

COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

May 18, 1998

5:30 PM

Chairman Pariseau called the meeting to order.

The Clerk called the roll.

Present: Aldermen Pariseau, Rivard, Thibault, Girard

Absent: Alderman O'Neil

Messrs: E. King, D. Mueller, D. Robinson, M. Normand, D. Kennedy,
F. Swerko, Y. Marquis

Chairman Pariseau addressed Item 3 of the agenda:

Denial of an amusement device license to Yvette's Crafts

Atty. Kennedy stated I represent Yvette Marquis of Marquis Crafts. Marquis Crafts in July of 1997 received an amusement device license by the City of Manchester for video amusement purposes. She ran it. She operated it out of that area during July, during August and in the beginning of September when the police raided her place. She subsequently opened up in October/November and continued to operate these amusement devices to which she has a valid license. Through the course of all of these matters, as I am sure you folks are all aware, a number of charges were brought forward against many different vendors. I think I have a copy of a letter from Dale Robinson or somebody to the City department which lists a number of vendors who they did not want to issue licenses for. One of which is Marquis Crafts and Yvette Marquis who is my client. Now in reviewing that list, I can't tell you one way or another if everybody on that list had an exchange that subsequently resulted in convictions. What I can tell you though is that four charges were brought against Marquis Crafts. Three of these charges were null prossed by the prosecution, no reason given nor do they have to but they never went forward.

Alderman Girard asked what does null prossed mean.

Atty. Kennedy answered good question. It means no prosecution, that the matter is being dropped. It is not a dismissal, it is not a judgment, it is just being dropped. We are deciding that we don't want to proceed any further on this matter. In fact, I think we were willing to discount something admitted in the exhibit so technically the judge made it attached and then the prosecution decided to drop their case. So three of those cases were dropped. Subsequent to that, my client was tried on a case and the judge clearly had attached in that case and that was the first witness to testify and the court called a mistrial. After the court called a mistrial, they dismissed the complaint against Marquis Crafts. Now after these items took place, there are no charges pending against Marquis Crafts and Yvette Marquis, nor at this time do I anticipate any charges being brought forward. In the meantime, Marquis Crafts went down to apply for a license for a video machine that she had to operate, basically a renewal. Not until probably the 28th or 29th of April, she was told you aren't going to get your license, you are going to have to come to meet with you folks and ask you to issue a license because the City Clerk's Office said no. Now a couple of our points is that one that I don't think we need to have a mini trial here. We don't have to have witnesses testify and you have cross-examination in a court where a true test of a case lies and that hasn't happened, however, I don't think you need to get involved in that. If you want to that is fine, but you are going to have cross-examination and it could go on for a long time. People aren't being subpoenaed, I don't know if it will or not. There are a lot of inherent problems in regards to that but it is your quarter and you can do what you want. I guess our points are as follows, my client has done nothing wrong. She is presumed innocent. She has taken her luck with the court system and has been exonerated. She has no criminal charges pending against her and as far as anybody can testify here she is a law abiding citizen. She has a license to run these amusement devices. Now the Police Department makes no point of the fact that they don't want these amusement devices here. In fact, way back when we initially enacted, not initially but subsequently enacted this matter the Police Department got up and said we don't want them here and they are still complaining that they don't want them here and they have turned down money from people who are associated with them so the Police Department has their duties, their interests, their position, their take in this matter albeit I don't think it is the same as the Aldermen's position because the Aldermen obviously approved the ordinance to allow the licensing for these machines. Like a driver's license, you are entitled to receive one until you break the law and they take it away from you from you provided you pass certain tests and that is in support of your ability to operate as opposed to any fees. Likewise, at this point in time we feel that this person should get her license back. There are other matters going on pending and just as a cross. I suggest to you that one there is also a matter pending in the Hillsborough County Superior Court in regards to the owner of these machines, four of which have been returned to this woman

because there was a charge pending and now that there is not a charge pending, what happens to the other machine will be dealt with by the Superior Court. The Superior Court has already said there is no problem, you can have the machines back on a temporary order. This is one of the things that my client does to help sustain her existence. Her husband is disabled and she receives money and she can receive proceeds on it, and you folks all understand that and you know this is what they are licensed for. So people can play and lose money, lose money forever. I don't want to get involved in the criminal charges, however I will if you want. I mean I can go on for a long time about that but your focus should be, while you are an administrative board, that there are no criminal charges pending, there are no convictions and the City of Manchester has taken no steps with regards to bringing the criminal charges pending requiring forfeiture of anything of my client with regards to not allowing her to operate and they have acknowledged she was operating. They didn't take any steps with regards to filing forfeiture on this case and there was money that has been received that essentially will work itself out I guess, but there was money that was received and they still haven't taken any action on that. At this point in time, I think that the appropriate action is that the presumption of innocence remains, that this is a matter to allow my law abiding licensed client to have her license back.

Alderman Thibault asked can you answer me why it was deemed a mistrial.

Atty. Kennedy answered yes I can. What happened was that in Superior Court rules, parties have to give discovery to the other side. You have to show the other side what you are going to do with regards to evidence. The discovery I received from the prosecution was not every thing that I should have received so when the judge saw this he said he should have had this, I am calling a mistrial. After that happened, jeopardy had passed. You can't call a mistrial unless it is manifest necessity so the court subsequently dismissed the action.

Alderman Thibault asked so there are no criminal charges against her pending now.

Atty. Kennedy answered no.

Alderman Thibault asked, and the machines are licensed.

Atty. Kennedy answered well they were licensed up until the license ran out on May 1 and that is what we are seeking today is we need the license back. We have had two weeks of, I guess you could call it a vacation, but you know we haven't operated the machine for the last two weeks because of this.

Alderman Rivard stated I am confused. What do you mean you haven't operated it for two weeks. Didn't they take the license away in October? They took them away last October. Is that what you are telling me?

Atty. Kennedy replied no they didn't take the license away.

Alderman Rivard asked you operated up until when.

Atty. Kennedy answered April 30.

Alderman Rivard stated you operated through April and when you came to renew your license, they wouldn't renew it.

Ms. Marquis replied right.

Alderman Rivard asked during the pending trial when it was an ongoing court case, you still had your license and you were still able to operate.

Ms. Marquis replied yes I was.

Alderman Rivard asked so you never lost your license to have those machines on your property.

Ms. Marquis answered no.

Alderman Rivard stated the renewing process is what we are talking about. You made an application to renew your license and it has been denied.

Ms. Marquis replied they sent me an application in the mail and I filled out the application. I went in there to see Matt and there I was denied.

Alderman Rivard asked your license to renew was denied. So they never revoked the license that you were issued last May?

Ms. Marquis answered no.

Chairman Pariseau asked did they pull the machines from your place.

Ms. Marquis answered yes they did.

Atty. King stated five machines were raided and confiscated by the Manchester Police Department. Then five new machines went in and they were all operating

on the old license. The four machines that she is talking about that were returned after the Superior Court hearing have been returned because of court orders by Judge Convoy. There is still an issue about whether or not the State is going to file a forfeiture on the machines and the illegal money that was seized by the Manchester Police Department.

Alderman Rivard asked, you licensed the five machines. That was last May.

Atty. Kennedy answered it was actually done in July.

Alderman Rivard stated okay last year. Shortly after there was a raid and they took the machines.

Atty. Kennedy replied in September. The machines were licensed in July, the raid occurred in September and they took the machines.

Alderman Rivard stated I understand that. So those machines were gone and the Solicitor's Office, you are saying that other machines were licensed?

Atty. King replied other machines were brought in. Five more machines were brought in.

Alderman Thibault asked how does that work.

Alderman Rivard stated that is why I am confused. If you had a license for five machines and you took those machines out, so those machines are gone. How do they bring five more in? Do they get another license?

Atty. Kennedy replied the owner brought them in and they operated under the existing license and they knew that.

Chairman Pariseau asked but aren't they identified on the license. Serial numbers?

Ms. Marquis answered they came up to my store and they talked to me. They were allowed to go in the room.

Chairman Pariseau asked who is they.

Ms. Marquis answered an Officer Sancewicz I think. I am not sure of his name.

