corporation are unfit and unwelcome to operate a casino in the State of New Jersey.

This Opinion will examine in detail the two major areas of concern identified by the Division in its summation. The other issues raised by the Division in its opening statement and in its proposed findings of fact and conclusions of law will also be examined, albeit in a less exhaustive manner.

1. *The New York State Liquor Authority Investigation*

The following is the Opinion of Commissioners Jacobson, McWhinney, and Thomas. A substantial portion of this hearing examined the role of certain Playboy officials in the events that led to the
New York State Liquor Authority ("SLA") investigations and prosecutions of the early 1960's. Even though some 20 years have elapsed, it is nonetheless possible to trace the cast of characters and sequence of events in that scandal from beginning to end. Our inquiry has been aided by two sets of trial transcripts,\(^{15}\) and by numerous grand jury transcripts admitted into evidence during the course of these proceedings. Before proceeding with our legal analysis, we will initially reconstruct the factual background and chronology.

The first Playboy Club opened in Chicago in February 1960. A distinctive, although not unique, feature of this operation was its utilization of a membership key admission system. As a marketing technique, patrons were required to pay a one-time admission fee and in return were given keys which thereafter guaranteed free admittance at all Playboy Clubs. All members of the public were invited to purchase these keys.

While developing the Chicago Playboy Club, PCI officials decided to open another key club in New York City. Concurrently, literature advertising the advance sale of keys was mailed to prospective club members in the metropolitan New York area. Playboy officials also began to actively seek an appropriate location for the New York Club.

During the summer of 1960, the Playboy management encountered the first in a series of obstacles with regard to the New York project. In July, Ralph Berger, a Chicago-based real estate entrepreneur and a casual acquaintance of Arnold Morton, approached at the latter's restaurant. By this juncture, Morton had assumed this role as the PCI officer primarily responsible for the operation of the Playboy Clubs. At this first meeting, Berger told Morton that Playboy would have serious problems getting a liquor license in New York City. Thereafter, Berger contacted Morton again at the restaurant, and told Morton that he would be entertaining Martin Epstein, Commissioner of the New York SLA, in Chicago. Morton suggested that Berger take Epstein to the Chicago Playboy Club as Playboy's guest in order to afford Epstein the opportunity to view the Chicago operation.

A week or so later, a third meeting between Berger and Morton

\(^{15}\)All citations to D-905, the trial transcript of People v. Morhouse, refer to the numbers at the bottom of the pages. All citations to D-904, the trial of People v. Berger, refer to the number of the trial transcript page. With regard to D-904B only, this means the parenthetical numbers in the body of the text.
occurred. Although Epstein had not had sufficient time to visit the Chicago Playboy Club, Bergen said that Epstein left Chicago extremely upset over the mailings made by Playboy and the company’s proposed method of operation in New York as a key club. Moreover, Berger indicated that Epstein had told him that it would cost Playboy $50,000 to obtain a liquor license to open the club in New York. After Morton expressed some skepticism, Berger stated that another club had paid $60,000 to get a liquor license and was still having problems because its owners did not go through proper channels.

After hearing this startling information, Morton related it to his associates at PCI. At that time, the inner circle at PCI consisted of Hefner, Preuss, Lownes, and Morton. These PCI officials decided to investigate Berger’s claims. In the event that Berger could actually deliver a liquor license that would allow the New York Club to utilize a key admission policy, all four Playboy officials agreed to make the $50,000 payment.

Approximately one week later, Berger informed Morton that a meeting with Epstein had been arranged in New York. On August 15, 1960, Berger and Morton went to meet Epstein at the SLA offices. The meeting amounted to little more than a handshake since Epstein excused himself for another appointment shortly after having been introduced to Morton in the lobby of the building. Although no substantive discussions were conducted during this brief encounter, the significance of this meeting was symbolic. By “delivering” Epstein, Berger was able to at least partially substantiate what he had told Morton at the third meeting in Chicago. Thereafter, satisfied that Berger accurately represented the involvement of Epstein, the Playboy officials proceeded on August 22, 1960, with the company’s “first major wave” of membership mailings to the State of New York.

Utilizing Bergen as an intermediary, Epstein subsequently instructed Playboy to retain attorney Hyman Siegel to handle Playboy’s liquor license application. Accompanied by Berger, Morton travelled to New York to discuss the liquor license application with Siegel at the end of October 1960. During their conversation, Siegel informed Morton that Playboy could not legally use a key admission plan if it wished to operate the club on a “for-profit” basis. Siegel suggested that PCI circumvent this problem by foregoing the desired retail liquor license, and applying instead for a “not-for-profit” private club license. If Playboy chose the nonprofit alternative, then the key admission plan could be utilized, and any actual profits generated there-
from could be siphoned into management corporations created specifically for that purpose.

After voicing his disapproval of this proposal, Morton returned to Chicago and again conferred with his associates. Since the PCI leadership adamantly opposed Siegel's suggestion, a second meeting with Siegel was arranged. At this conference late in November 1960, another New York attorney, Edward King, joined Siegel. Both Siegel and King attempted to persuade Morton that the only viable option available to Playboy was the nonprofit route. These efforts proved unsuccessful because the Playboy officers had already concluded that the suggested scheme would generate a myriad of tax problems for the company. Despite this controversy, Siegel received a $5,000 retainer from Playboy by a company check dated November 27, 1960.

While Playboy's licensing problems grew more acute, efforts were underway to secure a suitable location to house the New York Playboy Club. In mid-October 1960, the Edgar Realty Corporation was formed and served as an agent for Playboy in its acquisition efforts. Playboy did not act expeditiously and the present Playboy facility was purchased by another entity on October 26, 1960. However, by an assignment dated November 27, 1960, Playboy obtained the right to acquire the facility that is the site of its New York Club to this date.

On December 9, 1960, about two weeks after Morton's meeting with Siegel and King, Hefner wrote a letter to Siegel. As an alternative to the nonprofit club plan, Hefner suggested formation of two distinct corporations, one "for-profit" and one "not-for-profit". Each corporation would operate a portion of Playboy's New York facility. The "for-profit" operation would be open to the general public upon purchase of an admission key. The nonprofit club would appeal to an exclusive clientele and would have a limited admission policy.

In this letter, Hefner wrote that Playboy wanted to "eliminate any possible suggestion of subterfuge and keep everything very much on the up and up". Hefner argued that "nothing in the Illinois or New York statutes in any way prohibits the charging of an admission to an establishment that offers food, liquor and entertainment". When this letter was written, Playboy was awaiting a decision in an Illinois case that it initiated involving an admission key issue similar to the one under discussion in New York.

In December 1960, the PCI officers decided to contact Epstein directly in an effort to convince him of the legality of their proposed method of operation. Lownes and Hefner went to New York in January 1961 and met with Siegel, Epstein, and an SLA staff attorney.
By the time of this meeting, Playboy had received a favorable court decision in Illinois. A copy of that opinion was brought to New York. Epstein held steadfastly to the view that New York law prohibited a retail liquor licensee from selling admission keys in connection with a "for-profit" business. Although pressed by the Playboy executives to cite express legal authority to support this position, Epstein refused.

Shortly after this January meeting, Berger contacted Morton and told him that Epstein was extremely upset with Lownes and Hefner. Referring to these Playboy officers as "boy scouts", Epstein told Berger that he wanted nothing further to do with these individuals. Moreover, Epstein remained convinced that the continuing Playboy mailings were illegal. Playboy responded by informing Berger that it intended to secure the appropriate liquor license by undertaking legal action. Although Playboy failed to institute any legal proceeding during this period of time, the company continued to send mailings advertising the sale of keys to the public. The breakdown in negotiations resulted ultimately in Siegel's withdrawal as counsel to PCI. By letter dated March 31, 1961, Siegel resigned as PCI counsel and returned his entire $5,000 retainer. At one point during this impasse, Morton told Berger "to try to keep the door open, to try to talk to Epstein".

Berger was in contact with Epstein during this period of time. In late April 1961, Berger informed Morton that Epstein had agreed to reinstate his earlier deal with Playboy, but that now Morton would also need to strike a separate deal with L. Judson Morhouse. Morhouse was the Chairman of the Republican Party in the State of New York and a political crony of Martin Epstein.

This new overture was then evaluated by the inner circle at PCI. Hefner, Lownes, Preuss, and Morton all agreed that Morton should meet with Morhouse in order to investigate what Bergen had said. Assuming that an understanding could be reached with Morhouse, the Playboy officials agreed to revive their earlier deal with Epstein.

Following the directive from his colleagues, Morton met with Berger and Morhouse in New York on May 2, 1961. After Morton explained the type of liquor license that Playboy wished to obtain and the problems that had been encountered, Morhouse advised Morton that he would assist Playboy in securing the desired liquor license in one of several ways: interceding with Commissioner Epstein, replacing the elderly Commissioner upon his retirement, or by seeking a legislative amendment to the New York State liquor laws. In exchange for his services, Morhouse demanded $100,000 to be paid in installments
over a five-year period, an option to purchase $100,000 worth of Playboy stock in the event that the company became publicly-traded, and a concession to operate gift shops within the Playboy clubs. Morhouse also made it clear that his deal was separate from, and supplemental to, the one that had already been made with Epstein.

Morton returned to Chicago after this meeting and presented the Morhouse proposal to his associates at PCI. Lownes suggested that Playboy contact the authorities and expose these corrupt public officials. Instead of adopting this course of action, a decision was made to dispatch Morton and Lownes to New York to negotiate with Morhouse regarding the terms of his proposal.

At the second meeting with Morhouse, the Playboy representatives told him that if he received a stock option and the company became publicly-traded, then his name would have to be disclosed in the company's prospectus. The problems that would arise if Morhouse was granted concessions at the Playboy Clubs were also discussed. Although a consensus had not yet been reached on all issues, the Playboy officials made it clear that they had decided to pay Morhouse $100,000 in exchange for his assistance in securing the desired liquor license. During this discussion, Morhouse stated that he desired his payments to emanate from H.M.H. Publishing Company (the publisher of Playboy magazine) instead of PCI. For obvious reasons, Morhouse wanted to insulate himself from a direct relationship with the prospective liquor licensee.

To finalize the terms of their agreement, Morhouse met with Hefner, Lownes, Preuss, and Morton in Chicago in June 1961. Concessions were made on both sides. Morhouse agreed to abandon two of his original demands, the stock options and the gift stores in the clubs. Playboy reciprocated by agreeing to pay Morhouse through the publishing company instead of through PCI. To further shield his involvement, Morhouse also agreed to retain and pay another attorney to actually file the appropriate liquor license applications for Playboy. Through the use of an intermediary, Morhouse retained Jerome Marrus in July 1961, and thereafter Marrus filed Playboy's liquor license applications.

After Playboy reached an agreement with Morhouse in June 1961, Berger contacted Morton to arrange for Epstein to be paid the first half of his $50,000 fee. On June 28, 1961, two PCI checks, each in the amount of $12,500 were made payable to two designees of Ralph Berger. Presumably, Berger then forwarded these funds to Epstein.
After his agreement with Playboy had been finalized, Morhouse on July 17, 1961, submitted a bill for $20,000 to HMH Publishing. On August 9, 1961, a check drawn on PCI in the amount of $10,000 was sent to Morhouse. Later, at Morhouse’s request, a check drawn on the magazine was substituted for the first instrument. Preuss later reimbursed H.M.H. Publishing Company with a PCI check.

Playboy continued to make payments to Epstein and Morhouse well into 1962. During this period, Berger also received remuneration from Playboy for his services. He had received earlier a series of small payments to reimburse his expenses, and, in February 1961, a $5,000 payment for services.

In November 1961, Marrus filed a liquor license application on behalf of Playboy. By letter dated December 26, 1961, the SLA conditionally approved this license application pending completion of construction on the project. Thereafter, the SLA and Playboy negotiated a series of stipulations regarding Playboy’s key admission plan.

While these events were occurring, unbeknown to the parties concerned, the New York County District Attorney’s Office was conducting an investigation into corruption at the SLA. The District Attorney’s investigation was publicly revealed in November 1962 on the day after Election Day, when newspapers reported that Commissioner Epstein had been subpoenaed to testify before a grand jury. After learning of the SLA inquiry, Governor Nelson Rockefeller offered his assistance to the District Attorney’s Office. On November 30, 1962, the Governor issued a public statement urging all liquor licensees to cooperate with the District Attorney’s investigation and promising those who cooperated there would be no reprisals affecting the conduct of their businesses.

When Epstein appeared before the investigating grand jury, he invoked his privilege against self-incrimination and refused to testify. Governor Rockefeller responded by removing Epstein from his position with the SLA. Epstein’s termination thwarted Playboy’s plans. By stipulation dated December 7, 1962, Victor Lownes, on behalf of the Playboy Club of New York, agreed that the club would be open to members of the general public without the purchase of keys. Accordingly, a liquor license was issued and the club finally opened early in December 1962. After this December stipulation was executed, Playboy, for the first time, sought redress in the New York courts. Ultimately, Playboy prevailed, as the courts upheld the right of New York liquor licensees to require keys for admission to “for-profit” clubs.
On December 12, 1962, the books and records of the Playboy Club of New York were subpoenaed by a New York grand jury. Thereafter, Morton, acting on his own initiative, telephoned Morhouse, notified him of the seizure, and told him that the company's books reflected payments to him by Playboy. There is no evidence Morton consulted Hefner, Preuss, or Lownes, individually or collectively, before he did this.

Shortly after the subpoena was served, Playboy retained Milton Pollack, a New York attorney who presently serves as a Federal court judge in the Southern District of New York. An arrangement was worked out between Pollack and representatives from the District Attorney's Office. In exchange for their full cooperation and testimony, Hefner, Lownes, Morton, and Preuss were granted immunity from prosecution.

The testimony of the Playboy officials aided the prosecution in obtaining convictions against Berger in 1964 and Morhouse in 1966. Although Hefner testified before the 1963 New York County Grand Jury, he was not called as a witness at either the Berger or Morhouse trials.

After having detailed the involvement of Playboy and its officers in the above matter, we begin our legal analysis with a review of the pertinent sections of our enabling legislation, the Casino Control Act ("Act"), N.J.S.A. 5:12-1 et seq. Under Section 86(g) of the Act, an applicant for a casino license will be denied licensure if such applicant has committed any act or acts which constitute any offense under subsection c. of Section 86, even if such conduct has not or may not be prosecuted under the criminal laws of this State. Assuming that an applicant has committed any act or acts which constitute disqualifying offenses under Section 86(c), there need not be a disqualification in every instance. Section 86(c)(4) provides that:

[T]he automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification . . .

Although Berger's conviction was affirmed by the New York courts, it was ultimately reversed by the United States Supreme Court in a decision that limited the use of evidence obtained by means of electronic eavesdropping. Berger v. New York, 338, U.S. 41, 87 S.Ct. 1873, 18 L. Ed. 2d 1040 (1967).
While the above proviso speaks in terms of convictions, we deem that it must apply equally where it has been found pursuant to Section 86(g) of the Act that an applicant has committed a disqualifying offense although not convicted therefor.

We find that the facts related above which are drawn from the evidence in the record herein, demonstrate by a fair preponderance of the credible evidence that Hugh M. Hefner and Playboy engaged in conduct falling within the proscription against bribery contained in N.J.S.A. 2C:27-2, one of the enumerated offenses under Section 86(c) of the Act.

N.J.S.A. 2C:27-2 defines the crime of bribery in official and political matters, and provides in pertinent part:

A person is guilty of bribery if he directly or indirectly offers, confers or agrees to confer upon another . . .

a. Any benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election; or

b. Any benefit as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding; or

c. Any benefit as consideration for a violation of an official duty of a public servant or party official; or

d. Any benefit as consideration for the performance of official duties.

