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NATIONAL GAMBLING IMPACT STUDY COMMISSION FINAL REPORT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON THE FINAL REPORT OF THE NATIONAL GAMBLING IMPACT STUDY COMMISSION

JUNE 23, 1999
WASHINGTON, DC

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NATIONAL GAMBLING IMPACT STUDY COMMISSION FINAL REPORT

WEDNESDAY, JUNE 23, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 301, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Wellstone.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will come to order. This morning the committee will receive testimony on the final report released to the public on June 18, 1999 by the National Gambling Impact Study Commission.

This Commission was created in 1996 by Congress and conducted a series of hearings on issues related to gambling in the United States. The Commission was charged with studying the social and economic impacts of State lotteries, casinos, parimutuel betting, Indian gaming and other forms of gambling.

After a series of hearings, the Commission has submitted this report, together with its recommendations on how to address what it sees as problems associated with the gambling industry. Indian gaming, as we know, has grown substantially since the enactment in 1988 of the Indian Gaming Regulatory Act. Today, it generates $6.7 billion annually for those tribes that have gaming operations, and provides them with desperately needed economic development opportunities that have been so lacking on Indian reservations.

However, most people do not know that the majority of tribes in the United States—nearly, two-thirds of all tribes—do not operate Indian gaming at all. The benefits from Indian gaming have not been felt by all Native American communities, and it continues to be the business of this committee to assist tribes in the development of other economic enterprises. In fact, not all existing casinos show a profit, and, in fact, a few of them have already gone to receivership.

We will hear about a number of issues today, including the regulatory structures of Indian gaming; whether labor laws should apply to these activities; resolving State to tribal impasses over gaming negotiations; Internet gambling and a host of other issues.

Earlier this year we introduced legislation that will do three things: Provide Indian gaming with the kind of minimum standards it needs; ensure the National Indian Gaming Commission has the appropriate amount of resources to enable it to do its job; and assist States and tribes in resolving their differences over class III gaming compacts. Each of these proposals have been supported by the findings and recommendations of the National Gambling Impact Study Commission, and I remain hopeful that we can get these reasonable measures enacted this session and welcome constructive criticism of these bills.

With that, I look forward to today's hearing.

Senator Inouye, do you have a comment or statement?

Senator INOUYE. Well, we have a long agenda ahead of us. I ask that my statement be made part of the record.

The CHAIRMAN. Without objection, it will be included in the record.

[Prepared statement of Sen. Inouye appears in appendix.]

I might add too before we start that Senator Inouye has a conflict, as I do too, so we're going to try to get through this with post haste, but we may be cochairing and other members may too, as they come in, if we can't stay here for the duration of the hearing.

With that, we'll start with Panel I, Robert Loescher—if I pronounced that wrong, I apologize for that—National Gambling Impact Study Commission; and Montie Deer, chairman, National Indian Gaming Commission.

If you gentlemen would start, your complete testimony will be included in the record, and you may abbreviate or condense your materials. We'll go ahead and start with you, Bob, if you would.

STATEMENT OF ROBERT W. LOESCHER, NATIONAL INDIAN GAMING IMPACT STUDY COMMISSION, WASHINGTON, DC

Mr. LOESCHER. Thank you, Mr. Chairman.

My name is Robert W. Loescher. I am the president and chief executive officer of Sealaska Corporation, representing some 16,000 shareholders and tribal members originating from the communities of Southeastern Alaska. My Tlingit name is Kah Toosh Tu'. I am a member of the Tlingit Nation, the Eagle Tribe and the Chookaneidi clan, the people of Glacier Bay and Hoonah, Alaska.

President Clinton appointed me to serve as the only Native American on the National Gambling Impact Study Commission. The Commission was charged by Congress to study, among other things, the status of tribal governmental-sponsored gaming in the United States. The Commission came to realize that this was a complex task and appointed a tribal gambling subcommittee. The subcommittee had six field hearings in addition to the full commission hearings. It sought the view of tribal leaders throughout Indian country. Over 100 tribal leaders came to testify at their own expense and their views influenced the tone and texture of the final report.

In further recognition of the importance and complexity of the task, the subcommittee sought and received concurrence by the Commission to have its own separate chapter in the final report. The report on Indian gaming is simply a snap-shot of the status of Indian gaming in America today. The Commission concluded

that the right of tribal government to operate gaming is deeply entrenched in the tribes' special relationship with the Federal Government in the U.S. Constitution, and this distinguishes Indian tribal governmental gaming from all other gaming in the United States.

Congress created a second distinguishing attribute of Indian gaming in the Indian Gaming Regulatory Act, IGRA, of 1988. The revenues from Indian gaming must be used for the social and economic benefit of tribal members who desperately need it.

In my view, the benefits from Indian gaming are just a tiny down payment on the deficit of stupendous social and economic needs facing the vast majority of Native American citizens. The Commission's record strongly supports the conclusion that the economic benefits under IGRA are being realized. Indian gaming furthers Indian self-determination through tribal ownership and control of its gaming operations. It provides economic benefit to the surrounding communities by employing at least 100,000 people, regardless of race, color, or creed.

Tribal governments were among the first to recognize that gaming has social costs, and they did something about it. The Commission's records shows that tribal governments made the first real financial commitments to help identify and alleviate and problem and pathological gambling.

I was very disappointed that the Commission declined to include a narrative that objectively and clearly described the structure, operation and implementation of the regulation of Indian gaming. Despite early weaknesses, Indian gaming is increasingly well-regulated by a partnership of the tribal, State and Federal Governments. The National Indian Gaming Commission, established by IGRA, has ordered the implementation of minimum internal control standards that provide uniform standard of Indian gaming regulation throughout the United States. The Commissioners indicated that Indian gaming regulation was extremely complex and legalistic, and they wouldn't deal with it.

At the same time, it is my view that Indian gaming is increasingly viewed as a threat and a viable competitor to commercial gaming. The severe criticism of the Indian gaming regulation was one way to slow it down. In my view, the Commission was obligated to objectively describe the status of Indian gaming regulation, and it did not do so.

Two of the most contentious issues between tribes and States are the scope of gaming and the compacting procedures. The Commission's report has not shed any new light on these issues. I strongly object to limiting tribal gaming rights under existing law, as suggested by the second recommendation on the scope of gaming.

My goal, as Commissioner, was to review all aspects of gaming in America with strong emphasis on Indian gaming. The overall report is weighted heavily to a small percentage of the American public that is burdened with very real problem and pathological gambling. The report does little to acknowledge the fact that millions of Americans participate in and enjoy gaming as entertainment without any problems. This report and recommendations should help educate the American public about the positive role tribal governmental gaming has played in Indian country. It has

given hope and provided new economic resources to help alleviate long-neglected social and economic problems. It also suggests positive recommendations to improve Indian gaming regulation.

In pursing gaming, tribal leaders have done the best that they could do with very limited resources and opportunities, and, at this point in history, I believe they should be commended for what they have accomplished.

I have attached a copy of chapter 6 of the National Gambling Impact Study Commission Report, entitled, "Native American Tribal Gambling," as a part of my remarks.

Mr. Chairman, I want to thank you for the invitation to speak before the committee. I would like to highlight the 15 recommendations at the end of chapter 6 as the recommendations forthcoming from this National Commission.

The CHAIRMAN. Okay, we have that complete in print.

Do you want to go over those, or is the imprint good enough so that we can read that ourselves?

Mr. LOESCHER. We would be prepared to answer any questions or comments regarding those.

The CHAIRMAN. Okay, thank you.

[Prepared statement of Mr. Loescher appears in appendix.]

The CHAIRMAN. Montie, you can proceed.

STATEMENT OF MONTIE DEER, CHAIRMAN, NATIONAL INDIAN GAMING COMMISSION, WASHINGTON, DC

Mr. DEER. Thank you, Mr. Chairman, Mr. Vice Chairman and members of the committee.

As you know, my name is Montie Deer, and I am the chairman of the National Indian Gaming Commission. I want to thank you for giving me this opportunity to appear before you today to testify on the National Gambling Impact Study Commission's Final Report.

However, before I do that, I would like to introduce the committee to our newest member of the Commission, Teri Poust. Teri, would you stand please?

Teri comes to us from the Poarch Band of Creek Indians, and she joined us about 2 weeks ago. Thank you, Teri, and, of course, we're happy to have her on board, especially me because she's going to take over some of my functions, hopefully.

As you know, this report was issued just last Friday on June 18. At this time the NIGC has not had a full opportunity to review and digest that report, and we would appreciate, of course, an opportunity to fully comment on the report's recommendations once we have thoroughly analyzed the report's contents.

It is my understanding that I have been asked here today to address two issues—the regulation of Indian gaming and the NIGC's disclosure of aggregate tribal revenue figures to the Study Commission.

As you know, Indian gaming has three tiers of regulation—tribal, State and Federal. The Study Commission's report recognizes the fact that as sovereign governments tribes provide the first level of regulation for their gaming operations. Indeed, the report recommends that tribal sovereignty should be, and I quote, "recognized, protected and preserved." With respect to State involvement,

many tribal State compacts provide some level of State regulation, and, finally, the NIGC provides a third-level of regulation. We, of course, sincerely appreciate the Study Commission's acknowledgement of, and support of, the NIGC's role in regulating Indian gaming.

Tribal gaming regulatory authority is often delegated to tribal gaming commissions under the tribes's tribal gaming ordinances, which are submitted and approved by the NIGC. Although not mandated by IGRA, the NIGC does work closely with the tribes to establish independent regulatory bodies, and has issued a bulletin in 1994 to this effect.

In January of this year, the NIGC promulgated regulations on Minimum Internal Control Standards, which are intended to protect and preserve the integrity of Indian gaming. The MICS were drafted to provided protection against potential risk of loss at tribal casinos due to customer and employee access to cash, and/or cash equivalents, within the casino. All gaming tribes must adopt the Minimum Internal Control Standards by August 4, 1999, and, again, I appreciate the Study Commission's support of the MICS issued by the NIGC.

As these standards become effective, we intended to emphasize compliance with them as a key aspect of our regulatory program. To meet this challenge, we have established a separate division of audits as part of the NIGC staff structure.

This past week I visited four tribes in Michigan to tour the casinos, including a review of surveillance count room procedures and other aspects of casino regulation. I can tell you first-hand that these particular tribes had state-of-the-art surveillance and machinery to conduct the counting of money. I also learned about a cooperative network in which all Michigan gaming tribes share information on cheaters and scam artists. In addition, each tribe had counseling programs for compulsive gamblers. Let me add that on this Michigan tour, I was also impressed by the tribal infrastructure and programs that have resulted from the revenues of Indian gaming for the tribes in that State. The building of tribal schools, health centers and recreation centers, as well as substance abuse programs, elderly and Head Start programs and water treatment programs are just a few of the things that I observed first-hand. And, again, I was informed that 10 years ago prior to gaming these programs did not exist.

In addition to Indian gaming regulation, I want to briefly discuss the Study Commission's statement that the NIGC refused to provide information to the Study Commission. I believe the record is quite clear—that the NIGC provided extensive amounts of information in order to assist the Study Commission, including assisting in the preparation of an extensive survey, which I am disappointed to see is not included in the Study Commission's final report. What we did not produce were complete copies of tribal audits.

In September 1998, prior to my chairmanship at the NIGC, the Study Commission made a blanket request for individual tribal audits, which tribes must provide to the NIGC, pursuant to IGRA. In response to the Study Commission's request for copies of the tribal gaming operations and audit reports, we explained in a series of letters and in a face-to-face meeting that I had with Chairwoman

Kay James that we are prohibited by IGRA from releasing the audit reports except in limited circumstances. Because the audit information is confidential information under IGRA and the release of the information could result in substantial and competitive harm, we concluded that the NIGC is not authorized to provide copies of the audits to the Study Commission. The NIGC currently has ready access to tribal financial data related to gaming. Because we are bound by confidentiality requirements, when we are monitoring or investing gaming operations, tribal books and records are normally provided without objection. Notwithstanding the statutory prohibition, the NIGC and the Study Commission researchers met and finally agreed that the release of aggregate financial information on Indian gaming would satisfy the purposes for which the Study Commission requested the information.

Accordingly, in addition to substantial other materials we provided to the Study Commission, the NIGC on two occasions provided aggregate financial data.

I am likewise concerned about the Study Commission's recommendation that the NIGC compile for public release certain aggregated audit information about tribal gaming operations. To the extent that the Commission recommends a change in the current law, we do not believe that is necessary. As I stated earlier, we have already provided aggregate data to the Study Commission, and I believe this is permissible, pursuant to IGRA.

However, I have concerns with the vague recommendations made by the Study Commission. For example, the Study Commission does not articulate any sound public policy rationale for the public release of the data as to Indian gaming. In addition, public release other than aggregate form does have impact on tribal sovereignty. The Study Commission report would otherwise recommend, as I've said before, that sovereignty be recognized, protected and preserved, that public release of tribal financial data seems at odds with this fundamental position.

Again, thank you for the opportunity to present my views on the subject. I am available to answer any questions or respond in writing, if you wish, to any questions.

[Prepared statement of Mr. Deer appears in appendix.]

The CHAIRMAN. Thank you, Montie. I have a few, and I'm sure—before I ask questions, Senator Wellstone, do you have an opening statement to make?

Senator WELLSTONE. Actually, Mr. Chairman, I think I can only be here for a short while, and I think that in order to move the hearing forward, I'll just include my statement in the record.

The CHAIRMAN. Fine, all right.

[Prepared statement of Senator Wellstone appears in appendix.]

The CHAIRMAN. Montie, you mentioned that you provided aggregate financial data but not tribal financial data. Where did you draw the line, first of all, and what do you suppose the Commission wanted the confidential information for?

Mr. DEER. I asked that very question going from the latter, and I was never told what they specifically were looking for.

What we provided them, Mr. Chairman, was we divided the tribes into four categories—A, B, C, and D—and then we gave them the aggregate value and moneys. For example, by reading

that, you certainly learn that the top 20 tribes get most of the money, of the $7 plus billion, and that's, basically, what we did the first time. Then the second time we took it year by year, from I think 1997 forward.

The CHAIRMAN. And so they could generally tell which tribes were in each category, but not a dollar figure about what tribes were making from the gaming? Is that correct?

Mr. DEER. That is correct.

The CHAIRMAN. The Study Commission recommends to Congress that we should refrain from passing a law prohibiting the use of telephone technology to aid in the operation of class II bingo games. What was this recommendation based on, do you know?

Mr. DEER. I have no idea.

The CHAIRMAN. Maybe, Bob, could you answer that?

Mr. LOESCHER. Yes, sir; I can.

In the course of the deliberations of the Commission we were considering the aspects of Internet gaming being authorized or prohibited as a matter of public policy, and I know this Congress is looking at the same issue in the Kyl bill. In the course of that there came to be a number of exclusions that were being requested and recommended because various groups around the country had been undertaking these activities for better than one-half century or longer. For instance, parimutuel horse racing conducts horse racing track to track over the telephones, and the T.V.'s and whatnot.

The Native Americans as well have taken this class II gaming, bingo, and they've linked that over the telephone lines in order to enhance bingo operations, and that was considered as an exclusion as well, and upon investigation of that the Commission voted to support the continuance of that activity.

The CHAIRMAN. The question I asked Montie 1 minute ago too about why the Study Commission wanted confidential tribal information, do you happen to know, as a member of the Commission?

Mr. LOESCHER. Yes, Mr. Chairman; if I could, give you about a four or five point answer——

The CHAIRMAN. Go ahead.

Mr. LOESCHER. One is that in authorization of the law that created this larger Commission to look at all gaming in America the Congress provided very extensive authority to look within the private community, the States, within the Federal Government structure and provided a far-reaching statute to be able to get information on a current basis, and even went so far as to provide subpoena power within the statute of the larger Commission.

This Commission and its staff wanted detailed information about Native American gaming on an individual side-by-side basis for a whole number of purposes, not only financial revenues but to look at the patrons, to look at the various activities that surround casino gaming, for instance. That was difficult to get, even from the non-Native American casinos, but we did have surveys and the non-Native American casinos provided it. We searched and we went to the NIGC to try to get information, and we ran into a conflict in statute. This Commission had a far-reaching statute that even provided subpoena power, but the NIGC has a statute that protects information. So we ended up with a conflict in the laws, and so it came to a point of, well, how do we resolve that?

Well, we could resolve it by executing a subpoena and/or going to the Department of Justice. The Chairman, on behalf of the Full Commission, went to the NIGC and to the Bureau of Indian Affairs [BIA] to try to negotiate information, and we were able to get some information in the aggregate, and that was not satisfying to the overall Commission.

The other thing, Mr. Chairman, is that there is a sense in the Full Commission about Native American tribal governmental gaming as end-holdings within the overall boundary of America. Indian casinos and other gaming activities draw on the larger community for patrons, for services, for governmental services and what not, and so there is sort of a dichotomy of thinking. One side says,

> If you're going to do that, and you're going to make money and be involved in an activity that impacts a whole community, then you should have disclosure information, not only as a matter of public record, but also to tribal member.

When we dug into that aspect, we found that it was a very difficult matter, considering tribal sovereignty and the State policy within tribal governments, a reluctance to provide that information. The information is rooted—the question of whether or not to provide the information is rooted, basically, in competition, proprietary data and whatnot, and there were a lot of competing interests in the non-Native gaming industry with the Native American industry, and also the state of affairs in terms of public policy making the Native Americans find themselves in a constant flux at the tribal, State and congressional levels over this issue of how much activity they should have with regard to Native American gaming. So there was a reluctance to do that.

But, primarily, the issue of disclosure at some level—in our recommendations, Mr. Chairman, it might be kind of an odd way to write it, but the Commission is suggesting that Native American tribal governments where gaming be required to provide public disclosure at least at the same level as those activities are reported in Las Vegas and in New Jersey on the public record, and that's a recommendation that's included in here. The other is that any tribal member be enabled to get a copy of the audit that deals with gaming activities on a tribe.

The CHAIRMAN. Okay, thank you. I think that that recommendation probably would meet with some resistance, but, as it is now, there is nothing to prevent tribes from opening their books to tribal members. I mean, that's a decision they can make—some do and some don't—but it's not some Federal mandate that they're supposed to keep secret from their own members about the revenues. In fact, I think most tribes do make it a practice of opening their books to tribal members.

Let me ask Montie one last thing too. The Study Commission notes that enforcement efforts have been improving. Can you summarize some of those efforts and how they've improved with your group?

Mr. DEER. Well, I know since 1994 we've increased notices of violation and some closure orders. I think what's helped more than that, though, is the fact that we've increased our staff and we're on the scene more and we——

The CHAIRMAN. I'm reminded that we put in an additional $8 million to you, didn't we?

Mr. DEER. Say that again, sir?

The CHAIRMAN. Didn't we provide an extra $8 million, wasn't it, in last year's budget—up to $8 million?

Mr. DEER. Right.

The CHAIRMAN. And with that you did hire some additional people, enforcement people?

Mr. DEER. Right. We've now doubled in enforcement people.

The CHAIRMAN. Doubled?

Mr. DEER. Yes.

The CHAIRMAN. Well, as I read just a briefing on that final report, it seemed to me that even though we have ongoing problems with some addiction, things of that nature, overall I thought it kind of vindicated the gaming industry's positive effects, and so I thought it came back really pretty good for the gaming industry.

Senator Inouye, do you have any questions?

Senator INOUYE. Yes.

The CHAIRMAN. By the way, Senator, we did invite Kay Cole-James, the Chairwoman of the Study Commission, but she didn't accept our invitation to appear today.

Senator INOUYE. When Congress was considering the passage of the Indian Regulatory Act about 12 years ago, we based our policy upon that which was founded by our predecessors, that the relationship between Indian country and the Government of the United States was a government-to-government relationship. Accordingly, the first bills that we drafted called for the policymaking and regulatory responsibilities to be placed in the Federal Government.

However, as you know, the administration and the Department of Justice objected to this. They wanted no part of this, and insisted that if we are to set up any regulation, it should be done through the auspices of the various States, resulting today in what is best a patchwork quilt of regulatory and other rulemaking procedures in several States. There is no uniformity and there are a lot of problems.

Now, this report seems to suggest that the policymaking and the regulatory responsibilities should now be placed in the hands of the Federal Government.

Is my conclusion correct, Mr. Deer?

Mr. DEER. That's the way I looked at the reports. That's what they recommend.

Senator INOUYE. Would you be in favor of that?

Mr. DEER. I think I would be, as long as it was on a government-to-government relationship.

Senator INOUYE. Mr. Loescher, do you agree with my conclusion.

Mr. LOESCHER. I believe I do, Mr. Chairman.

Senator INOUYE. Do you think the Federal Government should put in place a policymaking process and assume the regulatory responsibilities?

Mr. LOESCHER. No, Mr. Chairman; you know, we struggled with that in the Commission. The Commission overall said that gaming in America should be a matter regulated by local control, meaning the States, as an overall matter.

With regard to Native American governmental gambling gaming, it's a partnership between the State government and the tribal government in compacts, and we believe that those matters should be

left in negotiation between the States, whether they're directly on point on gaming or as side issues. We think that there is a process, and it's working and that tribes should negotiate with one another.

The Federal role is a product of Congress under IGRA, and we believe that after looking at the effects of IGRA—and I've traveled all over America, been on the reservations and I've seen the results of gaming by tribes very positive. I think what distinguishes the Federal mandate is your requirement that all proceeds, 100 percent of those proceeds, be used to support tribal governance and tribal economic development, and we believe that your mandate, as Congress, distinguishes tribal-governmental gaming from any other gaming in America, and we think that's a very positive result.

Senator INOUYE. The Commission, among one of its recommendations, suggests that the Congress should specify a constitutionally sound means of resolving disputes between States and tribes regarding class III gambling.

Now, this is what we have been trying to do. We have constitutional restrictions, such as the 11th amendment, and the Secretary of the Interior, to his credit, has tried his best. But for every proposal we have advanced all we have is criticism, obstacles and such.

What do you recommend we do? I mean, it sounds nice to have a constitutionally sound means of resolving disputes.

Mr. LOESCHER. Mr. Chairman, Senator Inouye, as you know, in my opening comments I indicated that our Commission didn't come up with any solution, and if Congress, the House of Representatives and the Senate can't find an answer, and the President can't, and the Secretary can't, the way it stands right now I understand is that it's in Federal Court in Florida, and that we haven't recognized that there's an understanding that the Committee's jurisdiction will yield to see what the Court comes up with in terms of an answer on that question.

It all comes down to the issue of good faith, and as long as there's this issue of good faith at risk and the States nor the tribes are willing to put that at risk to have a resolution or a process to mediate or negotiate, even with an independent arbitrator involved, then it's a very difficult matter.

Senator INOUYE. Consistant with the concept of government-to-government relationship, the Secretary of the Interior, as an agent of the Federal Government, has tried his best to do something about this, and every time he tries to advance his suggestions, he is met by opposition.

Did any of the witnesses have anything constructive to present to your Commission as to how this should be resolved?

Mr. LOESCHER. Mr. Chairman, Senator Inouye, we did take testimony on this subject, and I was very interested in the position of the National Governors Association where this problem is being heard. They, basically, have said that they want to continue negotiating with the tribes, but my observation is that this position creates no answer because neither side is really negotiating, and it's a difficult place for tribes to be. The States are getting what they want because they're just waiting and holding their position, but the National Governors Association did submit testimony, and I would urge you to take a look at that.

Senator INOUYE. There are two words that seem to be very important in the proceedings—good faith. Is good faith in existence or is it just talk? I ask this because some of us are getting a bit impatient here. Is there any good faith between the adversarial parties here?

Mr. LOESCHER. Mr. Chairman, I am not a party to the negotiations, and so all I am is an observer. We did take testimony from both, the tribal leaders and the governors, and we get varying opinions. I would say that where we're at right now is in Federal Court, and we're at the mercy of our lawyers.

Senator INOUYE. Well, I want to commend you for your patience in sitting on this Commission all these months, but I was hoping that the Commission would come up with specific recommendations that we could adopt and translate into legislation. But, apparently, we are back to square one again.

This time we may try the Federal approach, and you think that would be acceptable?

Mr. LOESCHER. Mr. Chairman, with regard to Native American tribal government gaming, I think that the partnership between the Federal and the State and the tribal governments is working and that's a good place to continue and to maintain this relationship with the public, and I would commend that effort.

Senator INOUYE. I would like to ask one question, if I may of Mr. Deer.

The Commission recommends that labor organizations, tribes and States should voluntarily work together—that seems to be the key word, "voluntarily"—including the right to organize and bargain collectively.

Do you have any views on this?

Mr. DEER. Well, I certainly have views probably as a citizen, but as a regulator under the present act, I think that I have to be very careful because we're talking about sovereignty and we're talking about a government-to-government relationship, albeit the States and the tribes. As a regulator, I take no stance on labor law, et cetera, except that they should follow, I hope, the Federal laws that do exist, and I think most tribes when I've met with them and talked to the employees of these casinos, they on the large part are very happy.

Senator INOUYE. The recommendation also says that if there is not substantial progress, voluntary progress, over a reasonable period of time, whatever that means, that we should stop legislating.

What are your thoughts on that?

Mr. DEER. Well, again, my thoughts would be almost identical to what I've previously said. I think that, first of all, what is reasonable, how much time are we talking about, and that's why we hope that Mr. Chairman and yourself have the foresight to know how to handle that issue when it does come up.

Senator INOUYE. Well, I have a few other questions I would like to submit, Mr. Chairman, if I may.

The CHAIRMAN. Fine.

Senator INOUYE. Thank you very much.

The CHAIRMAN. Thank you very much.

It was interesting to hear Senator Inouye's comments and questions too because the words "good faith" are probably the most

often used phrase and rarely complied with of any that we see in this committee, frankly. We also hear that from States and tribes too, but when we try to find some common solution that both can buy into, they get very turf conscious, as you know, and go the other way. They talk about good faith, but States and tribes, neither one, has really come to the bargaining table when we have to find some resolution.

You might know of a bill that we recently introduced, S. 985, that will try to set up an arbitration panel that works out some of the disagreements between States and tribes before they have to fight it out in courts. That bill hasn't moved yet, but it's something that you might be interested in looking at, Robert.

With that, we'll go to the next panel, and I'll go ahead and combine two and three since there are only three people here on both those panels, and that will be Deborah Doxtator, chairwoman of the Oneida Indian Tribe; Raymond Scheppach, executive director of the National Governor's Association; and Richard Hill, chairman of the National Indian Gaming Association.

If the three of you would come to the table, we'll start in that order with Ms. Doxtator first, and your complete written testimony will be included in the record. So if you could abbreviate like the last panel, we would appreciate that.

Mr. Scheppach?

He's not here yet. Well, then we'll go ahead and start with Ms. Doxtator and then we'll go to Mr. Hill while we're waiting.

STATEMENT OF DEBORAH DOXTATOR, CHAIRWOMAN, ONEIDA TRIBE OF INDIANS OF WISCONSIN, ONEIDA, WI

Ms. DOXTATOR. Good morning, Mr. Chairman, Mr. Vice Chairman and members of the committee. I would like to address the National Gambling Impact Study Commission's interpretation of the role gaming has played in the development of the economies on Indian lands. Specifically, I am concerned that the casual reading of this report may not fully appreciate the degree to which tribes are using their revenues to diversify their economies or regulate their gaming activities.

Chapter 6 of this report, entitled, "Native American Tribal Gaming," correctly notes that Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face. This statement is correct for two reasons, in my opinion: first, the needs throughout Indian country are overwhelmingly profound; and, second, only approximately one-third of all tribes are located where political or demographic environment will allow gaming to prevail.

However, in chapter 7 the Commission also stated that economic benefits of Indian gambling cannot be factually proven. To this end, the Commission recommended that tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as seed money to further diversify tribal economies and to reduce their dependence on gambling.

Mr. Chairman, as you know, tribes must constantly struggle with the question, "What should we do first?" Because of the pressing health and social problems that exist on most reservations, it is politically difficult for tribal leaders to divert scarce gaming funds

into economic development projects, as opposed to hiring a new physician or building a new Head Start program. It should be noted that after spending $5 million this Commission visited a total of two reservations—the Mashantucket Pequot Nation and the Gila River Indian Community.

Although these tribes each demonstrate a significant level of commitment to economic development, they are only two among many tribes that have used gaming resources to diversify their economies. In that both of these tribes represent the most successful portion of the spectrum, it might have been of greater value for the Commission to have visited reservations where job creation was a primary goal in establishing gaming.

The Oneida Nation has used its financial resources in an effort to diversify our economy and reduce our long-term dependence on gaming as our primary income generating activity. We believe our success in this area benefits both the Oneida Tribe and its local non-Indian neighboring communities. The result is a strong, independent community with an orderly, flexible and stable government.

As the Oneida Nation works toward our number one goal of diversifying our economy, our efforts will continue to benefit the surrounding area because our enterprises will become more diverse and comprehensive while renewing dynamic economic growth in Northeast Wisconsin.

Of course, ours is a unique situation in that we are located near a metropolitan area. Outside of gaming, the Oneida Nation has acquired or invested in the following enterprises: the Oneida Radisson Inn is a 301-room hotel located across the street from the Austin Airport in Green Bay and sits adjacent to the tribe's casino and employs over 400 full and part-time positions.

We have invested $7.2 million in Oneida Nation Electronics, a joint venture with the Plexus Corporation of Neenah, Wisconsin, to manufacture printer circuit assemblies for a variety of customers and industries.

The Oneida Nation has invested $40 million in equity and debt into Airadigm Communications. Aeradigm is a personal communications service provider, which garnered 15 licenses in the FCC auctions, covering all of Wisconsin, except Milwaukee, portions of Michigan and the Eastern third of Iowa. It has over 12,000 customers and employs over 120 people throughout Wisconsin.

The Oneida Industrial Park is a 32-acre land development with 18 retail stores, including Sam's Wholesale, Wal-Mart and Festival Foods as anchors. The tribe collects lease payments generated from long-term lease agreements.

Seven Generations Corporation is a limited liability corporation developed for the purposes of overseeing the commercial properties for the tribe. Serving as a holding company for real estate and other business ventures of the nation, this enterprise has leased a 50,000 square foot health facility to Bill and Health Systems, a family medicine patient care facility specializing in sports medicine, physical therapy, fitness, diagnostic testing and administrative and ancillary services.

Bay Bank is a locally owned full service bank located on the Oneida Reservation. Bay Bank provides friendly service and com-

petitive interest rates on deposits, loans and certificates of deposit. The bank has been opened for over 3 years and is profitable.

The Oneida Nation has entered into partnership with the Green Bay Area Chamber of Commerce to provide counseling, training and technical support in the areas of small business management. The Oneida Small Business Loan Fund facilitates the creation of small business environment on sovereign lands.

The second area of concern is in the area of regulation. Unfortunately, the Commission did an inadequate job in presenting the status of current law, with respect to the regulatory nature of Indian gaming. The Commission failed to capture the investment tribes have made through their tribal gaming commissions to ensure the protection of their patrons and insulate themselves from illegal activity or intrusions by organized crime. The report neglected to acknowledge the extent to which class III games are regulated under the terms of the more than 140 tribal-State compacts.

And, finally, the report failed to fully describe the extent to which the National Gaming Commission is involved in conducting background investigations and field audits.

In summary, the report fails to present findings in support of the National Indian Gaming Commission's newly implemented minimum internal control standards, articulate the true status of off-reservation land transfers for gaming purposes and include a more comprehensive discussion concerning the regulatory authority shared by tribes, the States and the Federal Government through the National Indian Gaming Commission.

I bring the committee this information with the intent of supplementing the already lengthy record that exist concerning non-gaming economic development and the regulatory framework under which Indian Gaming is currently being conducted.

Thank you for this opportunity.

[Prepared statement of Ms. Doxtator appears in appendix.

Senator INOUYE [assuming chair]. Thank you very much.

Mr. Hill.

STATEMENT OF RICHARD HILL, CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION, WASHINGTON, DC

Mr. HILL. Thank you very much, Senator, Vice Chairman Inouye and others here.

First of all, I would like to say I need to acknowledge my brother, John Keefer. My brother, John Keefer, just passed on a few days ago, and I know most of you folks knew John. He's from Spokane. He was a lawyer, a legislator, a chief and a person who really worked hard to see that we could have gaming, the protection of gaming and its inherent rights. I would have liked to have gone to the funeral, but I need to really acknowledge that man and his efforts in this fight here.

Regarding the testimony, Mr. Chairman, I testified here on behalf of NIGA, both on the House side and the Senate side, when they developed the legislation to create the National Gambling Impact Study, and that testimony was basically that all gaming would be studied fairly, equitably and honestly and whatnot. So we were anxious and proactive in its development, and we interfaced with the National Gambling Impact Study and its staff and worked out

some of the logistics and tried to prepare information that would be useful for them to meet their goals. So we worked really hard at that from its inception.

Generally NIGA agrees with most of the recommendations, but it does have a lot of mixed reviews, and our testimony today primarily is really focused on the process that we were engaged in and whatnot. We understand that they were charged to do this comprehensive legal factual study on the social and economic impacts on gaming in the United States, and before it even began we were completely somewhat disappointed, and still disappointed, that on their website they described our nations as defeated nations and people that were in nations who were terminated, yet trying to seek Federal recognition, were only acknowledged as being private associations. We've testified and asked them to change their web site and would help them to correct that, and to date that has not been corrected.

The reason that's important is because it doesn't recognize the unique historical relationship that we have with the Federal Government. Those inaccuracies will be accepted by the general public who dial onto the Internet, and we still want to encourage them in a good way to try and correct that. So even out of the blocks we were disappointed in that.

First of all, they decided to do just 2 days on Indian gaming. We met with them again and we said that maybe to get a full view and full flavor for what your charge is, you need to have expanded hearings, and so we were pleased to work with them and pleased that they dedicated additional days for that purpose. But, as the chairwoman said here, Debbie, we were disappointed that they didn't really go out and see the smaller places in the Dakotas and really have site visits to other areas in order for them to get a full feel of the smaller, middle-range and larger types of casinos and the impacts that those have, both socially and economically, in those particular communities.

We also met with the Advisory Commission of Intergovernmental Affairs [ACIR], to give them some guidance, some help, in terms of protocol to garner information. We were disappointed that they did not take our advice, and the notices that went out to places in tribal government that really didn't filter down to get the appropriate response that they needed. In fact, those responses were made in July, and I don't think those notices went out until 5 months later. So the question of their data was really slow, and I think that even on their first writing they didn't compile the data necessary to write the report from our point of view.