Alderman Rivard stated I think understand how this worked. Okay you had five machines and it was ascertained that they were illegal payments so they come and get the machines so that is the end of the deal. Obviously you can't operate right. Somehow you were able to get approval I guess to put more machines in. How did that happen? How long of a period between the time they took them and the time you got them back?

Atty. Kennedy replied about a month.

Alderman Rivard asked and was there a reason. Did you go to court and they found you not guilty or...

Atty. Kennedy answered not yet. There was no ruling saying that we couldn't operate our amusement devices, there was no ordinance prohibiting us from operating our amusement devices, the City Clerk was aware that we put them there.

Alderman Rivard stated I am just trying to figure out how that works. Can Matt explain that to us?

Alderman Girard suggested that we allow the City to give its presentation and address Alderman Rivard's question and process.

Chairman Pariseau stated for the City we have Atty. King from the City Solicitor's Office, we have Deputy Chief Dale Robinson, we have Officer Swerko and we have Matt Normand from the City Clerk's office.

Atty. King stated I just want to clarify what Mr. Kennedy brought up about a null prossed. Three charges were filed against a woman by the name of Sharon Lavoie. They were in fact null prossed by the prosecutor. Gambling, all of the gambling cases those cases were null prossed. That doesn't mean that those charges can't be refiled by the State of New Hampshire.

Alderman Girard asked why would you null prossed.

Atty. King answered I had my reasons why and I prefer not to disclose them at this point. I have not disclosed them to any of the defense attorneys and the reason why I haven't disclosed them is because there is still an ongoing investigation and I think that is...

Alderman Girard interjected that is all I need. Thank you.

Alderman Thibault asked how long do you think this will take.

Atty. King answered under the statute I have up to a year to file charges. The Statute of Limitations provides to the State that we file charges up to a year and I would like to first bring in Deputy Chief Robinson to explain why the Police Department even filed charges.

Chairman Pariseau asked will he address that letter that he wrote back in April.

Atty. King answered he will but we have to start off with why the Manchester Police Department even started an investigation about gambling in the City of Manchester.

Deputy Chief Robinson stated as you know, Alderman, the Police Department certainly has been on record against the illegal use of video poker machines. It has been our contention that the video poker machines are in many establishments in the City of Manchester being used illegally. Alderman Pariseau there was a statement made by you in public session down at the Board of Mayor and Aldermen where you said to the Police Department that what we ought to be doing is going out there, finding the illegal use of them, take action but not to bother other people. When we got back from that meeting, a discussion was held with the Chief, with Deputy Stewart and with other investigators and it was determined that we would in fact take you up on your offer and go out and that is what we did. Back in August of last year, we instituted through our special investigative unit an undercover operation which involved Officer Frank Swerko. Frank is dressed the way he is because he is one of our undercover officers. He is on duty this evening. He is engaged in undercover work and we pulled him in here for this so that is why he is not dressed up with a tie. At that time, it was determined that we needed some outside help. We contacted the NH State Police. We were given a female trooper that worked with Francis Swerko and they went out and started visiting a variety of places. My letter of April 29 will list the different establishments that we made it into. You will get testimony this evening that in fact we made a visit to Yvette's Crafts. We will certainly describe the Yvette's Crafts to you. We will describe what transpired in there as far as the Manchester Police Department was concerned is Yvette's Crafts it was not a craft store but was nothing but a mini gambling casino location. In fact you will hear testimony from the officer this evening that not only did he observe pay-offs take place, but that he himself was playing the machines and this is an establishment that had no outside advertising. It had a video camera. It had a lock on the door and you had to get buzzed or let in. It wasn't open to just regular people. You told us, Alderman, to go out and find places that were illegal and that that is what we should be doing. That is

exactly what we did here. We have done that. It is inconceivable to the Manchester Police Department that any establishment that we can come in here and prove have used these machines not for amusement purposes but for monetary gains could receive a license. Right after this took place in July and we ended up doing the arrest, a meeting was held between the Manchester Police Department, the City Clerk's Office and the City Solicitor's Office. It was decided then that we would wait until all of the criminal proceedings were done before we would go after anybody's license through the administrative process. As far as we are concerned and I believe the law backs it, it is irrelevant what happened down in Manchester District Court due to a technicality. I will also tell you that there is an ongoing criminal investigation continuing into that particular establishment and that there certainly is a possibility that further charges will be coming forth in reference to those charges that were null prosed at the City Solicitor's request. Again, because it is an ongoing investigation and because work is being done, it is not something that we are at liberty to get into or discuss at this point in time. It is our contention that illegal activities took place there, that in fact gambling took place where pay-offs were made on those machines. That is what you told us to do, Alderman, to go out and if we found those type of establishments to come back and the Manchester Police Department is looking for the support of this Committee and the Board of Mayor and Aldermen on this illegal activity that is taking place in the City of Manchester.

Atty. King asked are you aware of four separate pay-offs to the undercover officers out of Yvette Marquis Crafts.

Deputy Chief Robinson answered yes I am. I have reviewed the reports and we have moved the reports as this was ongoing.

Atty. King stated and all of the pay-offs were actually marked and placed into evidence at your police station. Isn't that correct?

Deputy Chief Robinson replied that is correct.

Atty. King stated although the cases have either been null prosed or dismissed because of a technicality on discovery issues, is it your contention that illegal gambling did, in fact, occur at Yvette Marquis'.

Deputy Chief Robinson replied there is no question in our mind that illegal gambling took place in Yvette's Crafts at 348 Lincoln Street. The pay-offs were made on the machine and again, Officer Swerko can give you more of an insight as to what took place behind the locked door.

Atty. King asked and is that why it is the position of your department not to grant further license for Yvette Marquis Crafts because gambling had occurred on at least four separate occasions that your officer and the state trooper observed.

Deputy Chief Robinson answered that is absolutely correct and that is reflected in my letter of April 29. All of the business places that we got paid off, where illegal gambling was taking place, we have requested that no licenses be issued to any of these locations whatsoever.

Atty. King asked finally is it the message that you want out in the City of Manchester that it is okay if you commit gambling and the cases get dismissed you will continue to have a license by the City of Manchester. Is that the message that you want sent to the community?

Deputy Chief Robinson answered we certainly don't want to send that message and I think that is why this is so important to us that if, in fact, the Manchester Police Department spends its time and resources and quite frankly puts its officers in jeopardy by doing these undercover operations and that in fact if we get sufficient evidence to come in here and show you that in fact illegal activity was taking place and not to get the backing of the Board of Mayor and Aldermen is just something that is very hard for us to comprehend. Illegal activity took place there. Pay-offs were made there. They broke the law. We will again give you that information today and they don't deserve their license. They should not have their license.

Atty. King asked isn't it correct that an Independent Magistrate of Manchester District Court signed warrants for arrest.

Deputy Chief Robinson answered that is correct. We had warrants signed by an Independent Magistrate that said that we had probable cause to make the arrest, as well as a search warrant signed so that we could go in and confiscate the machines and other paraphernalia and again I would like to stress that there is an ongoing investigation going here and we will see what happens down the road.

Alderman Thibault stated you said that you have a year to investigate and bring charges. That must be just about done if the date was July.

Atty. King replied actually, Alderman, the Statute of Limitations starts running when all of the elements appear so it is the date of the offense on the complaint.

Alderman Thibault asked which is.

Atty. King answered July 25, 28, and 30.

Alderman Thibault stated so this July would be a year so by that time you have to make a decision.

Atty. King replied right.

Atty. Kennedy stated one point I want to say is that whether or not charges can be brought is going to be a legal issue. My understanding is that an exhibit was marked and although no testimony was taken when the trial began and whether or not charges can be brought or not, Evey disagrees and I appreciate that. I know David Morin who represents Sharon Lavoie -- as long as jeopardy has passed, I'm all set. I also know that David Morin has talked to Paul McDonough's office -- the Hillsborough County office -- and no charges were being brought. So the issue with regards to whether or not they are going to bring charges albeit they only have a year, I think that is a dead issue. If I could, I could ask Officer Robinson or Deputy Chief Robinson or some person. I guess basically when you said this was a...