For the purposes of this section "benefit as consideration" shall be deemed to mean any benefit not authorized by law. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

In any prosecution under this section of an actor who offered, conferred or agreed to confer . . . a benefit, it is no defense that he did so as a result of conduct by another constituting theft by extortion or coercion or an attempt to commit either of those crimes.

Any offense proscribed by this section is a crime of the second degree. If the benefit offered, conferred, agreed to be conferred . . . is of the value of $200.00 or less, any offense proscribed by this section is a crime of the third degree.

We have considered all the arguments advanced by the parties
regarding whether under then-existing New York law Hefner could have been successfully prosecuted for the crimes of bribery of a public official and conspiracy to bribe. Reasonable individuals could obviously differ with regard to this matter. Significantly, Nicholas Scopetta, a former New York County Assistant District Attorney and an expert on the New York criminal laws, testified during this hearing that, based on his subsequent review of the Berger and Morhouse transcripts, "the Playboy people would have been able to offer a viable defense of extortion." In view of our above determination, it is unnecessary to make a specific finding about Hefner's guilt or innocence in the State of New York during the early 1960's. However, various mitigating factors exist, which do not justify, but which help to put in perspective how Hefner succumbed to the influence of corrupt public officials.

Specifically, we find that there was pervasive corruption within the New York SLA during the early 1960's. One of the corrupt public officials, Martin Epstein, actively sought out Playboy, nefariously peddling his influence in regard to Playboy's prospective club operation and liquor license application in New York. Subsequently a more powerful but equally corrupt public figure, L. Judson Morhouse, joined Epstein to coerce Playboy to make improper payments to him. Prior to being enticed by the venal influence of Berger, Epstein, and Morhouse, it is clear that neither Playboy nor its officials had a predisposition or desire to unilaterally make unlawful payments to public officials.

At the time Playboy agreed to make payments, there was at least some, albeit limited, financial commitment to operate a key admission club in the State of New York. Additionally, corrupt officials at the SLA were also demanding and receiving tribute from numerous other persons and entities subject to their regulatory authority because it was the way the SLA did business.

Rather than making payments, other options may have been available to Playboy. It serves no purpose in this case to retrospectively examine these other options. Payments were made. However, as Hefner acknowledged before a 1963 grand jury and before this Commission these payments were wrong. This acknowledgment, by itself, does not wipe away what occurred, but it should not go unnoticed or unrecognized by us in evaluating Hefner's present character.

Furthermore, it is noteworthy that Playboy and its officials cooperated with the New York District Attorney's Office in its investigation
and prosecution of corruption at or associated with the SLA. This cooperation was subsequently acknowledged by Alfred J. Scotti, Chief Assistant District Attorney who, on December 8, 1965, forwarded a letter to the Commissioner of Licenses in New York, requesting that no adverse action be taken with respect to Playboy's then pending cabaret license application.

Jeremiah McKenna, the District Attorney who prosecuted Ralph Berger and who had been integrally involved in the SLA investigation, wrote two letters on behalf of Playboy. The first was written on November 6, 1964, to Wiley Manuel, Deputy Attorney General of California, wherein he recommended that no adverse action be taken with regard to Playboy's request for a liquor license in that State. The second letter was written on October 21, 1969, and was sent to Inspector Brian Gilliard of the London Police in connection with Playboy's application for a casino license in Great Britain.1

In this letter McKenna indicated that "corruption had reached such a level in that agency that one could hardly obtain a license to sell liquor without paying off officials of the New York State Liquor Authority". He further opined that: "Throughout [the] investigation and subsequent trials, the Playboy Club officials cooperated fully at considerable expense and embarrassment to themselves". Moreover, McKenna noted that the testimony of the Playboy officials was crucial in indicting and convicting certain New York public officials. The letter also states that no indictment was ever contemplated or returned against Hefner or his associates. Finally, the letter points out that the New York District Attorney's Office "characterized Playboy's position in the scandals as being that of a victim of moral extortion". McKenna's view comports with the testimony of Nicholas Scopetta which we cited earlier.

It has been approximately 20 years since the events underlying Playboy's involvement with the SLA occurred. If Hefner had been involved in those events one week ago, one year ago, or even 10 years ago, we could not find Hefner qualified. See N.J.S.A. 5:12-86. The passage of time is an important factor for us to consider. By itself, it can never remove the stain of unlawful or improper activity. Coupled with other considerations, however, this factor may aid an applicant in demonstrating his or her present fitness for licensure. There

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1 We note that Playboy was, thereafter, the recipient of a gaming license from the British gaming authorities and operated casinos there for a period in excess of ten years.
has been no evidence that during the last 20 years, Hefner has been charged with, or convicted of, any criminal offense. Nor has he been found by us to have committed, or been involved in, any other disqualifying act or association. See this Opinion, infra. Hence, in this case the passage of time reflects the fact that the SLA matter was an isolated incident that has never been repeated.

In order to determine whether Hefner is in fact qualified, we must make a judgment as to how he will conduct himself in the future. The need to make that predictive judgment, in turn, requires investigation of what has been denoted an individual's "character." This character inquiry is not undertaken to pass moral judgment on a person's behavior or to punish past wrongs. Rather, the good character standard has been established under the Act because of its clear and close relationship to the paramount objective of an honest and efficient casino industry. See N.J.S.A. 5:12-1(b)(7) and (15). The good character requirement heads off the risk of wrongdoing. It assures to the extent practicable honest performance. It meets the public expectation that casinos and the industries which directly serve them will be operated by individuals of honesty and integrity.

"Good character" is a concept used repeatedly in legal as well as everyday affairs. It is demanded in sundry situations, including, among others, business, personal and governmental relationships. Character is usually thought to embrace all of an individual's good qualities but also his deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men. Because of its generality, the subject defies a cataloguing of all conceivable facts and factors which define the standard. When viewed in a vacuum, the concept loses all significance. The standard, however, draws specificity from each setting and from the particular objectives sought to be achieved. Hence, we must look to an individual's past conduct as a guide to how that individual is likely to operate a casino facility in the future.

In an effort to meet the statutorily imposed burden, Hefner produced evidence in support of his good character, honesty, and integrity. Various witnesses appeared before this Commission and testified regarding Hefner and the company's excellent reputation in the Chicago and Los Angeles communities. One specific example that was brought to this Commission's attention involved Hefner's voluntary $75,000 reduction of salary and his foregoing of approximately $1,200,000 of dividends in order to assure that the minority share-
holders of Playboy would be able to receive their dividends. A.A. Sommer, a former Commissioner of the SEC and counsel to Playboy's Audit Committee during the SEC inquiry of that company, also testified that Hefner was cooperative and forthright in that matter.

Furthermore, Hefner's character comes into sharper focus when his commitment to the Playboy Foundation is examined. The Playboy Foundation was created in 1965 and supports those organizations in the United States which are concerned with issues of First Amendment freedoms, human rights, and civil liberties. As Hefner testified before this Commission:

... if we were going to be devoting a magazine to the good life we really ought to deal with the problems that made the good life not available to certain parts of society.

Championing many unpopular social causes, Hefner has "put his money where his mouth [is]". Former Ambassador to Norway Louis A. Lerner and former Congresswoman Yvonne Brathwaite Burke both acknowledged the contributions of Playboy and its Foundation to a variety of civic endeavors.

Obviously, in evaluating one's character, evidence of specific acts is of paramount significance. We have heretofore discussed Hefner's involvement in the SLA matter and the attenuating circumstances surrounding that 20-year old episode. The shadow cast by that incident has given way to the light shed by a career of social commitment, honest business dealings, and an otherwise unblemished personal record of integrity.

It has been suggested that the Commission's final decision entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (1980), affirmed by the New Jersey Superior Court, Appellate Division, Docket No. A-4106-79T1 (June 24, 1981), is controlling here and thus requires the disqualification of Hugh M. Hefner. The Alter case is distinguishable. The Commission disqualified Alter for having, in 1962, committed acts that constituted bribery, an offense listed in Section 86(c) of the Act, for lacking in good character, honesty and integrity, and for his less than candid testimony with regard to the events in question. He sought to bribe a public official to clear the record of a charge of illegal activity and to enable him to continue to engage in that activity.

The issue then became whether Alter had demonstrated by clear and convincing evidence the inapplicability of the automatic disqualification provision contained in Section 86(c)(4) of the Act. Id.
at 44. We noted in the Alter case, supra at 44, that this issue was a "close one". It is not so close here.

We have also observed in our Alter decision that

[B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes but a willingness to actively corrupt them for private ends. *Id.* at 46-47.

In the instant case, Hefner and his associates clearly did not seek to corrupt a governmental regulatory process. The New York State Liquor Authority and the individuals associated with it undeniably were already corrupt by the time Playboy decided to open a New York club. Moreover, as noted earlier, there were extenuating circumstances involving the payment of money to these venal and detestable public officials. These circumstances, which obviously weigh heavily in Hefner's favor, were lacking in the Alter matter. Whereas Alter sought out the bribe takers, the bribe takers sought out Playboy. Moreover, Alter with the assistance of a corrupt SLA official also attempted to show another how to break the law.

To satisfy the 10 year proviso of *N.J.S.A.* 5:12-86(c)(4), Hefner must clearly and convincingly demonstrate his present good character, honesty and integrity. Unlike Alter, Hefner has accomplished this task. Alter was not a mere victim of circumstances nor was his involvement in a bribery scheme an isolated incident. He was the "prime mover" seeking to "fix" a violation of the laws with illegal payments. *Alter, supra* at 47. This was not so with Hefner. We believe that Hefner's involvement with the SLA affair was unusual in nature and not indicative of his overall good sense and honesty. His actions with regard to the SLA episode suggest a singular, albeit serious, mistake on his part, the singularity of which is underscored by the very fact that it occurred over 20 years ago.

In evaluating an applicant's good character, honesty and integrity, that individual's sworn testimony before the Commission or a duly authorized representative thereof is important. Evasive testimony by an applicant in Commission proceedings reflects negatively on his or her good character, honesty and integrity. Indeed, such evasive testimony was most significant in the Alter case. He deliberately fabricated the pertinent facts when testifying under oath in a Commission proceeding. We have listened carefully to the testimony of Hugh M.
Hefner. We have judged his demeanor on the witness stand. We have compared his testimony before us with his testimony in the early 1960's, and we find it to be reasonably consistent despite the passage of so many years. More important, we do not believe that Hefner has sought, as Alter did, to mislead this Commission. He has been candid and has forthrightly acknowledged the events and the mistake of 20 years ago.

Jeremiah McKenna, Esq., testified in this proceeding that in his mind there were substantial differences between the Seymour Alter matter and the Playboy matter. He observed: Alter "did not tell the truth on his first time to us". "[N]obody came to Alter. He went looking to somebody who would in effect put a fix in for him . . ." "Playboy didn't go looking to put in a fix. Alter did". These comments are significant to us and comport with this tribunal's decision that was made in the Alter case and support our conclusions here.

The Commission is responsible for assuring that licenses are not issued to, nor held by, unsuitable persons. Moreover, unsuitable persons must also not have any material involvement, directly or indirectly, with a licensed casino operation or the ownership thereof. N.J.S.A. 5:12-64. We do not take this responsibility lightly. To date, we have issued five plenary casino licenses. We have applied the relevant statutory criteria delineated in the Act to the particular facts and circumstances present in each one. Our method of evaluation and the standards we apply have remained constant in the face of changing factual scenarios.

We must protect the casino industry and ensure public confidence while also being fair and just in the application of the provisions of the Act to prospective licensees. We are convinced that the above responsibility has been discharged in the instant matter. Indeed, the difficulty of our task has been narrowed to a certain extent by the following acknowledgment made by the Division in summation:

... I want to make it clear we are not suggesting that Playboy in any way, shape or form is in organized crime, has any ties to organized crime. Let that be said once and for all.

Were this circumstance present, as it has been plainly acknowledged it is not, the passage of time, whether alone or in concert with other mitigating circumstances, would not have been enough to shoulder the burden the applicant must bear, and that others have failed to meet.
We [Commissioners Jacobson, McWhinney and Thomas] find that none of the circumstances surrounding the SLA episode present disqualifies either Hefner or any of the Playboy entities.

2. The Events Surrounding the British Magistrates' Decision Not to Renew the Casino Licenses of the Playboy Club of London and the Clermont Club.

The following is the Opinion of Commissioners Jacobson, McWhinney, Thomas, and Zeitz. A substantial portion of this plenary casino license hearing focused upon the circumstances surrounding an October 1981 decision by a committee of British Magistrates that the casino licenses for the Playboy Club of London and the Clermont Club should not be renewed. Numerous witnesses testified about this subject and thousands of pages of documents were introduced into evidence, including the transcript of the legal proceeding in the United Kingdom.

Prior to passage of the British Gaming Act of 1968 ("1968 Act"), the London Playboy Club operated a casino under earlier legislation that did not require licensure. Under one provision of the 1968 Act, corporate casino licensees must be incorporated within the United Kingdom. To comply with this statutory requirement, Playboy's club operation in London was incorporated in England under the name of PCL. This company was a wholly-owned subsidiary of PCI, which was itself a wholly-owned subsidiary of PEI. PCL eventually acquired casinos in Manchester and Portsmouth in the early 1970's, the Clermont Club in 1972, and, through an intermediary company, the Victoria Sporting Club in 1979.

The 1968 Act also established the Gaming Board for Great Britain ("Gaming Board"). Charged with responsibility for supervising the operation of casino gaming in Great Britain, the Gaming Board, under the leadership of Sir Stanley Raymond, took the view that British casino licensees should not be controlled by foreign companies. After a period of negotiations between Playboy representatives and the Gaming Board, an agreement was reached, and a trust deed was executed in January 1970. Under the terms of this instrument, 75 percent of the shares in PCL was transferred to four trustees, all of whom were British residents. These trustees included Victor Lownes, the Chairman and Managing Director of PCL from its inception until his removal on April 15, 1981: Clement Freud, a Member of Parliament and a director of PCL; Arnold Finer, an English solicitor who was legal advisor to the Playboy group in Great Britain and a
director of some of PCL’s subsidiaries: and, Lord Desmond Hirshfield, a Chartered Accountant. By virtue of their voting rights, the trustees possessed the power to appoint and remove the directors of PCL. Led by Victor Lownes and his associate William Gerhauser, the PCL Board of Directors exercised operational responsibility over the Playboy casinos in England.

Acting at the direction of Lownes, PCL in 1979 joined the Metropolitan Police of London (“police”) and the Gaming Board in objecting to the renewal of casino licenses for Ladbroke, Ltd., a major competitor of Playboy. In retaliation, Ladbroke conducted its own investigation of Playboy and forwarded its findings to the police. That led to a police investigation that continued throughout 1980 and culminated on February 20, 1981, when search warrants were executed upon the PCL, the Clermont Club, and the company’s financial offices in the United Kingdom. Thousands of documents were taken from Playboy’s possession and held by the police.

Upon learning of this seizure, the PEI management in Chicago attempted to ascertain what had precipitated this police raid. Their efforts proved largely unsuccessful. At the PEI Board of Directors meeting of March 24, 1981, Lownes reported to his fellow directors, but failed to explain adequately why the raids had been conducted and what the likely ramifications would be. Accordingly, the senior American management of the company dispatched Frank DiPrima, PEI General Counsel, to London to supervise the investigation and report back to them.

Before DiPrima departed for London, the Division of Gaming Enforcement negotiated an agreement with Playboy regarding the association of Lownes, Gerhauser, and two other PCL employees with the PEA project in Atlantic City. As a condition precedent to the issuance of a temporary casino permit in New Jersey, the Commission required these four individuals to sever their relationships with PEA. Playboy complied with this directive, and a temporary casino permit was issued in April 1981 by the Commission.

After reviewing the voluminous materials seized in February, the police and the Gaming Board, on April 10, 1981, interposed objections to the renewal of the gaming licenses for PCL, the Clermont Club, the Victoria Sporting Club and the casinos at Manchester and Portsmouth. The substance of these objections will be discussed in a later portion of this Opinion.

