

Interview with the Honorable Philip M. Pro (Ret.)

By Jeff Rodefer



After nearly four years, on April 25, 2019, Judge Pro concluded his last hearing as a Member of the Nevada Gaming Commission. Known for his thunderous voice and stately demeanor, Judge Pro's legal career has been filled with remarkable accomplishments that are so numerous I could not begin to fairly cover all his achievements in this article. Here, is a quick glimpse of a truly outstanding career.

In 1972, following his graduation from law school—when he was still known as just Phil—he began clerking for the Honorable William P. Compton of the Eighth Judicial District Court in Clark County. From 1973-1975, he served as a Deputy Public Defender in Clark County. Then, in 1975, he moved on to become the Assistant United States Attorney in Las Vegas. In 1977, he relocated to Reno and tried his hand at private practice with two partners, founding the law firm of Semenza, Murphy and Pro. In 1979, he joined the Nevada Attorney General's Office, Gaming Division in Carson City providing legal representation to the Nevada Gaming Control Board and Nevada Gaming Commission then chaired by Harry Reid. In 1980, he briefly rejoined the Office of the United States Attorney in Reno pending his return to Las Vegas in October to commence service as Magistrate Judge for the United States District Court for the District of Nevada. In 1987, President Ronald Reagan nominated him to be a United States District Court Judge for Nevada where he served as Chief Judge from 2002 to 2007. Thereafter, assuming Senior Status in 2012 and retiring from the Court in 2015.

Judge Pro continues his post-judicial career with JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.), the largest provider of ADR services in the country, where he serves as an arbitrator and mediator in a wide range of cases. In 2015, Governor Brian Sandoval called to offer him a position on the Nevada Gaming Commission saying this would bring his gaming career full circle from his time as a Deputy Attorney General over 36 years before.

During his distinguished career, Judge Pro has traveled to over 20 countries to promote the rule of law through the U.S. State Department, the Justice Department, and non-governmental organization or NGO educational programs on such subjects as judicial independence, and judicial administration and case management. He was a member of the Founding Advisory Board for the UNLV William S. Boyd School of Law from 1997-1999 and has remained active with Boyd Law School ever since. Since 2006, Judge Pro has served as a Board Member for the Saltman Center for Conflict Resolution at the Boyd School of Law. He also has co-authored *Measured Progress, the Evolution and Administration of the Federal Magistrate Judges System* for The American University Law Review in 1995, and authored *Misunderstanding Judging* for the Nevada Law Journal in 1997, and *United States Magistrate Judges: Present, But Unaccounted For*, Nevada Law Journal, Vol. 16, 2016.

His leadership, temperament, logical approach to issues, and global perspective as a jurist were a tremendous asset to the Nevada Gaming Commission. Successful lawyers will tell you that they copy—probably, more accurate to say they “steal”—characteristics from more experienced well-respected predecessors, including writing style, the ability to identify issues and apply the law in a well-reasoned manner, and public speaking acumen or proficiency at advocacy. Judge Pro is certainly someone I would encourage any lawyer, at any stage of his or her career, from which to watch and learn.

As his former law clerk and current Nevada Gaming Commission Member, Rosa Solis-Rainey stated, “Judge Pro is a

terrific role model not only for lawyers, but for all human beings. He was lucky to be born with the booming voice and an incredible mind, but his accomplishments are the result of hard work and perseverance. In the nearly 20 years that I have known Judge Pro, I have never seen him give less than 150% to any role he has been in. His work ethic, sense of justice, integrity, compassion, and the desire to give back are attributes that all of us can, and should, try to emulate. I have seen him inspire not only his law clerks, law students, and lawyers appearing before him, but also the school children of various ages that he hosted in his courtroom or interacted with through the We the People program. We are all better for having worked with him.”

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Q: You served as a Deputy Attorney General in 1979-80, during the heyday of organized crime. What was the most important tool in eradicating mob influence in the gaming industry?

A: A perfect storm of elements came together to weaken and eventually remove the influence of organized crime in the Nevada gaming industry. Spurred by active media attention and public sentiment, federal and state leaders began to focus earnestly on the problem. Coordinated efforts by federal and state law enforcement agencies contributed significantly leading to successful prosecutions of organized criminal organizations throughout the country. Additionally, the economic tide shifted, or should I say, matured. Major corporations came to realize how profitable casino gaming was becoming and entered the market

with resources that the mob simply could not match. The process took many years, and in time demonstrated why Nevada is viewed as setting the “Gold Standard” in gaming regulation.