With the subcommittee hearings—we're very thankful for the subcommittee hearing process, and, as noted before, we had over 100 tribal witnesses, associated agencies and whatnot to come forth and testify. So we really felt that those testimonies were extremely important to describe the level of economic and social impact on those communities, but it really didn't—the subcommittee initially did not get the same level of recognition. They didn't have any logistical support, no transcript services, things of that nature, and that was per their operating rules that verbatim transcripts would occur.

So what did occur at two of the hearings is—you know, the testimony was lost. They had six field hearings and one-third of the testimony was either misplaced, lost or no where to be found. That was disappointing given the fact that the Harvard paper, a white paper, was developed. Sometimes it's better when white folks say the same thing that Indians are saying. They went to a prominent university, they dumped a lot of resources into have the study completed and compiled, and I think it was very well-done. A lot of tribes participated in this white paper, and there's no record of it. There's no record in the final report, and there is no record to be found later on—actually, they ended up blaming NIGA for that, which we don't really have responsibility for. So that was disappointing.

The next point I want to make is there was a redirection in their research at one point in time by the people doing the research. I think it was the ACIR doing the research, and they were asked to redirect their report that had already been approved. They decided to redirect the report to really focus on Indian gaming, and they sent out 141 travel surveys where we only have a universe of 310, both casino and class II and class III facilities, and only 25 to the non-Indian gaming commercial entities where they have a universe of about 600 casinos, 180 parimutuel, 38 State lotteries—they don't have the number of highlight and card rooms but you can see the universe is much larger.

So there's this thing they say up here in Washington about an 80–20 rule—you get 80 percent of your work from 20 percent of your clients. Well, in this instance it was probably 90 percent of the work for 10 percent of the industry, so you can see that—and the Treasury wasn't real happy to respond to this because from this track record there was this thing about—you talked about good faith, and trust and things of that nature. Well, we weren't really anxious, or the tribal governments weren't really anxious, to forward information when it was going to be misplaced or mis-logged or something negative would be happening to it.

The other thing I wanted to note is there was a Dr. Allan Rose who was an economist hired by the Commission from a State College in Pennsylvania. He was hired to review reports for and against gaming, and his analysis was there was a greater impact on the economic impact than the social costs of gaming, and that was no where to be found in the final report. We find that interesting and extremely disappointing because I think that this committee has heard—I think since 1988 you've had seven oversight hearings and 10 legislative hearings. So I don't really think the Commission has found out anything new that this body here hasn't already learned in more detail. We need to compliment the committee for its hard work, but there was really nothing new to be discovered through the report.

I think our main points were really disappointing in process, and, like we say time and time again, we just want to be treated fairly, honestly and equitably and tell our story in a factually-based manner.

I guess we were pleased to find out at the end of the day that they did acknowledge sovereignty to a certain extent, and were pleased that there was acknowledgement in the report for that.

Some of the positive economic things could have been emphasized even greater in the report, and I'll highlight that in a moment. They recognized and acknowledged the fact that tribal governments are in fact—they didn't say have primacy in this area, but we do with regards to class III, but indeed the fact that we are regulated, which has been an uphill battle to be acknowledged. That was positive.

They more or less dwelled on the negative social impacts and really didn't highlight the positive social impacts; for example, the AFDC payments in Minnesota and elsewhere have been a large reduction in getting people back to work, making taxpayers out of people who were once tax users and training them to get back into the large work force. The things that we thought should have been highlighted even greater was really the acknowledgement of the tribes who are really one of the top employers in their communities. If you look at the Prairie Island Community in Minnesota, they're the top employer in their community; if you look at the Oneida of Wisconsin who just testified, they're the largest employer in two regions; Cow Creek in Oregon, Rosebud, Oregon, are the second largest employer; look at the Biloxi Indian Nation, the largest employer in Parish County; the Oneida Nation in New York is the largest employer; and also the folks at Lock Creek are there; the Band of Superior Chippewa Indians is the second largest employer.

So I think that could have been—a lot of things that were highlighted by the 100 chiefs who testified, a lot of the data that fell off the table or disappeared could have been really highlighted, and they were things we were trying to emphasize. So we were disappointed that those things were not included.

Compulsive gambling, on a percentage have more programs and have dedicated more resources in terms of the issue of compulsive gaming and really dedicated a lot of resources in that area that really kind of tip the scale when you make a comparison between commercial gaming and efforts that the tribal governments have made in this particular area, and, in some instance, like Minnesota, have gotten recognition for their creativity in this area and their impact in that particular area.

The last point I'm going to make is about the pause, and we know this committee and others—and you spoke to it—about how do we break this log jam, how do we bring this to some closure? We were proud of the Secretary too for issuing the secretarial procedures to remedy the log jam for the class III gaming compact procedures.

So without qualification and without really having a factual basis to—in fact, at one point they issued a letter to try to block the secretarial procedures, this Commission did, which we didn't like. In another instance—you say, "Well, if they're going to do that, maybe they could help us with the Kyl bill so that could be held until the study was issued," but that fell on completely deaf ears.

Those are a lot of the reasons why we didn't care for process. There's mixed reviews in terms of the final recommendations, but I think the term "pause" really disturbed us and the fact that there's ongoing negotiation. We've had an economic pause for over 150 years, and we're seeking way to remedy class III compact negotiations, and so we don't have time for a pause. The only thing

pause would really mean is one less scholarship, one less day care center, one less hospital, one less meaningful thing because it's proven to be the only economic engine that works in Indian country. We want to maintain that and try to move that forward.

Just a few additional things, Mr. Chairman. Their chapter 7 is really not consistent with most of the report. It really kind of takes a shot at us in terms of some of those findings, so I think it's kind of contradictory to their overall findings, and the economic impact that outweighs the social impact of gaming. I think it was their best chance to get us, so to speak.

In terms of good faith, which you mentioned earlier, Mr. Vice Chairman, is that there are 189 compacts in 26 jurisdictions, so I think there's a certain amount of good faith out there. I think we strive for that to be our goal, and we continue to offer constructive ways to achieve that. One of our latest was the negotiations with Ray here and his group, something to break the log jam, and that was a facilitator—you know, let's get someone in there who has some wherewithal to bring the parties together. When we asked for that request, it took us 5 months to get a response and only to get another no in terms of exploring a remedy, finding a remedy, to kind of bring this thing to some closure, only to get to that point again.

So I guess that's something that needs to be noted again for the record, that we have tried to advance things in a good positive way only to find out at the end of the day that some of our proposals have been unacceptable.

I need to thank this committee for their due diligence on this subject and many others. Thank you for allowing me to testify this morning.

[Prepared statement of Mr. Hill appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Hill.

May I now call upon Mr. Scheppach.

STATEMENT OF RAYMOND SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS ASSOCIATION, WASHINGTON, DC

Mr. SCHEPPACH. Thank you, Mr. Chairman. I thank you for the opportunity to appear before you for the National Governors on this important study.

Since the report was only issued a few days ago, these comments should be viewed as preliminary. The report provides strong evidence that the Indian Gaming Regulatory Act of 1988 is working. In its report the Commission cites a successful completion of nearly 200 tribal and State compacts for class III gaming. The Commission's finding also State that there has been a more than a 30-fold increase in gaming revenues for the tribes over the past 10 years—this seems to be further proof of this. In fact, I think the report further says that even between 1996 and 1997, as I remember, tribal revenues grew about 16 percent—three to four times what total revenues for gaming grew. So we continued to get much faster growth in tribal gaming revenues than other gaming revenues.

The Commission raised many concerns in their Chapter 6, and several of them are viewed by the Governors as major issues:

First, I would like to address the several that are consistent with the Governors' views, and then talk about one area where we have significant differences.

The recommendation 6.9 on enforcement of IGRA, the Commission recommends that the Federal Government fully and consistently enforce all provisions of the Indian Gaming Regulatory Act. The Governors applaud the Commission for pointing out that the Department of Justice has not fulfilled its responsibility to enforce existing law in regards to un-compacted gaming. This is a very, very significant problem, particularly in three States.

Recommendation 6.2 on the scope of gaming, the Commission recommends a class III gaming activity should not include any activities that are not available to other citizens, entities, organizations of the State, regardless of technological similarities. It's the Governors' understanding that the *Rumsey* decision accurately interprets IGRA and ensures precisely what the Commission supports.

On the third one, the recommendation 6.10 and 6.12, voluntary negotiations between tribes and States, the Commission recommends that tribes, States and local governments should continue to work together to resolve issues of mutual concern, rather than relying on Federal law to solve problems for them, and that the Federal Government should leave these issues to the States and the tribes for negotiation. The Governors appreciate the Commission's recognition that States and tribes should seek to voluntarily negotiate issues, whether or not related to gaming.

Recommendation 6.11, economic development and local impact of gaming, the Commission recommends that gaming tribes, States and local governments should recognize the mutual benefits of Indian gaming and the need for reciprocal agreements to mitigate the negative impacts of activities when they occur, and I would say that the Governors concur with that recommendation, as well.

Now, I would like to state one important area where Governors disagree with the recommendations. This has to do with recommendation 6.13, which is the bypass mechanism:

The Commission does recommend that all parties to class III negotiations should be subject to an independent, impartial decision maker who is empowered to approve compacts in the event the State refuses to enter into a class III compact.

Here, the Commission takes nearly the same stance as the Department of the Interior after stating that there have been disputes between the States and tribes in regard to class III gaming compacts. The Commission takes the position that those matters should be resolved. It is not clear that the Commission had adequate understanding of this issue, but, clearly, the Governors' oppose that recommendation. If there is a third-party to intervene and make those decisions, we think it takes the pressure away from the two parties to reach any agreement.

There have been some problems—I don't deny that, but the mere fact that we have somewhere between 180 and 200 compacts, revenue growth has been 30-fold over 10 years and continues to grow quite rapidly are all indications that IGRA is in fact working.

That will conclude my short summary, Mr. Chairman, and I would be happy to answer any questions.

[Prepared statement of Mr. Scheppach appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Scheppach.

First, I have been asked by the Chairman to convey his apologies for leaving. He has other commitments.

May I ask either Mr. Hill or Chairperson Doxtator, the Commission recommends that Indian gaming not be inconsistent with the States' gambling policy, that class III gambling should not include any activities that are not available to other persons, entities, organizations in a State, regardless of technological similarities.

What do you think of this recommendation, Mr. Hill?

Mr. HILL. Well, what's good for—I guess the bottomline is we want equal treatment at the end of the day. If it's going to be allowed, it's going to be part of public policy, then we think it should be negotiated. In terms of what we testified a few weeks ago, we need to maintain presently what we have on the books that have been negotiated, the activity that they have in Oklahoma with regards to Megamania, Quartermania and the use of those telephone lines and satellite uses need to be maintained. I think we're going to go into an era, you know, where we don't know exactly what's going to happen in terms of technology, but what every other part of the industry has we would like to be included to remain in the marketplace in this gaming area.

Senator INOUYE. So you do not believe that this recommendation should be implemented at this stage?

Mr. HILL. As far as the recommendations, these things should be negotiated at the tribal and State level, and that's where it should lay.

Senator INOUYE. Chairman Campbell has asked me to ask this question of Chairperson Doxtator:

What is the current employee protection framework for employees who work for the tribe? Is there a grievance and appeal system for employees who feel they have been treated wrongly?

Ms. DOXTATOR. Yes; there is. We have a normal due process system within our tribe. We have a blue book, which entails our personnel policies and procedures, and we follow Federal labor laws in putting that together. So if there are grievances or complaints, they have an opportunity to be heard on a number of levels within the tribe. They can appeal those decisions—that's why I'm saying it can be heard on a number of levels.

So we're an equal employment opportunity employer so that everyone is allowed due process.

Senator INOUYE. Thank you.

Chairman Campbell has asked me to ask this question of Mr. Scheppach:

The Commission recommends that Congress should, quote, "specify a constitutionally sound means of resolving disputes between States and tribes regarding class III gambling." What is the position of the National Governor's Association on the proposal that Senator Campbell has set forth in S. 985, which outlines a procedure for resolving these disputes?

Mr. SCHEPPACH. We would be opposed to that, Mr. Chairman. We're opposed to anything congressionally that would allow any kind of by-pass or any kind of mechanism. Again, we think that the current law provides a tension for the tribes and the States to come

together and work out a compact—and we've got a long history of doing it—and we disagree with anything that preempts that ability. I think there are real questions about the Constitutionality of any law that would in fact interfere with State sovereignty.

Senator INOUYE. In no way do I question the integrity of the wisdom of the members of the Commission, but I note that one member is a member of the Nevada Regulatory Commission; another represents MGM Grand, a commercial gambling organization in Nevada; another is a senior political figure in California; and another is senior representative of the Hotel and Restaurant Employees National Union.

Do you believe that there were enough members on the Commission who were knowledgeable of the laws that apply to Indian and Federal Government relations?

Mr. SCHEPPACH. I really can't judge that. I mean, we did ask, as I remember, to have a governor on the panel, and we did not get anybody in. As I remember, I think the only person who represents State Government was the former Lieutenant Governor of California, if I'm not mistaken. But I'm really not capable of judging members of the Commission.

Senator INOUYE. Mr. Hill, do you think it was well-balanced?

Mr. HILL. No; it wasn't well-balanced at all. I think you really come up with that when you have appointments from different sectors of the government here. It really doesn't lend to the expertise, as needed, and the continuity that's really needed. We were really disappointed in what we were advocating, but Bob Loescher really represented our interests and our concerns with great enthusiasm. He did his homework on the subjects he wasn't familiar. So we had to make due with the best that we've had, but when I got with the Commission, it was the Christian Coalition, the Nevada interests, our interests, other interests that were anti-gaming, conservative points of view in terms of gaming.

So it was almost like Frankenstein meeting Dracula when we all met at the same table and didn't have a full discussion on various serious points with reference to union issues or legal points. They didn't have the background to really fully discuss it, and it really was at a disadvantage in terms of having a decent discussion, a legal discussion, things that could really lead to some positive productivity in terms of conversation, as well as final outcomes of the report.

So, certainly, this was a complete mismatch and misbag. So I really think they were short in a lot of legal aspects.

Senator INOUYE. Thank you.

Mr. Scheppach, I have read your written statement and found it very interesting. I would like to ask a few questions, based upon that testimony, if I may.

You posed the question, why should Indian tribes seek a compact with a State if there is no penalty in skipping that step? If I may respond by asking this question of you. Frustrated tribes, as you can imagine, have frequently asked this committee, what can we do if a State refuses to negotiate a compact and asserts its 11th amendment immunity to suit?

How should I respond to that question?

Mr. SCHEPPACH. Well, Mr. Chairman, my sense is that what happens in those cases is the tribal government wants to negotiate outside the laws of what's allowed for other residents in the State. I don't see any reason why a State would ever bring up the 11th amendment if a tribe was asking for what is legally allowed by other citizens in the State, and I think if you look closely at a lot of the cases, that, in essence, is the problem. This always boils down to, I think—Rick would probably agree—to scope of gaming, and where this is an agreement on this scope, I'm not sure we have problems; it's when there is disagreement on this scope. I think a lot of those disputes are because of tribes wanting to jump outside of what was legally required.

Senator INOUYE. In your written statement, there is an extraordinary sentence that there is a need for formal State involvement in the recognition of new tribes. What do you envision the State involvement would be, and why should States have a role in what, I am certain you are well aware has always been an exclusively Federal responsibility and authority under the U.S. Constitution?

I do not think there is any Federal court decision or law on our books that would suggest the States have a role in the recognition of new tribes. Why this new approach?

Mr. SCHEPPACH. Well, maybe I'll trade that off for the constitutional protection on the by-pass.

I think merely it's the first step toward lands being brought into trust for purposes of gaming, and that's the reason I think some of the governors have talked about that.

Senator INOUYE. You do not believe that the present process adequately protects your interest?

Mr. SCHEPPACH. Not entirely. It also has to do with lands being brought in for—I mean, there's an increasing problem, I think, in terms of lands being brought into trust, not for gaming but for other purposes, and being inconsistent with zoning and taxing and a number of other issues, which I think we're beginning to face more and more now.

Senator INOUYE. This report also speaks of an impartial third-party.

Why are you opposed to that?

Mr. SCHEPPACH. Again, because I think that as soon as you set up an alternative mechanism, it takes the pressure off the tribe to stay at the table and work something out. They will go and appeal directly to a third-party, and we think it's inappropriate for the third-party to interpret State law with respect to gaming. It's up to the State—I mean, they have adopted the law, and it's up to the State to decide what's consistent with State law.

Senator INOUYE. In your written statement—and I am going to quote this because it is very important—you state that, quote,

> If traditional State authority to regulate gambling was the underlying principle of IGRA that led to the requirement for tribal-State compacts, then the Authority of a State to interpret its gambling laws should not be preempted.

And if I may react to that, as the primary sponsor of the act in the Senate, as you are well aware, I can assure you that the Indian Gaming Regulatory Act is premised not on the authority of the States, but on the constitutional authority vested exclusively in the Federal Government to deal with Indian tribes. As I indicated, pos-

sibly before you came in, we premised all of our legislative activity on that concept, on the government-to-government relationship between the United States and the Indian nations..

As I indicated earlier, we initially proposed a joint Federal tribal regulatory framework for Indian gaming consistent with traditional relationships in other areas, but, as you know, the administration and Justice didn't want any part of that. We did not have a role for the States initially, if you look at the old bills that we considered. But, as you recall, the National Governors' Association and the various States came to this committee and said that in this one area, gaming, they wanted to be involved. So we fashioned the framework and legally took away some of the so-called sovereign prerogatives of Indian nations, and we authorized the application of State law where it would not otherwise apply. Up until then State laws did not apply to Indian gaming, and I think the Supreme Court's decision made that very clear.

So I simply do not understand where or how you think the Federal Government is preempting a State's interpretation of its laws.

Mr. SCHEPPACH. Well, I think—you, obviously, wrote the legislation but it seems to me, Senator, it was in fact a compromise between the Federal responsibility as trustees for the tribes—and you're right. You constitutionally had the right to do whatever you wanted to do with respect to gaming on trust lands, but I think you compromised with the States and with State law because this is a very, very emotional issue with States with respect to gaming. I think you worked out what was a pretty workable compromise, and I don't disagree that tribes didn't give up some sovereignty in that, but I think you've got to look back at the track record. I think that we do have almost 200 compacts, and it has been working. Perhaps, there's now tribes, I think, receiving well over $6 billion in income, up from $200 million in 1987—that's quite a dramatic increase. I think tribes and States have been working in good faith during this period.

It's not clear to me that States are not continuing to work in good faith. I don't know that we have a huge problem out there where States are going to the 11th amendment in every case to preclude negotiations. I think they're doing that primarily when I think a tribe wants to negotiate outside the realm of State law.

Senator INOUYE. Well, I am certain you recall that when we began this process after *Cabazon,* and the States came into the picture, we had an understanding that the law as drafted by the committee, finally, met your approval. Is that not right?

Mr. SCHEPPACH. I think, by and large, yes, Mr. Chairman.

Senator INOUYE. And, as a result, the bill passed the Congress with a substantial margin, and in that measure we have provisions in which if the State should not want to pursue negotiations for a tribal State compact, the Secretary of the Interior would get into the picture and no one objected to that at that time.

What is the objection now?

Mr. SCHEPPACH. Well, I guess we've got history now where the current system is in fact working, and we don't believe that it needs another party to get involved in it. Plus, we're in a very different place now with respect to gaming than we were 8 or 10 years ago, in terms of the level and the magnitude.

Senator INOUYE. I will re-read the Commission report again, but the impression I gathered from my first reading is that the Commission members feel that as a result of the present arrangement we have a patchwork quilt of regulations all over the United States. There is no uniformity, no standard, and, therefore, they seem to recommend that the Federal Government get into the act and set up policies and regulations.

What are your thoughts on that?

Mr. SCHEPPACH. I don't agree with that as a reading of the report. I mean, time and time again they talk about the Federal Government should not be involved in this, that in fact these issues should be left up to the tribes and to the States. I mean, the report is across-the-board there with one exception in terms of this bypass mechanism.

Senator INOUYE. Now, you use the word, "preempt." Where is the Federal Government preempting States' prerogatives?

Mr. SCHEPPACH. Well, I use the term with respect if the Federal Government gives the tribe the ability to have gaming that's above and beyond or inconsistent with State law. I look at that as a preemption of State law.

Senator INOUYE. So there is no preemption?

Mr. SCHEPPACH. I look at it as such; you may not, Senator.

Senator INOUYE. Well, I have several other technical questions I would like to submit, if I may, Mr. Scheppach, and Mr. Hill and Chairperson Doxtator. I thank all of you for sharing your wisdom with us, and the committee wishes to especially thank members of the Commission for spending their time hoping to find a national solution. But, apparently, I am certain all of you would agree that we are back to square one again. I hope we will be able to come to the table all together and come up with something because my concern is your concern. At the present time the success ratio is pretty high and there are compacts, but if one State asserts the 11th amendment, State B may get interested in that and State B may get interested in that. Before you know it, the whole framework will collapse, and I, for one, would not want to see that.

So I hope that we can get together and come up with something, instead of just criticizing whatever all of us are doing here.

Thank you very much, and the committee stands in recess. I say recess because I am certain all of you would like to submit addenda or supplementary testimony.

Thank you very much.

[Whereupon, at 10:55 a.m., the committee was recessed, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, I am pleased to join you today in receiving testimony on the final report of the National Gambling Impact Study Commission

This long awaited report will be perceived as controversial to some, and conservative to others.

But I believe that the sponsors of the legislation establishing the commission were sincere in their desire that the rapid growth of gaming in the United States be assessed and evaluated.

This report asserts that there is no central focal point for the formulation of policy or the regulation of an industry that some believe is expanding at a rate that is out of control.

and yet, I remember all too well, that when the Congress was considering the bill that was enacted into law as the Indian Gaming Regulatory Act in 1988, the Department of Justice and the administration were strongly opposed to any Federal presence in the regulation of Indian gaming.

The same principle—that gaming was a matter for the States to address—was applied as well to the imminent growth of commercial gaming in States other than Nevada and New Jersey.

Some will read this report and conclude that the only way to bring this ever-expanding growth of gambling activities under control is to put in place a Federal policymaking and regulatory framework.

This would assure the comprehensive approach to limiting the exponential expansion of gaming that the commission's report documents, and would provide for a uniform system of regulation that is now little more than a patchwork quilt of the various States' gaming laws and regulations.

As most of you know, Hawaii is one of the two States in the Union that criminally prohibits all forms of gaming, and I speak from the vantage point of one who supports that policy of my State.

On the other hand, I served as the primary sponsor of the Indian Gaming Regulatory Act in the Senate, and I have tried over the ensuing years to listen carefully to both the proponents and detractors of tribal gaming.

While gaming has not proven to be a panacea for the conditions of poverty that plague most tribal communities, it has brought about the means for some tribal governments to address the health and educational needs, of their citizens, and to provide the range of governmental services to all reservation residents—be they Indian or non-Indian.

It should also be noted that where tribal gaming has met with success, it has also proven to be a substantial windfall of prosperity to those non-Indian communities that surround reservations.

The commission's recommendation that "the Congress should specify a constitutionally-sound means of resolving disputes between States and tribes regarding class III gambling" is one which I think most of us would endorse.

It is, after all, the objective we have been trying to achieve for many, years now.

For those who are critical of the Interior Secretary's efforts to bridge the chasm of the stalemate between States and tribes, I would challenge you—as I have on every occasion that this committee has addressed matters related to tribal gaming—to advance your own constructive suggestions.

We have tried our best to bring people together, and to work with everyone concerned to fashion solutions to the problems that divide you, but we have yet to receive even one suggestion or one recommendation from the affected parties.

So I call upon the State and tribal governments once again, and I ask you not to use this commission report as another straw man in your public posturing, but to commit yourselves and the governments you represent to getting down to business.

Many consider me to be a patient man, but I will tell you, I am running out of patience and we are all running out of time.

So after you have finished berating some parts of this report and praising other parts, I ask you to come to a table.

If the secretary's table is not the one you want to frequent9 then come into this forum.

We have plenty of meeting areas and we come with a commitment to bring an end to the fractiousness and the battles which have been waged in the media for far too long.

Let us behave like responsible adults and get down to the task that confronts us.

I would hope that before the end of next week, we will have heard from the States and the tribes.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

I appreciate the Commission's inclusion of testimony from Minnesota tribes and communities in their final report. I think for people to have confidence in the report's conclusions, they have to believe that the concerns of all communities and interests were fairly weighed.

The report highlights the fact that gaming revenues, combined with wise leadership, have made a dramatic difference in some Indian reservation economies. We have had a terrific record in Minnesota. I think it's no mistake that the final report cites examples of two Minnesota tribes in its section on economic development in Indian country. The report notes that the Mille Lacs Band of Ojibwai has gone from 60 percent unemployment in the late 1980's to almost zero percent today. [Let me say, parenthetically, that while gaming has been part of the solution at Mille Lacs, I think the leadership of the tribe, under Marge Anderson, has really made the difference.]

This quote from Darrel Campbell of the Prairie Island Sioux was also included in the report: "We no longer rely only on government funding to pay for the basics. We have used gaming proceeds to build better homes for our members, construct a community center and an administration building, develop a wastewater treatment facility and build safer roads. We are also able to provide our members with excellent health care benefits and quality education choices....We are currently working with the [Mayo Clinic] on a diabetic study of Native Americans. We can provide chemical dependency treatment to any tribal member who needs assistance. And our education assistance program allows tribal members to choose whatever job training, college, or university they wish to attend."

On diversified economic development: Again, obviously gaming has been a big boost to those tribes that have it and have been successful at it. But, I think the wisest tribal leaders are taking these revenues and reinvesting them into the reservation to diversify their tribal economies. For example, the Mille Lacs Band has used some of it's gaming revenues to buy two banks and some restaurants, and has also created a Entrepreneur fund to provide assistance to small business owners. The Red Lake Band has started a pre-fabricated housing business.

These tribes and their leaders realize that having their communities be dependent on an income stream from one industry is a mistake. You never know what tomorrow may hold. Changing tastes, changing attitudes, or increased competition. For example, my state is considering allowing more non-Indian gambling. Diversifying tribal economies is the next step tribes need to take to secure their economic future.

On problem gamblers: The statistics on problem and pathological gamblers cited in the report are deeply troubling. Over 15 million Americans are thought to be either problem gamblers or pathological gamblers. Only one-half of those individuals are thought to be adults, the other one-half are adolescents who, in many cases, are

too young to be able to legally gamble. Even sadder are the personal stories of ruined lives included in the report. Livelihoods lost and families destroyed are some of the legacies of gambling addiction.

I think it is important, even as we laud the positive impact of gaming in Indian Communities—including those in my own state, that we not forget this social impact.

I think the report makes some good suggestions as to how we can address these problems: Such as education, posting of information about problem gambling and places to seek help in Casinos. Clearly this is an issue that merits further study.

I applaud those tribes who have been proactive about addressing problem gambling at their Casinos. This shows a real understanding that there can be negative social consequences associated with the practice of gaming, which is seen as very much a net positive for Indian nations. Furthermore, it demonstrates the willingness to face up to these issues and to attempt to address them. That is wise and compassionate leadership.

On regulation of Indian gaming: I think Indian gaming needs to be well regulated just as non-Indian gaming should be. Regulation is important not just to ensure the integrity of the games themselves, but also to ensure that tribes derive the maximum benefit from gaming revenues.

Regulation of Indian Gaming should be done in ways that are consistent with the intent of the Indian Gaming Regulatory Act—in other words, with maximum consideration for Indian Sovereignty.

I strongly support the mission of the National Indian Gaming Commission to work with tribal governments to ensure that Indian gaming is regulated.

Gaming is not a panacea: I am frustrated that gaming often seems to dominate discussions about Indian country. The report makes clear something that I, this committee, and the chairman have been saying for years: That not all tribes game. Some are unwilling for cultural or other reasons, others will simply be unable to take advantage. Some tribes have tried and failed. We cannot look to gaming to solve all the problems in Indian country.

In fact the report notes that "There was no evidence reported to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian Country, in the absence of gambling." I think that supporters of Indian gaming may take this as a positive statement—and, again, I don't dispute that gaming does make a huge different for some communities—but I think this finding is also disturbing, because, again, gaming will not work for all tribes across the country. We are going to need to find other mechanisms.

As the report notes, more than two-thirds of the 554 federally recognized tribes do not game. Of those that do, the top 20 account for 50.5 percent of the total revenues. This is a remarkable concentration. Too often we look to the most successful gaming tribes as "typical" gaming tribe. I think non-Indians sometimes assume that the problem of poverty in Indian country has been solved by gaming. We need to ensure that Americans realize the truth: That poverty is still pervasive, that unemployment is pervasive, that there are still significant housing shortages and health care shortages in many Indian communities.

Last, we must be careful that the success of a few tribes does not erode the trust relationship between the Federal Government and all Indian tribes. The Federal Government has significant obligations which must be maintained. Funding levels for most Federal Indian programs have stagnated or declined in recent years. This trend must be reversed.

PREPARED STATEMENT OF RAYMOND SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS ASSOCIATION

Mr. Chairman and members of the committee: My name is Raymond Scheppach and I serve as the executive director of the National Governors' Association. I thank you for the opportunity to present the views of the Nation's Governors on this important study.

Since the report was only issued a few days ago, these comments should be viewed as preliminary. The report itself was over 300 pages in length, and the Commission issued a total of 76 recommendations. The report provides strong evidence that the Indian Gaming Regulatory Act of 1988 [IGRA] is working. In its report, the Commission cites the successful completion of nearly 200 tribal-State compacts for class III gambling. The Commission's finding of a 30-fold increase in gambling revenues for tribes over the past 10 years is further proof. The Governors believe that this evidence demonstrates the good faith effort of States to implement IGRA.

Many of the recommendations contained in other chapters of the report may have significant impact on tribal gambling and the State-tribal relationship in regard to class III gambling. But today, at this early stage, I'd like to restrict my remarks to the chapter on tribal gaming.

Chapter 6: Native American Tribal Gambling

The Commission raised many concerns in this chapter, and several of them are viewed by the Governors as major issues. First, I'd like to address those major areas where the Commission's conclusions were consistent with the Governors' views and then highlight one significant area where we differ.

Recommendation 6–9 enforcement of IGRA. "The Commission Recommends that the Federal Government fully and consistently enforce all provisions of the Indian Gaming Regulatory Act." The Governors applaud the Commission for pointing out that the Department of Justice has not fulfilled its responsibility to enforce existing law in regard to uncompacted gambling. Failure to enforce State authority over compacts has added significantly to the problem of gamblings impact on the Nation, both in hastening the spread of gambling and in creating an atmosphere of uncertain or unclear regulatory responsibility. If a State has no compact with a tribe operating a casino within that State, the State is not able to establish and enforce standards to ensure integrity and fiscal responsibility. The majority of gamblers in most tribal casinos are not residents of reservations, but are citizens of the State. The protections that their State could have established through a compact are lacking. Further, the existence of substantial uncompacted gaming threatens the effectiveness of IGRA. Why should Indian tribes seek a compact with a State if there is no penalty for skipping that step? Governors are pleased that the Commission has highlighted this very important issue.

Recommendation 6–2 scope of gaming. "The Commission recommends that class III gambling activities should not include any activities that are not available to other citizens, entities, or organizations in a State, regardless of technological similarities." The ability of States to regulate gaming, an authority that IGRA clearly uses as the basis for requiring tribal-State compacts for class III gaming, could not exist if definitions of the games were left to the industry and technology. Technology will certainly lead to different approaches to more and more games of chance. In order to regulate gambling, it is imperative that State statutes and regulatory rulings be respected. It is the Governors understanding that the *Rumsey* decision accurately interprets IGRA and ensures precisely what the Commission supports, that technological similarities not be the basis for the classification of games. Governors are pleased that the Commission has raised this issue and pleased that the Commission opposes equating technologically similar games.

Recommendations 6–10 and 6–12 voluntary negotiations between tribes and States. "The Commission recommends that tribes, States, and local governments should continue to work together to resolve issues of mutual concern rather than relying on Federal law to solve problems for them (6–10); and the Federal Government should leave these issues to the States and tribes for negotiation (6–12)." The Governors appreciate the Commission's recognition that States and tribes should seek to voluntarily negotiate issues, whether or not related to gaming. To the Governors, many tribal issues are related to gaming because the State-tribal relationship is very complex. The Governors continue to seek voluntary discussions on a wide range of these issues, and believe that actions of the Department of the Interior have been detrimental to these discussions. The Governors are also pleased that the Commission has asked the Federal Government to leave these issues to the States. Besides scope of gaming issues and improved enforcement authority over uncompacted gaming, the Governors seek to negotiate issues such as greater State input into trust land acquisitions, appropriate enforcement mechanisms for taxes that are legitimately assessed pursuant to settled principles of tribal law, and the need for formal State involvement in the recognition of new tribes.

Recommendation 6–11 economic development and the local impact of gambling. "The Commission recommends that gambling tribes, States, and local governments should recognize the mutual benefits...of Indian gambling and...the need for reciprocal agreements to mitigate the negative effects of the activities that may occur...." The Commission was charged with two explicit questions regarding the extent to which gambling provided revenues to Native American tribal Government, and the extent to which alternative revenue sources may exist for such governments. Much of the chapter describes the impact of gambling in terms of tribal revenues and social impacts. Earlier this year in testimony before this committee, I suggested that IGRA was by and large a success, pointing out the large number of tribal-State compacts. The nearly 200 compacts and the 30-fold increase in gambling revenues that tribes have achieved in the last

10 years both demonstrate that States are very supportive of Indian tribes' efforts to use gambling to provide jobs and to raise the standard of living for their people. We are pleased that the Commission's research backs up this belief about IGRA's success and that the Commission recognizes the responsibility of tribes to the local Communities.

Now I would like to turn to the one important area where the Governors disagree with the recommendation of the Commission.