Chairman Pariseau asked can we get through the City's portion and then come back. We will call you to...all right?

Alderman Rivard stated, Mr. Chairman, you can't question him while he is here so we can kind of get a flow. I mean if we keep going back and forth we are going to get...

Chairman Pariseau stated well I think the City would want to present its case and then allow the attorney to...

Atty. Kennedy stated I guess that is one reason for having this and not really using a trial to do this. I mean you should not even be considering these witnesses. This is their point and I would ask them a number of questions, and they would say, hey he was found not guilty. That is what the court system is for. For these folks to come in and say all of the sudden, gee the court system didn't work for us so we are trying to get you to do something. I mean he is not under oath. I am not saying that he is lying, but he is not under oath. He is not a first hand witness. He has just reviewed the reports and he is sitting here telling you things as being fact where he wasn't even in the courtroom. He is trying to tell you that the defendant's conduct was illegal activities and it is illegal activity only if there is a conviction and there was no conviction.

Atty. King replied absolutely not. That is always illegal activity and not everybody is charged. We are ready and prepared to tell this Aldermanic Committee that there was illegal activity that went on at Yvette Marquis Crafts. I think Alderman Girard has a question.

Alderman Girard stated I for one, I am not a lawyer and I am certainly not a judge, but I would like to have the City, Mr. Chairman, have the opportunity and I have no objection to Mr. Kennedy asking questions of any of the people that Ms. King brings forward but I would like to hear what the City has to say. I would like to have an understanding of why things took place and if calling these folks as witnesses to give us background information and to help answer our questions so we have an idea of the picture is what needs to be done then certainly I hope Atty. Kennedy appreciates that we are not here in a vacuum and we are not here just to say you know to rubber stamp the position because the court did something that the Deputy Chief of Police has seen fit to send the City Clerk's Office a letter saying that for various reasons we do not want licenses issued to these establishments. I think that as a Committee we have the obligation to understand why and get the information we need. I don't want to turn this into an adversarial court type of proceeding. None of us are here to do that, but I think you need to understand from an administrative point, Mr. Kennedy, that we really need to have an idea of why the Deputy Chief of Police, supported by these other City officials, have come to this Committee to ask for this action.

Atty. Kennedy asked may I ask questions.

Chairman Pariseau answered one more.

Atty. Kennedy asked right now.

Chairman Pariseau answered one more and then we get back to the City side.

Alderman Girard asked, Mr. Chairman, do you want to let the City...

Chairman Pariseau stated I want the City to make its presentations and then if you (Atty. Kennedy) have questions of the City or the Solicitor's Office, the City Police Department or the City Clerk's Office then write them down as they are going along.

Atty. King stated my next witness is Detective Frank Swerko who works in an undercover capacity for the City of Manchester Police Department and we have already explained his dress. Officer Swerko, can you explain how you got involved in this undercover activity?

Officer Swerko stated I am assigned to the Special Investigations Unit of the Manchester Police Department and basically we investigate any type of organized crime, vice, gambling, drugs, that type of thing. During the spring of last year, I got involved in an investigation on behalf of my superiors in reference to illegal gambling with illegal video poker, well not illegal poker machines, but video poker machines used illegally. During that investigation, during about the last week of July of 1997, it was pointed out to me that I received information that Yvette Marquis Crafts was operating an illegal gambling operation and at that point myself and my partner who was is a state trooper, decided that we were going to try to infiltrate that business and investigate to see if there was, in fact, illegal gambling going on there.

Atty. King asked can you tell us about your first visit on July 25 to Yvette Marquis Crafts.

Officer Swerko answered actually my investigation started a couple of days before that when I actually pulled a copy of the license from the City Clerk's Office and on that license it listed the owner of Yvette Marquis Crafts as Yvette Marquis. I got the address, 348 Lincoln Street, from that license. At that point, it was at night and I decided to go check the location to find out where it was. I drove to 348 Lincoln Street and was unable to locate the business. The main reason I was unable to locate the business was because there was no signage on the Lincoln Street side. There was nothing indicating that there was a craft shop at the location. I then drove to the rear of 348 Lincoln Street and observed a small sign on the stairway, Yvette Marquis Crafts and there was a stairway leading up to the second floor and I assumed that that was where the business was located but at that point I still wasn't sure because, again, there was not a lot of signage, it was dark, I was in the parking lot. It was a short time, a couple of days after that on July 25 at about 3:00 in the afternoon when myself and my partner, Trooper DeAngelo, decided to make a visit to the business. We arrived and parked in the rear of 348 Lincoln Street which if you are familiar with rear the Stepping Out Lounge is right there. This is where I observed a small sign that stated Yvette Marquis Crafts. We both climbed the stairway. It is a wooden stairway to the second floor. My first observation of the business was it wasn't a business at all. There was a steel door at the top and I observed that it had a peep hole in the door, one of those little round peep holes and over the door was actually a camera.

What it was looking at I don't know. It was a surveillance camera and when I went up to open the door, it was locked and this was a regular, this was not a, this was on a Friday afternoon at 3 p.m.

Atty. King asked now is that consistent with craft shops that you have been in, like Michaels or something to that effect.

Officer Swerko answered most of those are opened until later at night. I assumed at the time that the craft shop should be open. The door was locked. My partner, Beth DeAngelo, who is into crafts as a hobby, also felt that this was a little odd that it would be locked so I knocked on the door. About a minute later the door was opened by Yvette and she was later identified as Yvette Marquis. She looked us over kind of funny at first and she said "What do you want?" and she didn't let us in right away and my partner, Beth DeAngelo, stated that she wanted to look at some crafts, is this a craft shop. She said yea sure, come in. She came in and she shut the door behind us and once we were inside we both took in the business and it was basically, it was on the second floor of the building and as you walked into the building, into the actual business, there was a small area with shelving with sparsely that had very few crafts. It had some dried flowers in baskets but the inventory was very sparse and there was hardly anything for a craft shop. As a matter of fact, Trooper DeAngelo later told me that she thought there was no doubt in her mind that this was a front because she had been in many craft shops before and she had never seen a craft shop with no crafts in it or very little crafts. So once in side we got to talking a little bit. There was another female subject there who identified herself as Sharon. We never found out her last name, but her name was Sharon and she basically, my partner told Yvette after Yvette told us that she was the owner that we were interested in crafts and she was looking for centerpieces for a wedding and she basically told us well we don't have anything here, we are just starting out. We don't have a lot of inventory, but maybe if we get some in we will give you a call. It was at that point that I interjected that I thought that Yvette looked familiar to me and I asked her if she had ever owned a clothing store on Spruce Street because that was the information that Yvette used to own a clothing store on Spruce Street and she stated yes. I told Yvette at that point that I had played the video poker machines at the Spruce Street location in the past and Yvette immediately stated to me well we have got machines here and she motioned us to come inside the business and she took us to a room that was just off to the side and showed us where the machines were. At that point, both Trooper DeAngelo and I expressed an interest in playing the machines. Yvette immediately stated look you can play the machines but I am not going to pay any money out to you guys unless you have references and when she said references she stated other places that you have played poker machines. So we told her that we had references and that we did play at other locations. She asked us where