Q: During your time in the Nevada Attorney General’s Office, our former U.S. Senator and Governor Richard Bryan was the Attorney General and the other attorneys in the Gaming Division were Ray Pike, Bill Hammer, Patty Becker, and Walter Lloyd. The Board was comprised of Chairman Roger Trounday, and Board Members Jack Stratton, Glen Mauldin, and Richard Bunker, who succeeded Trounday as Board Chairman. The Commission at times during your service included Chairman Harry Reid, Claire Haycock, Walter Cox, Jack Walsh, George Swarts, Stuart Engs, and Richard McDougal. Is there a moment or story that stands out to you during this period of time?

A: There are many, but I think the most prominent were the disciplinary proceedings against hidden ownership interests in the Tropicana, Stardust, and Aladdin that resulted in revocations of gaming licenses and record fines. The Aladdin Hotel Corporation and its principals were convicted of racketeering in Detroit, which led to disciplinary proceedings before the Board and Commission to temporarily close the Aladdin Casino until a Supervisor approved by the Board and Commission was installed. Significant litigation and a legislative enactment ultimately were necessary to achieve this.

Q: In the intervening 36 years since your time in the Nevada Attorney General’s Office and your appointment to the Nevada Gaming Commission by Governor Sandoval in 2015, what was the biggest change or surprise you encountered?

A: Of course, during my 35 years on the federal bench, I frequently presided over cases relating to the gaming industry and those in it. However, it was not until I joined

the Commission that I fully appreciated how greatly the gaming industry had grown throughout the United States and much of the world. The national and multi-national corporations engaged in gaming today are far more sophisticated than in the 1970s. The proliferation of sports and interactive electronic gaming, and the attendant intellectual property developments were also a real eye opener.



Q: What was appealing about being offered a position on the Commission and did you have any reservations about accepting the appointment?

A: It was an unexpected honor. I had retired from the bench only nine months before and was building my arbitration practice at JAMS and teaching a Trial Advocacy class at Boyd Law School. Governor Sandoval is a good friend and former colleague on our court, and I respect him tremendously. When he asked me to join the Commission, saying “yes” was easy. Besides, with few exceptions, my entire professional life has been centered on public service and joining the Commission offered another

opportunity to continue to provide a meaningful public service.

Q: What was the most enjoyable part of your time on the Commission?

A: The chance to work with so many outstanding Members of the Commission and Board, and the wonderful and hardworking agents and staff of the Board. Dr. Tony Alamo is an excellent Chairman of the Commission. I don't think most people realize how hard he works to cope with all of the issues that arise.

Q: What was the biggest challenge you encountered as a Commissioner?

A: Probably appreciating fully how much the dynamic demographic change in the age and interests of those who visit Nevada has affected the industry, as well as the worldwide nature of some of Nevada's licensees.

stance per Regulation 5.011(8) that there should be no association between the gaming industry and the regulated marijuana industry. This position was further underscored by the Trump Administration's decision under former U.S. Attorney General Jeff Sessions to withdraw the Obama-era policy that restricted federal prosecution to those who engaged in illegal activities. As a former federal judge, do you have any advice on how to resolve this stalemate?

A: Obviously, I hold personal views on these and many subjects, but I would be hesitant to offer advice. Thirty-five years as a federal judge and my experiences as a gaming regulator has taught me that it is best to try to faithfully follow both the federal and state laws, and to try to reconcile them as fairly and sensibly as possible where they conflict. When making judicial or regulatory decisions, I have always resisted the temptation to rewrite

nightclubs, and other world class amenities. Likewise, gaming product offerings and related technology have also introduced innovation including interactive gaming, remote race and sports wagering through apps, skill-based games, and esports to meet the growing demand of consumers. How has the role of the regulator evolved and how can our regulatory structure keep pace?

A: There is almost always a "cultural lag" in dealing with such matters. It is somewhat like the invention of the automobile before we had roads on which to drive them or laws governing their manufacture and operation. Developments in the gaming industry worldwide have been, and I expect will continue to be, dynamic and fast-paced. It is inevitable that those enforcing and regulating the industry will need to grow and adapt with new developments. Perhaps with one exception, I doubt that will ever change. People are basically the same as they have always been. The vast majority are honest, hardworking, and well-motivated. Those few who are not – the lowest common denominator so to speak – will always pose the greatest challenge for those who hold the public trust of regulating the gaming industry.