Recommendation 6–13 bypass mechanism. "The Commission recommends that all parties to class III negotiations should be subject to an independent, impartial decisionmaker who is empowered to approve compacts in the event a State refuses to enter into a class III compact...." Here the Commission takes nearly the same stance as the Department of the Interior. After stating that there have been disputes between the tribes and States in regard to Class III gambling compacts, the Commission takes a position on how those matters should be resolved. It is not at all clear that the Commission had adequate information and resources to investigate this matter. The Commission's recommendation is focused on a State that refuses to enter into a class III gambling compact. No circumstances or facts are included that might explain the State's decision to not enter a compact. This recommendation does not respect the sovereignty of the States. Much of the confusion and conflict that has arisen out of IGRA implementation centers around determining which gambling activities and devices are permitted by a State's public policy. The Governors assert that gambling public policy must be determined by reading a State's laws and regulations. Ultimately, a Governor must not be compelled by Federal law to negotiate for gambling activities or devices that are not expressly authorized by State law. The Governors are disappointed with the Commission's recommendation. If traditional State authority to regulate gambling was the underlying principle of IGRA that lead to the requirement for tribal-State compacts, then the authority of a State to interpret its gambling laws should not be preempted.

The Full Report

While the full research report needs more time to be evaluated, one conclusion is continually reinforced in every section, the impact of gambling on individuals and the community. This is a concern that States have as well as the regulators of gambling in our Federal system. It is a responsibility that Governors will continue to explore. There has been a rapid expansion of gambling. How this should impact the State-tribal relationship under IGRA needs to be further discussed. The Governors stand willing to meet with you and with members of the Commission and with tribal representatives to further the development of effective public policy in this crucial issue.

Statement by
Commissioner Robert W. Loescher
Of the National Gambling Impact Study Commission

Presented to
The United States Senate Committee on Indian Affairs,
June 23, 1999

Regarding the
National Gambling Impact Study Commission Report

My name is Robert W. Loescher. I am the President and Chief Executive Officer of Sealaska Corporation representing 16,000 shareholders and tribal members originating from the communities of Southeastern Alaska. My Tlingit name is Kah Toosh Tu'. I am a member of the Tlingit Nation, the Eagle Tribe and the Chookaneidi clan, the people of Glacier Bay and Hoonah, Alaska. I am of the Ice House. Our clan crests are the bear and the porpoise.

President Clinton appointed me to serve as the only Native American on the National Gambling Impact Study Commission. The Commission was charged by Congress to study, among other things, the status of tribal governmental sponsored gaming in the United States. The Commission came to realize that this was a complex task and appointed a Tribal Gambling Subcommittee. The Subcommittee had six field hearings in addition to the full Commission hearings. It sought the views of tribal leaders throughout Indian Country. Over 100 tribal leaders came to testify at their own expense and their views influenced the tone and texture of the final report.

In further recognition of the importance and complexity of the task, the Subcommittee sought and received concurrence by the Commission to have its own separate chapter in the final report. The report on Indian gaming is simply a snapshot of the status of Indian gaming in America today. The Commission concluded that the right of tribal governments to operate gaming is deeply entrenched in the tribes' special relationship with the Federal government in the United States Constitution. And this distinguishes Indian tribal governmental gaming from all other gaming in the United States. Congress created a second critical distinguishing attribute of Indian gaming in the Indian Gaming Regulatory Act (IGRA) of 1988 - the revenues from Indian gaming must be used for the social and economic benefit of tribal members who desperately need it. In my view, the benefits from Indian gaming are just a tiny downpayment on the deficit of stupendous social and economic needs facing the vast majority of Native

American citizens. The Commission record strongly supports the conclusion that the economic benefits under IGRA are being realized.

Indian gaming furthers Indian Self Determination through tribal ownership and control of its gaming operations. It provides economic benefit to the surrounding communities by employing at least 100,000 people regardless of race color or creed.

Tribal governments were among the first to recognize that gaming has social costs, and they did something about it. The Commission's record shows that tribal governments made the first real financial commitments to help identify and alleviate problem and pathological gambling.

I was very disappointed that the Commission declined to include a narrative that objectively and clearly described the structure, operation and implementation of the regulation of Indian gaming. Despite early weaknesses, Indian gaming is increasingly well regulated by a partnership of the tribal, State and Federal governments. The National Indian Gaming Commission (established by IGRA) has ordered the implementation of Minimum Internal Control Standards (MICS) that provide a uniform standard of Indian gaming regulation throughout the United States. The Commissioners indicated that Indian gaming regulation was extremely complex and legalistic, and they wouldn't deal with it. At the same time, it is my view that Indian gaming is increasingly viewed as a threat and a viable competitor to commercial gaming. The severe criticism of the Indian Gaming Regulation was one way to slow it down. In my view, the Commission was obligated to objectively describe the status of Indian gaming regulation, and it did not do so.

Two of the most contentious issues between tribes and states are the scope of gaming, and the compacting procedures. The Commission's report has not shed any new light on these issues. I strongly object to limiting tribal gaming rights under existing law, as suggested by the second recommendation on scope of gaming.

My goal as a Commissioner was to review all aspects of gaming in America, with strong emphasis on Indian gaming. The overall report is weighted heavily to a small percentage of the American public that is burdened with very real problem and pathological gambling. The report does little to acknowledge the fact that millions of Americans participate in and enjoy gaming as entertainment, without any problems. This report and recommendations should help educate the American public about the positive role tribal governmental gaming has played in Indian Country. It has given hope and provided new economic resources to help

alleviate long neglected social and economic problems. It also suggests positive recommendations to improve Indian gaming regulation.

In pursuing gaming, tribal leaders have done the best that they could do with very limited resources and opportunities, and at this point in history, I believe they should be commended for what they have accomplished.

I have attached a copy of Chapter 6 of the National Gambling Impact study Commission Report, entitled Native American Tribal Gambling, as part of my remarks. Mr. Chairman, I thank you for the invitation to speak before this Committee. I am available to answer any questions you may have on this topic.

Thank you.

CHAPTER 6. NATIVE AMERICAN TRIBAL GAMBLING

Congress established the National Gambling Impact Study Commission in 1996 and directed it to study and report on the economic and social impacts of all forms of legalized gambling in the United States, including Indian gambling.[1] To ensure that sufficient attention was devoted to this important and complex subject, the Commission established a Subcommittee on Indian Gambling to supplement the full Commission's work in this area. In the course of seven formal hearings (in Del Mar, California; the Gila River Indian Community near Tempe, Arizona; Albuquerque, New Mexico; New Orleans, Louisiana; Las Vegas, Nevada; Seattle, Washington; and Virginia Beach, Virginia), and with the assistance of the National Indian Gaming Association (NIGA), the Subcommittee received testimony from approximately 100 tribal leaders, representing more than 50 tribes from every section of the country. At the invitation of officials from the Gila River Indian Community, the Subcommittee visited that reservation and toured a range of facilities, including tribal housing developments, community centers, tribal government facilities, agricultural enterprises, and one of the reservation's two casinos. In addition to the Subcommittee's work, the full Commission heard testimony from tribal representatives, officials of the National Indian Gaming Commission (NIGC), the Bureau of Indian Affairs, and representatives of state and local governments at its hearings in Boston, Massachusetts; Del Mar, California; and Tempe, Arizona. The full Commission also visited Foxwoods, near Ledyard, Connecticut, the largest Indian gambling facility in the United States, to observe an Indian casino firsthand.

GROWTH OF TRIBAL GAMBLING

Large-scale Indian casino gambling is barely a decade old. Its origins trace back to 1987, when the U.S. Supreme Court issued its decision in *California* v. *Cabazon Band of Mission Indians*. This decision held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on Indian reservations.[2] In an effort to provide a regulatory framework for Indian gambling, Congress passed the *Indian Gaming Regulatory Act* (IGRA) in 1988.[3] IGRA provides a statutory basis for the regulation of Indian gambling, specifying several mechanisms and procedures and including the requirement that the revenues from gambling be used to promote the economic development and welfare of tribes. For casino gambling—which IGRA terms "Class III" gambling—the legislation requires tribes to negotiate a compact with their respective states, a provision that has been a continuing source of controversy and which will be discussed at length later in this chapter.

The result of those two developments was a rapid expansion of Indian gambling. From 1988, when IGRA was passed, to 1997, tribal gambling revenues grew more than 30-fold, from $212

[1] *National Gambling Impact Study Commission Act*, Public Law 104-169. The charge to study Indian gambling is quite explicit. The Act provides:

> (1) IN GENERAL—it shall be the duty of the Commission to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on (A) . . . Native American tribal governments,
>
> (2) MATTERS TO BE STUDIED—The matters to be studied by the Commission under paragraph (1) shall at a minimum include (A) a review of existing Federal, State, local and Native American tribal government policies and practices with respect to the legalization or prohibition of gambling, including a review of the costs of such policies and practices . (E) an assessment of the extent to which gambling provided revenues to State, local, and Native American tribal governments, and the extent to which possible alternative revenue sources may exist for such governments. . . Section 4(a)

The Commission was also instructed by Congress to develop a contract with the Advisory Council on Intergovernmental Relations to conduct "a thorough review and cataloging of all applicable Federal, State, local and Native American tribal laws, regulations, and ordinances that pertain to gambling in the United States . . . ." Section 7(a)(1)(A)

[2] 480 U.S. 202.

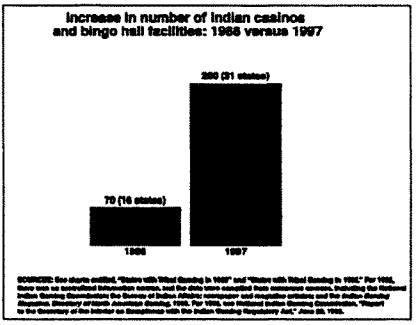
[3] 25 U.S.C A §2701-2721.

million to $6.7 billion.[4] By comparison, the revenues from commercial casino gambling (hereinafter termed "commercial gambling") roughly doubled over the same period, from $9.6 billion to $20.5 billion in constant 1997 dollars.[5]

Since the passage of IGRA, tribal gambling revenues consistently have grown at a faster rate than commercial gambling revenues, in large part because a relatively small number of the Indian gambling facilities opened in densely populated markets that previously had little, if any, legalized gambling. This trend has continued. For example, from 1996 to 1997, tribal gambling revenues increased by 16.5 percent, whereas commercial gambling revenues increased by 4.8 percent. The growth rates for both, however, have shown signs of slowing over the same period. There is a degree of economic concentration in a relatively small number of gaming tribes. The 20 largest revenue generators in Indian gaming account for 50.5 percent of the total revenue; the next 85 account for 41.2 percent.[6]

As was IGRA's intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face.

Only a minority of Indian tribes operate gambling facilities on their reservations. According to the Bureau of Indian Affairs (BIA), there are 554 federally recognized tribes in the United States, with 1,652,897 members, or less than 1 percent of the U.S. population. In 1988, approximately 70 Indian casinos and bingo halls were operating in a total of 16 states; in 1998, approximately 260 facilities were operating in a total of 31 states.[7] (See Figure 6-1) Of these 554 tribes, 146 have Class III gambling facilities, operating under 196 tribal-state compacts.[8]



More than two-thirds of Indian tribes do not participate in Indian gambling at all. Some tribes, such as the Navajo Nation, have rejected Indian gambling in referenda. Other tribal governments are in the midst of policy debates on whether or not to permit gambling and related commercial developments on their reservations.[9]

[4] See chart entitled "Trends in Tribal Casino Gaming Revenues, 1988-1997." Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398 For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy A Profile of the Indian Gaming Industry* (May 1997), p. 6. For Indian gaming revenues in 1996 and 1997, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1997 and 1998)

[5] See chart entitled, "Trends in Commercial Casino Gaming Revenues, 1988-1997." Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p 398 For commercial casino revenues, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1988 to 1997).

[6] Letter from Penny Coleman, Deputy General Counsel, NIGC, to Donna Schwartz, Research Coordinator, Advisory Commission on Intergovernmental Relations, dated December 4, 1998.

[7] See charts entitled, "States with Tribal Gaming in 1988" and "States with Tribal Gaming in 1998." For 1988, there was no centralized information source, and the data was compiled from numerous sources, including the National Indian Gaming Commission; the Bureau of Indian Affairs; newspaper and magazine articles, and the *Indian Gaming Magazine*, *Directory of North American Gaming* (1999) For 1998, see National Indian Gaming Commission, "Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act" (June 30, 1998).

[8] Figures obtained by Commission staff in oral communication with the Bureau of Indian Affairs, March 4, 1999. The larger number of compacts is due to some tribes operating more than one gambling facility.

[9] "Tribes Weighing Tradition vs. Casino Growth," Brett Pulley, *New York Times*, March 16, 1999.

The reasons for opposition are varied, but a common theme among many opposed to Indian gambling is a concern that gambling may undermine the "cultural integrity" of Indian communities.[10]

For the majority of tribes with gambling facilities, the revenues have been modest yet nevertheless useful. However, not all gambling tribes benefit equally. The 20 largest Indian gambling facilities account for 50.5 percent of total revenues, with the next 85 accounting for 41.2 percent.[11] Additionally, not all gambling facilities are successful. Some tribes operate their casinos at a loss and a few have even been forced to close money-losing facilities.

TRIBAL SOVEREIGNTY AND INDIAN GAMBLING

Under the U.S. Constitution and subsequent U.S. law and treaties with Indian nations, Native Americans enjoy a unique form of sovereignty. Chief Justice John Marshall, who was instrumental in defining the constitutional status of Indians, described the legal relationship between the federal government and the tribes as "unlike that of any other two people in existence."[12] Two centuries of often contradictory federal court decisions and Congressional legislation have ensured that the definition and boundaries of tribal sovereignty remain in flux. Differing perspectives on the nature and extent of that sovereignty—in particular, the relationship of Indian tribes to the state governments in which they reside—lie at the heart of the many disputes about Indian gambling.

The authority for tribal governmental gambling lies in the sweep of U.S. history and the U.S. Constitution. The Commerce Clause of the U.S. Constitution recognizes Native American tribes as separate nations. The Supreme Court so held in the early years of the Nation's history. In *Cherokee Nation* v. *Georgia*[13]—the Court held that an Indian tribe is a "distinct political society...capable of managing its own affairs and governing itself." A year later in *Worcester* v. *Georgia,*[14]—Chief Justice Marshall, writing for the Court, held that Indian tribes are distinct, independent political communities "having territorial boundaries, within which their authority [of self-government] is exclusive...By entering into treaties, the Court held, Indian tribes did not "surrender [their] independence—[their] right to self-government..."[15]

These principles of federal law have been repeatedly reaffirmed by the Supreme Court. Thus, it is broadly understood that "[t]he sovereignty retained by tribes includes 'the power of regulating their internal and social relations."[16]—and that this authority includes the "power to make their own substantive law in internal matters...and to enforce that law in their own forums."[17] And under settled law these rights include the right to engage in economic activity on the reservation,[18] through means that specifically include the right to conduct gambling on reservation lands.[19]

As a result of these principles, state law generally does not apply to Indians on the reservation. Thus, in *Worcester,* the Court held that the law of the state of Georgia (which is one of the original 13 states) has no force within the boundaries of the Cherokee Nation. "The

[10] Anders, *supra* note 1 at 104

[11] Letter from Penny Coleman, Deputy General Counsel, NIGC to Donna Schwartz, Research Coordinator, Advisory Commission on Intergovernmental Relations, dated December 4, 1998

[12] *Cherokee Nation* v *Georgia,* 30 U S (5 Pet.) 1 (1831)

[13] *Cherokee Nation* v *Georgia,* 30 U S (5 Pet.) 1, 16 (1831)

[14] *Worcester* v *Georgia,* 31 U S (6 Pet) 515, 557 (1832)

[15] Ibid ,at 561

[16] *New Mexico* v *Mescalero Apache Tribe,* 462 U S 324, 332 (1983) (quoting *United States* v. *Kagama,* 118 U S 375, 381-382 (1886)

[17] *Santa Clara Pueblo* v *Martinez,* 436 U S 49, 55 (1978) (citations omitted)

[18] *New Mexico* v *Mescalero Apache Tribe,* 462 U S 324, 335-36 (1983) and *Merrion* v *Jicarilla Apache Tribe,* 455 U S 130, 137 (1981)

[19] *California* v. *Cabazon Band of Indians,* 480 U.S 202, 207 (1987)

Cherokee Nation, then, is a distinct community, occupying its own territory... in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress."[20] As the Court explained in *Warren Trading Post* v. *Arizona Tax Comm.*, "from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference..."[21] Moreover, tribes enjoy immunity from suit absent a clear and express waiver by tribal governments.[22]

Consistent with the Supreme Court's decisions, Congress and the Executive Branch have implemented a policy of supporting and enhancing tribal sovereignty.

The federal government's unique obligation toward Indian tribes, known as the trust responsibility, is derived from their unique circumstances; namely that Indian tribes are separate sovereigns, but are subject to federal law and lack the lands and other resources to achieve self-sufficiency. Since it was first recognized by Justice Marshall in *Cherokee Nation* v. *Georgia*,[23]—federal courts have held that Congress as well as the Executive Branch must carry out the federal government's fiduciary responsibilities to Indian tribes.[24] The trust responsibility is the obligation of the federal government to protect tribes' status as self-governing entities and their property rights.

However, Congress may limit tribal sovereignty.[25] The Congressional power over Indian affairs is plenary, subject to constitutional restraint. Congress may use its plenary power to "limit, modify or eliminate the powers of local self-government which the tribes otherwise possess."[26] But, federal law now recognizes that Congressional acts are subject to judicial review to determine whether such enactments violate Indian rights and whether they are constitutional. The notion that Congressional power to regulate commerce with Indian tribes under Art. 1, sec. 8, cl. 3 of the Constitution, is plenary or absolute, is no longer the law. To the contrary, the Supreme Court has expressly rejected contentions that Congress' pervasive authority over Indian affairs presents "nonjusticiable political questions" that immunize federal legislation from constraints on Congressional power imposed by other parts of the Constitution.[27] As the Supreme Court held in *Delaware Tribal Business Comm* v. *Weeks*,

> The statement...that the power of Congress "has always been deemed a political one, not subject to be controlled by the judicial department of the government...." has not deterred this Court, particularly in this day, from scrutinizing Indian legislation to determine whether it violates the equal protection component of the Fifth Amendment....The power of Congress over Indian affairs may be of a plenary nature; but it is not absolute."[28] (emphasis added)

Reaffirming this rule just three years later, the Court explained that "the idea that relations between this Nation and the Indian tribes are a political matter, not amenable to judicial

[20] *Worcester* v *Georgia*, 31 U S (6 Pet) 515,561 (1832), see also *Cherokee Nation* v *Georgia*, 30 U S (5 Pet) 1 (1831)

[21] *Warren Trading Post* v *Arizona Tax Comm* , 380 U S 685, 686-7 (1965)

[22] *Santa Clara Pueblo* v *Martinez*, 436 U S 49, at 58

[23] *Cherokee Nation* v *Georgia*, 30 U S (5 Pet) 1 (1831)

[24] See e g *Morton* v *Mancari*, 417 U S 535, 555 (1974) (application of trust responsibility to the Congress), *Delaware Tribal Business Committee* v *Weeks*, 430 U S 73 (1977) (same), *Seminole Nation* v *United States*, 316 U S 286, 297 (1942) (application of trust responsibility to Executive Branch), *United States* v *Creek Nation*, 295 U S 103, 110 (1935) (same), *Cramer* v *United States*, 261 U S 219, 232-33 (1923) (same)

[25] *Santa Clara Pueblo* v *Martinez*, *supra* note 10

[26] *Santa Clara Pueblo* v *Martinez*, *supra* note 10 At 56 *See Talton* v *Mayes*, *supra*, note 11 and *United States* v *Kagama*, 118 U S 375, 379-381 (1886)

[27] *Delaware Tribal Business Comm* v *Weeks*, 430 U S 73, 83-84 (1977)

[28] Ibid at 84, (quoting *United States* v *Alcea Band of Tillamooks*, 329 U S 40, 54 (1946) and citing *United States* v *Creek Nation*, 295 U S 103, 109-110 (1935)

review... has long since been discredited in the taking cases, and was expressly laid to rest in *Delaware Tribal Business Comm.* v. *Weeks*."[29] Thus, while Congress has power "to control or manage Indian affairs," that power extends to "appropriate measures for protecting and advancing the tribe" and is further "subject to limitations inhering in a guardianship and to pertinent constitutional restrictions."[30] In short, Indian rights are no longer excluded from the protection of the Constitution.

In these decisions, the Supreme Court also articulated the standard of review under which the constitutionality of Indian legislation is to be tested. That standard requires that the legislation "be tied rationally to the fulfillment of Congress' unique obligation toward the Indians ..."[31] Applying this standard, the Supreme Court has critically examined federal legislation affecting Indians to determine whether it comports with constitutional limits imposed on Congressional power. As a result of that analysis, the Court has set aside those enactments that contravene the Fifth Amendment[32]—or has held the United States liable to pay just compensation.[33]

Federal Policy: Failure of the "Trust Responsibility" and Alternative Revenue Source to Indian Gambling

One fact that is not in dispute is the federal government's responsibility for the welfare of the Indian tribes and their members. In the *Cherokee* decision, Chief Justice Marshall described the relationship between the federal government and the Indian tribes to "that of a ward to his guardian." This "trust relationship" is a term derived from treaties between the United States and Indian tribes involving massive land successions and the fact that the title to Indian lands is held for tribal members "in trust" by the federal government. It has also come to mean that, among its other obligations, the protection of tribal members and the promotion of their economic and social well-being is the responsibility of the federal government. All observers agree that, in this regard, the federal government's record has been poor, at best.

The statistics are disheartening. According to U.S. government figures, the rates of poverty and unemployment among Native Americans are the highest of any ethnic group in the U.S., whereas per capita income, education, home ownership, and similar indices are among the lowest. Statistics on health care, alcoholism, incarceration, and so forth, are similarly bleak. As summarized by Senator John McCain (R-Arizona) during a Senate debate:

> Nearly one of every three Native Americans lives below the poverty line. One-half of all Indian children on reservations under the age of 6 are living in poverty.
>
> On average Indian families earn less than two-thirds the incomes of non-Indian families. As these statistics indicate, poverty in Indian country is an everyday reality that pervades every aspect of Indian life. In this country we pride ourselves on our ability to provide homes for our loved ones. But in Indian country a good, safe home is a rare commodity.
>
> There are approximately 90,000 Indian families in Indian country who are homeless or underhoused. Nearly one in five Indian homes on the reservation are classified as severely overcrowded. One third are overcrowded. One out of every five Indian homes lacks adequate plumbing facilities. Simple conveniences that the rest of us take for granted remain out of the grasp of many Indian families.
>
> Indians suffer from diabetes at 2½ times the national rate. Indian children suffer the awful effects of fetal alcohol

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[29] *United States* v *Sioux Nation of Indians*, 448 U.S 371, 415 (1980)

[30] Sioux Nation of Indians, 448 U S at 415

[31] Delaware Tribal Business Comm. 430 U S at 85 (quoting *Morton* v *Mancari*, 417 U S 535, 555) (1974)

[32] see *Hodel* v *Irving*, 481 U S 704 (1987)

[33] *United States* v *Sioux Nation of Indians*, 448 U S 371, 415 (1980); *Menominee Tribe* v *United States*, 391 U.S 404 (1968), *United States* v *Alcea Band of Tillamooks*, 329 U S 40, 54 (1946)

> syndrome at rates far exceeding the national average. Perhaps most shocking of all, Indian youth between the age of 5 and 14 years of age commit suicide at twice the national rate. The suicide rate for Indians between the ages of 15 and 24 is nearly three times the national rate.[34]

Congress directed the Commission to conduct an assessment of the extent to which gambling provided revenues to...Native American tribal government, and the extent to which possible alternative revenue sources may exist for such governments.[35]

Since the early 19th century, the federal government has attempted under specific treaty obligations and overall trust duty to provide for the health, education, and welfare needs of tribes and Indians. This has included federal efforts to promote mainstream economic activities in Indian communities such as agriculture, natural resource development, and various forms of industry and commerce. For example, the Allotment policies of the late 19th and early 20th centuries were aimed at breaking up the tribal land base and distributing it to tribal members thereby transforming Indians into farmers like their non-Indian neighbors. These policies failed to produce successful agricultural economies in tribal communities and, instead, are widely recognized as having had a disastrous impact on tribes and caused substantial reduction in lands owned by tribes and individual Indians.[36]

Today Congress continues to pursue efforts at stimulating economic development and to provide for the basic needs of Indians in Indian country. Recent enactments in pursuit of these objectives include the Native American Housing Assistance and Self-Determination Act of 1996,[37] the American Indian Agricultural Management Act of 1993,[38] the Indian Energy Resources Act of 1992,[39] the Indian Tribal Justice Act of 1993,[40] the Indian Employment, Training and Related Services Demonstration Act of 1992,[41] and many more. In addition, the federal government operates dozens of programs through the Department of Interior and the other federal agencies to provide assistance to tribes and Indians in the areas of health care, law enforcement, fire protection, tribal courts, road maintenance, education, child abuse and neglect, housing, and natural resource management. However, major federal expenditures on behalf of Native Americans have declined during the period from FY 1975 through FY 1999 (in constant dollars), except for the Indian Health Service.[42] Further this decline indicates that most federal Indian program spending areas have lagged behind their equivalent federal spending areas.

The poor economic conditions in Indian country have contributed to the same extensive social ills generated in other impoverished communities including high crime rates, child abuse, illiteracy, poor nutrition, and poor health care access.

But with revenues from gambling operations, many tribes have begun to take unprecedented steps to begin to address the economic as well as social problems on their own. For example, through gambling tribes have been able to provide employment to their members and other residents where the federal policies failed to create work. This has resulted in dramatic drops in the extraordinarily high unemployment rates in many, though not all, communities in Indian country and a reduction in welfare rolls and other governmental services for the unemployed.

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[34] 141 Cong. Rec. S11881 (August 8, 1995) (Statement of Sen McCain)

[35] Pub. L. 104-169, 4(a)(1)(E)

[36] *Hodel* v *Irving*, 481 U.S 704, 707 (1987); see also *County of Yakima* v. *Yakima Nation*, 502 U.S. 251, 255-56 (1992); Felix S Cohen's Handbook of Federal Indian Law 137-38 (1982 ed.).

[37] 25 U.S C. 4101 et seq.

[38] 25 U.S.C 3701 et seq

[39] 25 U.S C. 3501 et seq.

[40] 25 U.S.C. 3601 et seq.

[41] 25 U.S C. 3401 et seq.

[42] *Concurrent Resolution on the Budget, 1999 Report of the Committee on the Budget, United States Senate to accompany Con Res 86, together with additional and minority views, Report 105-170, March 20, 1998*

Tribes also use gambling revenues to support tribal governmental services including the tribal courts, law enforcement, fire protection, water, sewer, solid waste, roads, environmental health, land-use planning and building inspection services, and natural resource management. They also use gambling revenues to establish and enhance social welfare programs in the areas of education, housing, substance abuse, suicide prevention, child protection, burial expenses, youth recreation, and more. Tribes have allocated gambling funds to support the establishment of other economic ventures that will diversify and strengthen the reservation economies. Gambling revenues are also used to support tribal language, history, and cultural programs. All of these programs have historically suffered from significant neglect and underfunding by the federal government. Although the problems these programs are aimed at reducing continue to plague Indian communities at significant levels, gambling has provided many tribes with the means to begin addressing them. There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling.

The Move Toward Self-Determination

Over the past two centuries, the policy of the U.S. government toward the Indian tribes has oscillated between recognition of their separate status and attempts to culturally assimilate them into the broader society. Federal policy toward Indians in the first half of this century emphasized the latter and was characterized by an effort to reduce their separate status, culminating in the so-called Termination Policy of the 1950's. Under the Termination Policy, several Indian reservations were broken up and the land divided among members and some tribes were "terminated" and declared no longer in existence. This policy was reversed in the 1960's and 1970's when Native American self-awareness and political movements expanded. At the same time, there was growing public awareness of the difficult economic and social conditions on reservations. As a result of these developments, the federal government's policy toward Native Americans shifted toward enhancing tribal self-determination and placing a greater emphasis on promoting economic and social development on the reservations.

The blueprint for this change was laid by President Johnson in his Presidential statement. And, a milestone in this change was the Nixon Administration's Indian Self-Determination policy.[43] In his July 8, 1970, Message to Congress on Indian Affairs, President Nixon stated: "[t]he United States Government acts as a legal trustee for the land and water rights of American Indians" and has "a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill." This emphasis on self-determination has been reinforced by succeeding Administrations. For example, in 1975 Congress passed and President Ford signed the Indian Self-Determination and Education Assistance Act, which authorized the tribes to administer several federal programs and provided them with greater flexibility and decisionmaking authority regarding these programs and the associated funding.[44] In addition, promoting self-determination and economic development on the reservations was seen as requiring a move away from reliance on federal money. As President Reagan said in his 1983 Statement on Indian Policy: "[i]t is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government." These principles have been substantially expanded by President Clinton through four Presidential Executive Orders on various tribal issues.[45]

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[43] "The Forgotten American", Message to the Congress from the President of the United States, March 6, 1968 and Executive Order 11399, Establishing the National Council on Indian Opportunity, 33 FR 4245, March 6, 1968

[44] 25 U.S.C §§ 450-458

[45] For example, as recently as May 14, 1998, President Clinton issued Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," reiterating the relationship between Federal and Tribal governments "The United States has a unique

It was within this new context that large-scale Indian gambling made its appearance. One of IGRA's purposes was to ensure that the proceeds from tribal gambling were used to fund tribal government operations, including allowing for investment in the infrastructure relating to the promotion of tribal economic development.

Review of Regulations

In its 1987 *Cabazon* decision, the Supreme Court held that the state of California had no authority to apply its regulatory statutes to gambling activities conducted on the reservation. In essence, this ruling held that unless a state prohibited a certain form of gambling throughout the state (in practice meaning either by means of its constitution or its criminal code), it could not prohibit gambling on reservations on its territory. In the *Cabazon* case, the Supreme Court concluded that because bingo and card games were permitted in California in some form—in that case, for charitable purposes—and were merely regulated by the state, these games could not be considered to be prohibited. The Court stated that "In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular." The conclusion was that tribes could operate these games on their reservations and that the authority to regulate them lay with the tribes, not the state.

This decision prompted the passage in 1988 of the *Indian Gaming Regulatory Act*.[46] IGRA provides a regulatory framework for the conduct of gambling on Indian lands. It divides the gambling into three classes, each with a separate treatment:

- Class I consists of traditional tribal games and social games for prizes of nominal value, all of which are subject solely to tribal regulation;
- Class II consists of bingo, instant bingo, lotto, punch cards, and similar games and card games legal anywhere in the state and not played against the house. A tribe may conduct or license and regulate Class II gambling if it occurs in a "state that permits such gaming for any purpose by any person" and is not prohibited by federal law;
- Class III consists of all other games, including electronic facsimiles of games of chance, card games played against the house, casino games, pari-mutuel racing, and jai alai. Class III games may be conducted or licensed by a tribe in a state that permits such gambling for any purpose or any person, subject to a state-tribal compact. The compact may include tribal-state allocations of regulatory authority; terms of criminal justice cooperation and division of labor; payments to the state to cover the costs of enforcement or oversight; tribal taxes equal to those of the state; procedural remedies for breach of the compact; and standards for the operation of gambling, including licensing.[47]

Class II Tribal/Federal (NIGC) *Regulation*

One of IGRA's provisions was the establishment of the National Indian Gaming Commission (NIGC), which was given certain regulatory and investigative functions regarding Indian gambling. Originally the NIGC's responsibilities were focused largely on Class II facilities, but the rapid growth in Class III operations has resulted in a shift of its emphases toward this sector of Indian gambling.

NIGC's regulatory responsibilities regarding Class II gambling are extensive. Prior to the opening of any Class II operation, NIGC must review and approve all related tribal gambling ordinances. If a tribal government is working with an outside investor, the NIGC also is

legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions . The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian treaty and other rights."

[46] 25 U S C A. §2701-2721.

[47] 25 U.S.C. §2701(d)(7).

charged with reviewing all contracts with that outside management company.

Once a Class II gambling enterprise becomes operational, NIGC is authorized to monitor, inspect, and examine the gambling premises, as well as review and audit the operating records. NIGC has the broad authority to determine whether a tribal gambling operation is complying with the provisions of IGRA, NIGC regulations, and tribal regulations. If NIGC believes any of these provisions have been violated, it is empowered to issue notices of violation, closure orders, and civil fines up to $25,000 per day, per violation.[48]

The Commission and the Subcommittee have heard testimony that, in the past, the NIGC had been underfunded and understaffed, and that neither the NIGC nor state regulatory authorities have been able to prevent tribes from operating uncompacted gambling facilities in some states. This situation may have improved: With the passage of federal legislation amending IGRA in October of 1997, the NIGC has been empowered to impose fees upon both Class II and Class III gambling activities. This change has increased the NIGC's annual level of funding and has allowed for a significant increase in the number of field investigators and compliance officers. The NIGC reports having issued more notices of violation, closure orders, and civil fines during the period between October 1997 and end of 1998 than during the entire life of the Commission prior to that point. According to its own figures, those efforts have proven successful in bringing more than 95 percent of all the tribal gambling facilities into compliance with federal law.

Class III Tribal/State Regulation

NIGC's original purpose and focus was the regulation of Class II gambling. The explosive growth of Class III gambling has resulted in a greater emphasis on this area as well. NIGC has been assigned a number of responsibilities regarding the regulation of Class III operations, such as conducting background investigations on individuals and entities with a financial interest in, or a management responsibility for, a Class III gambling contract. In addition NIGC reviews and approves Class III management contracts. However, NIGC's regulatory responsibilities and authority regarding Class III gambling are far more limited than for Class II because IGRA gives the primary responsibility for the regulation of Class III gambling to the tribes and the states.

Under IGRA, the conduct of Class III gambling activities is lawful on Indian lands only if such activities are:

- authorized by an ordinance adopted by the governing body of the tribe and approved by the Chairman of the NIGC;
- located in a state that permits such gambling for any purpose by any person, organization, or entity, and;
- conducted in conformance with a tribal-state compact that is in effect.

IGRA requires that tribes and states negotiate a compact covering, among other things, the regulation of Class III gambling on Indian lands.[49] The primary responsibility to regulate Class III gambling is with the tribe. States may, but are not required to, provide some form of regulatory oversight of Indian Class III casino games under the compact provisions of the Act.[50] Therefore, the level of state and tribal regulatory oversight in any given state is determined by the voluntary compact negotiations between the tribe and the state.

The primary regulators of tribal government gambling are Tribal Gaming Commissions with front-line day-to-day responsibilities for monitoring the gambling operations. As noted by

[48] 25 U.S.C. §2712(a)(1)

[49] Section §2710(d)(3)(A) states: "Any Indian tribe having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact."