those locations were. We named off Always Tan which is a place we had been investigating which is on Hanover Street. We named a second place, Primetime Entertainment which we were also investigating at the time. At that time, Yvette told us that she would have to call someone from one of those businesses to get a reference before she would pay us and we said sure go ahead and she went back to the desk which was located at the front of the business and she opened the phonebook and tried to look up Always Tan which is a tanning salon. She was unable to find the number, so my partner, Trooper DeAngelo told her that we had a business card in the car and that she would go out and get it. At that point, the trooper left and I stayed upstairs. Yvette continued to look through the phonebook for either Always Tan or Primetime Entertainment. While she was looking through the phonebook, Yvette started questioning me about my name. She asked me my name and I told her. I gave her a fictitious name because I was involved in an undercover operation and we were investigating her business. She then asked me what I did for a living. She asked me where my office was and I made a comment to her like why are you asking me all of these questions what are you writing a book or something and she said no, no it is just that we have to be careful with the poker machines because you never know when those plainclothes cops are going to come around and check and I just want to make sure that you are who you say you are. At that point, she asked me for a business card and I gave her a fictitious business card that I had. By that time, Trooper DeAngelo had returned and she actually had a business card from Primetime Entertainment. Yvette made a phone call and asked for a person we knew there, Joanne. She had a short conversation with that lady asking her if she knew us and if we were okay to play the machines. Of course we could only hear half of the conversation but she ended the conversation saying well okay you can never be too careful you know with everything that is going on and then she hung up the phone. She said you are all set. You can play the machines. We will pay you there is no problem. At that point we said okay we are going to go play the machines. We began to play the machines on that date and what happened was Trooper DeAngelo played one of the dollar machines. I am not sure if you are familiar with how they pay out on these machines, but if you play a dollar machine, you put a \$20 bill in the machine you get 20 points and then you try to accumulate points. Trooper DeAngelo was able to accumulate 50 points. She called in Sharon who was working there and told her she wanted to get paid out in the machine. Sharon stated no problem. She paid Trooper DeAngelo, I witnessed her pay Trooper DeAngelo \$50 in U.S. currency for her 50 points. She then reset the machines. I continued to play the machine and won my machine and after a short time we both left the business. Now that was the first pay out and it was from the woman known to us as Sharon. It was for \$50.

Atty. King asked and what did you do with the money.

Officer Swerko answered after we left the business, we took the \$50 given to us for the illegal pay off on the video poker machine and we placed it into evidence. We then did a report on the incident and we waited until the next time we went int.

Atty. King asked and before you left was there any mention about, did Yvette Marquis invite you back for a grand opening.

Officer Swerko answered yes she actually, as we were leaving the business she told us that we were welcome back anytime. She was glad to see that we had good luck with the machines and she stated that they had just opened and they were having an open house on Saturday with reference to the machines and there would be prizes and they would match, for the open house if you lost \$20 they would match your money the first time you lost and there would be a buffet and other types of drawings in reference to the gambling machines.

Atty. King asked and this illegal pay-off, is this all documented in the report that you and Trooper DeAngelo submitted.

Officer Swerko answered yes it is documented in the Manchester Police Department report. The case number is 97-48170.

Atty. King stated and I can make that report available to any of the Aldermen who would like to review it in more detail. Then did you go back on the 28th of July?

Officer Swerko replied yes we went back on the 28th. This time there was a doorbell and we rang the doorbell. Same situation, the door was locked. It was at about 4:45 p.m. and it was both myself and Trooper DeAngelo. We went back and I rang the buzzer, the doorbell and Yvette Marquis answered the door. She recognized us and invited us in. We told her we were there to play the machines and she stated go right ahead. We went back and began to play the machines.

Atty. King asked and at some point did you and Trooper DeAngelo ask to be paid off on the machines.

Officer Swerko answered yes. About the same time we were both playing separate machines, Trooper DeAngelo was playing a dollar machine and I was playing one of the quarter machines. Trooper DeAngelo turned to me and told me that she had 75 points accumulated and about that time I had 120 points accumulated in my quarter machine so Trooper DeAngelo called Sharon and both Sharon and Yvette were there. Sharon came in and Trooper DeAngelo told her that she wanted to be paid off on the machine. At that point, I observed Sharon

pay Trooper DeAngelo \$75 for her 75 points in the machine. Trooper DeAngelo had initially put \$20 into the machine and got points up to \$75. At the same time, I had my points up to 120 and I told her to pay me off too and she just turned around and paid me \$30 for my 120 points which is 25 center a point. Shortly after that at about 5:05 p.m. we left the business.

Atty. King asked so after you and Trooper DeAngelo were both paid off for gambling.

Officer Swerko answered yes.

Atty. King asked did you go back to the police station and do something with the money.

Officer Swerko answered yes again we went back to the Police Department and we entered the cash paid to us for the illegal gambling on the video poker machines into evidence and we did a report on the incident.

Atty. King asked documenting the gambling that you observed and were paid off for.

Officer Swerko answered yes.

Atty. King asked and did you also do an affidavit for an arrest warrant on all of the persons that had paid you and Trooper DeAngelo off on.

Officer Swerko answered yes.

Atty. King asked is that was authorized the arrest from the Manchester Police Department to arrest the persons involved in the illegal gambling at Yvette Marquis Crafts.

Officer Swerko answered that is correct, yes.

Atty. King stated lets talk about the last sting that you had on the 30th of July. Did you and Trooper DeAngelo go back again to Yvette Marquis Crafts?

Officer Swerko answered yes. On the 30th we returned again. It was about 6:30 p.m. The same situation. We went up to the back door and it was locked. It is the only door to the business that we know of. We knocked, I can't remember if we knocked or rang the bell but Yvette Marquis answered the door, let us in. She recognized us and we told her we were there to play the machines. No problem.

We went in the back and there were two other people, a female and a male playing the machines, two separate machines and this was the only time we were there that we actually observed other people playing the machines, but there was a female and male subject each playing separate machines and myself and Trooper DeAngelo began to play separate machines.

Atty. King asked did you become aware that Trooper DeAngelo had accumulated a number of points and wanted to be paid off.

Officer Swerko answered she, while I was playing the machine I was playing, Trooper DeAngelo kind of yelled over to me come look I got...she initially started with \$20 and she actually was able in a short time to get up to 200 points and you know doing the undercover playing she just immediately was happy and said oh look Steve I got 200 points what should I do just playing like anybody else would do being happy that she got it and I said maybe we should just and she said I am going to play it a little more and see what happens and eventually she played it down oh at that point actually Yvette was walking by and she said oh good girl I am glad to see you are having good luck you know and she went over to talk to the male subject who was playing one of the machines and I observed her give a pay-off to that male subject. I didn't get the points or anything because they were on the other side of the room but he said he wanted to cash out and I did see her give him some money. She then reached down and reset the machine at least that what I thought she was doing. He got up and sat with the female subject so I did see a pay-off right there to another subject. As Trooper DeAngelo, she continued to play and she played her machine down to 150 points and at that point she left the room telling me that she was going to tell Yvette that she wanted to get paid out. What happened then was Yvette was sitting out at the desk. I didn't observe the actual pay-off but Yvette gave her \$150 for her points and then walked into the room where I was and I observed Yvette saying oh yea look you do have 150 points. She reset the machine and later Trooper DeAngelo told me that Yvette paid her the \$150 out by the desk so I didn't observe the actual pay-off. So what I did was at that point Trooper DeAngelo came over and sat with me and I played out the \$20 I had in my machine and then I switched machines to the one that Trooper DeAngelo was playing hoping that it was a lucky machine or whatever and played another \$20 and I was unable to accumulate any points so we left shortly after that.

Atty. King asked did Trooper DeAngelo confirm that she had been paid off by Yvette Marquis.

Officer Swerko answered again, she, as soon as we left she said that Yvette paid her out by the desk and then came back into the room with her which I observed and I observed Yvette having some conversation saying oh good, look 150 that is real good and she reset the machine and that is when Trooper DeAngelo came back and sat with me.

Atty. King asked and Trooper DeAngelo was paid \$150.

Officer Swerko answered yes, \$150.

Atty. King asked and that was placed and marked in evidence.

Officer Swerko answered later on we placed that into evidence and made a police report on the incident.

Atty. King asked are you aware that the license that Ms. Marquis had for the poker machines was for amusement purposes only.

Officer Swerko answered yes, that is what the license stated.

Atty. King asked and on those four occasions that you specifically observed people being paid off was that for amusement purposes only or was that for illegal gambling.

Officer Swerko answered the four pay-offs that were either to myself or Trooper DeAngelo and the fifth pay-out that I observed were definitely for illegal gambling purposes.

Atty. King asked and was that contrary to what the license was issued for.

Officer Swerko answered yes.

Atty. King asked did you observe any craft transactions while you were there on any of the previous...

Officer Swerko answered I didn't. Both myself and Trooper DeAngelo never observed anyone in the craft section of the store and we never observed a transaction with the crafts.