Q: Stare decisis does not apply to the decisions of the Board or Commission since each application and contested matter stands on its own merits. How important is it, however, for the Board and Commission to exercise consistency in their rulings—whether that is in the application or interpretation of a statute or regulation, or simply analyzing the factual criteria of a location seeking a restricted gaming license to determine that gaming is, in fact, incidental to the primary business, or granting waivers from certain regulatory requirements to encourage further growth and investment in gaming?

A: As I suggested earlier, consistency in interpreting the law



Q: As of the date of this interview, Nevada and 10 of its sister states, including Washington D.C., have legalized both medical and recreational marijuana and another 22 states have authorized medical marijuana. Since marijuana continues to be a Category I drug under the federal Controlled Substances Act, codified at 21 U.S.C. 801, et seq., that is punishable as a felony, Nevada has taken a policy

laws passed by Congress or the Nevada Legislature to fit my vision of the way things should be. That is the process we followed with regard to the intersection of gaming and marijuana, and the answer was clear.

Q: You have seen the gaming industry constantly evolving from a business model that was gaming centric focused on the casino floor to now entertainment, retail,

and regulations is vitally important. Those subject to our gaming laws and regulations are entitled to know as predictably as possible how the gaming laws and regulations will be applied by the regulators. It is essential to their ability to shape and grow their businesses coherently. It also is essential to protecting the public and ensuring their confidence and trust. In my view, it is an application of the rule of law which I tried to apply as a judge and as a Commissioner and is fundamental to our system of government and our system of justice.

Q: What advice would you give to a gaming lawyer appearing before the Commission?

A: Prepare your client and stress the importance of being forthright in responding to questions from Commissioners, Board Members, and Board Agents.



Q: How has the role of the gaming lawyer evolved since Bob Faiss first created the practice area?

A: I'm not sure the "role" has changed. Bob Faiss was a remarkably talented lawyer. So are many others practicing today. Lawyers who adhere to the highest standards of the legal profession do just fine in a gaming practice or in any other area. From time to time, we have seen what happens to those who "lose their way."

Q: Where do you see gaming regulation heading in the next few years, especially since new sports

wagering jurisdictions are emerging in the wake of the United States Supreme Court's ruling in Murphy v. National Collegiate Athletic Ass'n, 584 U.S. __, 138 S.Ct. 1461 (2018)? Can Nevada still be the "Gold Standard" for gaming regulation?

A: That is difficult to predict. I see no reason why Nevada will not continue to be viewed as setting the "Gold Standard" in gaming regulation. Nevada has always led by example. We are responsible for regulating the gaming industry within the scope of our jurisdiction in Nevada. We have no authority to set standards anywhere else. But if we continue to regulate fairly and effectively within Nevada, our example will continue to have a powerful influence elsewhere.

Q: While on the federal bench you handled some of the most significant cases in our state's history, including the MGM fire, Tailhook Convention, Nuclear Test Site claims, as well as a wide range of issues from securities, antitrust, intellectual property, banking and finance, labor, and sexual harassment matters. In light of the #MeToo Movement, the Commission handed down a historic \$20 million fine against Wynn Resorts for its failures to properly respond to allegations and claims against its former CEO and Chairman. Now, the Massachusetts Gaming Commission has followed with a \$35 million fine. What is the proper response to ensuring everyone has a safe work environment? In your experience did the Commission have the appropriate tools to address the case against Wynn Resorts? If not, what other regulatory changes do you feel might be needed?

A: That question covers a lot of ground and addresses issues far beyond regulation of the gaming industry. Holding the trust of the public as a federal judge and Commissioner has been a true privilege and humbling. I have always tried to explain clearly my reasoning in making decisions as a

judge or Commissioner at the time I make them. Thus, I avoid making post-decision explanations or comments. I cannot think of any particular changes in the law or regulatory structure that need to be made to protect the public or the work environment in the gaming industry. Of course, as circumstances change, the new laws and regulations will necessarily follow. What we need now, and what we have always needed, is for those charged with implementing, enforcing, and following the laws to do so.

Q: What advice would you give to your successor on the Commission or what characteristics would a successful Commissioner need to possess?