[50] 25 U.S.C. §2701(14)(a)(1-3)

the NIGC's Deputy Counsel, "The tribes generally serve as the primary regulators for gambling. They're the ones on the ground. They're the ones that are there 24 hours a day. On occasion states are there 24 hours a day, too, if the tribal/state compact provides for it, but by and large it is the tribes who are doing the primary regulating of Indian gambling."[51]

If a state has a public policy of complete prohibition against Class III gambling, then tribes within the borders of the state may not initiate such gambling. However, if the state has no completely prohibitive policy against Class III gambling, then the federal courts have held that the state may not prohibit gambling on reservations.

Given the often opposing viewpoints between tribes and state governments, IGRA's requirement that the two parties negotiate compacts for Class III gambling has been the source of continuing controversy. On one hand, the federal courts have ruled that Indian tribes have a right to establish gambling facilities on their reservations; on the other hand, IGRA requires that compacts be negotiated between the tribes and the states, obviously requiring the state's consent. Clearly, some form of mutual agreement is required. Although most states and tribes seeking to open gambling facilities have managed to successfully negotiate compacts, many have not. When an impasse develops, each side commonly accuses the other of not negotiating "in good faith" and there is no accepted method of resolution.

Eleventh Amendment Immunity for States

IGRA contains a provision for resolving such impasses, at least when it has been the state that is accused of not negotiating in good faith: the tribe may sue the state in federal court. However, in *Seminole Tribe of Florida* v. *Florida*,[52] a federal court found that this violated the Eleventh Amendment's guarantee of state sovereign immunity.

This decision, which covers a plethora of legal issues, has been widely interpreted. It did not, however, declare invalid nor set aside any part of the Act, nor did it set aside any Class III gambling pacts already negotiated. Obviously, states and tribes may continue to voluntarily enter into new compacts.[53]

One immediate and continuing effect of the *Seminole* decision is that a tribe has no judicial recourse if it believes a state has failed to comply with IGRA's "good faith" provisions. The *Seminole* decision contributed to a stalemate in negotiations between a number of tribal and state governments, a stalemate that continues nearly three years after the *Seminole* decision.

State Criticism of IGRA

Many states are unhappy with several of IGRA's provisions. In testimony before the Commission, representatives of the states have raised a number of areas of concern regarding Indian gambling, including: (1) The federal government does not actively and aggressively enforce IGRA on the reservations, and the states are unable to enforce it on their own; (2) IGRA requires states to negotiate in good faith but does not place the same requirement on tribes; and (3) the scope of gambling activities allowed to tribes is not clearly defined under IGRA.

In the large majority of cases, mutually acceptable tribal-state compacts have been successfully negotiated. In some states, however, including California, Florida, and Washington, tribes have opened Class III casinos without a compact. (As an indication of the difference in their perspectives, states refer to this as "illegal" gambling; tribes term it "uncompacted" gambling.) State governments are not empowered to act against Indian tribes if the tribes are operating Class III gambling establishments without a compact, as enforcement is a federal responsibility. Yet some

[51] Penny Coleman, Deputy General Counsel, National Indian Gaming Commission, testimony before the National Gambling Impact Study Commission, Tempe, AZ (July 30, 1998).

[52] 517 U S 44 (1996)

[53] Ibid.

states have complained that the federal government refuses to act aggressively in these matters.[54]

State officials also argue that IGRA requires states to negotiate in good faith without placing the same requirement on tribes. According to Tom Gede, Special Assistant Attorney General for the state of California, this unilateral good faith requirement reduces the likelihood that states and tribes will come to agreement through the negotiating process:

> [I]t's too easy to get to bad faith, and if there were incentives to allow legitimate differences of opinion to continue to be discussed at the table before somebody raises the bad faith flag, then both parties would be better off. What happens now is that any legitimate difference of opinion results in somebody hoist[ing] the bad faith flag, and it only goes against one party, the state.[55]

In addition, the states argue, IGRA lacks clarity on the scope of gambling activities permitted to tribes. For example, IGRA does not address whether states should be required to negotiate with tribes about providing electronic versions of games already authorized. As technological advances continue to blur the line between Class II and Class III gambling, this issue may become even more complex. Similar disputes have occurred regarding the proper classification of some bingo operations and, thus, the scope of the state's regulatory role.

The states also have bristled at court rulings that have held that if gambling is allowed anywhere in the state for any purpose, even if only under highly controlled and limited circumstances such as charitable gambling by non-profit institutions, there is effectively little restriction on what tribes may offer, including full-fledged casinos. Raymond Scheppach, Executive Director of the National Governors' Association (NGA), summarized the states' position as follows:

> It must be made clear that the tribes can negotiate to operate gambling of the same type and subject to the same restrictions that apply to all other gambling in the state. The governors firmly believe that it is an inappropriate breach of state sovereignty for the federal government to compel states to negotiate tribal operations of gaming activities that are prohibited by state law.[56]

Mechanism for Handling Impasse Between Tribes and States

In an attempt to resolve the impasse caused by the *Seminole* decision and provide a mechanism for resolving state-tribal disputes regarding compacts, the Bureau of Indian Affairs published an "Advanced Notice of Proposed Rulemaking" (hereinafter, "ANPR") on May 10, 1996.[57] The proposed procedures are a complex and lengthy series of steps involving repeated consultation with the respective tribes and states, but the key element is a provision that would allow the Secretary of the Interior to approve a tribe's request to operate gambling facilities, even if the state and tribe have been unable to agree on a compact. Tribes have strongly supported the ANPR because it would replace the remedy nullified by the *Seminole* decision[58]; states have strongly opposed the proposal as an infringement on their sovereignty.

In essence, the procedures would leave to the Secretary of the Interior the right to determine if the respective state had been negotiating in good faith and, if he determines that it has not, to approve a tribe's proposal to operate Class III gambling facilities. The proposed Secretarial procedures detail a number of steps and

[54] Ray Scheppach, Testimony Before the National Gambling Impact Study Commission, Washington, D C (March 19, 1999) (Executive Director of the National Governors Association) See also *Rumsey Indian Rancheria* v *Wilson*, 41 P 3d 421 (9th Cir 1994)

[55] Ibid

[56] Raymond Scheppach, Testimony Before the National Gambling Impact Study Commission, Tempe, Arizona (July 30, 1998) (Executive Director of the National Governors Association)

[57] 61 FR 21394 (1996)

[58] However, tribes disagree with the Secretary's decision to use the *Rumsey* case as the legal standard for the scope of gambling because it would impose the 9th Circuit's interpretation of California state gambling public policy on the rest of the nation

conditions necessary before a final ruling can take place. For example, the Secretary would intervene only after a state had invoked sovereign immunity to block a suit regarding its failure to negotiate a compact in good faith and that suit had been dismissed under *Seminole*. Further, the state would have the right to put forward an alternative proposal, which the tribe would be asked to comment on. Absent such comments, the state's proposal could be adopted. The key point of dispute concerns the fact that, assuming no tribal-state agreement had been reached, the Secretary could then appoint a mediator to decide the issue or himself approve the operation of the gambling facilities, in both cases without the state's consent.

At its July 29, 1998, hearing in Tempe, Arizona, the Commission voted to send a letter to the Secretary of the Interior requesting that he defer issuance of a final rule pending completion of the Commission's *Final Report*.[59] However, on April 12, 1999, shortly after the expiration of a legislative ban imposed by Congress prohibiting the Secretary of the Interior from approving any Class III compacts without the prior approval of the affected states, the Department of the Interior published its final rule that, in effect, would implement the proposed procedures after 30 days. This measure was immediately challenged in federal court by the states of Florida and Alabama, which sought to block the new rules from taking effect. Senator Enzi offered an amendment to an appropriations bill that would have prohibited the Secretary from issuing the 'Procedures.' Senator Slade Gordon withdrew the amendment based upon a promise from Secretary Bruce Babbitt that he would not implement the 'Procedures' until a federal court decided the issue of his authority to issue such procedures under the IGRA. The resolution of this problem will almost certainly become the responsibility of the federal courts.

Other Mechanisms

Other mechanisms have been proposed for resolving the problems underlined by the *Seminole* case. For example, the Department of Justice might prosecute tribes in federal courts only when the state has acted in good faith or by suing states on behalf of the tribes when it determines that the states are refusing to comply with their obligations under IGRA.[60] One scholar has argued for expansion of federal jurisdiction to allow for federal resolution of state-tribal disputes.[61] Senator Daniel Inouye (D-Hawaii) has suggested that both states and tribes agree to waive their sovereign immunity on this issue. No proposal, however, has secured the agreement of tribes and states.

LOCAL COMMUNITY IMPACTS

Local regulations such as zoning, building, and environmental codes do not apply on Indian lands. Tribal governments do, however, sometimes adopt local building and other health and safety codes as tribal laws. State and local governments usually provide and service infrastructure such as roads and bridges near reservations that are relied on by tribal gambling facilities. In some instances, state and local governments may provide water, sewage treatment, and electrical service to a tribal casino, and tribes may be charged (and pay) for such services. In addition tribal governments often conclude agreements with the local governments for certain essential governmental services such as fire and emergency medical services, or enter into reciprocal agreements to provide such services with an agreed level of compensation. Two of the largest Indian

[59] Letter from Kay C James, Chairman of the National Gambling Impact Study Commission, to Bruce Babbitt, Secretary of the Interior (August 6, 1998) (on file with the National Gambling Impact Study Commission) The Commission vote was 8 to 1 in favor of recommending to the Secretary of the Interior that he postpone issuing the final rule until after the Commission had delivered its report and recommendations to Congress and the President on June 18, 1999, Commissioner Robert Loescher opposed the motion

[60] Ibid

[61] *See* Brian Casey Fitzpatrick, *Casenote Finding a Fair Forum Federal Jurisdiction for IGRA Compact Enforcement Action in Cabazon Band of Mission Indians* v *Wilson*, 35 Idaho L Rev 159 (1998)

gambling enterprises in the United States remit substantial funds to the state that are then redistributed by the state on a formula to local communities.[62]

Tribal representatives often point to positive economic and social impacts of Indian casinos on neighboring communities. According to a study funded by five gambling tribes and presented at the Subcommittee's hearing at the Gila River Indian Community:

> In addition to...positive economic and social impacts on reservations, the available evidence also demonstrates that tribes contribute to local economies through taxes, revenue sharing, employment of non-Indians, contributions to local charities, and a myriad of other ways. Furthermore, the case study tribal casinos we analyzed did not appear to have discernable negative impacts on off-reservation sales or crime rates.[63]

A similar view has been expressed by Richard G. Hill, chairman of the National Indian Gaming Association:

> NIGA encourages all those who would disparage Indian governmental gaming to, first, add up all the benefits to their own communities from Indian gaming and what would happen to the jobs and businesses if Indian Nations and their economic development were no longer there. Those opponents of Indian governmental gaming who self-righteously speak about morality and "state's rights" would have much greater problems to deal with than poor, starving Indians.[64]

In many cases, local government officials acknowledge the positive economic impact of tribal gambling but voice concerns regarding other matters. For example, William R. Haase, Planning Director for the town of Ledyard, Connecticut, near the Foxwoods Casino, owned by the Mashantucket Pequot Tribal Nation, stated that:

> the three local host communities (Ledyard, Preston, and North Stonington), with a combined population of only 25,300, find it difficult to cope with the magnitude of Foxwoods Casino, primarily in the areas of diminished quality of life due to tremendous increases in traffic along local roads and state highways, deteriorating highway infrastructure, and increased policing and emergency services costs. Although confined to a 2,300-acre federally recognized Indian reservation, Foxwoods has expanded so rapidly that the host towns and Connecticut Department of Transportation have been unable to keep up. Fortunately, the adverse effects of Foxwoods are confined primarily to the immediate surrounding host communities, and problems diminish with distance.[65]

Similarly, Supervisor Dianne Jacob of San Diego, California, while noting that her county government "has had some success in establishing a government-to-government relationship with the members of the tribes in [her supervisorial] district," also pointed out that

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[62] Together, the Mashantucket Pequot Tribal Nation and the Mohegan Nation are forecasted to contribute $294 million to the state of Connecticut in FY 1999 of which $135 million will be redistributed directly to towns *1999-2001 Biennium Governor's Budget Summary, Connecticut John G Rowland, Governor, p A-3, A-7 4-12 1999*

[63] Stephen Cornell, Joseph Kalt, Matthew Krepps, and Jonathan Taylor, "American Indian Gaming Policy and Its Socio-Economic Effects" (July 31, 1998), p 78

[64] National Indian Gaming Association Press Release (March 16, 1998)

[65] William R Haase, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Planning Director, town of Ledyard, Connecticut) Mr Haase addressed the Commission during the bus trip to Foxwoods Casino and not during the regular meeting He also indicated that the problem was less with the tribe reimbursing the local communities for the costs they incurred from the nearby presence of the Foxwoods Casino than with the state of Connecticut's failure to share sufficiently the revenues it obtained from the same casino

> local governments incur the costs of law enforcement for gaming-related crimes whether they are property crimes that occur at a casino or more serious crimes related to individuals who have been at a casino. For example, the San Diego County Sheriff, who is responsible for law enforcement adjacent to all 3 of the reservations [in San Diego County] on which there is gambling, responded to almost 1,000 calls for service in 1996 alone.[66]

Supervisor Jacob also testified at length about two tribal land acquisitions that had been proposed but not yet approved in her district:

> In both of these situations, the impact on residents of adjacent communities—in terms of traffic, crime, and property devaluation—would have been devastating.
>
> [I]t is one thing to respect the sovereignty of existing tribal lands, but another to annex lands simply for the purpose of circumventing local land use and zoning regulations.[67]

Many tribes have voluntarily entered into agreements with neighboring local governments to address those types of issues. Howard Dickstein, an attorney representing the Pala Band of Mission Indians in California, explained to the Commission how such agreements can be reconciled with tribal sovereignty:

> I think the Pala and other tribes that I represent have determined that in an era when tribes have begun to interact with other non-reservation governments...and clearly have off-reservation impacts because of their on-reservation activities, what sovereignty requires is negotiation with those other governments that represent those non-reservation constituencies and reaching agreements and accommodations that allow those other governments to protect their interests but maintain the tribes' interests and allow the tribes to protect their interests.[68]

ECONOMIC DEVELOPMENT

Only a limited number of independent studies exist regarding the economic and social impact of Indian gambling. Some have found a mixture of positive and negative results of the impact of gambling on reservations,[69] whereas others have found a positive economic impact for the tribal governments, its members and the surrounding communities.[70] This is an area greatly in need of further research. However, it is clear from the testimony that the Subcommittee received that the revenues from Indian gambling have had a significant—and generally positive—impact on a number of reservations.

IGRA requires that the revenues generated by Indian gambling facilities be used to fund tribal government operations and programs, the general welfare of the Indian tribe and its members, and tribal economic development,

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[66] Diane Jacob, Testimony Before the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (Supervisor, County of San Diego, 2nd District).

[67] Ibid

[68] Howard Dickstein, Testimony Before the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (Attorney Representing the Pala Band of Mission Indians)

[69] *See* General Accounting Office, Tax Policy A Profile of the Indian Gaming Industry, GAO/GGD-97-91 (Letter Report, May 5, 1997) (as of December 31, 1996, 184 tribes were operating 281 gaming facilities with reported gaming revenues of about $4 5 billion), Stephen Cornell, Joseph Kalt, Matthew Krepps, and Jonathan Taylor, *American Indian Gaming Policy and Its Socioeconomic Effects A Report to the National Gambling Impact Study Commission* (July 31, 1998) (a study of five tribes that found gambling was an "engine for economic growth" and "the number of compulsive gamblers .has grown" but that "head counts of compulsive gamblers . pale in importance beside the demonstrable improvements in social and economic indicators documented for gaming tribes." At iii-iv), William Bennett Cooper, III, Comment What is in the Cards for the Future of Indian Gaming? 5 *Vill Sports & Entertainment L. Forum* 129 (1998) (discussion of the law and economics of Indian gambling that examines revenue increases, Indian cultural backlash, compulsive gambling, and crime); and Anders, *supra* note 1 (survey and discussion of a number of positive and negative aspects of Indian gambling)

[70] *The Connecticut Economy* (published by the Department of Economics, University of Connecticut), page 6, (Spring 1997)

among other uses. This includes essential governmental services such as education, health, and infrastructure improvements.[71] According to the Chairman of the National Indian Gaming Commission, many tribes have used their revenues "to build schools, fund social services, provide college scholarships, build roads, provide new sewer and water systems, and provide for adequate housing for tribal members."[72]

Many tribes are providing more basic services. One example is the Prairie Island Indian Community. Their representative testified before the Commission's Subcommittee on Indian Gambling that:

> We no longer rely only on government funding to pay for the basics. We have used gaming proceeds to build better homes for our members, construct a community center and an administration building, develop a waste water treatment facility and build safer roads. We are also able to provide our members with excellent health care benefits and quality education choices.... We are currently working with the [Mayo Clinic] on a diabetic study of Native Americans. We can provide chemical dependency treatment to any tribal member who needs assistance. And our education assistance program allows tribal members to choose whatever job training, college, or university they wish to attend.[73]

A representative of the Viejas Band of Kumeyaay Indians also testified that:

> Our gaming revenues provide such government services as police, fire, and ambulance to our reservation, neighbors and casino. Earnings from gaming have paved roads, provided electricity, sewage lines, clean water storage, recycling, trash disposal, natural habitat replacement, and watershed and other environmental improvements to our lands.[74]

Other tribal governments report the development of sewage management projects, energy assistance, housing, job training, conservation, education, native language programs, and many other services that previously were absent or poorly funded before the introduction of gambling. There also has been an emphasis by many tribes on using gambling revenues for preserving cultural practices and strengthening tribal bonds.[75]

For some, Indian gambling provides substantial new revenue to the tribal government.[76] For others, Indian gambling has provided little or no net revenue to the tribal government, but has provided jobs for tribal members. One estimate of employment at Indian gambling facilities puts the figure at 100,000 jobs. Indian gambling provides jobs for Indian tribal members in areas where unemployment has often exceeded 50 percent of the adult age population. Many of the casinos also employ non-Indian people and therefore can have a significant positive economic impact on surrounding communities, as well as for many small businesses near Indian reservations.[77]

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[71] 25 U S C. §2701(11)(B)(i-v)

[72] Tadd Johnson, (now former Chairman), Testimony Before the National Gambling Impact Study Commission, Boston, Mass. (March 16, 1998)

[73] Carrel Campbell, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, Nev. (Nov. 9, 1998) (Secretary of the Prairie Island Indian Community).

[74] Anthony R. Pico, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, Nev. (Nov. 9, 1998) (Chairman of the Viejas Band of Kumeyaay Indians).

[75] Ibid., note 50, and Hilary Osborn, Testimony Before the Subcommittee on Indian Gambling of the National Gambling Impact Study Commission, Las Vegas, Nev. (Nov 9, 1998) (Chairman of the Tribal Casino Gaming Enterprise, Eastern Band of Cherokee Indians).

[76] *See*, Sean Paige, *Gambling on the Future*, Insight on the News, 8. (Dec 22, 1997).

[77] "Economic Contributions of Indian Tribes to the Economy of Washington State," Veronica Tiller, Ph.D., Tiller Research, Inc., and Robert A Chase, Chase Economics (1999). This study was a partnership effort commissioned by the State of Washington and the Washington state tribal governments. See also, "Economic Benefits of Indian Gaming in the State of Oregon," James M. Klas and Matthew S. Robinson (June 1996) and "Statistics on the Economic

Although the impact varies greatly, tribal gambling has significantly decreased the rates of unemployment for some tribes. For example, the Subcommittee received testimony that stated that, for the Mille Lacs Band of Ojibwes in Minnesota, unemployment has decreased from about 60 percent in 1991 to almost zero at present.[78] For the Oneida tribe of Wisconsin, the unemployment rate dropped from nearly 70 percent to less than 5 percent after their casino opened.[79] Representatives from the Gila river Indian Community testified that unemployment on their reservation has decreased from 40 percent to 11 percent since the introduction of gambling.[80] The Coeur d'Alene tribe reported a decrease in the unemployment rate from 55 percent to 22 percent.[81] A number of other tribes have reported similar results.

The Subcommittee also heard much testimony about the pride, optimism, hope, and opportunity that has accompanied the revenues and programs generated by Indian gambling facilities. As one tribal representative stated:

> Gaming has provided a new sense of hope for the future among a Nation that previously felt too much despair and powerlessness as a result of our long term poverty...and a renewed interest in the past. The economic development generated by gaming has raised our spirits and drawn us close together.[82]

The Chairman of the Hopi tribe testified before this Commission.

> One need only visit an Indian casino to realize that a significant number of casino patrons are Indian people from the reservations on which the casino is located or from other nearby reservations, including non-gaming reservations.... I believe it is also safe to conclude that most Indian people do not routinely have a surplus disposable income which should be expended on games of chance. Most of our people on most reservations and tribal communities find it difficult enough to accumulate enough income on a monthly basis to meet the most basic needs of their families. While the decision to expend those funds in gaming activities is an individual choice, the impacts on family members who frequently do not participate in that choice are nevertheless affected.[83]

EMPLOYMENT LAWS AND INDIAN TRIBAL GOVERNMENTS

The applicability of federal labor laws to tribal governments and their business enterprises is a controversial and much-discussed issue in federal courts.[84] Two federal statutes concerning employment issues expressly exclude tribes from coverage: *Title VII of the Civil Rights Act of 1964* and *Title I of the Americans with Disabilities Act of 1990*. In addition, certain other non-discrimination laws have been held not to apply where the alleged discrimination was in regards to admission to membership in the tribe.[85] All other federal statutes regarding

Impact of Indian Gaming," National Indian Gaming Association, (February, 1997).

[78] Testimony submitted by Marge Anderson, Chief Executive, Mille Lacs Band of Ojibwe Indians, before the Indian Gambling Subcommittee of the National Gambling Impact Study Commission, Las Vegas, NV, November 9, 1998.

[79] Ibid

[80] Letha Lemb-Grassley, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Seattle, WA (Jan 7, 1999) (Board of Directors of the Gila River Indian Community).

[81] Information provided by the Coeur d'Alene Tribe to the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Seattle, WA (Jan. 7, 1999).

[82] Jacob LoneTree, Testimony Before the Subcommittee on Indian Gambling, National Gambling Impact Study Commission, Las Vegas, NE (Nov 9, 1998) (President of the Ho-Chunk Nation).

[83] The Honorable Wayne Taylor, Jr., Testimony before the National Gambling Impact Study Commission, Tempe, AZ, July 30, 1998.

[84] *See* William Buffalo and Kevin Wadzinski, *Application of Federal and State Labor and Employment Law to Indian Tribal Employers*, 25 MR. ST. U.L. REV. 1365 (1995).

[85] *Nero* v. *Cherokee Nation of Oklahoma*, 892 F.2d 1457, 1462-1463 (CA10 1989).

employment "are silent."[86] Some federal courts of appeals, however, have held that the following federal laws do apply to on-reservation tribal businesses under fact-specific circumstances: The Occupational Safety and Health Act;[87] the Employee Retirement Income Security Act;[88] and the Fair Labor Standards Act.[89]

The National Labor Relations Act (NLRA) permits employees to form unions and to bargain collectively with their employer. The law does not contain language that expressly applies the Act to Indian tribes nor does it expressly exempt Indian tribes from the Act's coverage. However, the Act does expressly exempt government entities.

The National Labor Relations Board (NLRB or Board), which hears disputes brought under the Act in the first instance, has addressed the issue of whether the Act applies to Indian tribes and has twice held that a tribally owned and operated business located on Indian lands is exempt from the Act under the Act's exemption for government entities. Similarly, at least one court has ruled that the NLRA does not apply to tribal governments.

An important case on the subject, *Fort Apache Timber Company*, was decided by the Board in 1976.[90] In this case, the Board ruled that it lacked jurisdiction over the White Mountain Apache Tribe and a wholly owned and operated enterprise of the tribe. Central to the Board's ruling was the recognition that the tribe was a government, and thus exempt from the Act:

> Consistent with our discussion of authorities recognizing the sovereign-government character of the Tribal Council in the political scheme of this country it would be possible to conclude that the Council is the equivalent of a State, or an integral part of the government of the United States as a whole, and as such specifically excluded from the Act's Section 2(2) definition of "employer." We deem it unnecessary to make that finding here, however, as we conclude and find that the Tribal Council, and its self-directed enterprise on the reservation that is here asserted to be an employer, are implicitly exempt as employers within the meaning of the Act.[91]

The Federal District Court for the District of Oregon expressly agreed with the Board's position in *Fort Apache Timber* and similarly ruled that the Confederated Tribes of the Warm Springs Reservation was "not an employer for purposes of [the NLRA]."[92] The court held, however, that a business operated by a tribal corporation was covered by the NLRA.

It should be noted that the Board has expressly held, and the D.C. Circuit Court has upheld, that the Act's provisions apply to private employers operating on reservations.[93] Similarly, the Board has applied the NLRA to a joint venture between a tribal employer and a non-tribal employer on a reservation.[94] In addition, the Board has also held that the Act applies to businesses wholly

[86] Vicki J. Limas, *Application of Federal Labor and Employment Statutes to Native American Tribes Respecting Sovereignty and Achieving Consistency*, 26 ARIZ L.J. 681 at 682.

[87] *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1115 (CA9 1985). *Reich v. Mashantucket Sand & Gravel*, 95 F. 3d 174 (CA2 1996). For example, in *Mashantucket*, OSHA was found to apply to the Mashantucket Pequot Sand & Gravel operation through its activities in interstate commerce, but recognized Tribe's right to establish its own tribal OSHA system.

[88] *Smart v. State Farm Insurance Co.*, 868 F.2d 929 (CA7 1989). *Lumber Industry Pension Fund v. Warm Springs Forest Products*, 939 F.2d 683 (CA9 1991).

[89] *Reich v. Great Lakes Indian Fish & Wildlife Commission*, 4 F.3d 490 (CA7 1993). The Court ruled against the plaintiff on the grounds that the FLSA's police exemption applied. The Court never reached or decided the question of whether or not FLSA applied directly to the tribal government.

[90] *Ft. Apache Timber Co.* 226 N.L.R.B. 503 (1976).

[91] Ibid.

[92] 103 L.R.R.M. (BNA) 2749 (D. Or. 1980).

[93] *Navajo Nation v. N.L.R.B.*, 288 F.2d 162 (D.C. Cir. 1961), *cert denied*, 366 U.S. 928 (1961).

[94] *Devils Lake Sioux Manufacturing Corporation*, 243 N.L.R.B. 163 (1979).

owned and operated by a tribe if the business is located off reservation.[95]

The applicability of state labor law to tribal gambling employers is significantly less complex. Absent some showing that Congress has consented, the states have no power to regulate activity conducted on an Indian reservation.[96] Thus, tribal labor laws apply and state labor laws do not apply to tribal gambling employers under the federal law.[97] State laws that would be inapplicable include workers' compensation; state unemployment insurance; state minimum wage; daily or weekly overtime; state disability insurance programs; protection against discrimination for race, sex, age, religion, disability, etc.; protection of minors; no authorized deductions from paychecks; no kickbacks or wage rebates; mandatory day of rest; payment of wages at least semi-monthly; no payment in scrip, coupons, or IOU's; no required purchases at company store; and payment in full to terminated workers. It should be noted that most states have laws of the types listed, but some states do not. Other states have additional laws not on the list.

State labor law varies considerably with respect to the rights of state government employees. Under these laws, 28 states allow their employees to organize but not to strike; 9 states permit employees to strike in limited instances; 11 states put limits on the areas that are subject to negotiations; and 8 states do not grant their employees a right to bargain collectively. However, citizens of those states have the right to vote for their state and local government officials. Although tribal members make up a majority of tribal casino employees in a few smaller rural tribal casinos, the great majority of tribal casino employees are not Native Americans; for example, in California, more than 95 percent of the estimated 15,000 tribal casino employees are not Indians; at Foxwoods, in Connecticut, there are a little more than 500 members of the Mashantucket Pequot Tribal Nation and more than 13,000 employees.

In Boston, the Commission heard extensive testimony on the issue of applicability of labor law to tribal employers. Connecticut Attorney General Richard Blumenthal urged the Commission to "apply basic worker protections in federal and state law to the tribal employers or require the tribes to enact laws and ordinances or protections that are commensurate with the federal protections."[98]

Noting that Indian casinos have created thousands of badly needed jobs in southeastern Connecticut, Connecticut State Senator Edith Prague, Chair of the Labor Committee for the Connecticut General Assembly, gave testimony on the relationship between tribal sovereignty and workers' rights:

> Federally recognized tribes enjoy sovereignty which is guaranteed under the Constitution of the United States. Along with sovereignty, there is a responsibility to maintain a basic respect for human rights. This is the balance we need. The reason there is no balance at Foxwoods is because of how the Mashantucket Pequots have chosen [to use] their sovereign rights....
>
> I am not opposed to sovereignty. I am however opposed to a tribe using sovereignty as a weapon to shield themselves from having to behave fairly and decently with their workers. There are just over 500 members of the Mashantucket Pequot Tribe, there are just over 13,000 workers at Foxwoods Casino, some of them may be

[95] *Sac & Fox Industries, Ltd*, 307 N L R B 241 (1992)

[96] *Mescalero Apache Tribe v Jones*, 411 U S 145, 148 (1973)

[97] Examples of state laws include workers' compensation, state unemployment insurance, state minimum wage, daily or weekly overtime, state disability insurance programs, protection of minors, no authorized deductions from paychecks, no kickbacks or wage rebates, mandatory day of rest, payment of wages at least semi-monthly, no payment in scrip, coupons or IOU's, no required purchase at a company store, and payment for terminated workers It should be noted that while many states have these laws, some states do not It is a prerogative of state sovereignty to choose its labor laws and of tribal sovereignty to choose its labor laws

[98] Richard Blumenthal, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Attorney General, State of Connecticut)

> Mashantucket Pequots, the great majority of them are not. And what rights do these workers have?[99]

In addition, the Commission heard testimony from former employees of the Foxwoods Casino, including Fred Sinclair, who described his experience there:

> I am part Cherokee and I support the dream of the Pequots and their success. I was at the original employer rally in 1992 and actually believed that they cared about their employees. I put my heart, soul, and thousands of uncompensated hours into Foxwoods. Even though my part may be considered small, I helped the Pequots achieve their dream, only to be severely injured, harassed, stripped of my position, my rights, my job, and my health benefits by the abusive upper management they are responsible for.[100]

Tribal representatives have disputed employee claims of poor working conditions. According to Richard G. Hill, Chairman of the National Indian Gaming Association:

> The record clearly shows Indian Nations provide good jobs, often with wages in excess of the federal minimum wage, health care, retirement, burial insurance, and other fringe benefits. Indian Nation gaming jobs are generally better than other jobs available in the community. We agree that unemployment insurance and workman's compensation should be available under a Tribal system or the Tribe should participate in a state or federal plan. We reject the notion that Indian Nation non-Indian employees have no rights. Indians and non-Indians are permitted access to grievance procedures at every Indian gaming facility. This objection infers Indian Nations cannot run fair grievance systems and is code for the implication that Indians are not able to govern themselves. This is an extremely prejudicial claim. No Indian Nation testified against Unionization. In fact, Indian people generally perceive Union members as working people like themselves.[101]

Although some tribes do not favor unionization, other tribes have taken an alternative approach by entering into labor agreements covering tribal gambling employees. Testifying before the Subcommittee in Seattle, Apesanahkwat, Chairman of the Menominee Indian Tribe of Wisconsin, described one such voluntary agreement between his tribal government and a group of unions, covering the tribe's proposed off-reservation casino in Kenosha, Wisconsin. This groundbreaking agreement affirms the tribe's sovereignty and guarantees the rights of tribal gambling employees to organize themselves, join unions, and bargain collectively. Among other things, it provides for employer neutrality on the issue of unionization; union access to employee dining and break rooms; and binding arbitration to settle disputes. The tribe also agrees to participate in the state's unemployment and workers' compensation programs. For their part, the unions agree not to engage in strikes, slowdowns, picketing, sit-ins, boycotts, hand-billing, or other economic activity against the tribe's casino.[102]

OTHER ISSUES FOR CONSIDERATION

Taxation

[99] Edith Prague, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 16, 1998) (Connecticut State Senator).

[100] Fred Sinclair, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts (March 17, 1998) (Former employee at Foxwoods Casino).

[101] Richard G. Hill, Testimony Before the National Gambling Impact Study Commission, Virginia Beach, Virginia (February 9, 1999) (Chairman of the National Indian Gaming Association)

[102] Apesanahkwat, Testimony Before the Indian Gambling Subcommittee of the National Gambling Impact Study Commission, Seattle Washington (January 7, 1999) (Chairman, Menominee Tribe of Wisconsin).

Few topics regarding Indian gambling have generated more controversy and heated dispute than the subject of taxation.

As governmental entities, tribal governments are not subject to federal income taxes. Instead, the Internal Revenue Service classifies tribal governments as non-taxable entities.[103] As Indian casinos are owned and often operated by the tribes, the net revenues from these facilities go directly into the coffers of the tribal governments. Some proponents of Indian gambling argue that these revenues are thus taxed at a rate of 100 percent.

As noted above, IGRA requires that the revenues generated by Indian gambling facilities be used for tribal governmental services and for the economic development of the tribe. To the extent that the revenues are used for these purposes, they are not subject to federal taxes. The major exception concerns per-capita payments of gambling revenues to eligible tribal members. According to IGRA, if any gambling revenues remain after a tribe's social and economic development needs have been met, and its tribal government operations have been sufficiently funded, then per-capita distributions can be made to eligible tribal members, if approval is granted by the Secretary of the Interior. Individuals receiving this income are then subject to federal income taxes as ordinary income.[104]

State income taxes, however, do not apply to Indians who live on reservations and who derive their income from tribal enterprises. State income tax does apply to non-Indians working at Indian casinos, and to Indians living and working off the reservations, as well as to those Indians who live on reservations but who earn their income at non-tribal operations off the reservations.