Atty. King asked and again has it been your practice that when you go to a craft shop that you have to get buzzed in and have surveillance cameras.

Officer Swerko answered there is no doubt, in my experience by this time I had investigated numerous businesses and there was no doubt to me after spending five minutes in this establishment that it was a front and that it was an illegal video poker machine parlor and that was the only reason that the place was there as far as I could see.

Atty. King asked and again you did do affidavit for the arrest of Yvette Marquis for the pay-off that she gave to Trooper DeAngelo.

Officer Swerko answered yes I did.

Atty. King asked and that was signed by a judge.

Officer Swerko answered yes it was.

Atty. King asked and the Manchester Police Department arrest her right.

Officer Swerko answered yes.

Atty. King asked and that was the one case that got dismissed because of some discovery problems being provided, supposedly provided to the opposing council. Isn't that correct?

Officer Swerko answered yes.

Atty. King stated I have nothing further on this. I would like to finish up with Matt Normand. That will be quick.

Chairman Pariseau stated I hate to say rush it because we have two Aldermen that have a meeting a 6:30 p.m. at Memorial.

Atty. Kennedy stated this is one of the problems, letting him have his say without anybody else having the right to say anything else. Just letting it stand. That is one of the problems that the Board system seems to project.

Chairman Pariseau stated we will give you all the time you need. They are calling Memorial now telling them that they will be late.

Alderman Rivard asked this testimony that you just gave to us did you give that testimony in Superior Court.

Officer Swerko answered I have never testified to any of this except for on a sworn affidavits.

Alderman Rivard asked so you never testified in Superior Court then.

Atty. King answered it actually didn't get to Superior Court.

Alderman Rivard stated because there was a glitch somewhere.

Atty. Kennedy stated he didn't testify in district court either. He never testified in these cases in district court either.

Alderman Rivard stated I want to know if he had an opportunity to testify in court.

Atty. King replied no he did not have an opportunity. All he did was he swore to it in front of a judge and the judge signed the arrest warrant. Three cases were null prosed for reasons that...

Alderman Rivard asked but he is not guilty when the judge signs the arrest warrant.

Atty. King answered no he is not guilty but there is enough probable cause to...

Alderman Rivard stated but something happened along the way where it didn't go to court and it was null prosed. So it bypassed the court system.

Atty. King replied it bypassed the court system, yes it did.

Alderman Rivard stated and now you are asking us to act as judge and jury.

Atty. King replied no I am not asking you to act as judge and jury. What I am asking you to do is to not permit illegal gambling to continue on. There were four pay-offs. You know whether or not that person was convicted, this officer can still testify that he was paid off on a number of payments along with his partner and that is what we are here for.

Alderman Rivard stated but that should be done in court shouldn't it.

Atty. King replied unless there are technicalities.

Atty. King asked Mr. Normand have you become aware of whether or not there was illegal gambling at Yvette Marquis Crafts.

Mr. Normand answered just through conversations, I don't have any first hand knowledge, but certainly through conversations with the Manchester Police Department.

Atty. King asked and are you aware from Trooper DeAngelo and from Officer Swerko that there were actually four illegal pay-offs to either this officer or Trooper DeAngelo.

Mr. Normand answered yes.

Atty. King asked and you became aware of that in meeting with the Police Department and also by speaking to Officer Swerko.

Mr. Normand answered that is correct. We had a meeting also with the Solicitor's Office, the Police Department and our office.

Atty. King asked and when you issue licenses for video poker machines, are they for gambling or are they for amusement only.

Mr. Normand answered amusement only.

Atty. King asked and if somebody is paid off, even though it is not a conviction, are you uncomfortable with giving that person a license after there has been documented gambling at that premise.

Mr. Normand answered certainly we are uncomfortable for obvious reason that the ordinance doesn't allow for that, but I know that the Aldermen had a question when Atty. Kennedy was speaking and that was why were they allowed to operate with a license after the arrest and basically the license for the poker machines are for the activity, not for those specific machines. If the license is still valid and still in place, they are still allowed to operate, whether it is for those five machines or for another five machines.

Chairman Pariseau asked then why do you list the numbers on the license.

Mr. Normand answered the numbers are so that if there were a sixth machine, it is more to look at a machine and know immediately within having to pull paperwork whether those machines are licensed. It is more for an internal process between the Police Department and our office.

Chairman Pariseau asked so having four new machines did not go against the licensing process.

Mr. Normand answered no, actually they are licensed for five.

Chairman Pariseau stated yea but they only got four back.

Atty. King stated they got four back after they were raided, Alderman.

Chairman Pariseau asked but not those with the serial numbers listed here.

Atty. King answered all of the machines were taken and then five new machines came in before there was a disposition in district court. Five new machines were issued under the...

Chairman Pariseau stated I thought it was four.

Atty. King replied no, four were returned by the Manchester Police Department after the raid.

Mr. Normand stated I think also part of the problem is that the license still existed. Just because there is an arrest, the license is still attached to Yvette Marquis' Crafts and through conversation with the Police Department, they wanted to wait until the criminal process was through before any kind of revocation process was implemented.

Alderman Girard stated the ordinance the way it is constructed does not allow the City to revoke a license if someone is arrested under these circumstances.

Deputy Chief Robinson replied it does, Alderman, okay...

Chairman Pariseau stated but they can get new machines.

Deputy Chief Robinson replied that is correct. We did not come in at that point and ask for revocation of any of the licenses. Again it was a meeting between the City Clerk's Office, the City Solicitor's Office and the Police Department. A decision was made that we wouldn't go civil or administratively which this Committee certainly has all the authority and power to do that as to whether or not we could either 1) revoke the license or 2) renew the license. Because of how long the process took, we decided to go for renewal versus revocation because everyone was coming up for renewal and that is why you got the letter from us not

to renew but this is the proper forum for this and I am sure that the Solicitor will tell you that.

Alderman Girard asked so the ordinance does provide then for an administrative hearing to consider evidence of the type that you are bringing forward for disposition from this Committee.

Deputy Chief Robinson again, I believe that is a legal question for the attorney, but I would say yes it does.

Alderman Girard asked Mr. Solicitor.

Mr. Mueller answered yes it does.

Atty. Kennedy asked in regards to the ordinance, can you direct me to the number please.

Mr. Mueller answered the reference is actually in the hearing section itself. It talks about a hearing in the event of a denial and that is under the general business license section.

Atty. Kennedy asked Section 10.

Alderman Girard stated so this hearing is being held pursuant to the denial of a license and it does fall within the purview of this Committee to consider the reasons for denial and either uphold or reverse.

Atty. Kennedy asked can you give me the exact set up of this again.

Mr. Normand answered this hearing stems from her (Yvette Marquis) coming to me on April 29 applying for a license. We denied her based on 1) the conversation and written letter from Dale Robinson which was in concurrence with the Solicitor's Office as well as Ordinance 110-02-C which allows the departments to set restrictions. I made it quite clear to Atty. Kennedy on April 30 on the phone that we were not taking away her Sunday license. She could still sell her crafts. What we were doing was limiting the activity of the video poker machines.

Alderman Rivard stated again I am still confused and I find it interesting that we waited until the time of license renewal and if, in fact, they violated the law several months ago why didn't take their license several months ago. Were we

waiting to see what happened in court? If they had found her guilty then you would have acted?

Deputy Chief Robinson replied I believe that was the position.

Alderman Rivard asked so now you are waiting for us to find her guilty. That is what it looks like to me.

Deputy Chief Robinson answered it is my letter that you are referring to Alderman and we decided back when we first did this that if we came in front of...this was our decision okay, it was what we thought. We thought that if we came in front of the administrative rules committee and asked to have the licenses revoked we would be told due process, this is in court, you know no one has been found guilty, and we thought we would get shut right down so we made a decision that we were going to wait. That was number one. Number two we knew we could do it then. We knew we had a right. We knew that it was covered by ordinance and we knew that it was an administration decision which this panel has made in the past on other licenses that we have come before it on. When all of the cases were done, we decided and made the decision beforehand irrelevant to what happened in court we were going to go forward and request that the licenses be revoked or not reissued irregardless of what took place in court. We feel very strong that we have the evidence that illegal activity was taking place there, that this is not a craft store, that in fact it is a mini gambling parlor and you are saying secondhand from me you heard it firsthand from the officer okay and we are asking for support in not issuing that license.