In response to this development, Playboy sought the counsel of an eminent British barrister, Gavin Lightman, Q.C. Previously, Light-
man had assisted Playboy in obtaining a license for its Victoria Sport-
ing Club casino. In order to salvage the company's casino licenses, which were then in serious jeopardy, Lightman recommended that Playboy take a series of decisive steps. Specifically, he strongly suggested that Lownes and Gerhauser be terminated and replaced with an interim management team, even if the latter was not domiciled in the United Kingdom. This interim management team would function only until suitable British replacements could be located and employed. Significant among his other recommendations was that an independent, outside Board of Inquiry be convened to investigate fully the grounds for objection and to recommend any appropriate correc-
tive measures.

The senior PEI executives in the United States agreed to accept fully Lightman's advice. On April 15, 1981, Lownes and Gerhauser were terminated and were replaced by Marvin Huston and Frank DiPrima, who were installed as Chairman and Managing Director, respectively. Shortly thereafter, a Board of Inquiry was formed and its members selected. Two of England's most respected professionals, Charles Sparrow, Q.C., and A.H. Chapman, the former managing partner of Price Waterhouse in Great Britain, agreed to serve on this panel. These individuals conducted a comprehensive investigation which resulted in 19 interim reports, a final report, and some 60 recommendations. While in Great Britain, DiPrima, reorganized the legal function of the casinos by hiring a new law firm, Messrs. Clifford-Turner. On August 4, 1981, Admiral Sir John Treacher replaced Huston as Chairman of PCL. This marked the emergence of a new British management structure for Playboy's British casino operations.

On September 14, 1981, the Gaming Licensing Committee for South Westminster ("Licensing Committee") commenced a hearing on the objections that had been filed by the police and the Gaming Board to renewal of Playboy's British casino licenses. During the 11-
day hearing, numerous witnesses testified and voluminous records were admitted into evidence. On October 5, 1981, the Licensing Com-
mittee issued an opinion denying renewal of the licenses of both the PCL and the Clermont Club. No reasoned decision accompanied the Licensing Committee's findings. The premises of the PCL were found to have been used "habitually" for unlawful purposes, and the license holder for that club was found not to be a "fit and proper person" under the 1968 Act. With respect to the Clermont Club, the Licensing Committee found that the license holder was not a "fit and proper person" under the 1968 Act and that the premises had been used for,
unlawful purposes. Since British gaming law mandates denial of licensure where a finding of habitual unlawful conduct has been made, the Licensing Committee had no discretion as to the appropriate sanction for the PCL.

Under the British regulatory scheme, Playboy's casinos received the least severe of three possible sanctions. No criminal charges were filed nor were cancellation proceedings instituted. Both these measures may result in harsher sanctions than merely objecting to the renewal of a casino license, which was the alternative sought by the police and the Gaming Board with respect to the Playboy casinos. Parenthetically, the New Jersey Casino Control Act provides a variety of sanctions that may be used for statutory violations. In addition to revocation and suspension of a license, the Commission may assess penalties, order restitution, enter cease and desist orders, or issue letters of censure or reprimand. See N.J.S.A. 5:12-129.

Under British law, Playboy was able to continue operating its British casinos after this adverse decision had been rendered since the company had the right to an appeal. This appeal would have involved a trial de novo before the Crown Court for Knightsbridge. Instead of pursuing this option, Playboy chose to sell its British casino operations to Trident Television Limited. This transaction closed on January 8, 1982.

Since the opinion of the Licensing Committee did not include specific reasons, it is impossible to determine which objection(s) formed the basis for the decision to deny the license renewals for the PCL and the Clermont Club. Prior to the Licensing Committee's hearings, Playboy made certain admissions of fact. In evaluating the various objections levelled against Playboy by the police and the Gaming Board, we will make factual determinations, but will not draw legal conclusions based upon disputed interpretations of British law.

The events that would later be described as the "Hall Porters Scheme" provided the basis for an objection lodged by the police and the Gaming Board. Pursuant to Section 12 of the 1968 Act, a member of a casino club is not eligible to game at such facility until the expiration of a 48-hour waiting period that commences with the initial application for membership to the club. If a member of a casino club, however, is eligible to game, then his or her bona fide guest may also game without having to wait 48 hours.

During 1976, two members of the PCL reception staff suggested to the Gaming Director, Bernard Mulhern, that it might be profitable for the club to recruit porters at several of the major hotels in the
area to serve as honorary members of the club. After Mulhern approved this proposal, porters at five London hotels were made honorary members of PCL. Thereafter, these honorary members brought their "guests" to PCL, and these individuals were able to participate in gaming activity without having to wait the 48-hour statutory period. This practice continued for several months and ended in May 1977. In substance, Playboy admitted the existence of this practice in its submission to the Licensing Committee.

Another objection to the renewal of the casino licenses for the PCL and the Clermont Club related to the gaming activities of Clement Freud, who was then a director and trustee of the PCL. Playboy conceded in its admissions of fact that Freud had participated in gaming at the PCL and the Clermont Club on numerous occasions between 1976 and 1980. Section 12(2) of the 1968 Act expressly forbids the holder of a casino license or any person acting on his behalf or employed on the premises from participating in gaming activity. Whether Freud's gaming is a violation of Section 12(2) of the 1968 Act is an unresolved question of British gaming law.

The activities of Abdul Khwaja, a member of the PCL, provided the basis for another of the police and Gaming Board objections. Again, the substance of this allegation was admitted by Playboy as indicated below:

The license holder failed to bar or adequately control the activities of Abdul Khwaja, a member, whom William Gerhauser was informed by the Security Office had been banned from all the Casinos run by Ladup Limited and also from the Curzon House Club because of his disruptive influence and bad behavior within the Casinos and also because of his dubious honesty. It is also admitted that some of the staff within the Playboy Club believed that Khwaja wrongly disputed call bets, that he misbehaved both with staff and with patrons and that he loaned money to patrons. A number of members of management wanted to have Khwaja banned from the Club but this was prevented by the direct decision of Victor Lownes.

At the outset of the Licensing Committee hearing, the objections alleging that the PCL and the Clermont Club had consolidated checks were dropped by the police and the Gaming Board.

Several of the police and Gaming Board objections implicate the credit provisions of the 1968 Act. Section 16 of the 1968 Act prohibits a casino licensee from extending credit to gamblers. Notwithstanding this prohibition, casino licensees may accept checks and give in ex-
change cash or tokens to enable individuals to participate in gaming activities. Any checks so received must be deposited by the licensee at a bank within two banking days. Additionally, Section 16 forbids licensees from releasing or discharging debts "in respect of any losses incurred by any person in the gaming".

Playboy's utilization of a credit practice known in Great Britain as "cheque-on-cheque" was the subject of an objection. Under this procedure, a licensee would accept a check from an individual who had previously had a check made payable to that same licensee dishonored. In its admissions of fact, Playboy stated that "there were occasions when certain patrons were permitted to continue gaming whilst owing the license holder sums of money by reason of previously dishonored cheques". Approximately 37 patrons made use of the "cheque-on-cheque" practice and some were able to incur individual debts in excess of one million pounds. Both Playboy and the Division produced expert witnesses who testified before this Commission as to the legality of this practice. These experts differed in their legal conclusions and in their interpretations of Section 16.

Beginning in 1975, the PCL began to accept what later would be known as "no-account" checks. Such instruments are drawn on banks at which the drawer has no account. Approximately 25 patrons participated in this practice. The "no-account" checks accepted by the casino amounted to millions of pounds. The acceptance of such checks by the PCL formed the basis for another of the objections lodged by the police and the Gaming Board. The specific allegation read as follows:

... between 1975 and October 1979 a credit scheme was operated within the casino whereby certain heavy gamblers numbering not less than 30 were permitted with the full knowledge of the license-holder to draw cheques on a massive scale on banks where the patron had no account.

In its admissions of fact, Playboy stipulated that "no-account" checks had been accepted by the PCL, and that this had been done, on at least some occasions, with the knowledge of a member of the management of the casino. The Playboy Board of Inquiry concluded that "there must have been acceptance of no-account checks by the Playboy Casino with the knowledge that there was no account and that the cheque was a mere pretense". This conclusion is buttressed by the fact that certain gamblers issued many such "no-account" checks to the casino over a period of months. Moreover, many of
these invalid checks were drawn on blank forms supplied by the casino and completed with the name of Playboy's bank.

In his testimony before this Commission, Robert Alexander, Playboy's primary counsel at the Licensing Committee hearing, candidly admitted that the knowing acceptance of "no-account" checks by a casino licensee violates the credit provisions of Section 16 of the 1968 Act.

An objection also raised was that bets were allowed to be "called" at the PCL. Ordinarily, a bet is placed by a physical deposit of chips or cash on the marked part of the gaming table. As an alternative, a bet may be "called", that is, stated orally and confirmed by casino personnel, without any formal placing of chips or cash on the gaming table. Although Playboy did not include "call betting" in its admissions of fact, the independent Board of Inquiry investigated this practice and reached the following conclusions:

Having considered the evidence produced by our Enquiry and that contained in the police documentation, we are satisfied that bets of the kind described in Allegation 3 ["call betting"] have occurred. In our judgment, some Playboy casino staff have allowed bets to be called without any money having been staked.

The legal objection to "call betting" under Section 16 is that such a bet allows the casino licensee to extend credit to the gambler, even if only for a few moments.

Additional allegations were made that the PCL and the Clermont Club had contravened Section 16 by settling and releasing a small number of debts owed to the casinos by gamblers. A settlement is a transaction of compromise, whereby a casino would accept a sum of money less than the full amount of a debt and agree to forgive the remaining unpaid balance of the obligation. A release is a total forgiveness of indebtedness. Playboy, in its admissions of fact, listed certain transactions that had been settled or released by either the PCL or the Clermont Club. At the hearing before the Licensing Committee, Playboy did not dispute the fact that these practices had occurred at its casinos. Rather, the Playboy position was that the settlement and release of debts did not constitute violations of Section 16. Again, this issue has not yet been definitively resolved by the British judicial system.

Another allegation was that the PCL failed to comply fully with a November 1980 request of the Gaming Board. Specifically, it was alleged that PCL withheld the names of some 33 individuals who owed
the casino amounts in excess of 10,000 pounds. Playboy’s Board of Inquiry investigated this allegation and thereafter concluded that William Gerhauser had knowingly withheld certain information that had been requested by the Gaming Board. This concealment was found by the Board of Inquiry to be a violation of Playboy’s statutory obligation to supply information to the Gaming Board on demand.

In June 1981, the Gaming Board supplemented its objections to include an allegation that Playboy violated the spirit of the Gaming Act when it removed Lownes and Gerhauser, thereby demonstrating that PCL was actually controlled from the United States. The Gaming Board also objected to the removal of these individuals from their positions as Directors of PCL, contending that this action violated the terms of the trust deed.

Relying on the advice of their British counsel, Gavin Lightman, Playboy did not notify the Gaming Board of Lownes’ and Gerhauser’s impending termination. Approximately one week later, the Gaming Board was notified of these dismissals. Michael Hogan, the spokesman for and Secretary of the Gaming Board, testified at this hearing. He indicated that his employer viewed this lack of prior notification unfavorably. He also acknowledged that the company had received advice from British counsel that it was not violating the trust deed in taking these actions.

After reviewing the facts surrounding each of the objections to licensure, the following conclusions may be drawn. The management of Playboy’s British casinos failed to uphold scrupulously the provisions of the 1968 Act. Moreover, their actions were at times contemptuous of the pervasive regulatory framework that governs gaming in the United Kingdom. The “no-account” scheme and the knowing failure to produce records requested by the Gaming Board typified this cavalier attitude toward regulatory compliance. In order to enhance the already impressive profitability of these casinos, Playboy’s British management loosely construed and occasionally ignored statutory provisions. Since Victor Lownes and William Gerhauser had operational responsibility over Playboy’s British casinos, these individuals are clearly accountable for the improper activities that occurred at the casinos.

Although we do not condone any of the improprieties sanctioned by Playboy’s British management, we recognize that no evidence has been adduced suggesting any tax evasion, skimming, or the defrauding of patrons at any of the company’s British casinos.

The pivotal issues which must be resolved by this Commission
are whether officials at PEI's corporate headquarters in Chicago knew or should have known of this regulatory misconduct prior to the execution of the February 1981 raid. With one exception, it is clear that no member of the company's management outside the United Kingdom had any specific awareness of the events that ultimately were the subject of the licensure objections. The company's U.S. management learned in April 1980 that Lownes had admitted in a British television broadcast that the company's middle management in the United Kingdom had, more than three years earlier, engaged in the "Hall Porters Scheme". Save for this exception, even the Division acknowledged in summation that

there is no direct proof that they [U.S. management] did know what was going on . . .

This lack of knowledge by U.S. management is buttressed by the testimony of numerous witnesses, including Marvin Huston, Robert Alexander, Gavin Lightman, Timothy Cassel, an English barrister, and Derrick Daniels. Accordingly, we find that the U.S. management of PEI had no prior knowledge of the improper activities that occurred at the Playboy casinos in the United Kingdom.

We now turn our attention to the question of whether PEI's U.S. management should have been aware of the management deficiencies that ultimately surfaced in the licensure objections. Although the 1968 Act does not expressly prohibit the foreign ownership of British casinos, the Gaming Board has, as we noted earlier, taken the position that British casino licensees should not be controlled by foreign companies. Indeed, Michael Hogan testified that the purpose of the trust deed was to

insure that so far as day-to-day operations were concerned they were in the hands of the license holding company, the London Playboy Club, and it would have been a matter of concern to the board [Gaming Board] if, in fact, Chicago had been in control of those day-to-day operations.

This fact was verified by the testimony of other witnesses. PEI respected the wishes of the Gaming Board and refrained from interfering with the operation of the British casinos until April 1981.

Although PEI's U.S. management was not able to exercise operational control of its British casinos, nothing in the trust deed or in the 1968 Act precluded it from requesting or reviewing financial data and management reports regarding its British subsidiaries. In fact, U.S. management had received periodic financial reports during the
1970’s. After Huston became associated with Playboy in 1977, he made efforts to increase the flow of information to the U.S. He directed that the British auditors’ reports, which had not been previously provided, be transmitted to corporate officials in the U.S.

Even though additional information was becoming available to U.S. management, we believe, given the operational limitations placed on it by the Gaming Board, that Playboy could not reasonably have been expected to uncover independently the evidence that resulted in the objections to licensure. Indeed, the difficulty of ascertaining any improper conduct is illustrated by the following examples. With club membership in excess of 35,000, Abdul Khwaja’s disruptive activities would not ordinarily have attracted the attention of U.S. corporate officials. This is true also with respect to the failure of the British management to forward documents requested by the Gaming Board. Equally difficult to uncover would be the improper gaming by a British director and trustee, the utilization of “call betting,” and the release or settlement of a small number of debts. Indeed, even the Gaming Board’s inspectors failed to uncover these improper practices during their periodic inspections.

In further evaluating the issue of whether PEI’s U.S. management should have been aware of regulatory improprieties in the United Kingdom, it is important to consider the positive signals that had been communicated. As a member of PEI’s Board of Directors, Lownes regularly attended the company’s quarterly board meetings in the United States. Lownes, at these meetings, misled the Board of Directors by failing to reveal any information that suggested the existence of any regulatory misconduct at the British casinos. As late as August 26, 1979, Arnold Finer and Lownes addressed the PEI Board of Directors and offered assurances that Playboy’s British casinos possessed an excellent record and reputation in the United Kingdom.

Prior to the February 1981, raid, it is clear that Playboy’s British casinos enjoyed an excellent reputation and were considered to be efficiently operated. Indeed, PEI’s U.S. management knew that the Gaming Board had taken foreign dignitaries to visit its British casinos.