In general, state and local government taxes do not apply to tribes or tribal members living on reservations. However, many of the state-tribal compacts that have been negotiated contain provisions for payments by the tribes to state governments, which may or may not then allocate some of the proceeds to local governments. These payments most commonly include reimbursement of the state's share of the costs of regulating tribal gambling facilities or similar types of services. But there are examples in which the state has required payment from tribes merely as a quid pro quo for concluding a compact. For example, in its compact with the Mashantucket Pequots, the state of Connecticut receives 25 percent of the proceeds from slot machines at the Foxwoods casino in return for maintaining the tribe's monopoly (shared along with the nearby Mohegan Sun casino on the Mohegan reservation) on slot machines in the state. In addition to these mandatory compacts, many tribes have negotiated voluntary agreements with neighboring communities in which compensation is provided for fire protection, ambulance service, and similar functions provided to the tribe.

Exclusivity Payments

Tribes in some states have made "voluntary" payments to states in exchange for the exclusive right to conduct casino-type gambling on a large scale when states allow charitable casino nights but not commercial casinos. These "exclusivity payments" are usually based on a percentage of revenues earned from slots or other gambling.

These voluntary payments have created some confusion. Given that the IGRA specifically prohibits imposition of a state tax on an Indian tribe as a condition of signing a tribal gambling compact, the payments at first glance seem to violate this provision.[105] The distinction, however, is that in order for these voluntary

[103] Internal Revenue Service Revenue Ruling 94-16, 1994-1 C.B. 19, as *amplified by* Rev. Rul. 94-65, 1994-2 C.B. 14. See also, "Indian Assistance Handbook," Department of the Treasury, Internal Revenue Service, (1994).

[104] 25 U.S.C. § 2710(b)(3)(D)

[105] 25 U.S.C. § 2710(d)(4), as follows:

> "(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity."

payments to be valid, the state must provide additional value that is distinct from the right of a tribe to operate Class III gambling in a state.

The Mashantucket Pequot Tribal Nation was the first such agreement to include exclusivity payments and provides the clearest example. The tribe was permitted to exclusively operate casino-style, Class III gambling in Connecticut in exchange for a 25 percent payment of the gross slot machine revenues to the state of Connecticut. The extraordinarily high value of the exclusivity consideration derived from the casino's location in one of the densest and wealthiest populations in the United States. Should the state of Connecticut permit any other party to operate casino-style gambling in Connecticut, the tribe's obligation to pay 25 percent of its slot revenues would cease, unless the tribe consents (as they recently did for the new Mohegan Sun casino). But the Mashantucket Pequot Tribal Nation would still be permitted to operate Class III gambling. Therefore, the additional agreement in which the state ensures non-competition for the tribe's gambling operation is distinct from the right of the tribe to operate Class III gambling.

Off-Reservation Gambling

It is possible for an Indian tribe to operate Indian gambling off existing reservation lands. The general rule under IGRA is that no Indian gambling may occur unless it is located on "Indian lands" acquired before the enactment of IGRA in 1988.[106] IGRA prohibits the operation of Indian gambling on lands acquired by a tribe and transferred into trust after its enactment in 1988, with the following exceptions:

- When an Indian tribe was without a reservation when IGRA was enacted and the newly acquired lands in trust are within the boundaries of the tribe's former reservation;
- When an Indian tribe purchases off-reservation lands and transfers them into trust after the enactment of IGRA and it meets certain conditions and obtains certain consents. An Indian tribe is permitted to operate Indian gambling on newly acquired lands that have been transferred into trust and located off an existing reservation when "the Secretary [of the Interior], after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gambling establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination;"[107]
- When an Indian tribe acquires land as settlement of a tribal land claim or its former reservation lands are restored to trust status;[108]
- When an Indian tribe acquires an initial reservation as a part of its federal recognition under the federal acknowledgement process.

In the eleven years since IGRA's enactment, the Bureau of Indian Affairs has reviewed ten applications to operate off-reservation casinos in Milwaukee, Wisconsin; Council Bluffs, Iowa (two applications for the same parcel of land); Salem, Oregon; Park City, Kansas; Allen Parish, Louisiana; Oklahoma City, Oklahoma; Detroit, Michigan; Marquette County, Michigan; and Airway Heights, Washington. Of these, the BIA accepted two—the Forest County Potawatomie Tribe located in Milwaukee, Wisconsin in 1990; and the Kalispel Tribe, located in Airway Heights, Washington in 1998. One application—i.e., Allen Parish—was rendered moot by the tribe's decision to use a site that did

[106] 25 U S C §2710 (b)(1), (d)(1) "Indian lands" are "all lands within the limits of any Indian reservation" and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power" 25 U S C §2703 (4)

[107] The Indian Gaming Regulatory Act of 1988, 25 U S C , Sect. 2719

[108] Ibid

not require approval; three applications—Council Bluffs, Salem, and Detroit—were officially rejected by either the Secretary of the Interior or the state governor; and the remainder, though not officially rejected, apparently are no longer under active consideration, at least in some cases because of the governor's stated opposition.[109]

Proposals for off-reservation tribal casinos do not always reach the formal application stage. For example, off-reservation tribal casinos also have been proposed in Bridgeport, Connecticut; Fall River, Massachusetts; Kenosha, Wisconsin; Kansas City, Kansas; Portland, Oregon; southern New Jersey; and New York's Catskill Mountains.

Land acquisitions by Indian tribes for non-gambling purposes have been largely focused on reclaiming former reservation land that was alienated in the past. According to Richard G. Hill, Chairman of the National Indian Gaming Association (NIGA): "There is really no need for anyone to fear land-into-trust acquisitions. It's not like Indian nations will ever be able to buy back the entire country."[110]

Class II "Megabingos"

Tribes currently operate Class II "megabingos" that use the telephone lines to operate gambling similar to the current pari-mutuel uses. These are not Internet gambling, as the linkages are reservation to reservation and do not involve individual home terminal access. More than 60 tribal governments currently use these forms of technology in the play of interstate-linked Class II bingo games, which are satellite broadcast across the country. These forms of technology are used to broaden the participation levels of these games and attract more people to visit Indian communities.

RECOMMENDATIONS

6.1 The Commission acknowledges the central role of the National Indian Gaming Commission (NIGC) as the lead federal regulator of tribal governmental gambling. The Commission encourages the Congress to assure adequate NIGC funding for proper regulatory oversight to ensure integrity and fiscal accountability. The Commission supports the NIGC's new Minimum Internal Control Standards, developed with the help of the National Tribal Gaming Commissioners and Regulators, as an important step to ensure such fiscal accountability. The Commission recommends that all Tribal Gaming Commission work ensures that the tribal gambling operations they regulate meet or exceed these Minimum Standards, and that the NIGC focus special attention on tribal gambling operations struggling to comply with these and other regulatory requirements.

6.2 The Commission recommends that IGRA's classes of gambling be clearly defined so that there is no confusion as to what forms of gambling constitute Class II and Class III gambling activities. Further, the Commission recommends that Class III gambling activities should not include any activities that are not available to other persons, entities or organizations in a state, regardless of technological similarities. Indian gambling should not be inconsistent with the state's overall gambling policy.

6.3 The Commission recommends that labor organizations, tribal governments, and states should voluntarily work together to ensure the enforceable right of free association—including the right to organize and bargain collectively—for employees of tribal casinos. Further, the Commission recommends that Congress should enact legislation establishing such worker rights only if there is not substantial voluntary progress toward this goal over a reasonable period of time.

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[109] U S Department of the Interior, Bureau of Indian Affairs, "Gaming Acquisitions Approved Since Enactment of IGRA, October 17, 1988", "Unapproved Gaming Acquisitions Since Enactment of IGRA, October 17, 1988", and "Actions by the Washington, D C Office of the Department of the Interior on Applications to Take Off-Reservation Land In Trust for Gaming (Not Including the Application Involving the Hudson Do Track)" January 8, 1998

[110] Daniel Meisler, "State and Local Finance Senate Proposal on Indian Gambling Is Under Attack By Governors' Group," *The Bond Buyer* (May 13, 1998), p 5

6.4 The Commission recommends that tribal governments, states and, where appropriate, labor organizations, should work voluntarily together to extend to employees of tribal casinos the same or equivalent (or superior) protections that are applicable to comparable state or private-sector employees through federal and state employment laws. If state employee protections are adopted as the standard for a particular tribal casino, then they should be those of the state in which that tribal casino is located. Further, the Commission recommends that Congress should enact legislation providing such protections only if there is not substantial voluntary progress toward this goal over a reasonable period of time.

6.5 The Commission recognizes that under IGRA, Indian tribes must annually report certain proprietary and non-proprietary tribal governmental gambling financial information to the NIGC, through certified, independently audited financial statements. The Commission recommends that certain aggregated financial, Indian gambling data from reporting tribal governments, comparable by class to the aggregated financial data mandatorily collected from commercial casinos and published by such states as Nevada and New Jersey, should be published by the National Indian Gaming Commission annually. Further, the Commission recommends that the independent auditors should also review and comment on each tribal gambling operation's compliance with the Minimum Internal Control Standards (MICS) promulgated by the NIGC.

6.6 The Commission recommends that, upon written request, a reporting Indian tribe should make immediately available to any enrolled tribal member the annual, certified, independently audited financial statements and compliance review of the MICS submitted to the NIGC. A tribal member should be able to inspect such financial statements and compliance reviews at the tribal headquarters or request that they be mailed.

6.7 The Commission recommends that tribal and state sovereignty should be recognized, protected, and preserved.

6.8 The Commission recommends that all relevant governmental gambling regulatory agencies should take the rapid growth of commercial gambling, state lotteries, charitable gambling, and Indian gambling into account as they formulate policies, laws, and regulations pertaining to legalized gambling in their jurisdictions. Further, the Commission recommends that that all relevant governmental gambling regulatory agencies should recognize the long overdue economic development Indian gambling can generate.

6.9 The Commission has heard substantial testimony from tribal and state officials that uncompacted tribal gambling has resulted in substantial litigation. Federal enforcement has, until lately, been mixed. The Commission recommends that the federal government fully and consistently enforce all provisions of the IGRA.

6.10 The Commission recommends that tribes, states, and local governments should continue to work together to resolve issues of mutual concern rather than relying on federal law to solve problems for them.

6.11 The Commission recommends that gambling tribes, states, and local governments should recognize the mutual benefits that may flow to communities from Indian gambling. Further, the Commission recommends that tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects of the activities that may occur in other communities and to balance the rights of tribal, state and local governments, tribal members, and other citizens.

6.12 IGRA allows tribes and states to negotiate any issues related to gambling. Nothing precludes voluntary agreements to deal with issues unrelated to gambling either within or without compacts. Many tribes and states have agreements for any number of issues (e.g., taxes, zoning, environmental issues, natural resources management, hunting and fishing, etc.). The Commission recommends that the federal government should leave these issues to the states and tribes for resolution.

6.13 The Commission recommends that Congress should specify a constitutionally sound means of resolving disputes between states and tribes regarding Class III gambling. Further, the Commission recommends that all parties to Class III negotiations should be subject to an independent, impartial decisionmaker who is empowered to approve compacts in the event a state refuses to enter into a Class III compact, but only if the decisionmaker does not permit any Class III games that are not available to other persons, entities, or organizations of the state and only if an effective regulatory structure is created.

6.14 The Commission recommends that Congress should adopt no law altering the right of tribes to use existing telephone technology to link bingo games between Indian reservations when such forms of technology are used in conjunction with the playing of Class II bingo games as defined under IGRA.

6.15 The Commission recommends that tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as "seed money" to further diversify tribal economies and to reduce their dependence on gambling.

TESTIMONY OF
THE HONORABLE MONTIE R DEER, CHAIRMAN
NATIONAL INDIAN GAMING COMMISSION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

June 23, 1999

Mr Chairman, Mr Vice-Chairman, members of the Committee, my name is Montie Deer and I am the Chairman of the National Indian Gaming Commission (NIGC or Commission) Thank you for the opportunity to appear before you today to testify on National Gambling Impact Study Commission's (Study Commission) final report

As you know, this report was issued this past Friday on June 18, 1999 At this time, the NIGC has not had ample time to fully review and digest the report We would appreciate an opportunity to more fully comment on the report's recommendations once we are able to thoroughly analyze the report's contents Additionally, we would like to comment on the "Survey of Regulatory Practices in the Gaming Industry" submitted by Dr Amy Bunger Pool This survey was conducted at the request of the Study Commission and discusses many characteristics of the Indian gaming industry, particularly with regard to regulation

You have asked me here today to address two issues (1) the regulation of Indian gaming and (2) the NIGC's disclosure of aggregate tribal revenue figures to the Study Commission

Indian gaming regulation

Indian gaming has three tiers of regulation tribal, state and federal The Study Commission report recognizes the fact that as sovereign governments, tribes provide the first level of regulation for their gaming operations Indeed, the report recommends that tribal sovereignty should be "recognized, protected and preserved " With respect to state involvement, many Tribal-State compacts provide for some level of state regulation Finally, the NIGC provides a third level of regulation including (1) monitoring all tribal gaming operations on a continuing basis, (2) approving management contracts; (3) conducting background investigations on management company officials, (4) reviewing and conducting audits of the gaming operations, and (5) initiating enforcement actions to ensure the integrity of Indian gaming operations We sincerely appreciate the Study Commission's acknowledgment of, and support for, the NIGC's role in regulating Indian gaming (Executive Summary Recommendation (E S Recommendation) 6 1)

Tribal gaming regulatory authority is often delegated to tribal gaming commissions under the tribes' tribal gaming ordinances which are submitted and approved by the NIGC They may also be established or delegated authority under Tribal-State compacts entered into to govern Class III gaming Occasionally, tribes establish their regulatory bodies by other means such as a tribal

resolution or may even change the tribe's governing document, its constitution Although not mandated by the Indian Gaming Regulatory Act (IGRA), the NIGC works closely with tribes to establish independent regulatory bodies The NIGC has issued a bulletin which encourages tribes to establish independent tribal gaming commissions and describes our expectations for the regulatory function that those commissions will provide

I have attached the most recent version of the NIGC's *Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act* This report focusses on eight key requirements of IGRA As you will see the report shows that gaming tribes maintain a strong compliance record

In January of this year, the NIGC promulgated regulations on Minimum Internal Control Standards (MICS) which are intended to protect and preserve the integrity of Indian gaming The MICS were drafted to provide protection against potential risk of loss at tribal casinos due to customer or employee access to cash and cash equivalents within the casino -- which is true of any casino The MICS will reduce the risk of loss to tribal gaming operations because the rule contains, among other things, standards and procedures that govern cash handling and counting, documentation, game integrity, auditing and surveillance For example, with regard to the game of Bingo, the MICS (1) establish game play standards, (2) restrict access to bingo supplies and equipment, (3) require collection and review of data, and (4) establish standards for linked electronic games In addition to Bingo, the MICS also establish minimum standards and procedures for Class II and III games such as pull tabs, card games, manual and computerized Keno, pari-mutuel wagering, table games and gaming machines In short, the MICS provide strict rules which track money from the time it enters the casino, until the time it leaves All gaming tribes must adopt Minimum Internal Control Standards by August 4, 1999 I appreciate the Study Commission's support of the MICS issued by the NIGC

As these standards become effective, we intend to emphasize compliance with them as a key aspect of our regulatory program To meet this challenge we have established a separate Division of Audits as part of the NIGC staff structure and are in the process of hiring auditors experienced in gaming operations for positions within that division Under the MICS, the annual independent audit of a tribal gaming operation provided to the NIGC will include comment on that tribal gaming operation's compliance with the NIGC-directed MICS program, as recommended by the Study Commission (Recommendation 6 5)

You should know that many tribes' internal controls already meet or exceed the NIGC's MICS Just this past week I visited four tribes in Michigan to tour the casinos, including a review of surveillance, count room procedures and other casino regulation I can tell you first hand that these particular tribes had state of the art surveillance and machinery to conduct the counting of money I also learned about a cooperative network in which all Michigan gaming tribes share photographs and other information on cheaters and scam artists Many employees I spoke with had prior experience in the industry and some had been with the operation for close to ten years, since the inception of Indian gaming

Let me add that I was impressed on my visit to Michigan last week by the tribal infrastructure and programs that have resulted from the revenues of Indian gaming for the tribes in that state As the Study Commission report concludes, "gambling revenues have proven to be a very important source of funding from many tribal governments, providing much-needed improvements in the health, education and welfare of Native Americans on reservations across the United States " (Final Report at 2-10) The building of tribal schools, health centers and recreation centers as well as substance abuse programs, elderly and headstart programs and water treatment programs are just a few of the things I observed first hand I was informed that 10 years ago many of these programs and much of the infrastructure simply did not exist

To be fair, this is not the case for all tribes Some tribes which have smaller, less profitable operations may not have sophisticated surveillance or advanced machinery to assist in count room procedures Indeed, some tribes will be required to expend additional revenues in order to come into compliance with the NIGC's MICS

With respect to the NIGC's regulatory authority, I would request again that the NIGC be granted licensing authority Currently, there exists some gaps in the regulatory process because, under the current statutory authority, the NIGC is not authorized to investigate suspect individuals or companies which might be using vending or consulting contracts as a foothold into Indian gaming The problem is that, because IGRA requires only the approval of management contracts and not the approval of consulting agreements and other similar arrangements, some parties have attempted to circumvent the management contract approval requirements by claiming that they are merely providing consulting or vendor services, or that they are simply lenders attempting to assure that they will be repaid in full A national licensing system for all individuals engaged in Indian gaming and for gaming related contracts would give the NIGC the ability to scrutinize persons involved in consulting agreements, and similar gaming related contracts and would be an improvement in our regulatory scheme

Release of tribal financial information

In addition to Indian gaming regulation, I wanted to briefly discuss the Study Commission's statement that the NIGC refused to provide information to the Study Commission (Report at 7-3 -- 7-9) I believe the record is quite clear that the NIGC provided extensive amounts of information to the Study Commission What we did not produce were complete copies of tribal audits In September of 1998, prior to my Chairmanship at the NIGC, the Study Commission made a blanket request for individual proprietary tribal audits which tribes must provide to the NIGC pursuant to IGRA In response to the Study Commission's request for copies of the tribal gaming operation audit reports, we explained in a series of letters dated September 9, October 23, and December 4, 1998, and in a face-to-face meeting with Chairman James, that we are prohibited by the Indian Gaming Regulatory Act from releasing the audit reports except in certain limited circumstances, e g , when the audits are used for law enforcement purposes

IGRA provides that

> Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraph (4) and (7) of section 552(b) of title 5, United States Code

The reference to paragraph 4 in 2716(a) refers to exemption 4 of the Freedom of Information Act which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential " Section 2716(a) thus eliminates the NIGC's discretion to release exemption 4 information Consequently, because the audit information is confidential information under exemption 4, and that the release of the information could result in substantial competitive harm, we concluded that the NIGC is not authorized to provide copies of the audits to the Study Commission In addition to the legal restrictions, the confidentiality provisions of IGRA allow the NIGC to efficiently conduct business as tribes are more inclined to provide the NIGC with a full and complete audit of their operations

Notwithstanding the statutory prohibition of full disclosure of audits, we met and discussed on several occasions, this issue with the Study Commission Ultimately, NIGC staff met with Study Commission researchers to reach some workable solution to the request The NIGC and Study Commission researchers finally agreed that the release of aggregate financial information on Indian gaming would satisfy the purposes for which the Study Commission requested the information On two occasions, December 4, 1998 and April 13, 1999 the NIGC provided aggregate data to the Study Commission Interestingly, the Study Commission recommends in its report that the NIGC compile and present for public release certain aggregated audit information about tribal gaming operations -- the precise solution that the NIGC recommended to the Study Commission, albeit not for public release In addition to the aggregate financial data, the NIGC produced, among other things, the following additional information to the Study Commission (1) a list of all tribal auditors used by tribes to conduct audits, (2) NIGC's Report to the Secretary of the Interior on Compliance with IGRA, (3) copies of redacted audits, and (4) copies of NIGC regulations including the MICS

I am concerned about the Study Commission's recommendation that the NIGC compile for public release certain aggregated audit information about tribal gaming operations (E S Recommendation 6 5) To the extent the Commission recommends a change in the current law, we do not believe that is necessary As I stated earlier, we have already provided aggregate data to the Study Commission and believe this to be permissible pursuant to IGRA However, I have concerns with the vague recommendation made by the Study Commission For example, the Study Commission does not articulate any sound public policy rationale for the public release of the data as to Indian gaming In addition, public release in other than aggregate form does have impact on tribal sovereignty The Study Commission report would otherwise recommend that sovereignty be "recognized, protected and preserved " The public release of tribal financial data seems at odds with this fundamental position To the extent this Committee recommends any

change in the law, we would be happy to work with Committee staff in reaching some resolution

Under IGRA, we are currently bound to treat such information as confidential and as such, the NIGC has ready access to tribal financial data related to gaming We receive the annual independent auditors' reports and when we are monitoring or investigating gaming operations, tribal books and records are normally provided without objection While a legislative change could result in a requirement that we release financial information to the public, I think such a change could have a negative impact on our oversight authority

Thank you again for the opportunity to present my views on this subject

NATIONAL
INDIAN
GAMING
COMMISSION

REPORT

TO

THE SECRETARY OF THE INTERIOR

ON

COMPLIANCE WITH

THE

INDIAN GAMING REGULATORY ACT

December 31, 1998

1441 L STREET, N.W. 9TH FLOOR WASHINGTON, D.C. 20005 TEL. 202-632-7003 FAX: 202-632-7066

Background

The National Indian Gaming Commission (NIGC) was created by the Indian Gaming Regulatory Act (IGRA) of 1988 25 U S C § 2701, et seq The three person commission has the authority to take actions for violations of the IGRA, NIGC regulations and tribal ordinances approved by the NIGC The mission of the NIGC is to provide fair, firm and consistent enforcement of IGRA's requirements to ensure the integrity of Indian gaming operations

The NIGC is a small regulatory commission which became operational in 1993 Since that time, the NIGC has processed more than 37,000 investigative reports, more than 60,000 fingerprint cards (currently processing an average of 1600 fingerprint cards monthly) and more than 43,000 employee applications The NIGC database contains more than 92,000 records pertaining to key employees and primary management officials This number represents individuals that have been licensed, been denied a license or have had their licenses revoked

Compliance Report

The NIGC prepares a report for the Secretary of the Interior on tribal compliance with the IGRA This report is as of December 31, 1998 The report will continue to be updated regularly

The IGRA imposes many requirements on Indian tribes and their gaming operations This report focuses on eight key requirements of the IGRA In reviewing this report, please keep in mind that regulatory compliance is a dynamic concept-- a tribe may be out of compliance initially and come into compliance or may be in compliance and then fall out of compliance Some compliance factors are ongoing activities, such as the submission of background checks and suitability determinations Therefore, this report is a "snapshot" in time of tribal compliance and is subject to future changes

In compiling this compliance report, the NIGC relied on lists prepared by the NIGC, including a tribal background investigations list, a tribal operations list, a fee assessment list, and an audit compliance list. For compact compliance, the NIGC relied on the Tribal-State Compact List of the Bureau of Indian Affairs (BIA) and NIGC tribal operations lists

Under IGRA the major compliance obligations for gaming tribes include (1) obtaining a tribal-state compact approved by the Department of the Interior (DOI) prior to conducting class III gaming, (2) submitting investigative reports and suitability determinations on each key employee and primary management official summarizing the results of the tribal background investigation, (3) submitting fingerprint cards to the NIGC for processing, (4) submitting gaming employee applications to the NIGC at the commencement of employment [1], (5) adopting a gaming ordinance that has been approved the NIGC, (6) paying a fee assessment to the NIGC based on gaming revenues, (7) issuing a separate license for each facility where gaming is conducted, and (8) submitting an annual independent audit of each gaming operation to the NIGC

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[1]NIGC regulatory requirement

Results

This report showed gaming tribes to be maintaining a strong compliance record High compliance percentages were again achieved with regard to the submission of investigative reports and employee applications, the payment of fees, compact approvals, and the submission of annual audits The percentage of tribes with approved ordinances and the percentage of operations with tribal licenses remained near 100%

Tribal Notification

Every tribe with a gaming operation has been sent a written notification of the current compliance status of their operation(s) and, where applicable, outlining the specific area(s) of noncompliance identified in this report

Tribal-State Compacts

IGRA provides that class III gaming activities are lawful on Indian lands only if the gaming activities are conducted pursuant to a tribal-state compact that has been approved by the Secretary of the Interior 25 U S C § 2710(d)(1)(C) As of December 31, 1998, the Secretary of the Interior has approved 196 compacts with 157 tribes in 24 states [2] Five California tribes have approved compacts for off-track betting, but are also operating other class III games without the required compact The information regarding tribal-state compact compliance was obtained from the BIA Tribal-State Compact List and compliance reports prepared by NIGC Field Investigators

Background Investigations

The IGRA requires Indian tribes to conduct background investigations on their key employees and primary management officials and to notify the NIGC of the results of the background investigations before issuing a license to those individuals 25 U S C § 2710(b)(2)(F)

By regulation, the NIGC has established the minimum requirements for background investigations 25 C F R Part 556 The three components of the background investigation are listed on the chart as separate requirements

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[2] Source Tribal - State Compact List 11/24/98 This list is maintained and updated by the Indian Gaming Management Staff, Bureau of Indian Affairs, Office of the Commissioner

1) The NIGC requires tribes to prepare and submit investigative reports on each background investigation 25 C F R. § 556 5 Tribes are required to notify the NIGC of the results of their background investigations before issuing a license to a key employee or primary management official 25 U S C § 2710(b)(2)(F)(ii)(III) The report must describe the steps taken in conducting the background investigation, the results obtained, the conclusions reached, and the basis for those conclusions and eligibility determinations It is NIGC policy that a tribe may not make its final suitability determination until after the results of the Federal Bureau of Investigation (FBI) criminal records checks have been received by the tribe The FBI response time averages four to six weeks

2) The tribe must obtain and review the FBI criminal history record information (CHRI) on a potential employee This information is accessed through fingerprint records The tribe may process these fingerprint cards through the NIGC or, under certain circumstances, through their State Bureau 25 C F R § 556 4 (a)(14).

3) Under NIGC regulations, the tribe must submit a completed application for employment to the NIGC when a key employee or primary management official begins work at a tribal gaming operation 25 C F R. § 558 3 (a)(1) To facilitate NIGC's review and to reduce the number of applications on file for individuals employed in tribal gaming operations, tribes have the option of submitting employee applications with the investigative report

Tribal Ordinances

A tribe that wishes to engage in class II or class III gaming must adopt a tribal gaming ordinance that meets the requirements of the IGRA and NIGC regulations, and that ordinance must be approved by the Chairman of the NIGC. 25 U.S C § 2710(b)(1)(B) and (d)(1)(A) The NIGC has approved 249 gaming ordinances Tribes with approved gaming ordinances that are not currently conducting gaming are excluded from this report.

Fee Assessments

Tribes engaged in gaming must pay a fee to the NIGC based on a rate established by the NIGC each year 25 U S C. § 2717(a). The rate is applied to the prior year's assessable gross revenues from gaming activities, and the total amount of fees that can be assessed by the NIGC in a fiscal year cannot exceed $8 million. Gaming operations must pay the fee quarterly Only gaming operations that have paid their fees for each required quarter are considered to be in compliance. Fees are not required to be paid to the NIGC until the second calendar year that the gaming operation has been open

Tribal License

The IGRA requires a separate tribal license for each gaming facility on Indian lands 25 U S C §2710(b)(1) Indian lands include all lands within the boundary of a federally recognized tribe's reservation, whether the land is held in fee or in trust

Annual Audits

Tribes are required to obtain an annual independent audit of the financial statements of each gaming operation on Indian lands and submit to the NIGC a copy of the report 25 C F R. §§ 571.12, 571 13 For this purpose, gaming operations are considered to be in compliance if, by June 30, 1998, they submitted audit reports for the most recent three (3) previous fiscal years

CHART

For ease of reading, the chart lists the major requirements of the Indian Gaming Regulatory Act across the top of the page

Each tribe and tribal gaming operation is listed alphabetically by state in the center of the page, between the tribal requirements and the gaming operations requirements

KEY	SIGNIFIES
X	Compliance
a blank space	Non-compliance
N/A in Compact	Class II operation, no compact necessary
◆ in Compact	Approved compact for off-track betting only
STATE	Tribe submits material to the State
XNC in Investigative Reports	Partial submission of materials
● in Investigative Reports	FBI is processing the fingerprint cards preventing completion of the Investigative Reports
○ in Investigative Reports	Employee applications will be submitted with the Investigative Report
C	Charitable gaming operation
New in Fees	New operation not required to pay fees until second calendar year of operation

N/A in Audits	New operation not yet required to submit audit reports
IR in Audits	Audit report(s) for certain year (s) could not be prepared due to incomplete records
■ Individually owned operations	Individually owned operations where compliance status is currently under review
CA Compliance Agreement	Tribe is meeting its compliance obligations pursuant to an agreement with the NIGC
CR	Compliance status under review

COMPLIANCE REPORT AS OF DECEMBER 31, 1998

	Compliance Items by Tribe							Compliance Items by Operation		
	DOI Approved Compact	Submits Investigative Reports	Submits Fingerprints to NIGC	Submits Employee Applications	NIGC Approved Ordinance	TRIBE Operation(s)	ST	Fees paid to NIGC	Operation Licensed by Tribe	Submits Audits to NIGC
21		X	X	X	X	Agua Caliente Band of Cahuilla Indians Spa Hotel & Casino	CA	X	X	X
22	X	X	X	X	X	Auberry Big Sandy Rancheria Mono Wind Casino	CA	X	X	X
23	◆ X	X	X	X	X	Barona Band of Mission Indians Barona Casino & Bingo	CA		X	X
24			X	X	X	Big Pine Paiute Tribe of the Owens Valley Sierra Springs Casino	CA	X	X	X
25		X	X	X	X	Big Valley Rancheria of Pomo Indians Konocti Vista Casino & Bingo	CA		X	X
26		X	X	X	X	Bishop Paiute Tribe Paiute Palace Casino	CA		X	X
27	◆	X	X	X	X	Cabazon Band of Mission Indians Fantasy Springs Casino	CA	X	X	X
28		X	X	X	X	Cahto Tribe of the Laytonville Rancheria Red Fox Casino & Bingo	CA	X	X	X
29		X	X	X	X	Cahuilla Band of Mission Indians Cahuilla Creek Rest & Casino	CA		X	X
30		X	X	X	X	Chemehuevi Indian Tribe Havasu Landing Resort	CA	X	X	X
31		X	X	X	X	Chicken Ranch Band of Me-Wuk Indians Chicken Ranch Casino & Bingo	CA	X	X	X
32			X		X	Coast Indian Community Resighini Rancheria Golden Bear Casino	CA		X	
33		X	X	X	X	Colusa Band of Wintun Indians Colusa Indian Casino & Bingo	CA	X	X	X
34		X	X	X	X	Coyote Valley Band of Pomo Indians Shodaki Coyote Valley Casino	CA	X	X	X
35		X	X	X	X	Elk Valley Rancheria Elk Valley Casino	CA	X	X	X
36		X	X	X	X	Hoopa Valley Tribe Lucky Bear Casino & Bingo	CA	X	X	X
37		X	X	X	X	Hopland Reservation Hopland SHO-KA-WAH Casino	CA	X	X	X
38	X	X	X	X	X	Jackson Rancheria Band of Miwuk Indians Jackson Indian Bingo & Casino	CA	X	X	X
39		X	X	X	X	Lake Miwok Indian Nation - Middletown Twin Pines Casino	CA	X	X	X

COMPLIANCE REPORT AS OF DECEMBER 31, 1998

	Compliance Items by Tribe							Compliance Items by Operation		
	DOI Approved Compact	Submits Investigative Reports	Submits Fingerprints to NIGC	Submits Employee Applications	NIGC Approved Ordinance	TRIBE Operation(s)	ST	Fees paid to NIGC	Operation Licensed by Tribe	Submits Audits to NIGC
40	X	X	X	X	X	Mooretown Rancheria Feather Falls Casino	CA		X	X
41		X	X	X	X	Morongo Band of Mission Indians Casino Morongo	CA	X	X	X
42		X	X	X	X	Pit River Tribe Pit River Casino & Bingo - Burney	CA		X	X
43	X	X	X	X	X	Redding Rancheria Win-River Casino Bingo	CA		X	X
44		X	X	X	X	Robinson Rancheria of Pomo Indians Robinson Rancheria Bingo & Casino	CA	X	X	X
45	X	X	X	X	X	Rumsey Indian Rancheria Cache Creek Bingo & Casino	CA	X	X	X
46	◆	X	X	X	X	San Manuel Band of Mission Indians San Manuel Indian Bingo & Casino	CA	X	X	X
47		X	X	X	X	Santa Rosa Band Tachi Indians Santa Rosa The Palace Indian Gaming Center	CA		X	X
48		X	X	X	X	Santa Ynez Band of Mission Indians Chumash Casino	CA		X	X
49		X	X	X	X	Sherwood Valley Rancheria Black Bart Casino	CA		X	X
50		X	X	X	X	Smith River Rancheria Smith River Lucky 7 Casino	CA	X	X	X
51		X	X	X	X	Soboba Band of Mission Indians Soboba Casino	CA	X	X	X
52		X	X	X	X	Susanville Indian Rancheria Susanville Casino	CA	X	X	X
53	◆ X	X	X	X	X	Sycuan Band of Mission Indians Sycuan Indian Bingo & Poker Casino	CA		X	X
54		X	X	X	X	Table Mountain Rancheria Table Mountain Rancheria Casino & Bingo	CA	X	X	X
55		X	X	X	X	Temecula Band of Luiseno Mission Indians Pechanga Entertainment Center	CA	X	X	X
56	X	X	X	X	X	Trinidad Rancheria Cher-Ae Heights Bingo & Casino	CA	X	X	X
57		X	X	X	X	Tule River Tribe of the Tule River Indian Res Eagle Mountain Casino	CA		X	X
58		X	X	X	X	Twenty Nine Palms Band of Mission Indians Spotlight 29 Casino	CA	X	X	