Alderman Rivard stated I am not questioning what took place. There is a process that we have to follow.

Deputy Chief Robinson replied this is the process.

Alderman Rivard stated well, I am talking about going to court. We are the only? I am assuming so we can present a case and the proper place to do that is in court.

Deputy Chief Robinson replied well we could have chose not to go to court, Sir. We could have chose not to take any of this to court and strictly come here. We could have chose that, but we chose to go the court process and this is a right that the citizens have or that we have to come in here to this Committee and the Committee can hear what is being presented and can make a decision as to whether or not we should allow this illegal activity to continue.

Alderman Rivard stated no further questions. I am just wondering how this works because I understand what you are saying you are trying to stop illegal gambling and I think that that is a credit that you folks are making an effort to do it, but the next step is when the evidence goes to court, have the court make the decision. For example, when someone gets stopped for DWI, they go to court. Same thing.

Atty. King replied they do, but sometimes that gets null prossed but their license can still be pulled for driving.

Alderman Rivard stated I am just saying she hasn't been found guilty and now you are here. In essence that is asking us to find her guilty. The activities are not questioned here.

Atty. King stated I just want to reiterate what Deputy Chief Robinson has said is that the Police Department did not have to make an arrest. They did not have to make an arrest. They could have bypassed that whole judicial process and just had Officer Swerko come in and testify in this Committee and have the licenses revoked. They chose to do both simultaneously, however, they chose administratively not to come in and ask to have the license revoked immediately upon the arrest. They made that decision amongst three departments. There was the City Solicitor's Office from my understanding, I wasn't in on the meeting, the Police Department and the City Clerk's Office. So that means that they strategically, not whether or not they could or couldn't, but strategically they thought it best not to bring it forward. We are not asking this Committee now to find Yvette Marquis guilty of gambling. We are not asking that. We are asking this Committee not to reissue a license for an establishment that has committed illegal gambling to undercover officers that have been able to testify firsthand. That is what we are asking. We are not asking you to find her guilty.

Alderman Thibault asked do you have the Ordinance clarification for the attorney.

Mr. Mueller answered in terms of the section that allows for the hearing, it is 110.27 Hearing and it begins "Upon receipt of notification of denial".

Alderman Girard asked does Atty. Kennedy wish to dispute the validity of the process here.

Atty. Kennedy answered well I think the validity of you having a hearing and substituting judgment for our court system I think is an issue.

Alderman Girard stated Atty. King just explained what she is asking here. She is asking us to find that the license should not be reissued.

Atty. Kennedy stated now to say that an officer can come here and just sit and testify, not under oath, not what he saw, but what they hear and what happened there.

Alderman Girard stated but this is not a courtroom and this is nothing different than what we do with taxicab licenses or revocations of other City licenses so in those cases, administratively, we are presented with evidence by the City, the defense is allowed to offer testimony to us and then we make a decision administratively whether or not to revoke or reinstate licenses. So just because this is video poker, Mr. Kennedy, doesn't mean that the administrative process that this Committee goes through for this license is any different than any other license we sit in judgment on. If you wish to dispute the validity of the City ordinance that applies here and applies to all of the other stuff that we have done, I want to know if this is the purpose of you trying to get the specific ordinance that cites this Committee's right to sit in judgment in these matters.

Atty. Kennedy replied yes and I want to make sure that the ordinance is in place and that it allows you to do these things, to sit in judgment so that if push comes to shove and we need to take further steps, we will have our record complete and I will understand what we will be able to do.

Alderman Girard stated I would be happy, Mr. Chairman, to have the Solicitor send a copy of the ordinance to Mr. Kennedy and if he thinks we are acting in violation of the law then he can certainly challenge the Committee or the City if he does not like the outcome of this hearing.

Chairman Pariseau asked Mr. Mueller from the City Solicitor's Office to make sure that send Mr. Kennedy a copy of the ordinance.

Atty. King stated I would like to say in closing again that we are not asking this Committee and nor are any of you equipped to do that that is why the rules of evidence don't apply and we are not here to determine whether or not Yvette Marquis was guilty of gambling. She is not being charged with a misdemeanor in this Aldermanic Committee. We are asking that her license not be renewed. There is a big difference. We are not taking away her liberty, we are not taking away her Sunday license, we are not taking her license away for selling crafts, we are asking that she not be permitted to run a video poker machine in that establishment anymore in light of the fact that two undercover officers received

illegal pay-offs in the gambling which is not for amusement purposes. It was for illegal gambling.

Chairman Pariseau stated if, and I don't know what the Committee will do, but if...you said that you had a year...

Atty. King stated there were three charges that I null prossed.

Chairman Pariseau stated until the 28th of July. So would it be proper for this Committee, if and I am just saying that no license be issued until after court activity.

Atty. Kennedy stated there is no pending court activity.

Atty. King stated I am not sure if I understand your question.

Chairman Pariseau stated well you have until July 28 of 1998 to bring this matter back to Superior Court or wherever.

Atty. King replied not to Superior Court, to refile charges, yes if we decide to do so.

Chairman Pariseau responded right and that is the 28th of July. If you don't do anything could this Committee, we will give you that time, but could this Committee reinstated the licenses say August 1.

Atty. King replied we would hope you wouldn't Alderman and the reason why we would hope you wouldn't is irregardless of whether the State of NH, not the City of Manchester, but the State of NH files charges against any other persons for gambling that happened at Yvette Marquis Crafts. The reason why we are asking you not to reissue a license in August or at any time at this point to Yvette Marquis is because known gambling occurred on those premises. It was not for amusement only and that is exactly what you issued the license for those machines for. She committed, well not she, but the establishment permitted gambling at that location and we would ask that no license be issued at any time.

Chairman Pariseau interjected to 348 Lincoln Street.

Atty. King replied right, for that address.

Deputy Chief Robinson stated it is the Police Department's position that Yvette Marquis of Marquis Crafts at that address shouldn't be issued a license. It is the Police Department's strong position that we need to send a message to people out there that if you are going to gamble, gambling through this type of business, and the Police Department comes along and spends the taxpayers money, time and effort in proving that and I believe we have proved it at this administrative hearing, I think we have given you a ponderance of evidence that shows you the illegal activity that took place, that that person is not going to be allowed to come back in here and get a permit to do it again under any other name. If she came back in under another name I would be right back here and asking you not to give it to her. That is what we are asking. We are asking to send a clear message that if you do this you are not going to get a license. Everyone that gets a license goes through an interview by our detectives. Everyone is brought in on video poker. They sit down with a detective and the detective makes sure that they understand that this is for amusement only. We ask them, you are not going to have any gambling, you know it is against the law to have any gambling, everybody who gets a license we sign-off that we personally spoke to that licensed person to make sure that they know and then we visit these places. There is a lot of time and effort that went into place here and if this person walks away with a license, no offense, but it is a mockery to everything the Police Department has done and it is mockery to everything that Officer Swerko and the other undercover officer did.

Alderman Girard stated I don't know if a motion is in order at this point, but the information that Officer Swerko has presented to this Committee is information that he swore on an affidavit to a judge in order to get an arrest warrant. That being sworn testimony and I have not heard anything from anybody that has contradicted what he has presented in evidence here, I move that the license denial be upheld and that a license not be issued to this establishment to operate video poker machines.

Atty. Kennedy stated I was hoping to get to cross-examine people.

Mr. Mueller stated I was going to say, Mr. Chairman, that you may want to check with Atty. Kennedy to make sure that he has had his say.

Alderman Girard stated I have no problem if he wants to do that.

Atty. King stated I can provide any of those reports to any of the Aldermen that want them.

Alderman Pariseau duly seconded the motion.

Alderman Thibault asked aren't we going to let him ask some questions. He should be able to ask some questions.

Chairman Pariseau stated go ahead.

Atty. Kennedy asked first of all, Matt, my client was contacting you with regards to opening up her machines right.