Another strong signal to bolster PEI’s confidence in its British operations was received in October 1980. When Playboy acquired the Victoria Sporting Club in 1979, the latter’s license was being challenged by the gaming authorities in violation proceedings because of the misdeeds of prior owners. In a trial before the Crown Court of Knightsbridge, senior Gaming Board Inspector John Bragoli praised the Playboy internal control systems that had been instituted
at the Victoria Sporting Club. He further indicated that he found no fault with these systems and no flaw in their implementation. A casino license ultimately was issued to the Victoria Sporting Club, providing further comfort to U.S. management. Additionally, Playboy's U.S. management knew that the licenses of its British casinos were renewed annually without objection for over a decade.

Elmer Johnson, Esq., a partner in the Chicago law firm of Kirkland & Ellis and an expert in the field of corporate law, testified in these proceedings that corporate directors are entitled to rely in good faith on the statements of officers "until they have good reason to believe the contrary that those officers are unreliable". He further indicated that no adverse implication may be drawn regarding the issue of actual or imputed knowledge by the PEI Board of Directors as to the business practices of its British casinos. Moreover, the mere fact that one director had knowledge of the underlying violations cannot be attributed to the entire Board, especially where the knowledgeable director had been reliable in the past. Despite his earlier involvement with the SLA, no evidence in the record suggests that Lownes' reliability for providing accurate information to the Board was suspect prior to 1981.

After considering all the evidence presented during this hearing, we find that the PEI officials in the United States could not reasonably have been expected to ascertain the extent or existence of the improper practices that led to the licensure objections in the United Kingdom. We agree with the conclusions expressed by Johnson and find that no knowledge of any wrongful conduct may be imputed to U.S. management.

After the February 1981 police raid on its British casinos, U.S. management undertook forceful and decisive action to uncover the truth and to rectify any deficiencies that were discovered. We believe that the bold course of action taken exemplifies the good character and integrity of present U.S. management. Prior to the raid, Huston and DiPrima had sought to professionalize the internal audit and legal functions of the British casinos. Specifically, Playboy's British auditors were replaced in 1980 by Price Waterhouse, which became the company's worldwide audit firm. Following their appointment as an interim management team, their efforts intensified and proved effective. The role that Huston and DiPrima played after their arrival in London cannot be minimized.

We find Playboy's present management highly qualified and competent. Derrick Daniels, Marvin Huston, and Frank DiPrima testified
in these proceedings. We have been particularly impressed by their candor and professional demeanor. There can be no doubt that these individuals clearly satisfy the Act's criteria for licensure in this jurisdiction. Although not called upon to testify as a witness in these proceedings, we also note that Marilu Marshall, PEI Vice President-Casino Regulations, has in the past appeared before us in other matters. We find that she too, is qualified and suitable for licensure in New Jersey. We are confident that these individuals would comply with the letter and spirit of the Casino Control Act.

Another issue raised during this hearing involved the exercise by Victor Lownes on April 15, 1981, of a stock option. On that date, Lownes was terminated under the terms of his employment agreement which provided 30 days notice if his termination was "not for cause". That same agreement also containing a provision permitting immediate termination "for cause" in the event that certain specified wrongdoing was found to have occurred. Since his termination was "not for cause," he was able to exercise an option which allowed him to purchase 100,000 shares of PEI common stock at $3.82 per share. On April 15, 1981, the market price of the stock was approximately $15 per share.

There was considerable testimony about the appropriateness of PEI's decision to terminate Lownes "not for cause" as opposed to "for cause", thereby affording him the opportunity to exercise what at that time was an advantageous stock option. We note that prior to making the decision to terminate "not for cause", Playboy sought the advice of British counsel and was advised that the severance should be "not for cause". Playboy followed this advice. Currently, a Committee of PEI's Board of Directors has been given the responsibility to evaluate Lownes' participation in the London affair and to determine whether any legal recourse against him exists.

Based upon all of the facts then available to PEI's U.S. management and the aforementioned advice from British counsel, we find this decision to terminate Lownes "not for cause" was reasonable under the circumstances.

For all of the reasons set forth above, we [Commissioners Jacobson, McWhinney, Thomas & Zeitz] find that the events surrounding the Magistrates' decision to deny the renewal of the casino licenses for Playboy's British casinos do not negatively impact upon the qualifications for licensure of any qualifier or Playboy entity.
3. The Drug Enforcement Administration Investigation

In its opening statement to the Commission, the Division identified as an area of concern the investigations conducted during 1974 and 1975 by the Federal Drug Enforcement Administration ("DEA") and other law enforcement agencies into the alleged use and distribution of narcotics by individuals affiliated with the Playboy organization. The facts regarding this matter are not in dispute. In March 1974, Roberta "Bobbie" Arnstein, an executive secretary to Hugh M. Hefner and a resident of the Chicago Playboy Mansion, was arrested and charged with conspiracy in connection with the distribution of a quantity of cocaine in 1971. After being informed of Arnstein's arrest, Hefner issued instructions that Allen Crawford, then Security Director of Playboy, conduct a search and remove any narcotics found in the Chicago Mansion. A similar sweep was performed by Les Marshall, an assistant to Hefner, at the Playboy Mansion West in Los Angeles. Apparently, some quantities of illegal drugs were found in some of the rooms in the Chicago Mansion. The drugs secured from the Chicago Mansion were then transported to the Playboy office building in Chicago for storage. After the prescription drugs had been separated and returned to the Chicago Mansion, the remainder of the items were destroyed by Crawford.

In the autumn of 1974, Arnstein was convicted and provisionally sentenced to 15 years in prison. She committed suicide in January 1975. After Arnstein's conviction, Federal drug agents and the Chicago Strike Force received information that Hefner and several other employees of Playboy were personally involved in the acquisition and distribution of cocaine. An extensive investigation ensued.

Significantly, on December 29, 1975, Samuel K. Skinner, the United States Attorney in charge of this investigation, issued a public statement declaring an end to it and exonerating Hefner and Playboy.

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1The Chicago Mansion consists of two buildings, purchased independently in 1959 and 1970 for a total of $920,000, that were subsequently joined together. The Playboy Mansion West, located in Los Angeles, California, was purchased on February 2, 1971, for $1,050,000. At the time of these investigations, both Mansions were used for traditional business purposes, to publicize the "Playboy lifestyle", and as a residence to accommodate Hefner and his personal guests.

2This sentence, the maximum penalty for the crime charged, was imposed to permit further evaluation of the defendant and was subject to later modifications. See 18 U.S.C.A. §4208(b) (repealed 1976).
He stated:

No evidence of the unlawful acquisition or distribution of cocaine or other hard drugs by Mr. Hefner, the corporation, or its employees has been adduced. Accordingly, we have concluded our investigation and ended our inquiry.

Apparently, this most unusual statement of exoneration by a Federal prosecutor was motivated by Skinner's conclusion that Playboy and Hefner may have suffered adversely as a result of the widespread negative publicity attendant to these investigations.

In view of Mr. Skinner's remarks, and the outcome of his investigation, we find that the drug allegations that were described above do not adversely reflect on the qualifications for licensure of either Hefner or any of the Playboy entities.

4. **Hugh M. Hefner's Retention of Sidney R. Korshak, Esq.**

In their opening remarks to the Commission, the Division raised questions regarding Hugh Hefner's one-time retention of a Chicago attorney named Sidney R. Korshak. The evidence reveals the existence of a bill dated March 16, 1978, in the amount of $50,000 from the Chicago law offices of Korshak to Hefner. A check in that amount, made payable to Korshak and signed by Hefner, bears the same date.

Hefner testified that he retained Korshak in connection with a lawsuit which was brought against himself and Playboy by Universal Studios. Universal alleged that Playboy's private film library constituted a copyright infringement, and was seeking the return of all videotapes of Universal motion pictures.

Hefner desired to protect the film library as well as his personal reputation. He was also concerned about his relationship with the motion picture studios.

Korshak was known to be a close friend of Lew Wasserman, the president of MCA, Inc. (which controlled Universal), and Hefner wanted to avoid a court proceeding which could affect his standing in Los Angeles and in the Hollywood community. According to Hefner, Korshak enjoyed a very good reputation in the entertainment circles in Los Angeles. Thus, Hefner wanted to arrange a meeting with Wasserman, at which the two men could discuss the issue and, Hefner hoped, reach a resolution without the need for litigation. For that reason, Hefner believed it was appropriate to utilize the services of Korshak.

At the time Korshak was retained, Hefner believed him to be a member in good standing for many years of the Bar of the State
of Illinois. Korshak, in fact, appears to have been a member of the Illinois Bar for over 50 years without any disciplinary action having ever been taken against him.

Hefner indicated that he did not have specific knowledge of Korshak’s allegedly questionable reputation at the time that he retained him, but that he was aware of some question about his reputation. Subsequent to his employment of Korshak, Hefner became aware of further publicity which identified Korshak as a link between crime and big business. Hefner stated that in light of this publicity he would make a different decision today with regard to the retaining of Korshak. Korshak was subsequently not successful in his mission.

It should be noted that the Board of Directors of PEI authorized Hefner to be reimbursed for his legal fees in connection with the Universal case, but that Hefner never sought reimbursement. Instead, he paid the $50,000 by personal check.

The Division did not focus upon the Sidney Korshak retention in summation. However, they very briefly noted it in their Proposed Findings of Fact that were submitted to the Commission.

We have examined, to the extent possible, the nature and scope of Hefner’s relationship with Korshak. On the record before us, we can find nothing improper or sinister in the one-time retention of Sidney R. Korshak, Esq. The relationship appears to have been solely for a singular professional purpose and did not continue in any way thereafter. Thus, based on the present record, we do not believe that there are any negative inferences which would require disqualification.

5. The Securities and Exchange Commission Inquiry

Under the applicable Federal securities laws, publicly-held corporations are required to disclose fully, among other things, all forms of remuneration provided to their officers and directors. Additionally, any potential conflicts of interest and the use of corporate assets for the personal benefit of officers or directors must also be disclosed in a wide variety of filings with the SEC, including prospectuses, proxy statements, and annual reports to the SEC.

In February 1978, the SEC notified Playboy that it was commencing an informal inquiry concerning possible undisclosed management remuneration and asked Playboy to provide information with respect to its compensation of certain officers during the fiscal years 1975, 1976, and 1977. Several months earlier, in December, 1977, a shareholder derivative suit had been filed in a state court in Illinois seeking on behalf of the company reimbursement from Hefner for his allegedly
improper utilization of certain corporate properties. A third related development was the Internal Revenue Service’s disallowance of corporate deductions for depreciation and operating expenses totaling $716,626 for the Chicago Mansion and $714,201 for the Playboy Mansion West for the tax years 1970 through 1976.

In response to these events, the Playboy Board of Directors established an independent Audit Committee on August 10, 1978. Two newly-appointed directors, Donald W. Diehl and William A. Emerson, were selected by the Board to serve on the Audit Committee since neither had any prior affiliation with the company. In February 1979, the Board of Directors delegated to the Audit Committee the responsibility for conducting a thorough investigation into whether the company had legal claims against any members of its management on account of their receipt of remuneration or personal benefits. If meritorious claims resulted, the Committee was directed to assert such claims on behalf of PEI. The Board mandate also directed the Audit Committee to consider and recommend prophylactic policies and procedures with respect to Playboy’s remuneration and benefit practices.

After conducting an exhaustive year-long investigation, the Audit Committee submitted its 546-page final report to the Board of Directors on January 31, 1980. A summary of the report, prepared by outside counsel for Playboy at the request of the Board of Directors, was sent to Playboy’s shareholders in order to inform them of the Audit Committee’s basic findings and recommendations. The findings of the Committee were also summarized in an internal Playboy report.

The Committee found no meritorious basis for Playboy to recover any amount of cash compensation paid to its officers and directors. However, it found several instances where other kinds of benefits had been received by officers from the Company without proper authorization, documentation or disclosure. These benefits included personal use by certain officers and their guests of Playboy property, particularly the Mansions and other accommodations. Also, professional services were sometimes rendered to officers by personnel in the employ of the Company: automobile, travel and entertainment, and other expenses were not always properly documented or authorized; and miscellaneous additional benefits were received.

The Audit Committee also concluded that Playboy should seek to recover specific amounts from the following individuals:
All of these individuals promptly paid to the company the full amount of the Audit Committee's demand.

Moreover, the Committee recommended the formation of a Compensation Committee that would be responsible for advising the Board of Directors concerning compensation matters. Other recommendations were also made in order to ensure that future management benefits would be properly authorized, documented and disclosed.

The testimony of A.A. Sommer, Jr., who was retained as counsel by the Audit Committee, indicates that the Playboy management and officials fully cooperated in the prolonged investigation. Subsequently, by order dated August 13, 1980, the SEC and Playboy entered into a consent decree wherein Playboy agreed to institute certain internal controls and to comply with the relevant report requirements under the securities laws. Since the late 1970's a comprehensive internal control system has been utilized by Playboy in order to prevent a recurrence of these improper practices.

We have examined the subject matter of the SEC inquiry, and we find that the explanation given by the Audit Committee for these practices to be reasonable.

... This is not a case of surreptitious misappropriation by management. Rather, it is a case of Playboy's failure to adjust practices that began when it was a private company to the standards expected of a Company with 30 percent public ownership. Playboy failed to give management relations and transactions the critical scrutiny, and failed to establish the kinds of procedures, customary in corporations with a history of public ownership. Playboy's difficulty in adjusting to its public status was compounded by its rapid growth and diversification, problems experienced in structuring its management organization, and management's concentration on other matters during a period of financial stress.

<table>
<thead>
<tr>
<th>Officer</th>
<th>Total Amount</th>
<th>Recoverable</th>
</tr>
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<tbody>
<tr>
<td>Hefner</td>
<td>$796,413</td>
<td></td>
</tr>
<tr>
<td>Daniels</td>
<td>24,278</td>
<td></td>
</tr>
<tr>
<td>Lownes</td>
<td>20,915 British pounds</td>
<td>2,870</td>
</tr>
<tr>
<td>Gerhauser</td>
<td>18,560 British pounds</td>
<td>4,091</td>
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<tr>
<td>C. Hefner</td>
<td>769</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>80</td>
<td></td>
</tr>
<tr>
<td></td>
<td>39,475 British pounds</td>
<td>$828,501</td>
</tr>
</tbody>
</table>
Significantly, no evidence has been adduced during this hearing which indicates that the officers or directors involved willfully sought to defraud the Company. Based upon the record before us, we are satisfied that the underlying circumstances surrounding the SEC inquiry do not negatively impact upon the qualifications for licensure of any individual or Playboy entity.

6. The Playboy Club of New Orleans

In its investigative report with respect to the Playboy entities, the Division included a section entitled "Playboy Club of New Orleans". The Division's concern with regard to this matter stems from Playboy's relationship with Michael Zuppardo, an individual of questionable character.

By way of historical background, the first Playboy Club of New Orleans was opened in the French Quarter of that city in 1961. Operating as a franchise of PCI, that club functioned until the mid-1970's at which time a decision was made to close it and to seek a new location in an area of New Orleans known as Fat City. Following some preliminary inspection and discussions, Victor Lownes reported to the Company that he had found a suitable facility, which was the Crystal Palace, owned by Anna DiPietro, the wife of Michael Zuppardo.

During the summer of 1975, officials of PCI received correspondence and internal memoranda suggesting areas of possible concern relating to the Company's dealings with Zuppardo. Daniel Stone, then and currently a Vice President of PCI, stated in an interview conducted by the Division that the Company had also been receiving reference letters on behalf of Zuppardo during this same period of time.20

On October 9, 1975, Daniel Stone sent Zuppardo a letter confirming PCI's intent to open a Playboy Club in the Crystal Palace with Zuppardo as the franchisee. Paradoxically, on October 13, 1975, a memorandum written by William H. Klein, then General Counsel for Playboy, reflects his conversation with other key Playboy executives on October 9, 1975, in which Klein exhorted the other individuals "to do everything to prevent the Company's granting a franchise to

20The applicant has produced favorable letters of reference on behalf of Zuppardo, but these letters bear the date of October 20, 1975, which is after the Company had already communicated its intention to deal with Zuppardo.
Zuppardo" unless they were convinced the information previously supplied was not true.