A: I wouldn't presume to give another Commissioner advice. They hold that position for a good reason and don't need my help.

Q: UNLV has established an LL.M. in Gaming Law and Regulation at the Boyd School of Law, created the International Center for Gaming Regulation, and has its long running International Gaming Institute, developed a Gaming Law Advisory Board, as well as a hosted a Gaming Law Speaker Series, the Robert D. Faiss Lecture on Gaming Law and Policy, and the Frank A. Schreck Gaming Law Moot Court Competition. Given your roles with the Boyd School of Law, where would you like to see the education of gaming law evolve to next or what else should be done to keep Nevada "intellectually smart," as Dr. Bo Bernhard likes to say, in the area of gaming and gaming regulation?

A: As you know, I actively supported the establishment of a law school in Nevada for 40 years and am so thankful for how well Boyd Law School has developed and contributed to the state. The gaming law programs at Boyd are the best in the nation. They enjoy tremendous support in the educational community and within the gaming industry and have outstanding

leadership. The only suggestion I would offer would be that I offer to young lawyers: Others may try to put limits on you, but don't put limits on yourself.

Q: As a regulator did you find the resources at UNLV or even those provided through publications and conferences by the Gaming Law Section helpful to you? If so, why?



A: These resources are very helpful, and especially so for anyone charged with helping regulate the gaming industry. The gaming bar is relatively small and specialized. However, given the size and complexity of the companies involved in gaming today, members of the gaming bar interact constantly with colleagues in a wide variety of practice areas including intellectual property, finance, real property, securities, and on and on. All benefit from the resources provided by Boyd Law School and the Gaming Law Section.

Q: As you reflect on your career as a regulator and jurist, what were some of the moments that shaped your career? Why were these events so instrumental to you?

A: When I came to Nevada in 1972 to clerk for Judge Compton, I planned to stay for one year. It turned out to be a "long year,"—47 of them so far. Other than deciding to remain in Nevada and meeting my wife, Dori, the moments that have shaped my career are too numerous to chronicle here. I have no intention of fully retiring and hope those moments continue to occur from time to time. Whatever the future holds, I could not be more thankful and happier for the career I have enjoyed thus far.



Following his retirement after nearly 35 years of service on the United States District Court for the District of Nevada, Judge

Philip M. Pro was appointed to the Nevada Gaming Commission by Governor Brian Sandoval in December 2015. Coming to Nevada immediately after graduation from law school in 1972, Pro has dedicated much of his legal career to public service. In 1980, he was appointed United States Magistrate Judge for the District of Nevada, where he served until his appointment as a United States District Judge by President Ronald Reagan in 1987. Pro previously served as a Deputy Public Defender, and Assistant United States Attorney in Las Vegas, and as a Deputy Attorney General for the Nevada Gaming Division, and in private law practice in Reno.

During his tenure on the federal bench, Judge Pro was actively

involved in national and circuit court governance and served as Chief Judge for the District of Nevada from 2002 to 2007. He was appointed by Chief Justice Rehnquist as Chair of the Magistrate Judges Committee of the United States Judicial Conference from 1993 to 1998, and by Chief Justice Roberts to the Board of the Federal Judicial Center from 2007 to 2011. He also is a founding member of the Howard D. McKibben Nevada American Inns of Court, serving as its President from 1988 to 1990.

Since 1998, Judge Pro has participated in over three dozen international "Rule of Law" programs with judiciaries in over 20 countries in Central and Eastern Europe, Central Asia, the Middle East, Africa, and South America on behalf of the United States Departments of State, Justice, and Commerce, the United Nations, the Council of Europe, and the American Bar Association. Throughout his career, Judge Pro also has been actively involved locally and nationally in law related education programs including We the People... the Citizen and Constitution, and the State Bar of Nevada's Law Related Education Consortium.

Judge Pro received his law degree from Golden Gate University School of Law in 1972, and his Master of Laws in Judicial Studies from Duke University School of Law in 2014. He served as a member of the Advisory Board for the founding of the William S. Boyd School of Law at UNLV and serves also as a member of the Advisory Board of Boyd's Saltman Center for Conflict Resolution. Pro currently provides arbitration, mediation and special master services through JAMS, the largest provider of ADR services in the United States and is a member of the adjunct faculty at William S. Boyd Law School.