Mr. Normand replied yes on April 29.

Atty. Kennedy asked but prior to that she spoke to you with regards to the legality of operating her machines at Marquis Crafts.

Mr. Normand replied probably, yes.

Atty. Kennedy stated and during that period of time you said that it was all right to operate the machines.

Mr. Normand replied she had a valid license.

Atty. Kennedy asked and you weren't involved in any of these meetings with the Police and City Solicitor and the City Clerk's Office with regard to the strategy involved on whether you were going to do the revocation or not were you.

Mr. Normand answered yes I was.

Atty. Kennedy asked and the decision was that it would be too difficult to do the revocation at this point in time.

Mr. Normand answered my understanding was that they wanted to wait until the process was completed, the criminal process in court.

Atty. Kennedy stated this all occurred back in September and the license lasted until April 30, 1998 right.

Mr. Normand replied correct.

Atty. Kennedy asked and the only information you have is what these folks have told you with regards to whether or not gambling was done.

Mr. Normand replied I have no firsthand knowledge.

Atty. Kennedy asked do you believe in our criminal justice system.

Mr. Normand answered yes.

Atty. Kennedy asked and you understand the reason why it works right.

Mr. Normand answered yes.

Atty. Kennedy stated they asked you the question about whether you felt uncomfortable about giving the license to a business where illegal gambling took place. Do you feel uncomfortable not giving a license to a business that has no criminal charges pending against it.

Mr. Normand replied well the circumstance is obvious in this case and it was in my fax that I think I stated to you my position and my office's position at that time on April 30 and that was that subsequent to, I have already stated this previously, but subsequent to the meeting with the Police Department, myself, Deputy Chief Stewart, Captain O'Leary and Dan from the Solicitor's Office the best thing to do was to wait until the criminal proceedings were over, that there was an avenue for them to, for us in the City to deny the license, and through my own research of 110.02C it is common knowledge that this happens every day. Conditions are set by other departments to restrict, in some cases, restrict the activity of a business license.

Atty. Kennedy replied that is right and next to the license provisions it talks about the people ? by the statues and rules and regulations of the State of NH. Correct?

Mr. Normand answered right.

Atty. Kennedy asked and at this time you have no knowledge of any convictions against my client.

Mr. Normand answered no I don't have any knowledge of that.

Atty. Kennedy asked so you have no knowledge of any crimes that my client has committed.

Mr. Normand answered no, not firsthand.

Atty. Kennedy asked, Officer Swerko, is it Officer.

Officer Swerko answered yes.

Atty. Kennedy asked you were on undercover duty, correct.

Officer Swerko answered yes I was.

Atty. Kennedy asked and as part of that undercover duty you have to lie about who you are.

Officer Swerko answered what I do is I have to hide my identify obviously to do my job, to conduct an undercover operation I have to...

Atty. Kennedy interjected lie about who you are.

Officer Swerko stated I hide my identity so I can do my job.

Atty. Kennedy stated so you lie about who you are.

Atty. King stated I am going to object. He has answered the question three times. I think...

Atty. Kennedy stated as you were undercover, you were hiding your identity and went out to trying to commit a crime.

Officer Swerko replied I hid my identify because I was conducting an undercover operation in reference to illegal gambling activities. If I walked in and told Ms. Yvette Marquis that I was a police officer she would have said here is my license, the machines are there and we don't pay out money. That is exactly what she would have said. She didn't say that.

Atty. Kennedy stated you went in there ready to commit a crime.

Officer Swerko replied I went in there to find out if there was illegal gambling there.

Atty. Kennedy stated when you went in the first time there was nobody there other than you and the trooper.

Officer Swerko replied myself, the trooper, Yvette Marquis and the female subject.

Atty. Kennedy asked there was nobody else there utilizing the machines and you were the only folks there, they didn't want to get involved with you but you continued to tell them, hide your real things that you were trying to do and lied to her with regards to...

Officer Swerko answered on the contrary. It took very little conversation for her to show us the machines and tell us that she wanted references.

Atty. Kennedy stated and as you looked, you obviously didn't mention that all these little places have little machines in separate secluded areas don't they and that is generally the way the amusement devices are placed.

Officer Swerko replied no every place no.

Atty. Kennedy stated many of the places do though.

Officer Swerko replied that would be against the City ordinance actually.

Atty. Kennedy stated well many of the places have a simple wall divider.

Officer Swerko replied a lot of the places we investigated had separate rooms but that is against the City ordinance. You are supposed to have them in plain view of the public.

Atty. Kennedy stated right and don't they usually have an open door where you can get a bird's eye view.

Officer Swerko replied some places do and some places don't.

Atty. Kennedy asked now when you went in there, my client never paid you any money.

Officer Swerko answered she never paid me any money.

Atty. Kennedy asked at this point in time you don't know if there was any other activities involved with regards to after that date of July 29 correct.

Officer Swerko answered I observed, well you client did...

Atty. Kennedy stated I am asking you a question with regards to after July 30 are you familiar with any other act of gambling activities in my client's place.

Officer Swerko replied actually in about, I would have to say it was December of 1997, we received a Crimeline tip stating that Yvette Marquis was operating a gambling establishment and that she was giving payouts.

Atty. Kennedy stated this was an anonymous tip coming over a phone.

Officer Swerko replied through the Crimeline, yes.

Atty. Kennedy asked but you have no personal knowledge with regards to anything of that nature, correct.

Officer Swerko answered after the 29th, no.

Atty. Kennedy asked during the period of times that you went there, there was only one other time that you observed illegal activity and you said there were two people there, correct.

Officer Swerko answered correct.

Atty. Kennedy asked and as a police officer are you trained to take reports and include important things in the reports usually necessary for an investigation, correct.

Officer Swerko answered correct.

Atty. Kennedy asked and this was done in this particular case wasn't it.

Officer Swerko answered actually I don't believe I wrote the report on this case. I believe Trooper DeAngelo wrote the report.

Atty. Kennedy stated right and Trooper DeAngelo's report makes no mention of any of the observations you made with regards to the other person getting paid off.

Officer Swerko replied she does note that there were two other people playing the machines.

Atty. Kennedy responded that's right and in fact at this point in time we don't know who got paid off, how much they got paid off or the fact that they did get paid off and just think that there was a pay-off.

Officer Swerko stated I think I testified that the people were playing the machines and I observed what I believed to be a pay-off and I, at that point I had seen numerous pay-offs and I think I knew what a pay-off was.

Atty. Kennedy asked how often do you apply for an arrest warrant and don't get it.

Officer Swerko asked how often.

Atty. Kennedy asked how often do you apply for an arrest warrant and don't get it.

Atty. King stated again I have to object. That is not relevant to this hearing.

Atty. Kennedy asked how often do you apply for an arrest warrant and don't get it.

Chairman Pariseau stated Sir, you don't have to answer that. Next question.

Atty. Kennedy asked when you gave this arrest warrant under affidavit, did you have the expectation that it would be denied.

Officer Swerko answered I believe that any arrest warrant can be denied by a judge.

Atty. Kennedy asked and how often does that happen.

Atty. King stated again I am going to object. It is beyond the scope of this hearing.

Atty. Kennedy asked so when you were in this so-called gambling casino you never saw any evidence of anybody being in the gambling casino in the three times you went there only once were two other people there.

Officer Swerko answered from what I witnessed, I would tell you that this place is not a craft shop. The craft shop part is just a front and that people go there to gamble on the machines. I don't see any other reason for them to be there.

Atty. Kennedy stated well the amusement devices are legal to have there. People can come there and play those machines.

Officer Swerko replied as long as they don't pay out.

Atty. Kennedy stated that is right and when you went there or when you or your Deputy Chief testified that it was a mini casino you never saw any evidence of anybody on the three times you went there other than the two people you saw, right.

Officer Swerko asked evidence of what.

Atty. Kennedy answered a mini casino.

Atty. King stated, Alderman, I am going to object. I think this question has already been answered.

Chairman Pariseau stated next question.

Atty. Kennedy asked do you know what entrapment is.

Officer Swerko answered yes I do.