The "information previously supplied" apparently refers to information supplied to PCI by the New Orleans Crime Commission, a quasi-official body. By letter dated October 15, 1975, Victor Lownes wrote to Zuppardo advising him that PCI could not risk an association with him as its New Orleans franchisee until a "major cloud" hanging over the negotiations had been dispelled. Lownes indicated that Playboy had been told by Aaron Kohn of the Crime Commission that Zuppardo had "definite links with organized crime figures". Also, the banks with whom Zuppardo had transacted business were suspected of being conduits through which money was funneled from organized crime into legitimate businesses. Additionally, this letter stated that before Playboy would be willing to close the deal, Zuppardo would have to open his books to an impartial investigative accountant selected by the Crime Commission, and would have to satisfy the Crime Commission that he was untainted by his alleged associations. This Zuppardo declined to do.

Subsequently, a decision was made by PCI to proceed with plans to open a Playboy Club in the Crystal Palace without granting a franchise to Zuppardo. No Playboy Club was, however, operated at the Crystal Palace location. A bar with very limited food services was opened under the name of "The Great Playboy Warm-Up". There were no other Playboy indicia on the premises such as logos, glassware, etc. Moreover, the limited facilities made a keyholder admission policy impractical. It had been anticipated that a Playboy Club would operate on the premises once the necessary remodeling was accomplished. This was to be effectuated by having the Company lease the premises from Zuppardo's wife, run the club using PCI personnel, and employ Zuppardo as director of sales and promotion. The agreement between Zuppardo and PCI was set forth in a letter dated November 6, 1975.

After a brief period of operation, the Great Playboy Warm-Up closed, and PCI decided to terminate its Crystal Palace lease arrangements. In August 1976 financial settlements were made with all parties concerned, at a cost to the Company in excess of $130,000. This amount encompassed negotiated settlements of lease and personal service contract obligations, reimbursement for the removal of various equipment from the premises, and legal fees. Significantly, Playboy never granted a franchise to Zuppardo, Hefner never knew or heard of Zuppardo, and Zuppardo has no present relationship with Playboy.
In reviewing the record before us, we view disfavorably Playboy's decision to employ Zuppardo after having received the derogatory information detailed above, even though such information was largely unsubstantiated. Apparently, Playboy was sufficiently concerned by these allegations not to grant Zuppardo a franchise for the New Orleans Playboy Club. Moreover, the October 15, 1975 letter written by Lownes reflects his sincere desire, on behalf of the Company, to uncover the truth regarding these allegations of impropriety. From the evidence presented to this Commission, we find that in considering the totality of the circumstances the above area of concern does not negatively impact upon Hefner's or Playboy's qualifications for licensure in New Jersey.

7. The Playboy Club of Miami

In its opening statement to the Commission, the Division made reference to the Playboy Club of Miami and indicated that certain circumstances surrounding the operation of that club were of concern to the Division. The Division's reservations were triggered by two 1973 memoranda written by Allen Crawford, then Security Director of Playboy, to Robert Preuss, then Executive Vice President. These intelligence reports summarized the results of a six-month long investigation of the Miami Club. Serious allegations of impropriety were levelled against two club employees, Richard Ancona and Paul Cavari. Ancona, the general manager of the club, was alleged to have links to members of the Miami criminal community. Cavari was suspected of operating a bookmaking business while performing his bartending duties at the club. Additionally, these memoranda were replete with other unsubstantiated allegations that had been furnished by confidential informants. Both individuals are still employed at the Miami Playboy Club.

In his testimony before the Commission, Don Hubbard, Playboy's present Security Director, testified that Crawford told him that Preuss had informed Crawford, several months after the memoranda were filed, that Preuss intended to do nothing about the Miami situation, since the Miami Club was the only club making money at that time. Since Preuss was unwilling to testify at this hearing, and was beyond the scope of the Commission's subpoena power, it is impossible to verify these statements. Moreover, after viewing all of the evidence presented during this hearing, we are unable to ascertain definitively what actions, if any, Preuss or any other Playboy official
took in response to the allegations contained in the Crawford memoranda.

There is no doubt that Playboy's present management was unaware of the existence of the Crawford memoranda prior to the issuance of the Division's investigative report with respect to the Playboy entities. After this matter was brought to his attention, Hubbard retained, on behalf of Playboy, David Peisner, a Miami-based private investigator. Peisner's comprehensive investigation revealed that there were no illegal activities ongoing at the Miami Club, and there was no current law enforcement interest in the club.

In February 1982, Playboy retained another private investigator, Daniel Fullen, in order to verify as many of the allegations made in the 1973 memoranda as possible. Although hampered by the passage of time, Fullen was able to find serious inaccuracies in the Crawford memoranda. Indeed, the evidence reveals that the memoranda were unprofessionally prepared, incorrect and untrustworthy in a number of material respects. Since none of the specific allegations of wrongdoing levelled against Ancona or Cavari were corroborated by either Peisner or Fullen, Playboy has taken no action against these two long-term employees of the Miami Playboy Club. However, the Playboy investigation in this matter is continuing, and Hubbard has expressed his intention to terminate these individuals if any derogatory evidence is uncovered.

Based upon the record before us, we conclude that the allegations contained in the Crawford memoranda are suspect at best and do not impact negatively upon the qualifications for licensure of Hefner, any individual qualifier or any of the Playboy entities.

8. The Playboy Club of Dallas

Neither in its opening or closing remarks did the Division suggest that the Commission should draw negative inferences about Hugh Hefner or Playboy because of activities that occurred at the Playboy Club of Dallas. In fact, the Division only briefly addresses this matter in its Proposed Finding of Fact and seems to indicate that the matter is not of a disqualifying nature. Nevertheless, a brief review of this area is appropriate.

The Playboy Club of Dallas opened as a franchise in July 1977. From its inception, however, the operation appears to have been plagued by financial and personnel problems, even though it was located in an apparently good market. The franchisee at the time was
Joel McQuade, about whom Playboy, after some period of time, received negative information.

The above information led Derrick Daniels to write a memorandum in August 1977, regarding the Dallas Club. Therein, he remarked:

Dallas, meantime, continues to draw good business but to scare the hell out of me because of the franchisee's continuing misbehavior, questionable associations and shaky financing.

We've read the riot act; we're watching like hawks and we are prepared, if necessary, to put them on legal notice in regard to the franchise.

After Daniels wrote the above-noted memo, Playboy directed its financial and security personnel to monitor the operations of the Dallas Club. The results of such monitoring as well as the continued unprofitability of the Dallas franchise led Playboy to find a new franchisee.

In 1978, the interests of McQuade and a co-owner of the Dallas franchise were purchased by Peter Couvall, who had been the manager of Playboy's Chicago Club. Unfortunately, the Dallas Club continued to experience financial problems and in August 1980, Playboy sought to take the franchise away from Couvall. However, he immediately filed for bankruptcy, both personally and on behalf of the Dallas Playboy Club. The case remained pending until December 1980 whereupon Playboy purchased the assets of the club from Couvall. Playboy then owned and operated the Dallas Club for a short period of time.

In May 1981, the assets of the Dallas Playboy Club were sold by Playboy of Texas, Inc. (a PEI subsidiary) to Diversified Entertainment, Inc. (a non-affiliated company), under a franchise agreement which was entered into on May 6, 1981.

Based upon the foregoing and the record before us, we find that the franchising of the Dallas Playboy Club does not, in any way, negatively impact upon the qualifications of Hugh M. Hefner or Playboy.

9. Francis K. (Frank) Lloyd and the Creation of Playboy (Bahamas) Limited.

An issue has been raised regarding Frank Lloyd's background and his request for a finder's fee from Playboy.

Prior to 1977, Frank Lloyd was involved in efforts to locate a management operator for a proposed government-owned casino to
be constructed in the Ambassador Beach Hotel, Nassau, Bahamas. Victor Lownes and Playboy initially learned of the potential for Playboy's operating a casino in the Bahamas from Lloyd. Lloyd represented to Lownes that he was the official representative of the Bahamian gaming authorities, who were attempting to find a casino operator to come to the Bahamas.

Lownes and Lloyd and their respective attorneys reached an initial understanding as follows: (1) that Lloyd and the government would put up whatever money was necessary to construct and open the casino; and (2) that Lloyd would receive 25 percent of Playboy's management fee.

At the very first meeting among Lownes, Julian Maynard (the solicitor in the Bahamas for Playboy), the Bahamian Solicitor General and the Hotel Corporation of the Bahamas (which is the licensee), Lownes disclosed Playboy's arrangement with Lloyd. However, the Bahamian government informed Lownes and Maynard that they would not countenance the payment of any commission or fee to Lloyd for introduction to the Hotel Corporation or the government of the Bahamas. The government denied the fact that Lloyd was acting as their agent and, in fact, they did not want Lloyd as a potential operator.

Lloyd was once the head of the prestigious Marlborough Art Galleries. In a New York state civil proceeding he had been found to have participated in a fraud involving the Estate of Mark Rothko, an artist. Lloyd was also the subject of criminal proceedings involving the Rothko estate and had been indicted. In fact, Lloyd was a fugitive from justice relative to his New York indictment. He has since, however, surrendered himself to the New York authorities.

Despite Lloyd's problems in New York, Lownes believes that Playboy had a moral obligation to pay Lloyd something in return for his bringing the Bahamian opportunity to Playboy's attention. Thereafter, Playboy and the Bahamian government came to an agreement that Playboy could pay Lloyd a settlement in the form of a one-time payment of $200,000.

Ultimately, however, Playboy's Chief Financial Officer Marvin Huston, became aware of the matter and believed that it was unnecessary to pay Lloyd anything since Lloyd had misrepresented his position to Lownes and was also under indictment in New York. Thus, Huston took the position, which was finally adopted by the company, that it would not pay Lloyd any money. In fact, Playboy has never paid any money to Frank Lloyd.
Frank Lloyd is not and was not a participant in Playboy’s Bahamian casino operation. To a certain extent, Playboy was misled by Lloyd. More important, however, is the fact that Playboy has never paid any money to Lloyd and has not entered into any suspicious relationship with him. Accordingly, after reviewing the testimony and exhibits, we conclude that this particular matter does not impact negatively upon the qualifications of Playboy or its management.

10. Other Issues

During the course of this hearing, the Commission heard testimony and received evidence with regard to other matters. These include, but are not limited to, Attendant Service Corporation, the Playboy Bahamas Limited, and the Playboy Plaza Hotel. The Division has not seriously contended that these other areas are of a disqualifying nature. Nevertheless, we have independently reviewed the testimony and exhibits that deal with the above. We find that no negative inferences may be drawn against Hefner or Playboy. Therefore, in the totality of this hearing, these matters are insignificant and of no force or effect.

For the reasons set forth above, we find that the Pritzker family, the Elsinore entities, Hugh M. Hefner and the Playboy entities have each established by clear and convincing evidence their qualifications for licensure in New Jersey.

IV. SEPARATE OPINION OF COMMISSIONER
MADELINE H. MCWHINNEY

I agree with this Commission’s decision which finds the Elsinore entities and the Pritzker family qualified. Additionally, I concur in all respects with the majority-but-not-controlling decision. However, I wish to note my concern about some of the operating practices of the Hyatt Corporation during its years as a public company. In my opinion, various records of the actions of the Board of Directors were incomplete and inadequately explained the use to which shareholder funds were put.

A prime example of this lack of documentation involves the finder’s fee paid to Melville Marx with respect to the King’s Castle/debenture transaction. The Pritzkers and Hyatt had borrowed money from the Teamsters Central States Southeast and Southwest Areas Pension Fund on previous occasions. In fact, they had outstanding loans from the Pension Fund on their books at the time of the
King's Castle deal. They did not need an introduction to the Pension Fund or to its officials. Moreover, there is no evidence that a finder's fee had been previously granted in connection with any Pension Fund transaction.

Additionally, Robert L. Heymann, an outside Hyatt director, was an officer of the First National Bank of Chicago. He was familiar with the officials of the Pension Fund because of his banking connections. He had offered his good offices, presumably without compensation, in obtaining financing from the Fund.

It is especially important for any organization concerned with casino gambling to document fully its routine operations. It is equally essential that unusual ones such as the fee paid to Mr. Marx also be properly documented. While I do not believe that proper documentation with regard to the Marx matter exists, such as failure to maintain this documentation does not, in my opinion, render the Pritzkers or any Elsinore entity unfit for licensure. Nevertheless, I expect that as long as the Elsinore entities and the Pritzker family are involved in casino gambling in Atlantic City complete records and appropriate documentation of all transactions will be maintained.

V. SEPARATE OPINION OF COMMISSIONER
JOEL R. JACOBSO

I agree with this Commission’s decision which finds the Elsinore entities and the Pritzker family qualified. Additionally, I concur in all respects with the majority but-not-controlling decision. I believe it necessary, however, to offer a comment relating to Hugh M. Hefner and his involvement in the New York State Liquor Authority scandal of the early 1960’s.

Complex and conflicting legal opinions have been offered by several learned members of the Bar in an attempt to instruct this Commission how to identify the fine line between bribery and extortion. The extent of the Hefner violation hinges upon such a distinction.

While a persuasive case can be made that Hefner and Playboy did offer payments to Martin Epstein and L. Judson Morhouse under some degree of duress, I still regard such payments as a grievous error. Throughout his testimony in this proceeding, Hefner conceded this fact.

But, in the more than 20 years which have ensued since the commission of this error, Hefner has revealed a determination, and
manifested a characteristic widely heralded in law enforcement circles as "rehabilitation".

I have reached the conclusion that despite this shadow of the past, Hugh Hefner is a cut or more above the routine "bottom-line" acquisitor. As a New Jersey casino operator in the future, Hefner possesses a greater potential to help this Commission implement the noble social and economic gains envisioned in the statute than others already licensed in New Jersey.

I find particularly commendable the establishment of the Playboy Foundation and its significant contributions in dispensing charity, in identifying citizens' rights under our First Amendment freedoms, in articulating the demographic goals of civil rights, civil liberties and personal human dignity, and in supporting other meritorious social, community and civic causes, always with conviction and with courage.

Furthermore, since the early, formative days of the Playboy empire, there has been no evidence that Hefner has borne any taint of association with organized crime.

I reject the argument that Hefner's culpability in New York over 20 years ago disqualifies him from offering to New Jersey today—as the Casino Control Act directs—"a substantial contribution to the general welfare, health and prosperity of the state and its inhabitants".

Hugh Hefner has the right to be free in New Jersey of the relentless pursuit of Inspector Javert.

Accordingly, I find Hugh M. Hefner and the Playboy entities qualified for licensure in New Jersey.

VI. SEPARATE OPINION OF COMMISSIONER
CARL ZEITZ

I concur in the finding that the Elsinore entities and the Pritzker family meet the statutory criteria for licensing set down in the Casino Control Act. I concur also in all the findings of Commissioners Jacobson, McWhinney, and Thomas concerning all but one issue regarding Playboy Enterprises Incorporated, and notably with their findings as to Playboy's British casino operations and the suitability for licensure of current management including Mr. Daniels, Mr. Huston, Mr. DiPrima, and Ms. Marshall. The exception I take is to the findings on that issue entitled the New York State Liquor Authority Investigation. As to that issue, I disagree in so much as it bears on the suitability and qualification for licensure of Hugh M. Hefner.
I agree with the recitation of facts pertaining to the New York State Liquor Authority matters as set down by the majority-but-not-controlling opinion on this subject. I do not agree with the finding in that opinion that sufficient mitigating and extenuating circumstances now overcome the otherwise adverse conclusion, with which I agree, that Mr. Hefner did participate in the early 1960s in a bribery scheme that under Section 86(g) of the New Jersey Casino Control Act automatically disqualifies him from eligibility to participate in the casino industry in this state.