COMPLIANCE REPORT AS OF DECEMBER 31, 1998

	Compliance Items by Tribe							Compliance Items by Operation		
	DOI Approved Compact	Submits Investigative Reports	Submits Fingerprints to NIGC	Submits Employee Applications	NIGC Approved Ordinance	TRIBE Operation(s)	ST	Fees paid to NIGC	Operation Licensed by Tribe	Submits Audits to NIGC
	X	X	STATE	X	X	Bois Forte Band of Chippewas				
105						Fortune Bay Casino	MN	X	X	X
	X	X	X	X	X	Fond du Lac Reservation				
106						Black Bear Casino	MN	X	X	X
107						Fond du Luth Casino	MN	X	X	X
	X	X	X	X	X	Grand Portage Band of Chippewa Indians				
108						Grand Portage Lodge and Casino	MN		X	X
	X	X	STATE	X	X	Leech Lake Band of Chippewa Indians				
109						Northern Lights Casino	MN		X	
110						Che-We Casino	MN	X	X	
111						Leech Lake Bingo Palace & Casino	MN		X	
	X	X	STATE	X	X	Lower Sioux Indian Community				
112						Jackpot Junction	MN	X	X	X
	X	X	STATE	X	X	Mille Lacs Band of Chippewa Indians				
113						Grand Casino Hinckley	MN	X	X	X
114						Grand Casino Mille Lacs	MN	X	X	X
	X	X	STATE	X	X	Prairie Island Indian Community				
115						Treasure Island Casino & Bingo	MN	X	X	X
	X	X	STATE	X	X	Red Lake Band of Chippewa Indians				
116						Lake of the Woods Casino & Bingo	MN	X	X	X
117						Red Lake Casino & Bingo	MN	X	X	X
118						River Road Casino & Bingo	MN	X	X	X
	X	X	STATE	X	X	Shakopee Mdewakanton Sioux Community				
119						Little 6 Casino	MN	X	X	X
120						Mystic Lake Casino	MN	X	X	X
	X	X	STATE	X	X	Upper Sioux Community				
121						Firefly Creek Casino	MN	X	X	X
	X	X	STATE	X	X	White Earth Band of Chippewa Indians				
122						Golden Eagle Bingo	MN	X	X	X
123						Shooting Star Casino	MN	X	X	X
	X	X	X	X	X	Mississippi Band of Choctaw Indians				
124						Silver Star Hotel & Casino	MS	CR	X	X

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	X	X	X	X	X	Assiniboine & Sioux Tribes - Fort Peck				
125						Becky Morales dba 4 J's	MT	■	■	■
126						Burt Johnson dba Git-N-Go	MT	■	■	■
127						Earl L LaCounte dba Triple L	MT	■	■	■
128						Ft Peck Tribes dba Tribal Express	MT	■	■	■
129						Georgia Atkinson dba Lonestar	MT	■	■	■
130						Lowell Standing dba Horseshoe Bar	MT	■	■	■
131						Orrian Denny dba B&S Laundry	MT	■	■	■
132						Robert Longtree dba TJ's QuickStop	MT	■	■	■
133						Velma Lee dba Reserve Bar	MT	■	■	■
134						Silverwolf Casino	MT	X	X	X
	X	X	X	X	X	Blackfeet Tribe of Indians				
135						Browning Bingo	MT	X	X	X
136						Seville Bingo	MT			X
	X	XNC		X	X	Chippewa Cree Tribe - Rocky Boy				
137						4 C's Cafe & Casino	MT		X	X
138						Chippewa Cree Pow Wow Bingo	MT	C	C	C
	■	■	■	■	■	Confederated Salish & Kootenai Tribes				
139						44 Bar	MT	■	■	■
140						Allards General Store	MT	■	■	■
141						Allards Trading Post	MT	■	■	■
142						Dyno-Mart	MT	■	■	■
143						Eagles Nest RV Park	MT	■	■	■
144						Jackpot Casino	MT	■	■	■
145						Joe's Jiffy Shop	MT	■	■	■
146						Joe's Smoke Ring Casino	MT	■	■	■
147						Kwa Taq Nuk Resort	MT	■	■	■
148						Moriqeau's Restaurant & 4 Star Bar	MT	■	■	■
149						Quicksilver Express	MT	■	■	■
150						Silver Dollar Bar	MT	■	■	■
151						Standing Arrow Casino	MT	■	■	■
152						Time Out Drive In	MT	■	■	■
	X		X		X	Crow Indian Tribe				
153						Absaloka/Little Big Horn Casino	MT	X	X	X
	X	X	X	X	X	Northern Cheyenne Tribe				
154						Charging Horse Casino	MT	X	X	X

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	X	X	X	X	X	Eastern Band of Cherokee Indians				
155						Cherokee Tribal Casino	NC	X	X	X
156						Harrah Cherokee Smoky Mountain Casino	NC		X	X
	X	X	STATE	X	X	Sisseton - Wahpeton Sioux Tribe				
157						Dakota Magic Casino	ND	X	X	X
	X	X	X	X	X	Spirit Lake Sioux Tribe				
158						Spirit Lake Bingo	ND			X
159						Spirit Lake Casino/Bingo	ND	X	X	X
	X	X	X	X	X	Standing Rock Sioux Tribe				
160						Prairie Knights Casino	ND		X	X
	X	X	X	X	X	Three Affiliated Tribes - Fort Berthold				
161						4 Bears Casino and Lodge	ND		X	X
	X	X	X	X	X	Turtle Mountain Band of Chippewa Indians				
162						Turtle Mountain Chippewa Casino	ND		X	X
			X	X	X	Santee Sioux Tribe of Nebraska				
163						Ohiya Casino	NE		X	X
	X	X	X	X	X	Jicarilla Apache Tribe				
164						Apache Nugget Casino	NM		X	X
	X	X	X	X	X	Mescalero Apache Tribe				
165						Inn of the Mountain Gods/Casino Apache	NM		X	
	X	X	X	X	X	Pueblo of Acoma				
166						Sky City Casino	NM	X	X	X
	X	X	X	X	X	Pueblo of Isleta				
167						Isleta Gaming Palace	NM	X	X	X
168						Palace West	NM	X	X	X
	X	X	X	X	X	Pueblo of Pojoaque				
169						Cities of Gold Casino	NM	X	X	X
170						Cities of Gold Sports Bar	NM	X	X	X
	X	X	X	X	X	Pueblo of San Felipe				
171						Casino Hollywood	NM		X	X
	X	X	X	X	X	Pueblo of San Juan				
172						OHKAY Casino	NM		X	X
	X	X	X	X	X	Pueblo of Sandia				
173						Sandia Casino	NM	X	X	X
	X	X	X	X	X	Pueblo of Santa Ana				
174						Santa Ana Star Casino	NM	X	X	X
	X	X	X	X	X	Pueblo of Taos				
175						Taos Mountain Casino	NM	X	X	X

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	X	X	X	X	X	Pueblo of Tesuque				
176						Camel Rock Casino	NM	X	X	X
	X	STATE	STATE	STATE	X	Fort Mojave				
177						Avi Casino	NV		STATE	X
	X	STATE	STATE	STATE	X	Las Vegas Paiute Indians				
178						Las Vegas Paiute Resort	NV		STATE	X
	X	STATE	STATE	STATE	X	Moapa Band of Paiutes				
179						Moapa Tribal Enterprises I	NV		STATE	X
180						Moapa Tribal Enterprises II	NV		STATE	X
	X	X	X	X	X	Oneida Nation of New York				
181						Turning Stone Casino/Bingo	NY		X	X
	N/A	X	X	X	X	Seneca Nation of Indians				
182						Seneca Nation Bingo -Allegany	NY	X	X	X
183						Seneca Nation Bingo - Cattaraugus	NY	X	X	X
	X	X	X	X	X	St Regis Mohawk Tribe				
184						Mohawk Bingo Palace	NY	X	X	X
	N/A	X	X	X	X	Absentee-Shawnee Tribe of Oklahoma				
185						Thunderbird Entertainment Center	OK	X	X	X
	N/A	X	X	X	X	Cherokee Nation of Oklahoma				
186						Cherokee Nation Bingo Outpost-Catoosa	OK	X	X	X
187						Cherokee Nation Bingo Outpost-Roland	OK	X	X	X
188						Cherokee Nation Bingo Outpost-Siloam	OK	X	X	X
189						Loyal Shawnee Bingo	OK	X	X	X
		X	X	X	X	Cheyenne and Arapaho Tribes of Oklahoma				
190						Cheyenne & Arapaho Bingo Clinton	OK	X	X	X
191						Cheyenne & Arapaho Bingo Watonga	OK	X	X	X
192						Lucky Star Bingo	OK	X	X	X
	N/A	X	X	X	X	Chickasaw Nation of Oklahoma				
193						Ada Gaming Center	OK	X	X	X
194						Goldsby Gaming Center	OK	X	X	X
195						Sulphur Gaming Center-Chickasaw	OK	X	X	X
196						Touso Ishto Gaming Center	OK	X	X	X
	◆	X	X	X	X	Choctaw Nation of Oklahoma				
197						Choctaw Indian Bingo - Arrowhead	OK	X	X	X
198						Choctaw Indian Bingo - Durant	OK	X	X	X
199						Choctaw Indian Bingo - Idabel	OK	X	X	X
200						Choctaw Indian Bingo - Pocola	OK	X	X	X
201						Choctaw Travel Plaza & Smoke Shops	OK	X	X	

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202	◆	X	X	X	X	Citizen Band Potawatomi Indians Firelake Entertainment Center	OK	X	X	X
203	N/A	X	X	X	X	Comanche Indian Tribe Comanche Nation Games	OK		X	X
204	N/A		X	X	X	Delaware Tribe of Oklahoma Gold River Bingo	OK	X	X	X
205	N/A	X	X	X	X	Eastern Shawnee Tribe of Oklahoma Border Town Bingo	OK		X	X
206	◆	X	X	X	X	Iowa Tribe of Oklahoma Cimarron Bingo Casino	OK	X	X	X
207	N/A	X	X	X	X	Kaw Nation of Oklahoma Kaw Bingo Enterprise	OK	X	X	X
208	N/A		X	X	X	Kiowa Tribe of Oklahoma Kiowa Grand Center	OK		X	
209	N/A		X		X	Miami Tribe of Oklahoma Miami Rocket Bingo	OK	New	X	N/A
210	N/A	●	X	O	X	Miami Tribe / Modoc Tribe The Stables	OK	New	X	N/A
	N/A	X	X	X	X	Muscogee (Creek) Nation				
211						Bristow Indian Community Bingo	OK	X	X	X
212						Checotah Indian Community Bingo	OK	X	X	X
213						Creek Nation Muskogee Bingo	OK	X	X	X
214						Creek Nation Okmulgee Bingo	OK	X	X	X
215						Creek Nation Tulsa Bingo	OK	X	X	X
216						Eufaula Indian Community Bingo	OK	X	X	X
217	N/A	X	X	X	X	Ponca Tribe of Oklahoma Ponca Tribal Bingo	OK	X	X	X
	N/A		X	X	X	Seminole Nation of Oklahoma				
218						Seminole Nation Bingo	OK	X	X	
219						Wewoka Trading Post	OK		X	
220	N/A	X	X	X	X	Seneca-Cayuga Tribe of Oklahoma Seneca-Cayuga Gaming Operation	OK	X	X	X
221	N/A		X	X	X	Thlopthlocco Tribal Town Thlopthlocco Tribal Bingo	OK	X	X	CA
222	◆		X	X	X	Tonkawa Tribe of Indians Tonkawa Tribal Casino	OK	X	X	X
223	N/A	XNC	X	X	X	United Keetoowah Band of Cherokee Indians United Keetoowah Bingo	OK		X	

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	X		STATE		X	Burns Paiute Tribe				
224						Old Camp Casino	OR	New	X	N/A
	X	X	STATE	X	X	Confederated Tribes - Grande Ronde				
225						Spirit Mountain Gaming, Inc.	OR	X	X	X
	X	X	STATE	X	X	Confederated Tribes of the Siletz Indians				
226						Chinook Winds	OR	X	X	X
227						CTSI BINGO	OR	X	X	X
	X	X	STATE	X	X	Confederated Tribes of the Umatilla Indians				
228						Wildhorse Gaming Resort	OR	X	X	X
	X	X	STATE	X	X	Confederated Tribes of the Warm Springs				
229						Indian Head Gaming Center	OR	X	X	X
	X	X	STATE	X	X	Coquille Indian Tribe				
230						The Mill Casino	OR		X	X
	X	X	STATE	X	X	Cow Creek Band of Umpqua Indians				
231						Seven Feathers Hotel & Gaming Resort	OR	X	X	X
	X	X	X	X	X	Klamath Tribe				
232						Kla-mo-ya Casino	OR		X	X
	X		STATE		X	Cheyenne River Sioux Tribe				
233						C R.S T. Bingo	SD	X	X	X
	X		STATE		X	Crow Creek Sioux Tribe				
234						Crow Creek Bingo Hall	SD	C		C
235						Lode Star Casino	SD		X	X
	X	X	STATE	X	X	Flandreau Santee Sioux Tribe				
236						Royal River Casino	SD	X	X	X
	X		STATE		X	Lower Brule Sioux Tribe				
237						Brule Horseman Association	SD	C	C	C
238						Brule Sioux Booster Club	SD	C	C	C
239						Golden Buffalo Casino & Resort	SD	X	X	X
240						Kul Wiscasa Elderly Bingo Club	SD	C	C	C
241						Lakota Care Bingo	SD	C	C	C
242						Lakota Family Dance Club	SD	C	C	C
243						Lower Brule Health Club	SD	C	C	C
244						Lower Brule Youth Activities	SD	C	C	C
	X	X	STATE	XNC	X	Oglala Sioux Tribe				
245						Children's Village Bingo	SD	C	C	C
246						Prairie Winds Casino	SD	X	X	X
	X	X	STATE & NIGC	X	X	Rosebud Sioux Tribe				
247						Rosebud Casino	SD	X	X	X

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	X	X	STATE	X	X	Sisseton-Wahpeton Sioux Tribe				
248						Dakota Connection (FKA Agency Bingo)	SD	X	X	X
249						Dakota Sioux Casino	SD	X	X	X
	X	X	STATE & NIGC	X	X	Standing Rock Sioux Tribe				
250						Bear Soldier Bingo	SD		X	X
251						Grand River Casino	SD	X	X	X
	X	X	STATE & NIGC	X	X	Yankton Sioux Tribe				
252						Fort Randall Casino	SD	X	X	X
		X	X	X	X	Kickapoo Traditional Tribe of Texas				
253						Kickapoo Lucky Eagle Casino	TX	X	X	X
	X	X	STATE	X	X	Confederated Tribes of the Chehalis Res				
254						Chehalis Tribal Lucky Eagle Casino	WA	X	X	X
	X		X		X	Confederated Tribes of the Yakama Indian Nation				
255						Yakama Legends Casino	WA	New	X	N/A
		X	X	X	X	Confederated Tribes of the Colville Res				
256						Coulee Dam Casino	WA	X	X	X
257						Mill Bay Casino	WA	X	X	X
258						Okanogan Bingo Casino	WA	X	X	X
	X	X	STATE	X	X	Jamestown S'Klallam Tribe				
259						Seven Cedars Casino	WA	X	X	X
	N/A		STATE	O	X	Makah Indian Tribe of the Makah Indian Res				
260						Makah Bingo	WA	X	X	X
	X	X	STATE	X	X	Muckleshoot Indian Tribe				
261						Muckleshoot Indian Bingo	WA	X	X	X
262						Muckleshoot Indian Casino	WA	X	X	X
	X	X	STATE	X	X	Nisqually Tribe of Indians				
263						Red Wind Casino	WA		X	X
	X	X	X	X	X	Nooksack Indian Tribe				
264						Nooksack River Casino	WA	X	X	X
	X	X	X	X	X	Port Gamble S'Klallam Tribe				
265						Little Boston Bingo	WA	X	X	X
	X	X	STATE	X	X	Puyallup Tribe of Indians				
266						BJ's Enterprises, Inc	WA	X		X
267						Emerald Queen Casino	WA		X	X
268						Puyallup Bingo Palace	WA			X
		XNC		X	X	Shoalwater Bay Indian Tribe				
269						Shoalwater Bay Bingo & Casino	WA	NEW		N/A

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		X	STATE & NIGC	X	X	Spokane Tribe of Indians				
270						Cadallic City	WA		X	X
271						Double Eagle Casino	WA	X	X	X
272						Kieffer's Store	WA		X	X
273						Lile' Chiefs Casino	WA		X	X
274						Pappy's Corner	WA		X	X
275						Snack 'n' Chat	WA		X	X
276						Spokane Indian Bingo & Casino	WA		X	X
277						Two Rivers Casino	WA		X	X
	X	X	STATE & NIGC	X	X	Squaxin Island Tribe				
278						Little Creek Casino	WA	X	X	X
	X	X	STATE	X	X	Suquamish Tribe				
279						Suquamish Casino	WA	X	X	X
	X	X	STATE & NIGC	X	X	Swinomish Indian Tribal Community				
280						Swinomish Casino & Bingo	WA	X	X	X
	X	X	STATE	X	X	Tulalip Tribes of Washington				
281						Tulip Bingo	WA	X	X	X
282						Tulalip Casino	WA	X	X	X
	X	X	STATE	X	X	Upper Skagit Indian Tribe				
283						Harrah's Skagit Valley Casino	WA		X	X
	X		X		X	Bad River Band				
284						Bad River Lodge & Casino	WI	X	X	X
	X	X	STATE	X	X	Forest County Potawatomi Community				
285						Northern Lights Casino	WI	X	X	X
286						Potawatomi Bingo	WI	X	X	X
	X	X	STATE	X	X	Ho-Chunk Nation				
287						Ho-Chunk Bingo	WI	X	X	X
288						Ho-Chunk Casino	WI	X	X	X
289						Majestic Pines Bingo	WI	X	X	X
290						Majestic Pines Casino	WI	X	X	X
291						Rainbow Bingo	WI	X	X	X
292						Rainbow Casino	WI	X	X	X
	X	X	STATE	X	X	Lac Courte Oreilles Band				
293						Grindstone Creek Casino	WI	X	X	X
294						LCO-Casino, Lodge & Convention Center	WI	X	X	X
	X	X	STATE	X	X	Lac du Flambeau				
295						Lac du Flambeau Band Bingo	WI	X	X	X
296						Lake of the Torches Casino	WI	X	X	X

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	X	X	STATE & NIGC	X	X	Menominee Indian Tribe of Wisconsin				
297						Menominee Crystal Palace	WI	X	X	X
298						Menominee Nation Casino	WI	X	X	X
299						Menominee Tribal Bingo	WI	X	X	X
	X	X	STATE	X	X	Oneida Tribe of Indians of Wisconsin				
300						Oneida Bingo & Casino	WI	X	X	X
	X	X	STATE	X	X	Red Cliff Band				
301						Isle Vista Casino	WI		X	X
	X	X	STATE	X	X	Sokaogon Chippewa Community				
302						Mole Lake Bingo	WI	CA	CA	CA
303						Regency Resort	WI	CA	CA	CA
	X	X	STATE	X	X	St. Croix Chippewa Indians of Wisconsin				
304						Hole in the Wall Casino	WI	X	X	X
305						Little Turtle Hertel	WI	X	X	X
306						Maple Plain Bingo	WI	C	X	C
307						Sand Lake Bingo	WI	X	X	IR
308						St. Croix Casino & Bingo	WI	X	X	X
	X	X	STATE	X	X	Stockbridge-Munsee Community				
309						Pine Hills Casino	WI	New		N/A
310						Mohican North Star Casino & Bingo	WI	X	X	X
	N/A		X	X	X	Northern Arapaho Wind River Indian Res				
311						789 Bingo	WY		X	CR

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1	N/A		X		X	Klawock Cooperative Association Klawock Coop Association Bingo/Pullitab	AK	X	X	X
2	N/A	X	X	X	X	Metlakatla Indian Community Metlakatla Indian Community Bingo	AK	X	X	X
3		X	X	X	X	Poarch Band of Creek Indians Creek Bingo Palace	AL	X	X	X
4	X	X	STATE	X	X	Ak Chin Indian Community Harrah's Ak-Chin Casino	AZ	X	X	X
5	X	X	STATE	X	X	Cocopah Indian Tribe Cocopah Bingo	AZ	X	X	X
6	X	X	STATE & NIGC	X	X	Colorado River Indian Tribes Blue Water Casino	AZ	X	X	X
7	X	X	X	X	X	Fort McDowell Mohave-Apache Indian Fort McDowell Gaming Center	AZ		X	X
8	X		STATE	X	X	Fort Mojave Indian Tribe Spirit Mountain Casino	AZ		X	X
9	X	X	STATE	X	X	Gila River Indian Community Gila River Casino	AZ		X	X
10						Lone Butte Casino	AZ		X	X
11	X	X	STATE & NIGC	X	X	Pascua Yaqui Tribe of Arizona Casino of the Sun	AZ	X	X	X
12	X	X	X	X	X	Quechan Indian Tribe Paradise Casino	AZ		X	X
13						Salt River Pima-Maricopa Indian Community Casino Arizona at Salt River	AZ	New		N/A
14	X	X	X	X	X	San Carlos Apache Tribe Apache Gold Casino	AZ	X	X	X
15	X	X	X	X	X	Tohono O'Odham Nation Desert Diamond Casino	AZ	X	X	X
16	X	X	STATE	X	X	Tonto Apache Tribe Mazatzal Casino	AZ	X	X	X
17	X	X	STATE & NIGC	X	X	White Mountain Apache Tribe Hon Dah Casino	AZ	X	X	X
18	X	X	STATE & NIGC	X	X	Yavapai Apache Tribe Cliff Castle Casino	AZ	X	X	X
19	X	X	STATE	X	X	Yavapai-Prescott Indian Tribe Bucky's Casino	AZ	X	X	X
20						Yavapai Bingo	AZ	X	X	X

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	X	X	STATE	X	X	Kickapoo Nation in Kansas				
81						Golden Eagle Casino	KS	X	X	X
	X	X	X	X	X	Prairie Band Potawatomi				
82						Harrah's Prairie Band Casino	KS	New	X	N/A
	X	X	STATE	X	X	Sac & Fox of Missouri				
83						Sac & Fox Casino	KS		X	X
	X	X	STATE	X	X	Chitimacha Tribe of Louisiana				
84						Cypress Bayou Casino	LA		X	X
	X	X	STATE	X	X	Coushatta Tribe of Louisiana				
85						Grand Casino Coushatta	LA		X	X
	X	X	STATE	X	X	Tunica-Biloxi Indian Tribe of Louisiana				
86						Grand Casino Avoyelles	LA		X	X
	X	X	X	X	X	Bay Mills Indian Community				
87						Bay Mills Indian Casino	MI		X	X
88						King's Club Casino & Lounge	MI		X	X
	X	X	X	X	X	Grand Traverse Band of Ottawa & Chippewa				
89						Eagles View	MI	X	X	X
90						Leelanau Sands Casino	MI	X	X	X
91						Palace Bingo	MI	X	X	N/A
92						Turtle Creek Casino	MI	X	X	X
	X	X	X	X	X	Hannahville Indian Community				
93						Chip-In Casino/Bingo	MI	X	X	X
	X	X	X	X	X	Keweenaw Bay Indian Community				
94						Ojibwa Casino & Resort/Big Bucks Bingo	MI	X	X	X
95						Ojibwa Casino & Resort - Marquette	MI	X	X	X
	X	X	X	X	X	Lac Vieux Desert Band				
96						Lac Vieux Desert Bingo & Casino	MI	X	X	X
	X	X	X	X	X	Saginaw Chippewa Indian Tribe				
97						Soaring Eagle Casino	MI	X	X	X
	X	X	X	X	X	Sault Ste. Marie Tribe of Chippewa Indians				
98						Christmas Kewadin Casino	MI	X	X	X
99						Kewadin Shores Casino - St. Ignace	MI	X	X	X
100						Kewadin Casino - Hessel	MI	X	X	X
101						Manistique Kewadin Casino	MI	X	X	X
102						Mid Jim Convenience Store - Sault St. Marie	MI			
103						Mid Jim Convenience Store - St. Ignace	MI			
104						Kewadin Casino - Sault Ste. Marie	MI	X	X	X

COMPLIANCE REPORT AS OF DECEMBER 31, 1998

	Compliance Items by Tribe							Compliance Items by Operation		
	DOI Approved Compact	Submits Investigative Reports	Submits Fingerprints to NIGC	Submits Employee Applications	NIGC Approved Ordinance	TRIBE Operation(s)	ST	Fees paid to NIGC	Operation Licensed by Tribe	Submits Audits to NIGC
		X	X	X	X	Tyme Maidu Tribe Berry Creek Rancheria				
59						Gold Country Casino	CA	X	X	
	◆	X	X	X	X	Viejas Band of Mission Indians				
60	X					Viejas Casino & Turf Club	CA	X	X	X
	X	X	STATE &	X	X	Southern Ute Indian Tribe				
61			NIGC			Sky Ute Casino and Lodge	CO	X	X	X
	X	X	STATE	X	X	Ute Mountain Ute Tribe				
62						Ute Mountain Casino	CO	X	X	X
	X	STATE	STATE	STATE	X	Mashantucket Pequot Tribe				
63						Foxwoods High Stakes Bingo & Casino	CT	X	X	X
	X	STATE	STATE	STATE	X	Mohegan Tribe of Indians				
64						Mohegan Sun Casino	CT		X	X
65						Mohegan Sun High Stakes Bingo	CT	X	X	X
		X	X	X	X	Miccosukee Business Committee				
66						Miccosukee Indian Bingo & Gaming	FL	X	X	X
		X	X	X	X	Seminole Tribe				
67						Hollywood Seminole Gaming	FL	X	X	X
68						Seminole Bingo of Brighton	FL	X	X	X
69						Seminole Gaming Palace - Immokalee	FL	X	X	X
70						Seminole Gaming Palace - Tampa	FL	X	X	X
	X	X	X	X	X	Omaha Tribe of Nebraska				
71						Casino Omaha	IA		X	X
	X	X	X	X	X	Sac & Fox Tribe of Mississippi in Iowa				
72						Meskwaki Bingo & Casino	IA	X	X	X
	X	X	X	X	X	Winnebago Tribe of Nebraska				
73						WinnaVegas Casino	IA	X	X	X
	X	X	X	X	X	Coeur d'Alene Tribe				
74						Coeur d'Alene Tribal Bingo	ID	X	X	X
	X	X	X	X	X	Kootenai Tribe of Idaho				
75						Kootenai River Inn	ID		X	X
	X	X	X	X	X	Nez Perce Tribe				
76						Clearwater River Casino	ID	X	X	X
77						IT SE'Ye Ye Casino	ID	X	X	X
		X	X	X	X	Shoshone-Bannock Tribes				
78						Bannock Peak	ID	X	X	X
79						Shoban Casino- Exit 80 Casino	ID		X	X
	X	X	X	X	X	Iowa Tribe of Kansas and Nebraska				
80						Iowa Tribe Party Games-Bingo Hall	KS	X	X	X

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: (414) 869-2214 **Oneida, Wi 54155**

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them

UGWA DEMOLUM YATEHE Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible

STATEMENT

OF

DEBORAH DOXTATOR

CHAIRWOMAN OF THE ONEIDA NATION OF WISCONISN

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

CONCERNING

THE REPORT OF THE NATIONAL GAMBLING IMPACT STUDY COMMISSION

PRESENTED ON

JUNE 23, 1999

Mr. Chairman, members of the Committee, I would like to address the National Gambling Impact Study Commission's interpretation of the role gaming has played in the development of economies on Indian lands. Specifically, I am concerned that the casual reader of this report may not fully appreciate the degree to which tribes are using their revenues to diversify their economies or regulate their gaming activities.

Economic Development

Chapter 6 of this report correctly notes that Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face.[1] This statement is correct for two reasons in my opinion: first, the needs throughout Indian country are overwhelmingly profound; and second, only approximately one-third of all tribes are located where a political or demographic environment will allow gaming to prevail.

However, in supporting this point the Commission's report appears to be in conflict. Chapter 6 appears to do a fine job in illustrating the failure of the United States to hold up their Trust Responsibility toward the tribes and also points out the tremendous strides tribes have taken to address the social ills that have cast their shadows upon our lands.[2] However, in Chapter 7, the Commission also stated that "economic benefits of Indian gambling cannot be factually proven".[3] To this end the Commission recommend that "tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as 'seed money' to further diversify tribal economies and to reduce their dependence on gambling".[4]

Mr. Chairman, as you know, Tribes must constantly struggle with the question "what should we do first?" Because of the pressing health and social problems that exist on most reservations it is politically difficult for tribal leaders to divert scarce gaming funds into economic development projects as opposed to hiring a new physician or building a new Headstart program. How can I explain to our tribal members that the Tribe should invest money in a new high-tech circuit board manufacturing facility when it takes them six-months to simply see a dentist?

Likewise, while the report does a credible job outlining the significant legal basis for Indian gaming and the underpinnings of the Indian Gaming Regulatory Act, the report simply fails to discuss the complete lack of alternative revenue sources that may exist for Indian tribal governments. Rather than spending funds on research to identify potential alternative revenue sources the Commission simply stated that "There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling".[5]

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[1] National Gambling Impact Study Commission Report, June 18, 1999, p.6-2.
[2] National Gambling Impact Study Commission Report, June 18, 1999, p. 6-5
[3] National Gambling Impact Study Commission Report, June 18, 1999, p. 7-9
[4] National Gambling Impact Study Commission Report, June 18, 1999, p. 6-24
[5] National Gambling Impact Study Commission Report, June 18, 1999, p. 6-7

In my view, this failure represents a disservice to those tribes who might have been looking for the Commission to offer substantive recommendations to assist them in diversifying their economies.

On one hand, over 100 tribal leaders representing over 50 tribes spent tribal funds to travel to the various Commission meetings to tell their story of economic development.[6] Unfortunately, the Commission chose to question the legitimacy of these presentations and asks whether the economic benefits from Indian gaming can be "factually proven". On the other hand, because tribes were themselves unable to offer any form of broadly based replacement for gaming funds, tribes are criticized for not having invested enough in non-gaming forms of economic development.

It should be noted that after spending $5 million this Commission visited a total of two reservations—the Mashantucket Pequot Nation and the Gila River Indian Community. Although these Tribes each demonstrate a significant level of commitment to economic development, they are only two among many tribes that have used gaming resources to diversify their economies. In that both of these tribes represent the most successful portion of the spectrum, it might have been of greater value for the Commission to have visited reservations where job creation was a primary goal in establishing gaming.

Oneida's Experience

The Oneida Nation has used its financial resources in an effort to diversify our economy and reduce our long-term dependence on gaming as our primary income generating activity. We believe our success in this area benefits both the Oneida Tribe and its local non-Indian neighboring communities. The result is a strong independent community with an orderly, flexible and stable government.

The Tribe has an enrolled membership of about 13,500 with approximately 5,100 living either on or near the Oneida Reservation. The Reservation encompasses a 65,000-acre tract of land, located approximately 8 miles southwest of Green Bay. Today we own approximately one-sixth of the property within the 65,000 acres of land within the reservation boundary, and we are vigorously pursuing more lands as they become available.

One of the major goals of the Oneida Nation is to forge a true and lasting partnership with the citizens, businesses and local governments of the Northeast Wisconsin area. Our positive working relationship with the City of Green Bay, the Village of Ashwaubenon, and the City of DePere are perfect examples of our efforts to work as true partners to build a relationship that fosters economic growth that benefits everyone.

As Northeast Wisconsin's largest employer, we are extremely proud that over 60% of our 3,561 employees are non-Oneida and our Oneida enterprises are one of the major reasons why the Greater Green Bay area enjoys one of the lowest unemployment rates in the nation. The Oneida Nation generates an annual payroll of $80 million, fueling consumer spending that impacts all of Northeastern Wisconsin.

[6] National Gambling Impact Study Commission Report, June 18, 1999, p. 6-1

As the Oneida Nation works toward our number one goal of diversifying our economy, our efforts will continue to benefit the surrounding area because our enterprises will become more diverse and comprehensive, fostering new dynamic economic growth in Northeast Wisconsin

Outside of gaming, the Oneida Nation has acquired or invested in the following enterprises:

The **Oneida Radisson Inn** is a 301-room hotel located across the street from the Austin Straubel Airport in Green Bay and sits adjacent to the Tribe's casino The hotel employs over 400 full and part-time positions and has provided management training opportunities for many tribal members Additionally, the Radisson generates over $500,000 annually to the Green Bay Area Convention Bureau

We have invested $7 2 million in **Oneida Nation Electronics**, a joint venture with the Plexus Corporation of Neehnah, WI to manufacture printed circuit assemblies for a variety of customers and industries. This 114,000 square foot, state-of--the-art high tech manufacturing facility provides high quality, customer oriented turnkey electronic manufacturing services It is anticipated that our investment in this joint venture will bring a 20% annual return over a 10 year period and provide an opportunity for many tribal members to gain jobs in the electronics industry

The Oneida Nation has invested $40 million in equity and debt into **Airadigm Communications, Inc.** Airadigm is a PCS (Personal Communications Service) provider which garnered 15 licenses in the FCC auctions, covering all of Wisconsin, except Milwaukee, portions of Michigan, and the Eastern third of Iowa It has over 12,000 customers and employs over 120 people throughout Wisconsin Airadigm Communications has generated over $100 million in additional revenues for its vendors throughout the state and nation The advanced digital service supplies communications capabilities to numerous tribal reservations, and acts as a lifeline communications support for many of its customers Furthermore, it has forced competition into an otherwise stagnant marketplace

The Oneida Industrial Park is a 32 acre land development with 18 retail stores including Sam's Wholesale, Wal-Mart and Festival Foods as anchors The tribe collects lease payments generated from long-term lease agreements

Seven Generations Corporation is a Limited Liability Corporation developed for the purposes of overseeing the commercial properties for the Tribe Serving as a holding company for real estate and other business ventures of the Nation, this enterprise has leased a 50,000 square foot health facility to Bellin Health Systems, a family medicine patient care facility specializing in sports medicine, physical therapy, fitness, diagnostic testing and administrative and ancillary services

Baybank is a locally owned, full service bank located on the Oneida Reservation. Baybank provides friendly service and competitive interest rates on deposits, loans and Certificates of Deposit. The bank has been open for over three years and is profitable.

The Oneida Small Business Development Center provides counseling, training, and technical support in all areas of small business management. OSBDC's loan fund facilitates the creation of a small business environment on sovereign lands.

Other Oneida developments and enterprises include: Oneida Printing, Oneida Nation Farms, Oneida Promotions, and three One-Stops—self service gas stations and small convenience stores.

Regulation

Unfortunately, the Commission did an inadequate job in presenting the status of current law with respect to the regulatory nature of Indian gaming.[7] The Commission failed to capture the investment tribes have made, through their tribal gaming commissions, to ensure the protection of their patrons and insulate themselves from illegal activity or intrusions by organized crime. The report neglected to acknowledge the extent to which class III games are regulated under the terms of the more than 140 tribal-state compacts. And finally, the report failed to fully describe the extent to which the National Indian Gaming Commission is involved in conducting background investigations and field audits.