Atty. Kennedy asked and obviously it is your testimony that you didn't entrap this lady to do anything wrong, correct.

Officer Swerko answered she did everything on her own. She volunteered information that we needed references, she made phone calls on those, she had no reason whatsoever to pay us out except for reasons of...

Atty. Kennedy asked the crime would never have been completed if the police didn't participate in the act, correct.

Officer Swerko answered obviously the crime was ongoing. It was ongoing at the time. There were people, we believe, being paid off.

Atty. Kennedy asked well on the 25th when you went there you saw nobody else there so there was no ongoing crime there, correct.

Officer Swerko answered as far as we were concerned, we had information that there was illegal gambling.

Atty. Kennedy asked but on the 25th when you went there was there anybody there.

Officer Swerko answered just myself, the trooper...

Atty. Kennedy interjected no ongoing crime, right.

Officer Swerko replied at that point, no.

Atty. Kennedy asked when you went in on the 28th, no ongoing crime.

Officer Swerko answered well by that time we had already been paid off so as far as I was concerned...

Atty. Kennedy interjected the police have participated in the commission of a crime so as far as they are concerned this is ongoing.

Officer Swerko replied that is like saying when I go to do a drug investigation that just because I buy the drugs it is not an ongoing crime. Of course it is. This person is out there, she is out there conducting illegal gambling and that is an ongoing crime.

Atty. Kennedy asked why was she...no strike that let me ask that a little bit differently. At this point in time, do you know the Sharon Lavoie that works at Yvette Marquis'?

Officer Swerko answered I only know the female subject as Sharon. As a matter of fact, I would rather not comment because it is an ongoing investigation.

Atty. Kennedy stated okay so you are saying then that you don't this person Sharon Lavoie.

Officer Swerko replied I can't really answer that because we are in the middle of an investigation.

Atty. Kennedy asked with this Sharon Lavoie.

Chairman Pariseau stated next question.

Atty. Kennedy asked are you involved with Sharon Lavoie right now.

Officer Swerko answered again I really can't answer that.

Atty. King stated, Alderman, I am going to object just because what he is asking is a very sensitive issue. I haven't relayed that information and I chose not to because there is an ongoing investigation with the Police Department and for me to disclose that now would be detrimental to their case so I ask that those questions don't be posed for this witness.

Atty. Kennedy asked, Deputy Chief Robinson, you have no firsthand knowledge of any of these incidences occurring, correct.

Deputy Chief Robinson answered just the reports that I have read and my personal conversations with Officer Swerko.

Atty. Kennedy stated the answer to the question is no I have no firsthand knowledge.

Deputy Chief Robinson stated I answered the question.

Atty. Kennedy asked no, you have no firsthand knowledge.

Deputy Chief Robinson answered I told you, Sir, that my knowledge is from the reports I have read and my conversations with Officer Swerko.

Atty. Kennedy asked so you don't know the means or the methods of...you didn't actually observe the means and methods of Officer Swerko.

Deputy Chief Robinson answered I have never been in Yvette's Crafts.

Atty. Kennedy stated my question is do you know the means and the methods that Officer Swerko used to commit these crimes that he alleges that he did.

Deputy Chief Robinson replied Officer Swerko committed no crime.

Atty. King stated I am going to object, I don't know if I understand that question.

Atty. Kennedy stated so the officer committed no crimes by getting paid off. Is that what you are saying?

Atty. King stated again I am going to object. I think the question is vague and misleading.

Atty. Kennedy stated there is nothing vague about that. In any event, you said that it was a mini gambling casino, were you aware of the number of people that were in that shop at that time.

Deputy Chief Robinson replied I was aware of other information that I have at my disposal which I can't discuss.

Atty. Kennedy asked but no firsthand knowledge, right.

Deputy Chief Robinson answered nothing that I observed, correct.

Atty. Kennedy asked and nothing that any of the witnesses here observed.

Deputy Chief Robinson answered absolutely. The information that I received, information passed on by Officer Swerko and other investigators certainly that that happened.

Atty. Kennedy stated no I am talking about the issue in regards to when you and I don't want to call it a hyperbole but when you said it was a mini gambling casino.

Deputy Chief Robinson replied I gave you what my opinion was and the information I had, Sir, is that this was an illegal gambling parlor and I certainly used the word gambling.

Atty. Kennedy stated and then when you found out that of the three times he went there that only once were two people there, that still doesn't shake your opinion at all.

Deputy Chief Robinson replied no Sir, not at all.

Atty. Kennedy asked and you think that there is illegal gambling going on on all of these machines in the City, don't you.

Deputy Chief Robinson answered I would say that on the vast majority that there is illegal gambling taking place, yes, Sir.

Atty. Kennedy asked and you have been involved in testifying before these Boards with regards to why you want the...in fact you do not want the machines to be licensed at all, correct.

Atty. King stated again, Alderman, I am going to object because we are talking about the license of Yvette Marquis only, not on licenses in general.

Atty. Kennedy stated most of this is misrepresented. Most of the statements they brought in are automatically true. I may have misrepresented what was the motive. I have no other questions.

Alderman Thibault asked if, in fact, this goes to court as you say it may and she would be found innocent by some stretch of the imagination if I can use that word, would you still be against issuing her a license.

Atty. King answered yes, if I had an officer that I trusted like I do Officer Swerko and Trooper DeAngelo who went in and actually got paid off. There are a lot of reasons why a case might be dismissed, might be found not guilty or might be null prosed. There are a lot of little legal technicalities, but it does not negate the fact, for license purposes, not for guilt or innocence of a crime, that is a different standard and that is beyond a reasonable doubt. We are talking about whether or not a license should be reissued to this particular person and I would say even if she was found not guilty or the case was dismissed again against Ms. Marquis which it was and we are here in this scenario. We are here asking you not to renew that license based upon Officer Swerko and Trooper DeAngelo.

Atty. Kennedy stated one point with regards to Ms. Marquis. The charges aren't going to be brought against her. That case was dismissed. That case is never going to return. It is the case against Sharon Lavoie, the 25th and 28th cases that were null prosed by the City, or by the State. Those are the cases that the double jeopardy argument would be involved, but I doubt it.

Alderman Girard stated with all due respect to the questions and points that Atty. Kennedy tried to raise. He has done nothing to cause the testimony of any of the people before us to be contradicted. He has done nothing to contradict the accusation that pay-offs were made. Regardless of whether or not it was Ms. Lavoie or this Sharon Lavoie person or whatnot, he has done nothing to dent the argument that says that illegal gambling took place in this establishment. I would like to move to the question, Mr. Chairman.

Atty. Kennedy asked for a moment to summarize. Just quickly, our government has checks and balances in place and at this point in time there are no charges pending against my client nor will there be. One thing that is illegal is entrapment. This is not a crime committed by people, this is where the police entrapped by client. They were the commissioners of the crime. They went up, they induced her and they basically entrapped her. These cases don't have a leg in the criminal courtroom and that is why they have the results that there were. They sit there and

they scream and yell about oh no this is what our strategy was. They lost their cases and now they are trying to get back at my client in other ways.

Atty. King stated that is incorrect information. These are not cases that are going nowhere. On this particular client they ended up getting null prossed or dismissed for technicality reasons but I can tell you that there were several defendants who were arrested and charged with the same kind of offenses with the same pay-offs to the same two officers. They were the only two officers conducting this undercover sting. They are serving time at the house of corrections. They are serving jail time. In addition, they are serving high fines to the State of New Hampshire. So there are people who are going to jail for this same exact thing so when Mr. Kennedy says that this is not something that goes anywhere, that is incorrect. It does go somewhere and people are going to jail for it.

Atty. Kennedy replied my clients aren't going to jail for it.

Alderman Rivard asked the motion is to not reissue the license, is that the motion.

Alderman Girard answered the motion is to uphold the denial.

Alderman Rivard stated the denial to reissue the license. The motion is not to issue a new license.

Chairman Pariseau called for a vote. There being none opposed, the motion carried.

There being no further business to come before the Committee, on motion of Alderman Rivard, duly seconded by Alderman Girard, it was voted to adjourn.

A True Record. Attest.

Clerk of the Committee