In that opinion, in the separate opinion of Commissioner Danziger, and in this opinion the Commission has concluded unanimously that Hefner's conduct in the New York State Liquor Authority matter constituted willing participation in bribery, as defined today in the "New Jersey Code of Criminal Justice". See N.J.S.A. 2C:27-2. I believe it was also bribery in New York at the time it occurred, no matter whether Hefner contends that it was a case of extortion in which he was an unwilling victim.

It is sufficient that from the moment an illegal payment was mentioned to him in August 1960 as the means to obtain a liquor license in the State of New York, it became the way Hefner and the company he headed then in its private form, as he heads it now in its public shape, went about seeking that license.

From that moment, when he and his company could and should have said no to the illegal proposition that they pay, that they bribe for a license, Hefner's course was set and never altered from the path of bribery.

Thus, the Commission is confronted in this case, by this issue, with a negative finding of fact that reaches to and attacks the heart of sound, honest government regulation, a point it made emphatically on May 20, 1980 in the opinion entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60, which the Appellate Division of the New Jersey Superior court affirmed on June 24, 1981, Docket No. A-1406-79TI.

In that opinion, in a case which also revolved around events that transpired in connection with corruption in the New York State Liquor Authority in the early 1960s, the Commission declared:

... [B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably, and in all contexts, the corruption of government. Its commission demonstrates on the part of the of-
fender not only a complete disregard for regulatory pro-
cesses, but a willingness to actively corrupt them for private
ends.

There is no need, and no point in attempting to say better what was
said in the Alter opinion. Any further explanation of why bribery is
so specially repugnant to the honest government that deserves and
has the public's confidence would be superfluous. So the question
becomes whether this finding that Hefner participated in bribery, a
crime which it has been noted as an automatically disqualifying of-
fense under the New Jersey Casino Control Act, N.J.S.A. 5:12-86(c)
and (g), can be overcome.

It can be only because amendments to the Act, which took effect
on January 9, 1980, added provisions to N.J.S.A. 5:12-86(c)(4) making
it possible for an applicant to attempt to demonstrate by clear and
convincing evidence that an automatic disqualification should be
waived by the Commission on a showing that the disqualifying offense
occurred more than 10 years before and has been fully redeemed.

I find although this last barrier is not insurmountable it is nearly
so, and can be scaled in the end only by the most forthright testimony
before this Commission. I have concluded that Hugh M. Hefner failed
to scale that barrier, failed to carry the burden that statutorily is his
to bear, and which this Commission must demand and in a notably
similar circumstance, the Alter case, did demand.

That Hefner clings to the fiction that at all times he and his
company were victims of extortion, without the free will to release
themselves from the squalid demands of corrupt officials in the State
of New York, is not acceptable and without justification. We need
not, and we have not in any of the other opinions on this matter,
yielded to the temptation to walk the tightrope between the over-
lapping legal definitions of extortion and bribery, whether in the State
of New York in 1960 or the State of New Jersey then or now.

It is indisputable that the New York officials involved in this
matter, Martin Epstein, the public official, and L. Judson Morhouse,
the political official, were venal, corrupt men. That Ralph Berger, the
agent they injected between themselves and Playboy to carry the
virulent infection of corruption, was equally venal is also beyond
dispute. The unconcealed face of their corruption, at each and every
turn of an affair that lasted from August 1960 to December
1962—when the books and records of the New York Playboy Club
were subpoenaed by the office of the district attorney in New York
County—is the very reason that Hefner and Playboy should have turned their backs on this scheme from its inception.

No one, finding himself, herself or itself in the circumstances in which Hefner, Playboy, and his associates in Playboy in those years (Victor Lownes, Arnold Morton, and Robert Preuss) found themselves, needs to be a victim. They were not faced with a threat against life, as is the case in a kidnapping. Here, there was at most a threat to a property interest that had barely been established, and in reality was not to be established until November 1960, four months after Berger brought them Epstein’s sordid deal.

Hefner and Playboy should have said no the first time they were told it would require illegal payment to obtain a liquor license in New York. Such a payment never is, and never can be involuntary.

Hefner’s real state of mind, not now but then, contemporaneous with the events, is revealed in his testimony before the grand jury. Asked by the grand jury examiner, then Assistant District Attorney Jeremiah McKenna, what persuaded him to go through with the agreement which by June 1961 clearly required a payment of $50,000 to Epstein and a separate $100,000 for Morhouse, Hefner replied:

Because it was obvious that to take the matter through the courts would cost us, even without any special legal harassment, probably a like amount. We wound up spending that much in legal fees alone in taking the case through the courts in Illinois.

Bribery, thus, by June 1961, had become a business judgment, a voluntary decision by Hefner and Playboy that the best way to spend the company’s money was corruptly, not honestly.

All of this being so in my mind as a trier of fact, the remaining question is what mitigating circumstances exist that would make it possible for Hefner to overcome this barrier and meet the burden that is his under the Casino Control Act, to establish clearly and convincingly his present suitability for licensing.

There are many, and they have been recognized in the opinion that now forms the majority-but-not-controlling view of the impact of the New York State Liquor Authority issue on Hefner’s suitability for licensure.

It recognizes that more than 10 years, in fact 20 years have passed since these events. It recognizes that several witnesses came forward in this hearing to testify to Hefner’s good works and good character as they know it. It recognizes that Hefner saw to the establishment
of the Playboy Foundation, an organization that has directed corporate philanthropy to causes and issues that comport with the philosophy espoused by Playboy for a quarter-century in Playboy Magazine.

But none of these mitigating factors, including the attenuation in time of the otherwise disqualifying events, is equal on the scales to the burden Hefner needed to shoulder squarely in this hearing.

His candor, or lack of it, in this hearing before this Commission as to the events in New York in the 1960s is the chain that links them irrevocably to the present. I find Hefner's testimony lacked the candor that was required to establish, clearly and convincingly as the statute mandates, that what happened in New York was an aberration and that no trace of it will linger in any relationship today between himself and the duly authorized casino regulatory authorities in New Jersey. Certain of these key elements of testimony will be cited below. I find them controlling because they go to the heart of Hefner's credibility.

Hefner has said "memory is not morality", and he is right. He has told us that for him, and he believes for most of us, remembrances of things past are controlled by what he terms "islands of recollection". If Hefner's metaphor is an accurate description of the function of his memory in particular, or of human memory in general, then it can be said equally that islands of memory should stand out in stark relief, like sharp cliffs rising from a sea otherwise filled with lesser memories eroded by time and events until they become indistinguishable.

In the end, his testimony here becomes the craggy peak of another of those islands, a peak too high for Hefner to climb.

Asked whether he remembered being granted immunity before the New York County Grand Jury before which he appeared on March 25, 1963, Hefner replied, not once but twice, that he did not. I find this testimony inherently incredible, and especially so because Hefner has also testified that never before and never again has he gone into a grand jury room. The record establishes in the transcript of his grand jury appearance that to receive the immunity from prosecution granted to him, Hefner first had to invoke his Fifth Amendment privilege, a searing experience that could be forgotten by no one.

Similarly Hefner recalls no agreement in August 1960 to pay the money demanded by Epstein, when the record is replete with testimony that in fact at the third meeting with Arnold Morton in August 1960 Berger said the price for a license was $50,000. Morton carried this word back to Hefner and their associates, Lownes and Preuss.
They could have said no, they could have refused. Instead they dispatched Morton to New York on August 15, 1960 in the company of Berger to meet Epstein. If Berger was in fact dealing with and for Epstein, and that was what Morton went to New York to find out, then Playboy was ready and willing to meet Epstein's demands and Hefner knew it. This too can be construed only as incredible testimony. If, as Hefner has testified, he has never since engaged in this kind of corrupt transaction, then the day he did agree to it ought to be etched in his memory, and I cannot believe it is not.

Also, Hefner testified that he looked for an opportunity "to blow the whistle", a strategy recommended only once by any of the Playboy officials, and in that instance by Lownes not Hefner. There is no evidence in the transcripts of the Berger or Morhouse trials, or in the grand jury testimony of any of the witnesses in 1963 or 1965, that Hefner even once attempted to put a halt to this nefarious scheme. To suggest otherwise, as he did to this Commission, is misleading. The Commission cannot afford to be misled.

Hefner testified also that at the first opportunity to come forward before the appropriate New York authorities Playboy did so. The facts are exactly the opposite. Even if the first opportunity is taken to mean the moment when the State Liquor Authority scandal became public knowledge through the newspapers, on November 8, 1962, Hefner's testimony about coming forward at the first opportunity fails and fails miserably.

In fact it was not until December 13, 1962, the day after the New York County District Attorney subpoenaed the books and records of the New York Playboy Club, that Playboy sent an emissary, a newly retained attorney, to visit the District Attorney and begin to arrange cooperation with the law enforcement authorities. It took 21 days more before Hefner or any of the other Playboy officials actually submitted to interviews with the representatives of the District Attorney, and even then only after their attorney had made a deal by which they would be granted transactional immunity from prosecution.

Similar deficiencies scar the testimony of Hefner before this Commission and have been noted in the opinion by Commissioner Danziger.

In sum they add up to a failure by Hefner to exhibit the forthright candor he had to display to overcome the unanimous finding that his conduct 20 years ago constituted willing participation in bribery of public officials. The only conclusion to be drawn is that Hefner
preferred it this way, that he chose to evade the real, truthful answers. In so doing, I find, he has failed to demonstrate before this Commission the present good character it had to see displayed to find him suitable for licensure in 1982, and to take the measure of his transgressions in 1960, 1961 and 1962.

Because of this finding I must conclude that Hefner, in the words of the alter opinion, supra at 48 "has not purged himself of the cavalier and manipulative attitude toward government process evidenced by his earlier conduct . . ." He is disqualified. However, I find that the Playboy entities have otherwise established by clear and convincing evidence their qualifications for licensure in New Jersey.

VII. SEPARATE OPINION OF COMMISSIONER MARTIN B. DANZIGER

I concur with the other Commissioners that the Elsinore entities and the Pritzker family meet the Casino Control Act's statutory criteria for licensure. However, I object to the licensure of Hugh M. Hefner and Playboy Enterprises, Inc. In so doing, I make the following findings.

The overriding policy of the Casino Control Act demands that public trust and confidence in the credibility and integrity of the regulatory process and the casino industry be fostered and maintained. N.J.S.A. 5:12-1(b)(7). To license Hugh M. Hefner and Playboy would result in this Commission licensing an individual and a company that: (1) actively participated in bribing public officials; (2) was found by a British regulatory body not to be a "fit and proper person" to operate gaming facilities within its borders; (3) was required by the Securities and Exchange Commission ("SEC") to revise and adopt improved internal audit controls and to reimburse the corporation in excess of $700,000 after finding that corporate assets were misused and expenses not adequately documented; and (4) knowingly had business dealings with, and ultimately employed, an individual with alleged organized crime ties. I believe, therefore, that licensing Hugh M. Hefner and Playboy would negate the stringent requirements of the Act and would make a mockery of New Jersey's casino regulatory system.

1. The New York State Liquor Authority Investigation

With regard to the New York State Liquor Authority investigation, Hefner and Playboy contend that the only reasonable inference
that may be drawn from the evidence is that extortion, and not bribery, was committed. Therefore, they argue that this Commission should view their actions from the summer of 1960 through 1965 regarding L. Judson Morhouse and Ralph Berger in a favorable light. In fact, they contend that they were victims of extortion and not co-conspirators.

While acknowledging that payments to public officials were made, it is argued that these payments were induced by a threatened interference with then existing property rights, that is, threats to withhold a liquor license to which they believed they were entitled as a matter of law. Playboy also asserts in support of its victimization theory that the New York SLA was so corrupt that no reasonable alternative existed except to make payments that were requested in order to enter the State of New York and protect their property interests. Accordingly, they conclude that the transactions that resulted constituted extortion since they were making payments to protect rights that were already theirs. In my opinion, the facts do not support these arguments.

The majority, but-not-controlling-opinion, recites at length the factual scenario that occurred. I am in general accord with this chronology of events. Pursuant to the provisions of the Casino Control Act, New Jersey law at the time of application for a license must be applied. The majority, but-not-controlling-opinion, concludes, therefore, that Hugh M. Hefner did commit an offense. They refuse to specifically find that under New York law in the early 1960's, which is admittedly different from New Jersey law today, Hefner committed the crime of bribery. Therefore, several commissioners seek to excuse the conduct of Hefner and Playboy by noting extenuating circumstances and the passage of time.

I believe that Hefner committed bribery and I do not excuse this conduct. Below I will briefly review the pertinent facts and the conclusions I have drawn.

During the summer of 1960, prior to any financial investment by Playboy in New York City, but during a period of time when consideration was being given to opening a key club in that city, Arnold Morton, Playboy Executive Vice President, was approached by Ralph Berger, an acquaintance, on several occasions. Berger advised Morton that Martin Epstein, a member of the New York State Liquor Authority wanted $50,000 in order to assure a liquor license for their proposed New York club. This information was shared with Hefner and other corporate officers, and it was agreed that negotiations with
Berger should proceed and a $50,000 payment should be made. A conspiracy to bribe a public official, Martin Epstein, was thus hatched. This decision was not reached after a continuing barrage of requests for the payment of money. Indeed, the decision to "deal" was made early in the SLA matter and without coercion.

In furtherance of the conspiracy, and as evidence of the willingness of Hefner to participate in the bribery scheme, Morton was dispatched to New York. On August 15, 1960, he went with Berger to meet Epstein. This meeting was ostensibly arranged to verify that Berger had a relationship with Epstein so that Playboy could be assured that they would be paying money to a person who would deliver a liquor license to them. This conduct further demonstrates the willingness of Hefner and Playboy to participate in the sordid scheme and to bribe a public official, albeit a corrupt one.

On August 22, 1960, after satisfying themselves that Berger was accurately representing his involvement with Epstein, Playboy proceeded with its first wave of mailings in New York announcing its intention to open a club there and soliciting membership. This was a minimal investment by Playboy in its planned New York enterprise and certainly does not justify a claim that it was being extorted. In fact, the conspiracy continued and Playboy and its officials became more involved in the corrupt scheme.

By October 1960, before the prospective site for a New York club had been purchased, Playboy received a communication from Berger that Epstein, who on September 13, 1960, became chairman of the SLA, had identified an attorney that it should use to process its liquor license application. Subsequently, in November 1960, Playboy complied with Epstein's suggestion and retained this lawyer.

In mid-October 1960, Playboy established a real estate holding company which it intended to use in purchasing the site for the New York club. However, it was not until late December 1960, that Playboy ultimately took title to a site, at a cost of $700,000. It is only reasonable to assume that Hefner and the Playboy officials moved forward with the real estate purchase because they believed that they had guaranteed, through bribery of the then Chairman, favorable treatment on their application for a liquor license. Consistent with this view, this application was not filed until November 1961.

In January 1961, Hefner and another corporate official, Victor Lownes, travelled to New York to meet the Chairman Epstein. They attempted to persuade Epstein that it was permissible to grant them a liquor license which allowed them to restrict entry to persons who
purchased a key or membership in the club. Epstein was unpersuaded, and the meeting terminated without a resolution. Epstein was extremely upset with Hefner and Lownes and referred to them as “boy scouts”. He also wanted nothing further to do with them.

The conspiracy could have ceased at this point. Epstein had terminated discussions. Playboy could easily have attempted to secure their liquor license, as they had in Illinois, through legal means. However, with the approval of Hefner, Morton told Berger “to try to keep the door open, to try to talk to Epstein”. By April 1961, the deal with Epstein was reinstituted. The foregoing actions are not those of a recalcitrant victim, but are instead the purposeful steps of an eager and willing co-conspirator. In my opinion, this belies the argument of Playboy that they were mere victims of a corrupt political system.