Each year, the Oneida Nation spends over $9 million on the internal regulation and protection of our gaming facilities and employees. Our control systems and audit procedures are equivalent to those found anywhere in the world. It is this level of commitment that tribes have brought to gaming throughout America, but the Commission failed to comment upon.

Although the Commission did adopt a recommendation that acknowledges the National Indian Gaming Commission's newly implemented Minimum Internal Control Standards, developed with the help of the National Tribal Gaming Commissioners and Regulators, the report fails to include any finding in support of this recommendation.[8] This omission works to undercut the legitimacy of tribal gaming and diminishes the importance of gaming as a form of well regulated economic development.

Also, the Commission failed to articulate the true status of off reservation land transfers for gaming purposes. This Commission had a real opportunity to clarify this point of great confusion for many communities across America. As this Committee knows, in the eleven years since IGRA's enactment, the Bureau of Indian Affairs has reviewed ten land in trust acquisition applications to operate off-reservation casinos. The BIA accepted two and rejected eight. The Forest County Potawatomie Tribe located in Milwaukee, WI in

[7] National Gambling Impact Study Commission Report, June 18, 1999, pp 6-8 to 6-11

[8] National Gambling Impact Study Commission Report, June 18, 1999, p. 6-22

1990 with a 15 7 acres site and Kalispel Tribe, located in Airway Heights, Washington in 1998 with a 40 1 acres site were approved; one (Allen Parish) was rendered moot by the tribe's decision to utilize a site that did not require approval, three (Council Bluffs, Salem, and Detroit) were officially rejected by either the Secretary of the Interior or the state governor; and the remainder, though not officially rejected, are apparently no longer under active consideration, due in at least some cases to the governor's stated opposition.

Further, the Commission's report would have been well served had it included a more comprehensive discussion concerning the regulatory authority shared by Tribes, the States and the Federal Government through the National Indian Gaming Commission

IGRA is a comprehensive federal regulatory measure regarding on-reservation Indian gaming. It provides "a statutory basis for the regulation of gaming by an Indian tribe" and establishes federal standards for Indian gaming.[9] Congress authorized tribal regulation of Indian gaming under IGRA as an exercise of the Tribe's inherent sovereign authority. In IGRA, it provided a mechanism for state involvement in Indian gambling regulation through tribal-state compacts.

Federal oversight of Indian gaming under IGRA is the responsibility of the National Indian Gaming Commission ("NIGC"). The NIGC is required to approve all tribal gaming ordinances and to license and monitor and inspect the premises where all Class II Indian gaming is conducted [10] Class III gaming activities are allowed on Indian lands only when "located in a State that permits such gaming for any purpose by any person, organization, or entity "[11] Class III gaming must also be conducted in accordance with tribal law and a tribal-state compact.[12] The Commission has the authority to enforce the provisions of IGRA and its regulations by levying fines and issuing temporary, and permanent orders to close a gaming operation [13]

Under IGRA's terms a tribal-state compact may include provisions related to the following the application of criminal and civil laws and regulations of the tribe or the state directly related to and necessary for the licensing and regulation of such activity, the allocation of criminal and civil jurisdiction between the state and the tribe necessary_ for the enforcement of such laws and regulations, the assessment by the state of amounts necessary to defray the costs of regulation under the compact, taxation by the tribe of the gaming activity of such amounts comparable to the amounts assessed by the state for costs of regulation, remedies for breach of contract, standards for the operation of such activities and the maintenance of the gaming facility, including license and any other subjects that are "directly related to the operation of gaming activities."[14] Apart from reimbursement for costs associated with regulatory activities, states are not permitted to seek a tax or fee in exchange for agreeing to a compact.[15]

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[9] 25 U S.C § 2702(1)
[10] 25 U S C § 2706(b), 2710(b)(1)(B), d(1)(A)(iii)
[11] 25 U S C § 2710(d)(1)(B)
[12] 25 U S C § 2710(d)
[13] 25 U S C §§ 2706(a), 2713
[14] 25 U.S.C. § 2710(d)(3)(C).
[15] 25 U S C. § 2710(d)(4)

Federal regulation of all Indian gaming was further enhanced on January 5, 1999 when the NIGC issued a final rule requiring tribes to establish minimum standards for internal controls ("MICS") for gaming operations on Indian lands and setting out standards which tribal MICS must meet.[16] The rule is effective February 4, 1999 and requires all tribes or tribal regulatory, agencies to develop and adopt MICS by August 4 of this year.
The NIGC explained the basis for the rule in the January 5, 1999 Federal Register announcement of the rule, stating that the overall growth, the increasing diversity and complexity of Indian gaming, and the cash-intensive nature of gaming create a "need for a minimum level of control, to apply universally throughout the industry." Therefore, the "commission concluded that in furtherance of its role in providing regulation of tribal gaming adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribes are the primary beneficiaries of the gaming operations, and to assure that gaming is conducted fairly and honestly by both the operators and players, the formulation and promulgation of minimum internal control standards governing tribal gaming were necessary and appropriate."

To comply with the NIGC rule, tribal standards must: be at least as stringent as the NIGC standards; contain standards for currency transaction reporting required in 31 C.F.R. Part 103; include standards addressing games not addressed in the NIGC standards; and establish a deadline not to exceed 12 months from February 4, 1999 for existing operations within their jurisdiction to comply with the tribal MICS.[17] Gaming operations must establish internal controls that are at least as stringent as the tribal MICS. Operations that begin operating after March 30, 1999 must comply before opening.

The rule contains standards for the following game categories and departments: bingo, pull tabs, card games, manual keno, computerized keno, pari-mutuel wagering, table games, gaming machines, cage and credit, internal audit, surveillance, electronic data processing, and complimentary service items, i.e. promotional allowances to customers.

The rule also establish three tiers of gaming operations with more stringent requirements applicable to the larger operations and less stringent standards for the smaller ones.[18] Tier A gaming operations are those with no more than $3 million in annual gross revenues. Tier B gaming operations are those with annual gross revenues between $3 and $10 million. Tier C gaming operations are those with more than $10 million in annual gross revenues. Tier A gaming operations may request a variance for requirements in the MICS that are too burdensome for smaller operations.[19]

Again, this report would have been much more meaningful had this information been included.

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[16] 25 C.F.R Part 542
[17] Minimum Internal Controls, National Indian Gaming Commission, Jan. 5, 1999 - Sec. 542 3.
[18] Sec. 542.2.
[19] Sec. 542.18.

Conclusion

I bring the Committee this information with the intent of supplementing the already lengthy record that exists concerning non-gaming economic development in Indian country and the regulatory framework under which gaming is currently being conducted I am hopeful that the testimony the Commission received from over 100 tribal leaders from over 50 tribes will be used at some future date to show the true impact Indian gaming has had on both Indians and our non-Indian neighbors.

Testimony of
Richard G. Hill
Chairman
National Indian Gaming Association

National Gambling Impact Study Commission
Oversight Hearing

Senate Committee on Indian Affairs
June 23, 1999

Introduction

Chairman Ben Nighthorse Campbell, Vice Chairman Daniel Inouye, members of the Senate Committee on Indian Affairs, thank you for the opportunity to provide testimony today. I am Rick Hill, Chairman of the National Indian Gaming Association (NIGA) based in Washington, DC I am a member of the Oneida Indian Nation of Wisconsin currently serving my fifth term as Chairman of NIGA.

The National Indian Gaming Association is an organization of 168 Indian Nations with governmental gaming interests around the United States. NIGA's purpose is to protect and advance the sovereign rights and interests of our member Indian Nations with respect to tribal governmental gaming.

Not since Congress deliberated over the Indian Gaming Regulatory Act in 1988 have NIGA and its member tribal governments had as much reason to act both deliberately and decisively to protect and preserve the sovereign tribal governmental gaming rights of Indian Nations. In this case, Indian Nations did not choose to simply react to the fact finding process that the National Gambling Impact Study Commission (NGISC) followed

in conducting a study of the impacts of gambling in the United States. Instead NIGA and our member Indian Nations were pro-active and embraced the work of the NGISC as more than 100 tribal leaders and representatives traveled to various hearing sites around the country, at their own expense, to provide testimony before either the full Commission or the NGISC Subcommittee on Indian Gaming. Moreover, NIGA was present at every single hearing and/or meeting conducted by the NGISC over the two-year period of the study effort, prepared to offer information and other assistance as needed by the study commission.

Generally, NIGA is pleased with the recommendations included in the final report of the study commission. However, in NIGA's estimation, this unique opportunity to study tribal communities under the circumstances presented to the NGISC was, in the best possible scenario, not managed as well as it could have been.

Overall our association with the NGISC during the study process has evoked a broad range of emotions and thought for NIGA. The work of the study commission required constant monitoring, a task that NIGA was only too glad to perform on behalf of our member Indian Nations.

The National Gambling Study Commission

Public Law 104 - 169, the National Gambling Study Commission Act, established the nine-member study commission in 1996. In the enabling legislation, Congress specified the duties of the Commission as follows:

(1) IN GENERAL - It shall be the duty of the Commission to conduct a

comprehensive legal and factual study of the social and economic impacts of gambling in the United States on - -

(A) Federal, State, local and Native American tribal governments;

NIGA participated in Congressional hearings as the Act was being considered, making several recommendations which were later incorporated into the bill. NIGA remained neutral on the bill, but once the bill was enacted, we worked tirelessly to ensure that the study commission had full use of our NIGA resources to help carry out its important educational mission, so that its members and the public could make informed decisions.

Before the NGISC began the work of collecting information on the impacts of tribal governmental gaming, NIGA became concerned that information posted on the study commission's web site included references and statements that were not factually correct. The NGISC information stated that, among others, Indian tribes were "defeated nations" and that those Indian Nations who were actively seeking reinstatement of the recognition due to the federal government's policy of termination, were characterized as merely "private associations".

NIGA representatives, as well as others, offered to assist the NGISC staff to correct information on their web site. The NGISC staff declined NIGA's offers and did not act to correct the members reference or lack thereof. In fact, this was brought to the attention of the Commission and Executive Director Tim Kelly, in my February 9, 1999 testimony in Virginia Beach, VA. This ongoing misinformation, is specifically detailed in the hearing record transcripts at pages 153 through 156.

In our estimation, the NGISC, a federal commission created by Congress, failed in

its initial educational effort to understand and appreciate the unique historical and legal relationship between Indian Nations and the federal government That the NGISC was unable to recognize the tribal/federal relationship even when presented with corrected information was disappointing to the tribes. In fact it should be noted that the misinformation on the NGISC web site still had not been corrected as of the time my testimony was forwarded to you

The Study Process

From the outset, NIGA and its member Indian Nations believed it to be in our collective best interest to cooperate and participate fully in the study efforts of the NGISC Beginning in July 1998 as the NGISC entered the research phase to gauge the impacts of tribal governmental gaming in tribal communities, NIGA became particularly active in the study process

In early July 1998, the study commission notified NIGA and its member tribes that the commission would devote at least a portion of their full commission agenda to Indian gaming The NGISC hearings which were to include tribal testimony were scheduled for Del Mar, CA (July 29) and Tempe, AZ (July 30).

However, NIGA became concerned that their proposal to hear from Indian tribes on the impacts of gaming included only a small number of tribal leaders and representatives NIGA requested, and was granted a meeting with the NGISC staff to present a proposal for eliciting testimony from a broader representation of tribes Noting that for a factual finding to be accurate the sample size needs to accurately reflect the population In effect

if the process methodology is flawed the finding will be flawed.

The following are among the specific points of an understanding or agreement accepted by NIGA and NGISC following that meeting in early July 1998.

- NGISC would schedule additional days for a newly-formed Subcommittee on Indian Gaming in order to hear from tribal witnesses. These additional hearings would be held in conjunction with those hearing dates and sites already on the NGISC schedule. (As a result, more than 100 tribal witnesses testified at six (6) field hearings of the Subcommittee, and four (4) others involving the full Commission.)
- NIGA would work with its member Indian Nations and the NGISC staff to schedule witnesses for the additional hearings of the Subcommittee on Indian Gaming.

In addition to the agreement, NIGA took steps to provide a briefing for the Advisory Commission on Intergovernmental Affairs (ACIR), a designated contractor to the NGISC tasked with collecting governmental documents relating to the regulation of gaming activities. Tribal governments were among the governmental entities to be contacted for their regulatory documents and related information. NIGA thought it would be helpful to provide the ACIR with cultural and procedural insights for effectively working with tribal leaders to gain the desired results. ACIR representatives as well as their subcontractor, American University, participated in the briefing on July 20, 1998 in Washington, DC.

Tribal Concerns with the Study Process and Substantive Positions

While the agreement with the NGISC provided for additional opportunities to hear from tribal witnesses regarding the positive impacts of gaming in tribal communities, tribal leaders had serious concerns regarding the study process and approach employed by the study commission. Consider the following

- As I detailed earlier in my testimony NIGA had particular concerns about the information that the NGISC elected to include on its web site regarding Indian tribes, tribal governments, and Indian gaming Despite offers to help correct the inaccuracies, the study commission went forward without taking action. The danger with the NGISC's inaction is that the posted information reflects a fundamental lack of knowledge about the institution of tribal government. And that lack of knowledge turned out to be vital to the ability of the study commission to interact effectively with Indian tribes

  Furthermore, the erroneous posted information concerning Indian tribes was likely to be accepted by the general public as accurate, thereby contributing to a disservice of offering inaccurate information on Indian Nations to the American public

  NIGA and its member tribal governments had strong concerns that a plurality of the nine-member Commission brought to this important study task, a predetermined personal position on gambling or aspects of tribal governmental gaming As such, tribal leaders believed that it would be very difficult to obtain a fair hearing or an objective assessment of the positive impacts that tribal governmental gaming has

brought to tribal communities. I note for the record the 8 to 1 vote by the NGISC in support of forwarding a letter to Secretary Babbit not to issue procedures on alternative compacting until its report was finished Mr. Chairman you subsequently issued a letter calling the commissions move on this matter inappropriate and "beyond the scope" of its legislative charge Alternatively while the commission took pains to inform Congress of the need to wait for its report before acting on secretarial procedures, in fact the NGISC letter was used by Senator Enzi during the Senate debate on Enzi/Sessions, the Commission though was deafeningly silent when similar actions were requested by Indian Nations regarding Internet legislation Our calls went unheeded, unanswered, and not acted upon

NIGA and its member tribal governments, while applauding the creation of the Subcommittee on Indian Gaming, were concerned that the Subcommittee did not appear to receive a level of recognition by the NGISC that it deserved For example, in the early hearings, no logistical support or transcription services were in place to create a Subcommittee hearing record.

I specifically note that according to the NGISC's Operating Rule IV (E) adopted on October 31, 1997·

> "A verbatim transcript of each Commission meeting, hearing, and subcommittee meeting shall be made and retained by the Commission The Executive Director shall review and correct the transcription before distribution . copies of transcripts of open sessions and redacted copies of transcripts of closed sessions in consultation with counsel will be provided to any individual upon request for a reasonable fee "

NIGA learned that later in the hearing process, the written testimonies, Q and A

discussion points, from the Del Mar, CA and Tempe, AZ hearings, were lost, misplaced, or unable to be located. I would like to point out to this Committee that despite the NGISC's representations, alleging bad faith on the part of NIGA, the NGISC has failed to identify any governmental process where the testifying witnesses are held accountable for transcribing the entire hearing record for Members of Congress or the general public.

While the statute creating the Commission was very clear on what was to be studied, the Commission changed the focus of research to be provided by an independent firm. In mid-October 1998, the Advisory Commission on Intergovernmental Affairs (ACIR) was informed by the NGISC staff that the commissioners wished to redirect the research, and focus PRIMARILY on tribal gaming, as opposed to a comprehensive survey of state, local and Indian ordinances and regulations. ACIR was asked to focus on 141 tribal gaming operations (out of a total population of 310 operations), but only 25 non-tribal operations for the entire rest of the gambling industry (a population which is comprised of approximately 600 commercial casinos, 180 parimutuel facilities, 38 state/district lotteries and an unknown population of jai alai and card rooms.) Donna E. Schwartz, Research Director of ACIR, specifically testified to this at the March 18, 1999 Washington, DC Commission meeting

Some Commissioners question why tribes engaged in gaming should be entitled to receive funds from the Federal government. It should be understood that every form of government in the United States is a recipient of Federal funds and rarely

are those funds based upon the relative wealth of the recipient government Additionally, by virtue of treaties, executive orders, and Federal statues, the United States made agreements with tribal governments in exchange for the unlimited use of land and other natural resources

Specifically I want to note for the record that in NGISC testimony by Chairman Roland J. Harris of the Mohegan Nation on November 9, 1998, the Mohegan nation made a very personal decision - they decided to return federal grant money to the United States and not seek any future financial assistance

Additionally I note that Chairman Stanley Crooks of the Shakopee Mdewakanton Sioux Nation testified to the following before the NGISC on August 1, 1998 in Albuquerque, NM.

> "Our Mdewakanton ancestors ceded 24 million acres of land and gave up a way of life in exchange for the promise of perpetual protection by the United States. That promise must be honored. I firmly believe that the Federal government must continue to maintain its trust responsibility to the tribes, irrespective of whether gaming continues or not."

I also note for the record that Adam Rose, Ph D , an economist from State College of Pennsylvania, who was hired by this Commission to provide comprehensive analysis of gaming studies and or articles, but whose work was not included in the final report, detailed the following in response to the racial-ethnic distributional implications of casino gambling.

> "The most obvious reflection on this question pertains to Native Americans: as a whole they have benefitted greatly relative to whites and other groups, even though there is a sizable disparity among tribes. Deller and Chen (1996) have found some negative impacts on

> reservations, though the successes overall far outweigh these. For many tribes, casinos have been an economic salvation, and the gains have been spread across all members in the form of trust funds, necessary services, and luxury goods It is not unusual for patrons exiting Foxwoods to remark, with some consolation, that they 'have helped repay the Indians '"

In spite of the above omissions and the affirmative steps taken by NIGA to ensure that NGISC and its contractors were equipped to get the most out of their work with tribal governments, it eventually became clear that the advice offered by NIGA had little or no effect The results were especially disappointing given the time and effort that NIGA put forth to help the study process along This is demonstrated by the fact that the informational request from ACIR to Indian Nations was not forwarded to the tribes until five months following the July 20th briefing Despite this lack of an informational data base and noting the fact that Indian Nations did not receive the request until January, 1999, the first draft of the Indian Gaming report was still completed approximately two weeks later on February 4,1999

NIGA Response to Final NGISC Recommendations

In spite of the above procedural problems and additional ones we will not mention today, NIGA encountered throughout the study phase, there are some reasons to be pleased with the final recommendations offered by the NGISC in their final report Conversely, there remain several items in the same report with which Indian nations disagree

1 NIGA is pleased that the study commission recognized the sovereignty of

Indian tribes and their sovereign right to engage in tribal governmental gaming for the benefit of Indian communities.

2. NIGA is pleased that the study commission recognized the positive economic impact of Indian gaming, however, the study commission should have more adequately detailed and referenced the hearing record, in order to highlight the importance of gaming to tribes and their neighboring communities. The testimonial record does exist and NIGA has placed copies at the media desk for your intellectual curiosity

3 NIGA is pleased that the study commission acknowledged that tribal governmental gaming is, in fact, regulated

4 NIGA is disappointed that the study commission put so much focus on the negative social impacts of gaming and failed to acknowledge the positive social benefits for Indian tribes. Specifically, NGISC failed to note the incredible " welfare to work" success story that Indian Gaming has provided Once again, I bring to your attention, Professor Rose who conducted an analysis of all gaming studies and or articles and found the following.

> "A Minnesota study found a significant decrease in AFDC payments following the advent of tribal gaming Even if the skills learned are not high-level, permanent jobs enable people to develop good work habits and work records The key to the question is whether there are opportunities for advancement within the industry or beyond "

Recognizing the fact that Tribal governments are major employers within and without their communities is critical to an understanding of how inclusive

Indian Gaming has proven to be. I cite the following NGISC testimony for your edification

> "Prairie Island Indian Community's Treasure Island Resort and Casino is the number one employer in Goodhue county "
>
> "The Ho-Chunk Nation has become the largest employer in each of three countries in Wisconsin."
>
> "In just five years, the Oneida Indian Nation of Wisconsin has grown to become the largest employer in a two-county region with more than 2900 employees working at or managing our enterprises."
>
> "Tribal gaming is the second largest employer in our area." Testimony provided by Sue Shaffer, Chairperson Cow Creek Band of Umpqua Indians in Roseburg, OR.
>
> "The Tunica Biloxi Indian Nation is the largest employer in the Parish and offers the best wages."
>
> "The Oneida Nation of New York is the largest employer in the district."
>
> "We are now the 2nd largest employer in Medoncino county, second only to the county itself." Cited in testimony by Tribal Chairman Richard Williams of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

5. NIGA is disappointed that the study commission failed to note the contributions made voluntarily by Indian tribes to the issue of compulsive gambling. Indian gaming makes up only 13 percent of the U S gambling revenues, yet tribes contribute a larger percentage of their revenues and have more on-site programs to prevent and treat gambling addictions than does commercial gaming and state lotteries. Specifically I draw to your

attention that in the state of Arizona, that since October 1994 Indian nations have contributed $244,000 dollars out of a total $269,000 dollars to the Arizona Council on Compulsive Gambling programs.

6 NIGA opposes the recommendation made by the study commission calling for a pause in gaming. Any call for a pause, without qualification, would have a devastating affect on the stability of tribal governmental gaming by, among others, creating uncertainty as to how state governments might respond to the call for a pause when negotiating new gaming compacts or renegotiating existing ones.

Conclusion

Thank you again, Mr. Chairman, for this opportunity to offer testimony. I would like to conclude my remarks with a passage from a study conducted by The Economics Resource Group, Cambridge, MA titled: *American Indian Gaming Policy and Its Socio-Economic Effects, A Report to the National Gambling Impact Study Commission*, July 31, 1998 It states in part·

> "In sum, we find that Indian gaming, an expression of Indian self-determination, has produced remarkable movement on stubborn social and economic problems that have been resistant to federal and tribal efforts for decades. . . Tribes are also translating gaming employment and revenue into significant social change by investing in social and physical infrastructures, thus producing striking improvements in the quality of reservation life. While the legacy of Indian poverty will not be easily erased, and while the vast majority of gaming tribes enjoy only modest gaming income, the economic and social benefits Indian gaming has produced are diverse, substantial, and

unprecedented in this century."

The report concludes:

> "Our investigation inescapably yields the conclusion that the positive social and economic impacts of gaming, both on and off reservations, far outweigh the negative. Indeed, for much of Indian Country, the alternative to gaming is the status quo ante: poverty, powerlessness, and despair. Self-determination - and the ways that Indian nations have used it - constitutes a public policy success of major dimensions. Indian gaming is a striking example of that success."

NATIONAL GAMBLING IMPACT STUDY COMMISSION
800 North Capitol Street, N.W., Suite 450, Washington, D C 20002
Tel· 202-523-8217, Fax 202-523-4394

June 18, 1999

TO THE PRESIDENT, CONGRESS, GOVERNORS, AND TRIBAL LEADERS:

At the inaugural meeting of this Commission two years ago, I stated that we had been charged by Congress with "a very broad and very difficult task – to conduct a comprehensive legal and factual study of the social and economic implications of gambling in the United States." We have now completed that task. This Report presents the principal findings of that effort and the recommendations we believe provide a coherent framework for action.

The Commission devoted considerable attention and resources to discharging its responsibilities, efforts which included holding a series of hearings around the country in which the Commission and its Subcommittees received testimony from hundreds of experts and members of the public; making several site visits; commissioning original research; conducting surveys of the existing, wide-ranging literature; and soliciting and receiving input from a broad array of individuals and organizations.

Despite these extensive efforts, we have not exhausted the topic: the subject of gambling's impact is too extensive to be fully captured in a single volume. Through our contracted research, we have added important new information in several fields; but the need for additional research remains. In fact, one of our most important conclusions is that far more data is needed in virtually every area. <u>But even though the need for additional information cannot be contested, this cannot be allowed to become an excuse for inaction</u>. It is likely that necessary information will always be in short supply and insufficient to compel agreement on controversial issues or to lay out a road map for the future. However, it is our belief that we have substantially reduced the uncertainties that are an inevitable part of that process.

Two years ago, I also stated that this Commission had a diverse make-up, representing broad differences of opinion, and that I expected that diversity to be fully and forcefully voiced. I believe anyone who has been present at any of our proceedings will acknowledge that that was an accurate forecast. That diversity did not necessarily make for quick decisions or easy consensus, but it did ensure a healthy representation of a wide range of interests and perspectives. One need not claim perfection for the process to understand that this approach is the foundation of representative democracy.

In the end, however, the unanimous adoption of this Report speaks for itself. That is not to say that every Commissioner has agreed with every point or recommendation. Even in areas of agreement, each Commissioner brought to our work his own point of view, some of which is reflected in the individual statements appended to this Report. But the determination of the Commissioners to search for common ground without sacrificing a vigorous advocacy of their perspective is a testament to their dedication to public service.

This is the Report of a national Commission to the President, Congress, State Governors, and Tribal Leaders. But although the growth of gambling is a national phenomenon, gambling itself is of greatest concern to the individual communities in which it operates or is proposed to operate. It is at that level that its impact is felt most keenly and where the debates surrounding this issue are most energetically contested. Those communities form no common front: one community may welcome gambling as an economic salvation, while its neighbor may regard it as anathema. As such, there are few areas in which a single national, one-size-fits-all approach can be recommended.

Thus, with only a few exceptions in areas such as the Internet, we agree that gambling is not a subject to be settled at the national level, but is more appropriately addressed at the state, tribal, and local levels. It is our hope that this Report will help spark a review and assessment of gambling in those same communities and jurisdictions. For that reason, we have recommended a pause in the expansion of gambling in order to allow time for an assessment of the costs and benefits already visible, as well as those which remain to be identified. The only certainty regarding these reviews is that any results will be as individual as the communities undertaking them: some will decide to curtail the gambling they already have, others may wish to remove existing restraints. Still others may conclude that their situation requires no change. What is most important, however, is that these reviews take place and that whatever decisions are made are informed ones.

The recommendations in this Report are not self-enacting. In the end, the usefulness of the Commission's work can only be measured by the actions of others, be they in government or in the private sector. Regardless of whether or not their actions draw directly upon the recommendations in this Report or are the result of other efforts that this Commission may help prompt, it is our hope that those who bear the responsibility for protecting and promoting the public's welfare will find this Report useful toward that end. That alone would be sufficient reward for our efforts.

I want to express my deep appreciation to the members of this Commission for their perspective, sacrifice, and commitment to a fair, balanced, and objective analysis of the issue. Our ability to come together with a unanimous Report is indicative of their diligence, as well as the outstanding support provided by the Commission's staff.

On behalf of my fellow Commissioners, thank you for the opportunity to serve the American people.

Kay C. James
Chairman

INTRODUCTION

Since the mid-1970's, America has evolved from a country in which gambling was a relatively rare activity—casinos operating only in the distant Nevada desert, a few states operating lotteries, and pari-mutuel gambling relatively small scale and sedate—into a nation in which legalized gambling, in one form or another, is permitted in 47 states and the District of Columbia. Commercial gambling has become an immense industry. Governments are now heavily involved and increasingly active in pursuit of gambling revenues, either directly through state-owned lotteries and Native American tribal gambling or through the regulation and taxation of commercial operators. Tribal governments, in particular, have become the pacesetters for the rapid growth of gambling activities. Yielding more than $50 billion in gross revenues and still growing, and with little end in sight to the proliferation of gambling, our country stands at a crossroads. Do we allow gambling to continue to expand, or do we halt its growth until we more fully understand its effects on individuals, communities, and the nation?

There was no single, overarching national decision to turn the United States into a world leader in gambling. Rather, games of chance spread across the map as a result of a series of limited, incremental decisions made by individuals, communities, states, and businesses. Little by little, lotteries expanded, aided by increasingly sophisticated advertising campaigns. Over time, Las Vegas-style casinos multiplied, first in Atlantic City, then on riverboats and Indian reservations. Often with little notice, so-called "convenience" gambling, including such games as video poker, cropped up in corner stores, in gas stations, and on main streets in towns across America. And today the Internet—an unlimited frontier in the proliferation of gambling—beckons millions of existing and would-be gamblers from around the world.

In the next 25 years, gambling could, at its present rate of growth, become more and more like other common and legal, but somewhat restricted, business activities, such as the sale of alcohol or cigarettes. Of course, over time, the basic rules of our economic system would be expected to play a greater role in shaping the pattern of gambling, as

the quasi-monopolistic circumstances of the present are replaced by more routine competition. But with little stretch of the imagination, it is conceivable that someday gambling enterprises may be franchised and, at least in parts of the country, become as common as fast food outlets are today.

The rapid acceleration in the growth of gambling begs a host of questions. How much do we know about the social and economic impacts of gambling? Do its benefits outweigh its costs? Will bringing in gambling help struggling local economies, or will it sap the very citizens it is intended to help? To what extent, if any, does gambling create jobs? Cut welfare rolls? Raise or lower crime rates? How widespread is problem and pathological gambling? Does more gambling automatically mean more problem and/or pathological gambling? No one has definitive answers to these and other questions about gambling, least of all our policymakers, who are now caught short and, in some cases, may be flying blind as they attempt to formulate rational, informed gambling policies

In 1996, Congress responded to the urgent need for more information about gambling's impact on people and places by mandating the National Gambling Impacts Study Commission (NGISC). Congress instructed the NGISC, within a 2-year period, to "conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States." This *Executive Summary* provides an overview of the *Final Report* of the NGISC. It describes the size, scope, and nature of the gambling industry as well as gambling's most problematic issues. It also presents recommendations on gambling to the President, Congress, governors, tribal leaders, and a broad range of individuals within the public and private sectors.

Growth of Gambling in America

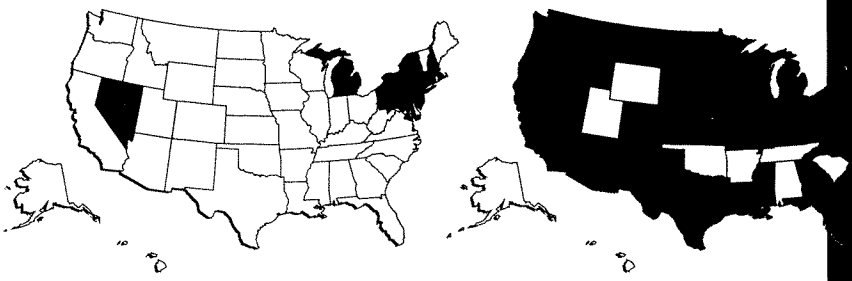
The gambling industry in the United States has grown tenfold since 1975. Today a person can make a legal wager of some sort in every state except Utah, Tennessee, and Hawaii. Thirty-seven states and the District of Columbia have lotteries, 28 states authorized casino gambling (including both commercial casinos and Class III Indian casinos), and 43 states have pari-mutuel betting. Between 1976 and 1997, revenues from legal wagering grew nearly 1,600 percent, and gambling expenditures more than doubled as a percentage of personal income

from 0.30 percent to 0.74 between 1974 and 1997. Especially striking is the increase over time in states with lottery and/or casino gambling.

In 1982, gross gambling revenues (dollars wagered minus payouts) totaled $10.4 billion. In 1997, gross gambling revenues had increased to more than $50 billion.[1] The amount of money spent on gambling compared with amounts spent on other leisure activities is noteable. In 1997, Americans spent $495.9 billion on leisure goods, services, and activities; more than $1 in $10 ($50.9 billion) was spent on gambling, not including monies spent by gamblers on hotels, food, transportation, and other expenses. In terms of "destination leisure"

[1]These numbers must be viewed with caution For a fair and accurate understanding of the actual size and potential profitability of the entire industry or any of its segments, it is critical to note the difference between the figures for "total money wagered," known in the trade as "handle," and gross gambling revenue " The two terms are not interchangeable The ratio between them is on the order of 10 to 1 for the entire industry and 25 to 1 for casino gambling It is easy to see how, taken out of context, figures for "money wagered" and for "gross gambling revenue" might be easily misinterpreted, especially by the layman

INCREASE IN STATES WITH LOTTERY AND CASINO GAMBLING: 1973 VERSUS 1999*



States with lotteries | States with authorized casinos | States with lotteries and authorized casinos

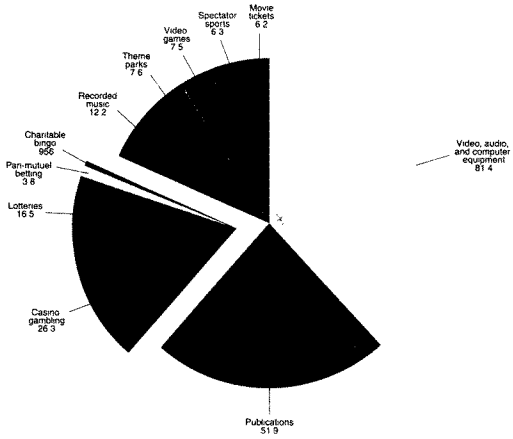
*Excludes pan-mutuel gambling
SOURCES *Gross Annual Wager*, International Gambling and Wagering Business Magazine, August 1998 p 8 *Gambling in America* Final Report to Congress, 1975 pp 78, 144 *Casino Business Directory*, Reno, Nevada Nevada Gaming Publishing 1998 and other sources

(e.g., spectator sports, cruise ships, theme parks, concerts), the 1997 figure is $81.8 billion, with "destination" gambling accounting for $30.1 billion, or more than one-third of those revenues.[2]

Before the beginning of this decade, legalized casinos operated in just two jurisdictions: Nevada and Atlantic City. Currently, casinos are authorized in 28 states and have created over 700,000 direct and indirect jobs with wages of approximately $21 billion.[3] With the multiplication of locations, there was a metamorphosis of the types of casinos:

[2] *The 1997 Gross Annual Wager*, International Gambling and Wagering Business Magazine, August 1998, p 33
[3] A Arthur Andersen, *Economic Impacts of Casino Gaming in the United States Volume 1 Macro Study*, December 1996, p 8

Comparison of Amounts Spent in 1997 on Gambling Versus Other Leisure Activities



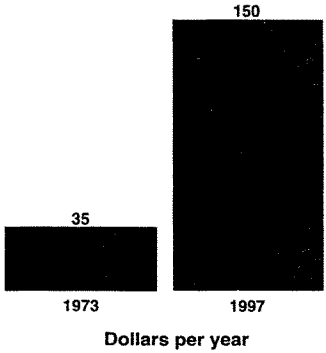
Dollars in billions

SOURCE *Gross Annual Wager*, International Gambling and Wagering Business Magazine, August 1998, pp 13, 17–18

In addition to "destination" casinos in Nevada and Atlantic City, there are nearly 100 riverboat and dockside casinos in 6 states and approximately 260 casinos on Indian reservations. The expansion of gambling to these new sites is seen by one leading researcher as "the most significant development" in the industry in the 1990's.