In late April 1961, Berger advised Morton that Epstein agreed to reinstate the $50,000 deal, however, Playboy would have to negotiate with L. Judson Morhouse, the Chairman of the Republican party in the State of New York as well. Thereafter, at the behest of Hefner, Morton met with Morhouse in New York. Morhouse demanded $100,000, stock options, and a gift shop concession. After consultation with Hefner, Morton again meets with Morhouse and a deal is struck for $100,000. In June 1961, this agreement was ratified in Chicago after Morhouse met with Hefner and other Playboy officials. The agreement with Morhouse was concluded with reluctance only as to price, not the fact of payment, as evidenced by Playboy officials negotiating only the terms of this corrupt scheme. These actions again suggest that Playboy was not a victim but rather a willing participant in a criminal offense.

By June 1961, payments began to flow to Epstein, and by August 1961, Morhouse also began to receive payments. Both the corrupt public officials and Playboy were satisfied. Playboy officials were justified in feeling secure with the arrangements since Morhouse had assured them that if Epstein did not deliver the license he could have a new chairperson named who would look on favorably on the Playboy application.

While the above events were occurring, the New York County District Attorney’s Office was conducting an unrelated investigation into corruption at the SLA. The District Attorney’s investigation was publicly revealed in November 1962. Thereafter, Governor Nelson Rockefeller issued a public statement urging all liquor licensees to cooperate with the District Attorney’s investigation and promising those so cooperating that there would be no reprisals affecting the
conduct of their businesses. Playboy officials were, however, silent.

On December 12, 1962, the books and records of the Playboy Club of New York, which had just opened, were subpoenaed by a New York grand jury. Morton, however, secretly telephoned Morhouse and notified him that the company's books reflected payments made by Playboy to him. This notification generated a self-serving letter dated December 20, 1962, from Morhouse to Playboy which attempted to establish he was consulted by the company on matters other than the New York Club. The circumstances surrounding the letter were not revealed or explained by Hefner or other corporate officials until confronted with the facts during the 1965 criminal trial of Morhouse. Playboy's lack of cooperation is further evidenced by their unwillingness to voluntarily supply the District Attorney's office with documentation for the first $10,000 payment to Morhouse in the summer of 1961.

By early January 1963, Playboy retained an attorney who worked out an arrangement with representatives of the New York District Attorney's Office. In exchange for their cooperation and testimony, Hugh M. Hefner, Victor Lownes, Arnold Morton, and Robert Preuss were given transactional immunity from prosecution. At first, Hefner was a recalcitrant witness and Morton lied. Ultimately, and with prodding from the District Attorney's office, they became more cooperative witnesses.

In March 1963, Hefner testified before a New York grand jury. In response to a question about his failure to consult an attorney prior to agreeing to pay Epstein and Morhouse, he remarked that the Playboy officials were embarrassed and also noted that the scheme "got stinkier and stinkier as it went along". I agree with Mr. Hefner's characterization and note that attempts to portray the SLA matter in any other light must obviously fail.

Every decision rendered by this Commission has precedential value. It is, therefore, incumbent upon this tribunal to attempt to maintain rational consistency in its rulings. Similar fact patterns should produce the same results. If we do not follow our prior decisions, or validly and cogently distinguish them, then this Commission's effectiveness as a quasi-judicial body will be undermined, public confidence in our performance will be shattered and finally the public may grow suspicious of our actions.

On May 20, 1980, this Commission issued a sophisticated opinion entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee. Docket No. 79-EA-60, affirmed by the
New Jersey Superior Court, Appellate Division, Docket No. A-4106-79T1 (June 24, 1981). The facts in the instant matter are uniquely comparable to those of the Alter case. Indeed, they are even more egregious. For that reason, I believe that the Alter case is dispositive of Hefner's and Playboy's qualifications for licensure.

Alter agreed to pay $10,000 to corruptly dispose of liquor license violations in New York. Hefner and Playboy, on the other hand, agreed to pay $150,000 to secure a liquor license in New York. Each tried to claim extortion as a defense to their bribery. The differences between the cases relate mainly to the magnitude of the offenses. Alter's conduct was serious; Hefner's was outrageous. Alter instigated the bribe of the SLA official while Hefner responded to an invitation. The law, in virtually all jurisdictions, does not distinguish nor adjust culpability on such basis. Alter was held responsible for his corrupt deed involving a lower level Liquor Authority official. Hefner, who bribed the highest level officials in the same Authority, should not be excused on the basis that the officials were corrupt and therefore to blame. Such a result would be inconsistent and utterly without merit.

Hugh M. Hefner is a qualifier, a substantial stockholder in Playboy Enterprises, Inc., and Chairman of its Board of Directors. If permitted to remain in New Jersey's casino industry he could exert tremendous influence over PEA's casino hotel facility. His bribe involved $150,000, of which a substantial portion was paid, and his actions were as a principal, not merely an employee, as in the case of Alter. In comparison, Alter's acts were minimal. No money actually changed hands and the benefits, if he had been successful, would have accrued more to another than to himself. Further, Alter's position, influence, and visibility in the Atlantic City casino industry and the nation may be considered almost inconsequential when compared to that of Hefner.

I believe that the Alter decision establishes a minimum standard against which this Commission should measure applicants. That opinion noted that bribery is a specific disqualifying offense in Section 86(c) of the Act. Moreover, Section 86(g) of the Act holds qualifiers to the same standard as Section 86(c), even if not convicted of any offense, if the person had committed "any act or acts which would constitute any offense" under Section 86(c). Alter case, supra at 13.

There can be little doubt that Hugh M. Hefner and other corporate officials conspired to bribe and did, in fact, bribe public officials
of the State of New York. This Commission remarked in the *Alter* case, *supra* at 46-47, that

...[B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes, but a willingness to actively corrupt them for private ends.

The bribery by Alter and Hefner occurred almost 20 years ago. When the Commission considered this factor and the issue of rehabilitation in its *Alter* opinion, it found the burden of persuasion to be a "very heavy one". *Id.* at 45. Thus, the applicant is obliged to clearly and convincingly produce in the minds of the Commissioners a "firm belief or conviction" that his offense does not justify disqualification under all pertinent circumstances. *Id.* at 45.

The Commission went on to point out in the *Alter* case, *Id.* at 45, that the position applied for is an extremely important factor, particularly if a high management role is sought. If a person can, as Hefner would be able to do if licensed, "...direct and control...the future course of the casino gaming industry in New Jersey...[he] must meet the very highest standards of qualification in terms of character, honesty, integrity and business probity; not just barely, but clearly and convincingly". *Id.* at 45-46.

Management positions require "the most stringent scrutiny". *Alter* case, *supra* at 46. When subjected to such scrutiny, Hugh M. Hefner does not meet the standards set forth in the Act or in prior Commission decisions.

Alter and Hefner may be compared in other respects. To paraphrase the *Alter* opinion, the testimony of each contains a "disturbing pattern". On nearly every occasion where the evidence "indicated a culpable state of mind" they both sought to "place responsibility for...illegal acts upon third parties" in order to exculpate themselves. Yet both men were sophisticated and worldly business persons at the time of the bribes, not "ignorant youth". *Id* at 47.

The *Alter* opinion also focused upon the applicant's evasive testimony in Commission proceedings, and it was found that he uttered deliberately fabricated testimony which reflected negatively on his good character, honesty, and integrity. Alter sought to make excuses for his behavior in the early 1960's. Despite Hefner's comments that
what he did was immoral and wrong, he has also sought to excuse his immorality and wrongdoing by presenting the "facts" in a fashion which would not make him culpable for the SLA events.

Examining Hefner's testimony before this Commission in juxtaposition to the objective facts surrounding the SLA scandal is revealing. On direct examination Hefner initially claims he met Morhouse once in a "social context". He then goes on and attempts to couch his relationship with Morhouse initially as an attorney/client relationship. He says his "original assumption was that he [Morhouse] was going to be able to solve the problem for us by representing us". At another point in his direct testimony, he claims the Morhouse payment "was simply a payment to an attorney to solve the problem". He then goes on to claim that as the Morhouse "thing unfolded he realized it was extortion". These assertions by Hefner before the Commission are patently false. Hefner, Morton, Preuss and Lownes' grand jury testimony in 1963 at the Morhouse and Berger trial records clearly establish that the agreement to pay Morhouse was, from its inception, to assure a liquor license for Playboy as a private membership club and not for attorney fees. Only in 1982 does Hefner dissemble the evidence in this fashion and try to justify his actions in this manner.

Though all the evidence establishes that Hefner and others agreed to pay Epstein $50,000 during the summer of 1960, at no point during his direct testimony does he reveal this fact. Was it inadvertent or deliberate?

At several points in his direct examination Hefner tried to convince the Commission that the Morhouse payments were to secure a license to operate. He attempted to give the impression that Playboy was being denied any license at all. Can anyone familiar with the facts in this case find this testimony credible?

Hefner claimed before us that he and his associates were not breaking or subverting any laws, but that the company had no other way to secure a license except through Morhouse. These claims were made even though no liquor license application had been filed, no reputable attorney consulted, and no litigation attempted at the point he agreed to bribe public officials.

Hefner also testified before this Commission that to the best of his recollection, he contacted the District Attorney and wanted to cooperate before any subpoena was served. We know the facts are otherwise, not only as to the sequence of events, but also the initial lack of cooperation by Hefner and Morton. He also stated he was
not represented by an attorney at the District Attorney's office, when
in fact not only was he represented, but his attorney had arranged
for his immunity if he cooperated fully. If Alter's testimony and
disposition 18 years after the bribe were equivocal, Hefner's were lies.
If Alter dissembled, Hefner was untruthful. If Alter was correctly
denied licensure, Hefner should expect and receive no more.

We should also measure Hefner's testimony before this Com-
misson in contrast to his testimony before the New York grand jury
in 1963. In 1963, he unequivocally stated that he agreed to deal with
Morhouse for "the understanding ... he [Morhouse] was to get us
a liquor license for our Playboy club as advertised". Before this
Commission he argued extortion and sought to have us believe he
was the victim of some nefarious scheme. In 1963 Hefner testified that
"those big shots in Albany didn't want to have anything to do with
little old Hefner out in Chicago". Yet now, in 1982, Hefner testifies
"we had refused the previous overtures from Epstein". The facts
clearly dispute Hefner's contention in his recent testimony that Berger,
Morhouse and Epstein exclusively maintained the initiative behind the
conspiracy. Berger testified in 1963 that "he [Morton] told me to try
to keep the door open, to try to talk to Epstein". Hefner was a willing
participant.

Hefner explained to the grand jury in 1963 that the costs and
attorney fees for pursuing the matter through the courts in Illinois
equalized the illegal payments agreed to in New York. This comment
reveals a motive. Through bribery he was more certain of victory.
Hefner never even tried to legitimate the process by filing an appli-
cation for a liquor license until November 1961, several months after
payments were made to Epstein and Morhouse.

I reject the argument that Hugh M. Hefner is contrite and should
be forgiven for events which took place over 20 years ago. I find that
his behavior and the company's behavior during the intervening years
indicate a lack of moral courage as evidenced by the SEC, New
Orleans, British matters, and his testimony before this body. I am not
persuaded that establishment of the tax exempt Playboy Foundation,
dedicated to good deeds, is sufficient to overcome objectionable and
illegal conduct.

In response to Hefner's claim of extortion, this Commission
should determine that this crime is generally defined as obtaining
property from others, with their consent, induced by wrongful use of
actual or threatened force, violence or fear, or under color of official
right. The fear may be fear of economic loss as well as of physical
harm. Extortion involves payment in return for something to which the payor is already entitled. Bribery, on the other hand, is a voluntary payment made in order to exert undue influence upon the performance of official duty. The essence of bribery is voluntariness; the essence of extortion is duress.

I conclude that the statements, meetings and payments by Hugh M. Hefner and the other Playboy officials were in furtherance of the conspiracy to bribe Martin Epstein—to influence him to act favorably on their license application. There was no fear of economic injury. It is clear that Hefner agreed to pay Martin Epstein $50,000 to secure a liquor license in New York prior to Playboy having made any financial investment in the city or even having filed a formal application. Further, the law was and still is that a liquor license is not a right but a privilege. Though ultimately found by the New York State courts to be without merit, the SLA had consistently denied private club licenses like or similar to that being requested by Playboy.

Options were clearly available to Hefner and the Playboy corporate officials. They could have consulted their attorney, but they did not. They could have sought redress in the New York court system as they had done in Illinois, but they did not. They could have gone to various law enforcement agencies and complained, but they did not. They could have resisted, but they did not. They chose instead to forego these options by willingly participating in an unlawful, sordid affair.

I find the testimony of Hugh M. Hefner before this Commission to be untrue and insincere. His appearance was, quite simply, an attempt to mislead this Commission. Hefner has not proved to me by clear and convincing evidence that he has purged himself of a "cavalier and manipulative attitude" toward government processes. Alter case, supra at 48.

After examining all the facts involving this SLA matter, I find that Hugh M. Hefner and other corporate officers were not extortion victims. They were bribers. They were eager co-conspirators in a scheme to bribe public officials. Two separate grand juries and two separate petit juries identified the scheme as such. Four different appellate courts reviewed these cases and supported these determinations. Only today do some of the Commissioners, in reexamining the facts, judge Hefner under different standards. I respectfully submit that neither the evidence nor the law permits or supports such a finding.

Bribery subverts and mocks the democratic process, turning it
upon itself. Among other things, Hefner has admitted to having participated in a conspiracy to bribe a public official. The evidence does not support in a clear and consistent manner in the licensure of Hugh M. Hefner, a 66 percent stockholder of Playboy Enterprises, Inc. By operation of law, Playboy Enterprises, Inc. may thus not be licensed. N.J.S.A. 5:12-85. The fact that they have made a substantial investment in this state’s economy is not adequate justification.

2. The Events Surrounding the British Magistrates’ Decision Not to Renew the Casino Licenses of the Playboy Club of London and the Clermont Club

It is undisputed that Playboy was found by the British gaming authorities not to be a “fit and proper” person to hold a casino license because the Playboy Club of London was found to have been habitually used for unlawful purposes while the Clermont Club was found to be used for unlawful purposes. Playboy admitted some of the charges prior to the hearing conducted in the United Kingdom. Among their admissions were: (1) knowingly accepting checks drawn on banks where the patron did not have an account; (2) knowingly permitting patrons to continue gaming while owning the casino money by reason of previously dishonored checks; (3) allowing a few patrons to settle debts for less than face value; (4) failing to control and bar a disruptive patron; (5) permitting a director of the holding company to gamble.

Playboy’s basic contention is that it should not be held responsible because the parent, Playboy Enterprises, Inc. and its Chicago officers and directors were totally unaware of what had occurred in Britain; and further, that they were precluded from obtaining this information by an agreement with the British Gaming Board. Playboy does not deny the alleged irregular transactions by its British clubs but argues that Playboy Enterprises, Inc.’s (PEI) United States officials knew nothing of the violations during the period they were being committed.

A corporation can only act through its employees or agents (a foreign subsidiary corporation may be an agent for a domestic parent corporation) and consequently the acts of those employees or agents, within the scope of their employment, constitute acts of the corporation. Likewise, collective knowledge acquired by employees or agents within the scope of their employment is imputed to the corporation even if the information is not acquired by any one employee. Additionally, a corporation is held responsible for failure to act in con-
formance with the law based upon this collective knowledge. A corporation may be found guilty of a criminal offense requiring intent if at least one individual participated, and that person's intent may properly be imputed to the corporation. The actions and intent of a corporate officer, such as Victor Lownes, who acted within the scope of his authority are obviously imputable to the corporation.

While the Chicago and British operations may, on paper, look like separate entities to satisfy the British gaming authorities, for practical purposes they were one big, albeit not well organized, corporation. They were controlled from the top by Hefner and a few trusted employees such as Lownes. Clearly, because of the importance placed on Hefner as a personality and the Playboy name and lifestyle, the company held its enterprises out as one giant corporation. The shareholders of this public corporation had the expectation and right to consider the company as a single entity.

Lownes was an officer and director of the parent corporation, managing director of the British clubs, and one of the trustees of the holding corporation. His duties involved control of all of the Playboy Clubs. The fact that the parent Playboy and the subsidiary had a common director in Lownes does not by itself indicate an agency relationship with an automatic imputation of knowledge. But the fact that Lownes was specifically delegated broad authority by the PEI Board of Directors does indicate the requisite agency relationship and carries with it the concomitant responsibility of imputed knowledge.

Playboy does not content it was unaware of the British law and regulations that it was ultimately found to have violated. The sole issue regarding knowledge is whether Playboy knew, or can be held responsible for knowing, of the specific improprieties.

In analyzing the facts we must keep in mind that Victor Lownes and William Gerhauser, both Playboy executives for over a decade, were responsible for the operations of the British casinos. Lownes, in particular, had been a friend and business associate of Playboy Chairman Hefner for over 20 years. It is reasonable to assume that the power and influence of Lownes were derived not only from his personality, but equally or more so from his relationship with the 66 percent stockholder and founder of the company, Hugh M. Hefner. This unique relationship can be seen in the remuneration Lownes received (over $500,000 annually) and the value of the stock option he exercised on the day of his termination (calculated to have been worth over one million dollars).

I cannot accept the reasoning that Playboy Enterprises, Inc. and
its officers and directors were not aware and had no responsibility to be aware of how the British clubs were operated. First, Lownes was a member of the Board of Directors of Playboy Enterprises, Inc., attended Board meetings and regularly reported on the clubs’ activities.

Second, Michael Hogan, Secretary to the Gaming Board for Great Britain, clearly and unequivocally point out that although the British gaming authorities licensed Playboy under an agreement whereby the clubs would be managed and operated by persons resident in England, the parent was not prohibited from being knowledgeable about their operations, or from assuring that the clubs were operated with integrity and in full conformance with the British gaming laws. In fact, the parent had the affirmative obligation to its shareholders and the British regulators to monitor its subsidiary. Playboy should not be permitted to use this trust deed as a crutch to avoid a disagreeable and difficult responsibility. I believe that such self-imposed restrictions existed because of Hefner’s unique relationship with Lownes and the “protected” position he had within the corporate structure.

Third, Arnold Finer, British Counsel for Playboy and one of the trustees under the trust deed, indicated in substance that he reported frequently to PEI’s principal officials including Hefner regarding operations in England. Additionally, Robert Preuss, PEI Vice President until 1976, maintained a close liaison with William Gerhauser who would report monthly on operations in Great Britain.

Fourth, though Derrick Daniels, Marvin Huston and Frank DiPrima joined PEI between 1976 and 1978, they claim it was not until the London police raid in 1981 that they had any indication that the clubs were being operated in violation of the British gaming laws. Even if I accept their testimony as truthful, I cannot excuse the parent for this dereliction of duty. I cannot support a legal principle and licensing standard that permits a corporation or its officers to insulate themselves from responsibility by claiming lack of knowledge under the facts of this case. I submit, as reasonable prudent business persons, responsible for the company’s leading profit center, they should have been informed and should be held responsible as if they were so informed. All they were required to do was ask, look and listen.

There were numerous indications that information was not readily forthcoming from the subsidiary’s officers. The Playboy officials, however, refused to respond to the warning this type of behavior presented. When a corporation president, chief financial officer and
general counsel can each testify that a subsidiary's manager would not readily share information and they did not take firm, immediate and direct action, such conduct cannot be excused. To do so would totally defeat the licensing and regulatory process of the Casino Control Act. We cannot permit so loose a system of corporate responsibility. Were we to adopt such a standard, potentially any company could be licensed in this state—whatever its prior transgressions—provided they were carried out through effective, manipulative insulation.

Fifth, financial, audit and management letter reports were available to the parent company and its officials on a regular basis, at least from 1976, and without question they could have been secured by the parent before that date. These reports, though not dispositive on the issue of corporate knowledge, should have contributed to the corporate concern on the issues under review. Dishonored checks and bad debts had increased in number, profits had multiplied several fold and the character of the business was admittedly going through drastic changes. Corporate concern should flow not only when profits fall, but to a cautious business person, rapid escalation in earnings demands explanation.

Another aspect of the English club operation is disquieting. Financial and other club records reveal the company's willingness to engage in foreign currency violations. This is but another indication of their contumacious disregard for law and strict adherence to regulations.

The proposition this Commission should adopt is that Playboy is deemed to have knowledge of the English regulatory violations since the means were readily available for them to have detected serious infractions and senior officials, operating within their authority, participated in defalcations.

3. Securities and Exchange Commission

The SEC investigation commenced on February 13, 1978. Prior to the SEC inquiry a stockholders lawsuit had been brought raising similar issues. Playboy reacted to the SEC by retaining Coopers and Lybrand to develop specific responses to the inquiry and establishing an independent audit investigation. Pursuant to negotiations with the SEC the audit committee was composed of two independent directors. The Coopers and Lybrand review, completed in October 1978, pointed up the inadequacy of Playboy's accounting procedures and internal controls. The audit committee reported in January 1980 and estab-
lished, among other things, the misuse of corporate funds by Hefner.

Though cash compensation paid to officers and directors was not questioned, other kinds of benefits were identified as having been received without proper authorization, documentation or disclosure. The benefits include use of corporate property for personal use by corporate directors, officers and their non-employee friends. In some instances expenditures were improper.

Can we condone this misuse of corporate assets? Certainly the twenty-five thousand stockholders of Playboy had a right to feel abused by their fiduciaries. Federal securities laws require disclosure of all directors' and officers' remuneration and prohibit use of corporate assets for other than corporate business. Playboy failed to appropriately disclose to their stockholders and the investigating public the inappropriate and/or undocumented corporate payments for the benefit of Hefner and his friends. Hefner's reimbursement to the corporation of over $700,000 is a measure of this abuse. Playboy's payment of plaintiff's lawyers' fees of approximately $70,000, in settlement of the stockholder suit, is additional evidence of indiscretion.

The SEC found in 1980 that although Playboy became a public corporation almost a decade earlier, its internal controls were still in need of improvement. Playboy and its existing audit committee were found to have failed to carefully scrutinize management and its transactions and establish customary accounting and control procedures required for a public company. The SEC recommended specific changes in the ways the corporation handled its financial affairs. Playboy's acceptance of these recommendations is reactive corporate management rather than the preferred proactive variety. The SEC findings are but another example of Playboy's failure to pursue corrective action without the prodding of government. Exposure by the SEC and the stockholders lawsuit should be interpreted by this Commission as evidence of the failure of Hefner and others to control corporate abuse through their own initiative.

The gaming control system in this State establishes two independent checks to assure the integrity of both the regulatory and the regulated. The Division of Gaming Enforcement and the Commission constitute the former; the hotel/casinos the other. Both components of the system have the burden of maintaining the high standards envisioned by the Casino Control Act. An essential foundation block in New Jersey's casino regulatory scheme is voluntary compliance with our laws and regulations by licensees. Can we believe Playboy will meet its responsibilities, given a history that includes misuse of corpor-
ate funds, as revealed through the SEC investigation? I do not believe this company has met its burden of establishing that it meets the ethical standards required by the Act. Further, I do not believe that this company can in its present posture, become a responsible participant in the New Jersey regulatory scheme. This investigation also points up that Hefner’s conduct during the early 1960’s was not an aberration. As late as 1980 his judgment and conduct have been unacceptable. There is no conceivable way to justify his misuse of corporate assets.

4. New Orleans and Miami Clubs

We have heard testimony about Playboy’s relationship in 1975-1976 with Michael Zuppardo in connection with its New Orleans Club. This matter has been documented during these proceedings. Although memoranda from Playboy’s attorney reflected his conversations with various corporate officials advising them of the inappropriateness of their doing business or having any relationship with Zuppardo, the company went forward and employed him as a director of sales and promotions. In Playboy’s eyes, Zuppardo’s alleged organized crime background apparently only justified discontinuing plans to grant him a franchise, not prohibit employment.

Zuppardo allegedly had links with organized crime figures and his financial sources were believed to be conduits through which organized crime moneys were funnelled. Playboy, having evidence of Zuppardo’s organized crime associations, disregarded this unequivocal notice and proceeded to employ him in a most sensitive position—a position that would require licensure in New Jersey. Obviously, his friends and associates were found acceptable by Playboy since he was seen as useful in the role of host and promotional personality.

Playboy should be judged both on the extent to which it has maintained a corruption-free reputation, and the extent to which it has actively safeguarded its integrity by initiating vigorous and meaningful prevention programs. Playboy has failed on both scores and, rather exhibited a willingness to knowingly compromise all ethical considerations for potential profits.

The issues raised by the Miami Playboy Club are documented fully in the opinion of the other Commissioners and need not be repeated. They are important not because of the accuracy of the two memoranda (from Playboy’s security director at the time) questioning particular employees’ alleged associations with organized crime figures, but because these allegations remained unanswered until this
proceeding some 10 years later. I believe that the disregard of an allegation of that type suggests this company is hardly likely to adhere to this State's strict standards of integrity.

5. Conclusion

In considering the suitability of Playboy for a casino license, we must assess the impact on the public confidence in this State's regulatory process and on the integrity of gaming in New Jersey. We must ask at what point, if at all, does Playboy's illegal and embarrassing behavior become unacceptable conduct. Should one, two, three or four instances nullify years of acceptable business operation, or should years of acceptable business operations nullify four instances of illegality and impropriety? Can any other company with a similar background be allowed into New Jersey?

The good character requirement contained in the Casino Control Act has been interpreted as an important indicator of future wrongdoing. A finding of a qualifier's good character is an important element in shaping a measure of the public's perception of the integrity and honesty of both the industry and the Commission. Finding Hefner qualified and licensing Playboy risks his future indiscretion. I doubt Hefner would now knowingly violate the laws and regulations of this State in the same manner and under the same circumstances as he has done elsewhere in the past. Nonetheless, I have reservations about his ability to exercise the judgment and fortitude to avoid transgressing the law if confronted with a challenging problem in the future. Hefner exhibited poor judgment in dealing with the SLA affair, Lowes' accountability and the British gaming scheme, corporate assets and corporate security. Based upon his conduct up until very recently, he did not respond in an acceptable manner when confronted with a judgmental business issue. Hefner's behavior indicates he fails to recognize the consequences of his actions and may as a result violate his obligations as a licensee. Based upon this finding I would hold that Hugh M. Hefner does not have the requisite character to justify licensure.

Unfortunately, and not as a consequence of some unique or peculiar standards extant only in New Jersey, Playboy's ethics are unacceptable. This company's unethical conduct required New York law enforcement authorities, the Securities and Exchange Commission and the British Gaming Board to insert themselves into corporate affairs. We should not excuse corporate behavior previously found unacceptable by other knowledgeable, sophisticated and prestigious
public officials. We should not permit Hugh M. Hefner's beguiling, evasive testimony to mitigate or confuse the facts. The criminal law was still violated in New York, the British gaming laws and regulations were still violated and subverted; Federal laws and rules pertaining to corporate accountability and governance were still abused by this applicant. We must not permit our standards to be so different from those of other jurisdictions. Even if we choose not to elevate our standards above other jurisdictions, we cannot in good conscience lower them.

Ethics deal with what is good or bad, right or wrong, and the principles of what constitutes a moral duty or an obligation. Ethics in business must encompass all spheres of the company's activities, its public relations, corporate behavior abroad, and compliance with regulatory processes. Often only a thin line separates an ethical from an unethical act. Similarly, there is often a thin, albeit real, separation between the unethical tactic and the actual violation of law. This Commission should refuse to condone corporate practices entered into solely to maximize profits when the means employed involved the subversion of a government, its laws and/or its regulations.

As indicated by the evidence in this case, Playboy has, in my opinion, violated the principle of good ethics and integrity. Playboy reasons they were justified in some of their behavior because various government regulations and laws encountered during their years of business operations were unnecessary, unreasonable or counter-productive. However, did they seek to change these laws and regulations in an appropriate and acceptable fashion? I contend they did not. Nor did they approach resolution of their problems and differences with the high ethical standards required of this State's gaming companies.

Playboy's decisions to testify under immunity for the government after having bribed public officials; to assume control over its British gaming clubs and comply with the county's gaming regulations, after the company was under scrutiny by the authorities for gaming law violations; to repay misappropriated corporate assets, after a stockholders' lawsuit and inquiry by the SEC, were only marginally acceptable responses having occurred only after government intervention. I find these actions and motives violative of the very essence of concepts of ethical responsibility and integrity.

I submit that this Commission should not contemplate too lenient a set of penalties for such corporate offenses or misconduct. Administrative agency sanctions such as warnings, consent agreements and/or
promises by a principal to deport oneself differently in the future, are of limited, if any, value in this particular case. The facts herein warrant a denial of licensure. Any lesser sanction will justify the belief of future applicants that denial of corporate licensure by New Jersey is a myth so long as corrective corporate action follows government discovery of an indiscretion or criminal act.

Licensing Playboy would be tantamount to encouraging corporate leaders to believe this Commission has ruled that time will cure even the most reprehensible conduct. Licensing Playboy, with its history, would signal the abandonment of virtually all licensing criteria requiring ethical restraint. If the unethical practices and illegal acts of corporations are not checked, the future of a crime-free casino industry in Atlantic City would be in jeopardy. At stake would be the success of gaming in this State and our credibility in the eyes of the public.

Playboy should not be denied a gaming license in this State because this Commission, the Division of Gaming Enforcement, the Attorney General or the citizens of New Jersey are unreasonable, unfair or insensitive to the business community. Rather, Playboy should be denied a gaming license in this State because it abused the public trust and failed objectively to demonstrate good corporate citizenship. The applicant failed the test that each of us is required to pass in the conduct of our affairs. This applicant has not met its burden to establish by clear and convincing evidence its qualifications to hold a casino license.

For the reasons set forth above, I join with Commissioner Carl Zeitz in finding that Hugh M. Hefner is unqualified for licensure in New Jersey. Pursuant to Section 85 of the Casino Control Act I must and I do find Playboy Enterprises, Inc., and Playboy Elsinore Associates unqualified as well.

VIII. CONCLUSION

For the reasons expressed in this Opinion, we find that the Pritzker family and the Elsinore entities have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 84 and 89 of the New Jersey Casino Control Act. [Signed by Commissioners Thomas, Danziger, Jacobson, McWhinney and Zeitz.]

For the reasons expressed in our Opinions, we find that Hugh M. Hefner and the Playboy entities have established by clear and
convincing evidence their good character, honesty and integrity to participate in casino operation as required by Sections 84 and 89 of the New Jersey Casino Control Act. [Signed by Commissioners Thomas, Jacobson and McWhinney.]

For the reasons expressed in this Opinion, we find that the Playboy entities have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 84 and 89 of the New Jersey Casino Control Act. [Signed by Commissioners Thomas, Jacobson and McWhinney.]

For the reasons expressed in this Opinion, we find that Hugh M. Hefner has established by clear and convincing evidence his good character, honesty and integrity to participate in casino operations as required by Section 89 of the New Jersey Casino Control Act. [Signed by Commissioners Thomas, Jacobson and McWhinney.]

For the reasons set forth in our Opinion, we find that all of the qualifiers other than Hugh M. Hefner have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required under Section 89 of the New Jersey Casino Control Act. [Signed by Commissioners Thomas, Danziger, Jacobson, McWhinney and Zeitz.]

For the reasons set forth in our separate Opinions, we find that Hugh M. Hefner and the Playboy entities have failed to establish by clear and convincing evidence their present qualifications for licensure in New Jersey. [Signed by Commissioners Danziger and Zeitz.]

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.