The number of state lotteries—the second largest type of gambling in terms of revenues—has expanded rapidly during the last quarter century. In 1973, seven states had lotteries, with total sales of $2.0 billion. By 1997, state lotteries operated in more than five times as many states and garnered $34 billion in sales, not including money from the new and fast-growing electronic gambling device (EGD) segment. Perhaps most dramatic, per capita lottery sales climbed from $35 in 1973 to $150 in 1997.

Per Capita Lottery Sales in States with Lotteries: 1973 Versus 1997*



*Per capita based on total lottery sales/population of all states with lotteries
NOTE Sales in billions stated in current dollars
SOURCES Charles T Clotfelter, et al State Lotteries at the Turn of the Century Report to the National Gambling Impact Study Commission, 1999, p 2

Pari-mutuel gambling—horse racing, dog racing, and jai-alai—has not enjoyed the high level of growth that many other segments of the industry have, and its percentage of total gambling revenues has declined significantly over past decades. Of the three segments, horse racing is by far the largest component and has performed the best financially. Legal in 43 states, with over 150 racetracks in the United States, pari-mutuel horse racing generates annual gross revenues of approximately $3.25 billion, based on a "handle" or wagers of $15.3 billion. While comparatively small in terms of revenue, the industry has an extensive network of connections throughout the economy, with hundreds of thousands of individuals owing their jobs to the industry.

From informal, illegal office pools to legal bookmaking in Nevada, wagering on sports events is a pervasive activity in our culture. Many gamblers are avid and knowledgeable followers of sports, tracking point spreads on major, and even minor, sporting events by consulting newspapers, radio talk shows, television programs, on-line services, and other sources. There is growing concern regarding increasing levels of sports wagering by adolescents in high school and by young adults on college campuses. A 1996 study sponsored by the National Collegiate Athletic Association found that of the over 2,000 student athletes surveyed in Division I basketball and football programs, 25.5 percent admitted betting on college sports events while in school.

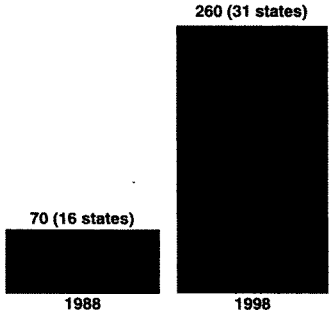
The terms "convenience gambling" and "retail gambling" have been used to describe legal, stand-alone slot machines; video poker; video keno; and other EGD's that have proliferated in bars, truck stops, convenience stores, and a variety of other locations across several states. However, these terms do not adequately convey the range of locations at which EGD gambling takes place, nor do they describe the spectrum of laws and regulations that apply (or fail to apply) to EGD's. Some states, including Louisiana, Montana, and South Carolina, permit private sector businesses to operate EGD's; in other states, such as Oregon and California, this form of gambling is operated by the state lottery. In South Carolina, this form of gambling is increasingly widespread, with 34,000 licensed video poker machines operating at some 7,500 locations.

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA), providing a regulatory framework for casino gambling on Indian reservations. From 1988, when IGRA was passed, to 1998, tribal gambling revenues grew more than thirtyfold, from $212 million to

$6.7 billion. As of 1998, approximately 260 facilities were operating in 31 states. It is important to note that over two-thirds of Indian tribes do not have any gambling at all and that not all gambling tribes benefit equally. In fact, the 20 largest revenue generators in Indian gambling account for 50.5 percent of the total revenue.

The Internet represents a new frontier in the spread of gambling, with the number of on-line bettors continuing to grow every year. The gross revenues of Internet gambling doubled between 1997 and 1998, when they reached an estimated $651 million. One estimate predicts that Internet gambling will exceed $2 billion by 2001. Adding to the concern regarding Internet gambling is the issue of access by adolescents and the recent licensing of Internet gambling operators by several foreign governments, including Antigua and Australia, with sites accessible to users worldwide.

Increase in Number of Indian Casinos and Indian Bingo Hall Facilities: 1988 Versus 1998

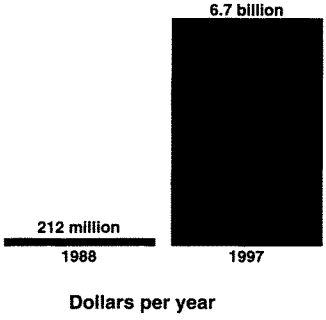


SOURCES See charts entitled "States with Tribal Gaming in 1988" and "States with Tribal Gaming in 1998." For 1988, there was no centralized information source, and the data were compiled from numerous sources, including the National Indian Gaming Commission, the Bureau of Indian Affairs, newspaper and magazine articles, and the *Indian Gaming Magazine*, *Directory of North American Gaming*, 1999. For 1998, see National Indian Gaming Commission, "Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act," June 30, 1998.

With the sharp increase of legal gambling in the past 20 years, there is increased concern about problem and pathological gambling. Clearly, more people are gambling, and they are wagering more. Problem and pathological gamblers are distinct from recreational or social gamblers: They cannot control their impulse to gamble and often bring ruin on themselves and their families. Problem and pathological gamblers often lose their jobs, their savings, their relationships, and their dignity. Researchers estimate that between 2.5 and 3.2 million adults in the United States have met the criteria in their lifetime for pathological gambling. Between 1.7 and 2.6 million adults have met the criteria in the past year. Especially troubling, 1.1 million adolescents between the ages of 12 and 18 are also estimated to be pathological gamblers.[4]

[4]This figure should be viewed with caution, however, since adolescent measures of pathological gambling are not always comparable to adult measures and different thresholds for adolescent gambling may exist

Increase in Tribal Gambling Revenues: 1988 Versus 1997



SOURCES See chart entitled "Trends in Tribal Casino Gaming Revenues, 1988–1997." Amounts are in constant 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President*, February 1999, p. 398. For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry*, May 1997, p. 6. For Indian gaming revenues in 1996 and 1997, see *Gross Annual Wager*, International Gambling and Wagering Business, August, 1998, p. 9

1976 Federal Report on National Policy Toward Gambling

It has been 23 years since the gambling industry and the gambling behavior of Americans have been reviewed by a federal commission. In 1976 the Commission on the Review of the National Policy Toward Gambling issued its Final Report, "Gambling in America." At the time, only 13 states had lotteries, 2 states (Connecticut and New York) had approved off-track wagering, and there were no casinos outside of Nevada. The 1976 Report marked the first time that a national commission had sought to provide methodologically sound research and recommendations on gambling. In its efforts, the Commission conducted and oversaw 3 years of in-depth research and extensive hearings.

An excerpt from the Commission's 1976 Report reveals that gambling was then, as it remains today, a controversial and divisive subject:

> "Gambling is an issue so fraught with ingrained moral and philosophical dichotomies and unresolved social questions that no disposition of the subject can ever come close to being universally accepted. Attitudes toward gambling encompass the most sincere and high-minded ethical beliefs as well as the basest kinds of acquisitive instincts and exploitation."

The Commission's 1976 Final Report adhered to a pragmatic approach. Theirs was primarily a single question: Since gambling is inevitable, who should regulate gambling and how? Furthermore, inasmuch as gambling was also recognized as a social issue, the Commission determined that "gambling policy is the proper responsibility of the government entity closest to the lives of citizens—the State." The 22 key recommendations of the Commission focused on the enforcement of state and local gambling statutes, the regulation of legal gambling industries, and the issues surrounding illegal gambling industries.

National Gambling Impacts Study Commission: 1996–1999

The NGISC was established on August 3, 1996, when President Clinton signed Public Law 104-169. The nine members of the Commission were appointed by the President, the Speaker of the House, and the Senate Majority Leader. They represent diverse backgrounds, regions and, indeed, viewpoints.

By the time that the NGISC was created in 1996, legalized gambling had grown nationally to a multibillion-dollar-per-year industry with $50 billion in gross revenues. Indeed, as the NGISC was launching its initial efforts, the gambling issue was playing an increasingly prominent role in political elections and preelection spending wars. More than ever before, policymakers, business executives, and voters needed reliable information about the benefits and costs of all forms of gambling.

Congress charged the NGISC with the task of "conducting a comprehensive legal and factual study of the social and economic impacts of legalized gambling in the United States." The study was to include the impacts on communities, social institutions, and individuals, as well as the role of government.

The following excerpt from Public Law 104-169 outlines the NGISC's six mandated topics of inquiry:

> A review of existing federal, state, local, and Native American tribal government policies and practices with respect to the legalization or prohibition of gambling, including a review of the costs of such policies and practices;
>
> An assessment of the relationship between gambling and levels of crime, and of existing enforcement and regulatory practices that are intended to address any such relationship;

An assessment of pathological or problem gambling, including its impact on individuals, families, businesses, social institutions, and the economy;

An assessment of the impact of gambling on individuals, families, businesses, social institutions, and the economy generally, including the role of advertising in promoting gambling and the impact of gambling in depressed economic areas;

An assessment of the extent to which gambling provides revenues to state, local, and Native American tribal governments, and the extent to which possible alternative revenue sources may exist for such governments; and

An assessment of the interstate and international effects of gambling by electronic means, including the use of interactive technologies and the Internet.

The NGISC officially began its 2-year study on June 20, 1997. A research agenda based on 42 specific policy questions was unanimously adopted in October 1997, and major research tasks were contracted. A key research task was a National Survey of Gambling Behavior, the first since 1976. At the Commission's request, approximately $2.5 million of research on gambling was conducted. (Copies of all research reports are available in CD form to be distributed with the *Final Report*.)

In addition to their regularly scheduled meetings, the Commission also conducted site visits in Atlantic City, Boston, Chicago, San Diego, Tempe, Biloxi, New Orleans, and Las Vegas. The Commission listened to presentations on gambling from the federal, state, and local perspectives. It met with experts on state lotteries, casinos, pari-mutuel gambling, sports wagering, and many other forms of gambling. It heard from mayors, senators, city council members, police officers, hotel union representatives, gambling commissioners, problem

gambling treatment counselors, and others. The Commission toured the Atlantic City boardwalk and interviewed casino and non-casino vendors. It was briefed by leading researchers on pathological gambling by youth and adults The Commission also visited two Native American casinos and heard testimony from the representatives of more than 50 Indian nations. And in a live demonstration of interactive technology, they learned of the most current Internet gambling practices and their law enforcement implications. Finally, the Commissioners heard passionate testimonies from individuals whose lives had been affected dramatically, both positively and negatively, by the gambling industry. (Individuals who provided testimony to the NGISC are listed in the Acknowledgments Appendix of the *Final Report*)

From the outset, the Commissioners saw their primary obligation as a civic one: to carry out a fair and objective review of the gambling industry's economic and social impacts. Second, the Commissioners felt that the facts of the mandated research reports should stand on their own merit and that the public's right to draw its own conclusions should be preserved Third, despite a range of perspectives among Commissioners on how the gambling industry might best evolve over the next quarter century, all members of the Commission agreed that every sector of the industry must remain bound by fair and honest practices, including truth in advertising, accurate disclosure of odds, reliable machines, guaranteed payments to winners, training of employees, responsible use of credit availability, and corporate accountability.

Major Issues in Gambling Today

The following section of the *Executive Summary* presents overviews of each of the key chapters of the *Final Report* Major issues within the current public debate on gambling were introduced. For a complete understanding of gambling's complex issues, readers are referred to the Commission's full *Final Report* Clearly, each of the many discrete segments of the industry—"destination" casinos, riverboat casinos, Indian casinos, lotteries, pari-mutuels, "convenience" gambling, sports wagering, keno, charitable gambling, and Internet gambling—has its own distinct set of issues, communities of interests, and balance sheets of assets and liabilities

Regulating Gambling

Most citizens agree that the gambling industry needs to be regulated. Simply allowing market forces to guide the growth and direction of gambling is seen as a dangerous course of action. Most people also agree that the government is best suited to protecting the integrity of gambling games, including keeping organized crime out of gambling and limiting the number of gambling sites. The key question is not whether the government should regulate gambling but, rather, to what extent are individual states succeeding in their attempts to regulate various forms of gambling and are the "best practices" being shared and adopted by others?

Gambling is regulated primarily at the state level. Such regulation is generally in the hands of an appointed independent body, sometimes called a "gambling commission" or "lottery board." Most state statutes specify the qualifications of the members, their powers, the scope of their oversight, and regulations to be administered. In general, gambling regulation is designed to protect people's income, to preserve the quality of life for the community, to keep the games honest, and to ensure that citizens are free from criminal activities. It usually involves licensing of gambling, standards for licensing, public accessibility, operation of devices and facilities, use of funds, and protection of employees. Some states also incorporate a statement of the need for strict regulation as a matter of public policy for the public good.

Government-sponsored gambling includes both state lotteries and tribal government gambling. (The latter is discussed in the section below under "Native American Gambling.") Lottery states are free to determine for themselves what the administrative oversight for their lotteries will be. Currently, 14 of the 38 government-sponsored lotteries have placed their operations within the existing administrative structure of the state. In the remaining 24 jurisdictions, states have established a separate agency bound by rules different from the rest of the state government. In some of these jurisdictions, the lottery is an independent, quasi-public entity, not bound by the states' civil service requirements or their rules for procedure. And in some cases, this independence allows the lotteries to operate more like independent businesses, with some of them choosing to conduct full-blown, glitzy advertising campaigns. Clearly, as lottery activities have continued to expand over the past two

decades, the line between the state as regulator and the state as gambling franchise has grown increasingly nebulous. Indeed, those states running their own lotteries may be subject to a conflict of interest between the desire to maximize revenue and the need to promote the public good. The NGISC views this conflict as a key issue to be resolved by policymakers.

Lotteries have become as much a part of the American scene as apple pie—and they are marketed as just as benign and wholesome. State governments—free of the advertising constraints imposed on commercial gambling—use many forms of media to tout ever-larger jackpots and to celebrate successful gamblers. The beneficial effects of the proceeds from lotteries are similarly oversold. The truth about lotteries receives scant attention from most governors and state legislators. Lotteries, in fact, are highly regressive sources of revenue. Players with household incomes under $10,000 bet nearly three times as much on lotteries as those with incomes over $50,000. And although half the adult population plays the lottery in any given year, the degree of involvement is highly heterogeneous. Among those who played in the last year, the top 5 percent of players accounted for 51 percent of total sales.[5] Moreover, the states' pay-out to players represents the smallest "win" percentage of any major legal form of betting. And, since money is fungible and regular taxes are unpopular, research indicates that lotteries fall far short of their promise of extra spending for desirable programs. Close studies of spending in such areas as education and senior citizens' programs suggest no increase due to the existence of lotteries.

Like government-sponsored gambling, commercial gambling—including casino, convenience, pari-mutuel, and sports wagering—is also subject to regulation. Casino gambling, in fact, is the most highly regulated component of the industry. Each state gambling commission is authorized to investigate the operation of the casinos in that state, including the employee work conditions, the conditions for gambling, the amount of money generated, the legal disposition of the money, and proper payment of relevant taxes. State gambling commissions operate under the presumption that ownership of casinos and management of gambling operations will be conducted by those suitable for licensure or other involvement. Regulators usually are authorized to conduct background checks and routine oversight of gambling

[5]Charles T. Clotfelter and Philip J. Cook, State Lotteries at the Turn of the Century. Report to the National Gambling Impact Study Commission, April 1, 1999

establishment operations In addition, a state regulatory authority may extend to oversight of suppliers, distributors, and others who are involved with gambling enterprises. In Nevada, the State Gaming Commission plays an important role in every aspect of legalized gambling, and many states have used Nevada's regulatory structure as a model.

The regulation of "convenience" gambling—primarily an "electronic device form" of wagering that ranges from slot machines and video keno to video poker—has proven difficult. Such regulation involves licensing, regulation of the placement of machines within an establishment, age restrictions, regulation of operations, and taxation of revenues. Most convenience gambling machines, however, are not located in concentrated spaces, as is the case with casinos. Instead, convenience gambling occurs in locations that exist primarily for other purposes, such as markets, gas stations, truck stops, bars, taverns, and even arcades frequented by adolescents, and there appears to be a gross under-reporting of machines by the owners of many such establishments. In addition, illegal and quasi-legal EGD's offering a similar if not identical gambling experience to legal EGD's are widespread in the bars and fraternal organizations of many states, including West Virginia, New Jersey, Alabama, Illinois, and Texas.

Sports gambling is legal in two states: Nevada, through casino sports books, and Oregon, through a state lottery game based on games played in the National Football League. Although sports wagering is generally illegal, it is nevertheless popular. Clearly, it is important to distinguish between a sports bet between two friends and sports wagering conducted as a business, as in the case of recent attempts to take office pool betting onto the World Wide Web. The NGISC believes that when wagering is used to alter the outcomes of games or when it threatens the integrity of sports or becomes an illegal business, it should be prosecuted to the fullest extent of the law.

A central debate within gambling regulation concerns advertising. On one side of the debate, the American Association of Advertising Agencies is arguing that in as much as gambling advertising is commercial speech, it is protected by the First Amendment. Nevertheless, the Clinton Administration is standing by a federal ban on commercial gambling advertising, citing studies which indicate that gambling advertising contributes to compulsive gambling. In addition, the NGISC was very troubled by the recent upsurge in state lotteries that have

adopted the sophisticated promotional tools of commercial marketing. In 1997 alone, state lotteries spent $400 million on advertising campaigns, some of which targeted people in impoverished neighborhoods.

Problem and Pathological Gambling

Today, the vast majority of Americans either gamble recreationally and experience no measurable side effects related to their gambling, or they choose not to gamble at all. Regrettably, some of them gamble in ways that harm themselves, their families, and their communities. The more that Americans are presented with opportunities to gamble, the more concern there is about problem and pathological gambling. While the prevalence and causes of problem and pathological gambling are not well understood, it is clear that millions of individuals fall into these categories. For whatever reason, they cannot control their urge to gamble, despite often horrific consequences. Commission members were frequently moved by the many testimonies from compulsive gamblers. They shared heart-wrenching personal stories of the social, legal, and financial damage they brought upon themselves and their families. Problem and pathological gambling affects not only the problem or pathological gambler and his or her family but also broader society. Such costs include unemployment benefits, welfare benefits, physical and mental health problems, theft, embezzlement, bankruptcy, suicide, domestic violence, and child abuse and neglect.

Unfortunately, public awareness of pathological gambling is a relatively new phenomenon. Only in recent years has the medical community's attention been drawn to the investigation and diagnosis of this problem. Furthermore, treatment programs for problem and pathological gambling are in their infancy.

Despite its impact on millions of Americans, including young people, very little research exists on pathological gambling. In response, the NGISC funded top research organizations to gather evidence on gambling and addictive behavior. One organization, the National Opinion Research Center (NORC) at the University of Chicago, was hired to collect new information on gambling behavior. They interviewed 2,417 adults via telephone, 530 adults in gambling facilities, and 534 adolescents via telephone. NORC collected information from 100 communities, contrasting those near gambling facilities with those

far away. Additionally, NORC conducted case studies in 10 of these communities in which they interviewed 7 or 8 community leaders regarding their perceptions. Another organization, the National Research Council (NRC) of the National Academy of Sciences, conducted a review of the available literature, which covered 4,000 gambling-related references, including 1,600 related specifically to problem or pathological gambling. Taken together, the NORC and NRC studies provide more hard research data and general information on pathological gambling than have ever before been available.

The greatest challenge in crafting a set of recommendations in response to the issue of pathological gambling concerns the debate on the precise definition and prevalence of the problem. There are many differences of opinion. The American Psychiatric Association (APA), considered an authoritative source on mental problems, has attempted to bring order to the labeling of gambling behaviors by creating diagnostic criteria for pathological gambling. APA describes pathological gambling as "persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits. The gambling pattern may be regular or episodic, and the course of the disorder is typically chronic." With regard to pinpointing problem and pathological gambling prevalence, the core of the confusion stems from the timeline used in various studies. Such timelines range from "lifetime" to "past-year" measures. On the one hand, lifetime estimates run the risk of overestimating the problem and/or pathological behavior, because those estimates will include people who have gone into recovery and who no longer manifest the symptoms. On the other hand, past-year measures may underestimate the problem, because this number can include people who continue to manifest pathological gambling behaviors but who may not have met the APA diagnostic criteria within the past year. As a result, problem and pathological gambling estimates in 17 states where surveys have been conducted range from 1.7 all the way up to 7.3 percent of adults.

Perhaps most troubling to the NGISC was the challenge of estimating the costs involved in problem gambling. Clearly, the extent of personal consequences on the pathological gambler and his or her family may be severe, including domestic violence, child abuse, and financial hardships. The NORC study estimated that problem and pathological gamblers account for 15 xpercent of the dollars lost gam-

bling. But beyond dollar amounts, how does one quantify a divorce, a loss of life savings, or worse, a gambling-induced suicide?

Despite their differences on the definition of pathological gambling, its prevalence, and its costs, the members of the NGISC were unanimous in their conclusion that a serious pathological gambling problem exists and that it must be addressed aggressively by policymakers at all levels. Current responses to the problem include efforts by the National Council on Problem Gambling and ongoing research at various universities. Perhaps surprising to some, the largest source of funding for research on problem and pathological gambling is the commercial casino industry. In addition, the pari-mutuel industry, as well as several states and tribal governments, has made contributions to gambling treatment programs and other organizations that deal with mental health issues and addiction.

The NGISC stands firm in its conviction that further research on problem and pathological gambling must be conducted and it is important to aggressively seek to prevent and treat these disorders. Finally, the Commission believes that a major portion of the responsibility for addressing the problem of pathological gambling must be borne by the states that sponsor gambling.

Native American Tribal Gambling

The NGISC established a Subcommittee on Indian Gambling to supplement the full Commission's work in this area. Six formal hearings were held around the country and with the assistance of the National Indian Gaming Association (NIGA), the Subcommittee received testimony from 100 tribal members representing more than 50 tribes across the nation.

Large-scale Indian casino gambling is barely a decade old. Its origins trace back to 1987, when a landmark Supreme Court decision, in effect, limited the ability of the states to regulate commercial gambling on Indian reservations. In order to provide a regulatory framework for Indian gambling, Congress passed in 1988 the IGRA. The IGRA provides a statutory basis for the regulation of Indian gambling. It specifies several mechanisms and procedures, including the requirement that the revenues from gambling be used to promote the economic development and welfare of the tribe. For most forms of casino gambling—which the IGRA terms "Class III" gambling—the IGRA requires

tribes to negotiate a compact with the respective states. It is this legislative provision that has been a continuing source of controversy.

From 1988, when the IGRA was passed, to 1997, tribal gambling revenues grew more than thirtyfold, from $212 million to $6.7 billion. By comparison, the revenues from non-Indian casino gambling roughly doubled over the same period. As was the IGRA's intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements to the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that many Native Americans continue to face.

Under the U.S. Constitution and subsequent laws and treaties, Native Americans enjoy a unique form of sovereignty. However, two centuries of often contradictory federal court decisions and congressional legislation have kept the definition and boundaries of tribal sovereignty in flux. Differing perspectives on the nature and extent of that sovereignty—in particular, the relationship of Indian tribes to the state governments in which they reside—lie at the heart of nearly all disputes over Indian gambling. In the view of some observers, tribal sovereignty is extensive and at least on par with that of states. Others contend, however, that tribal sovereignty is far more restricted in scope. (The complex historical roots of these differing perspectives are discussed in detail in the Commission's *Final Report*.)

What is not disputed is the federal government's responsibility for the welfare of the Indian tribes and their members. The Supreme Court articulated this relationship to be a "trust relationship," like a "ward to his guardian." In this regard, the federal government's record has been poor. According to U.S. government figures, rates of poverty and unemployment among Native Americans are the highest of any ethnic group in the United States, while per capita income, education, home ownership, and similar indices are among the lowest.

Given the often-opposed viewpoints between tribes and state governments, IGRA's requirement that the two parties negotiate compacts for Class III gambling has been the source of mounting tension and stalemates. Many states complain that the federal government does not actively enforce the IGRA on the reservations and that the states are unable to enforce it on their own; that the IGRA requires

states to negotiate in good faith, but does not place the same requirement on tribes; and finally, that the scope of permissible gambling activities is not clearly defined under IGRA. And while many acceptable tribal-state compacts have been successfully negotiated, several tribes have opened Class III casinos without compacts (e.g., California, Florida, and Washington). States refer to such gambling outlets as "illegal" gambling; the tribes term it "uncompacted" gambling.

In a recent attempt to resolve the tribal-state disputes regarding compacts, the Bureau of Indian Affairs published an "Advance Notice of Proposed Rulemaking" (ANPR) on May 10, 1996 The key element of the ANPR is a provision that would allow the Secretary of the Interior to approve a tribe's request to operate gambling facilities, even if the state and tribe had been unable to agree on a compact. At its July 29, 1998, hearing in Tempe, Arizona, the NGISC voted to send a letter to the Secretary of the Interior requesting that he defer issuance of a final rule, pending the completion of the Commission's *Final Report*. However, on April 12, 1999, shortly after the expiration of a legislative ban imposed by Congress prohibiting the Secretary of the Interior from approving any Class III compacts without the prior approval of the affected states, the Department published its final rule, in effect implementing the proposed procedures. This measure was almost immediately challenged in federal court by the states of Florida and Alabama, which sought to block the new rules from taking effect. Absent congressional action, the resolution of this problem will almost certainly become the responsibility of the federal courts.

Internet Gambling

Technology is revolutionizing the gambling industry as we know it. As the Internet continues to grow, so too does the popularity of on-line wagering. Seemingly overnight, all forms of gambling have become accessible to every home and every individual 24 hours a day. But how prepared is the nation for this kind of evolution within the gambling industry? How will children's access to Internet gambling be monitored? How will gambling regulators—indeed, how will any of our lawmakers—keep pace, in theory and in practice, with the exponential growth of EGD's and on-line betting? The recent explosion of Internet gambling poses serious legal, economic, and social concerns. One researcher estimates that in 1997, there were approximately 6.9 million potential

Internet gamblers and Internet gambling revenues of $300 million. By 1998, there were an estimated 14.5 million potential Internet gamblers and Internet gambling revenues of $651 million. Today's Internet gambling sites feature dazzling interactive games. They broadcast races in real-time video. They walk their customers through "virtual" tours of casinos with music playing in the background. Most gambling sites offer casino-style gambling; others offer lotteries and bingo. There are an estimated 110 sports-related gambling sites offering on-line tournaments and sweepstakes with a special attraction to young gamblers.

The legalities of gambling in cyberspace are unclear. Statute 18 U.S.C.§ 1084, the law most frequently cited in reference to Internet gambling, was written before the World Wide Web was invented It uses the phrase "wire communications" But does the Internet, soon to employ aspects of satellite technology, fall within the domain of wire communications? And does the word "contest," also used in Statute 18 U.S.C.§ 1084, apply to Internet bingo, lotteries, and casino-style games? What are the legal jurisdictions when it comes to Internet gambling? *Where* are the bets and wagers actually taking place? At the point of financial transaction? At the site where the person downloads a Web page on a personal computer? Is gambling via the Internet protected by the First Amendment as an act of free speech or is it primarily a commercial enterprise? These unanswered questions may lead some Internet gamblers to believe that the traditional rules of honesty and financial accountability no longer apply.

Gambling on the Internet is especially enticing to youth, pathological gamblers, and criminals. There are currently no mechanisms in place to prevent youths—who make up the largest percentage of Internet users—from using their parents' credit card numbers to register and set up accounts for use at Internet gambling sites. For pathological gamblers, the Internet's anonymity provides a shield from public scrutiny, a ticket to traverse unchecked through scores of gambling web sites 24 hours per day. Dr. Howard J. Shaffer, director of addiction studies at Harvard, likens the Internet to new delivery forms of addictive drugs: "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced." Finally, Internet gambling can provide a nearly undetectable harbor for criminal enterprises. Since Internet "servers" for gambling operations are physically located offshore, dishonest gambling operators can

easily steal the "winnings" by taking credit card numbers and money from deposited accounts and then, within a matter of minutes, move a gambling site or close it down altogether Computer hackers can tamper with software and manipulate games to their benefit. And money launderers need only to deposit their money into an offshore account, use the funds to gamble, lose a small percentage of the original funds, then cash out the remaining funds.

Last year Congress introduced legislation to address Internet gambling Efforts to regulate an industry whose parameters have yet to be defined could be premature and unwarranted. Furthermore, regulation of Internet gambling would likely involve large costly regulatory bodies within each state that would take away the anonymity of Internet users through registration processes Alternatively, total prohibition of gambling on the Internet, a proposition unanimously endorsed by every member of the NGISC, would provide law enforcement with the additional authority it needs to prosecute dishonest operators In addition, a total ban on Internet gambling would prevent improper endorsements by the U.S. government of what are often questionable offshore gambling operations

When the casinos came to Atlantic City I got employed as a pantry person making sandwiches. Then the casino sent me to school to further my education in the culinary field. I became a cook, shortly thereafter a relief cook, making money that I didn't imagine I could be making and being able to provide for my family.

—Sydney Meadows
Cook
Atlantic City Showboat
Atlantic City, New Jersey

Gambling's Impact on People and Places

The proponents of gambling tend to stress its economic benefits. Opponents tend to point to its social costs. In fact, there are both significant benefits *and* significant costs. Communities that embrace gambling, and the areas that surround them, experience both gambling's negative and positive impacts The key question is this: How do gambling's benefits measure against its costs? Even after the NGISC's 2 years of extensive research, the question cannot be

I'm so glad to be part of the union gaming industry. Thanks to it, I don't need to depend on welfare anymore, and I can give my family anything they need. And I can give them a better life and a prosperous future.

—Silvia Amador
Guest Room Attendant
Las Vegas Hilton Hotel and Casino

definitively answered. The overall amount of high-quality and relevant research in this area is still extremely limited. Indeed, much of the previously existing research is flawed by insufficient data, poor or underdeveloped methodology, or researchers' biases. However, even without a complete range of measurements, the NGISC has begun the process of determining the *net impact* of gambling. Policymakers at all levels of government are urged to review the Commission's analyses and to evaluate and critically test gambling's costs and benefits within their own communities To that end, the NGISC offers policymakers a process as well as qualitative and quantitative factors to consider as they assess the true benefits and costs of gambling

The NGISC suggests that policymakers consider a number of caveats First, social and economic impacts are not easily severable. Employment, for instance, is both an economic

"I have worked at the Hollywood Park Casino for the last four years. I am married and I have a beautiful family. I am the father of six children. I came to California sixteen years ago, and I got a job at the International House of Pancakes where I worked for twelve years as a cook for $7.00 an hour. In those twelve years I never received a raise, never had a vacation, and never was offered family health insurance. When my children got sick, I had to take them to a local clinic and pay cash for all the expenses. I never had time for my family. I worked 14 or 15 hours a day, seven days a week just to be able to support them. But now I am working at the Hollywood Park Casino, the first union casino in Southern California. As a lead cook I make $12.00 an hour, $5.00 more an hour than I used to make. And now I have affordable health insurance, and I can count on having regular days off to spend with my family. Before, I had to worry about our future, but now I have job security and most importantly I have respect and a voice on my job."

—Carlos Alvarenga
Hollywood Park Casino, Eglewood, California

In 1994 Ellen Cantor experienced a mid-life crisis of sorts. She was at the top of her field, earning $90,000 a year as a controller for a home care agency. But Cantor, a self-described "nice Jewish girl from New York," wanted a change. She cashed in her 401K plan, withdrew her substantial savings, and she and her soon-to-be husband packed up everything and headed to "the land of opportunity"—Las Vegas. Once there, they visited the casinos frequently—he played the horses, and she played blackjack. They both found jobs they enjoyed. For two years, life was good. Then Cantor discovered video poker. Before then, Cantor used to chuckle at the people playing video poker in the convenience stores and supermarkets. "Don't they have a life?" she wondered. Her husband tried to warn her. "That stuff is video crack. You are never going to get away from it." He was right; she couldn't. Cantor "won" over $1 million at one casino on video poker—but of course losing far more there and at the other casinos she frequented. She began stealing from her company. Her husband finally left. Cantor sought help at Gamblers Anonymous meetings, but the opportunity to gamble remained ever present. The pull was too strong. Cantor knew she had to get away. She left her clothes, furniture—everything—in the apartment and drove back to New York City. She was so broke she had to write hot checks to cover expenses on the trip. The support of family and a GA group in New York has seen her through recent months. She thinks often of the hundreds of others she met in Las Vegas whose lives were similarly destroyed by a gambling addiction. She worries, though, about the rapid spread of gambling across America. What if video poker was to come to New York? "I know I don't have another recovery left in me," she says. "I will never set foot in Vegas again, because I know I'm not strong enough not to gamble."

—Ellen Cantor
New York City

and social benefit. Likewise, crime is both an economic and social cost. Second, it is extremely difficult to quantify social costs and benefits. For example, a casino job might not be considered a true benefit, because other jobs may be available. Likewise, bankruptcy might not be considered a true cost, because in the eyes of economists, the dollars are merely transferred. But in the context of real people leading real lives, the lens through which policymakers must view the gambling issue, a casino job, complete with benefits, might be an individual family's saving grace. And to the individual family that must

I would like to tell [the advocates of] video poker what it has done for me. I am now a 'single' parent with one small income and two small children, one of who doesn't even remember ever seeing his daddy outside of prison gates. Anyone who thinks that video poker isn't addictive or harmful needs to walk a mile, or even a step, in my shoes.

—"Susan"
Greenville, South Carolina

I was a good family man, a good man in my church and a good businessman but after gambling in Atlantic City, I turned into a thief and a bum.

—Dominick Fiorese
New Jersey

endure it, bankruptcy is indeed a crisis and a cost to be borne Third, what society terms "the gambling industry" actually involves segments that are quite different from one another. "Destination" casino resorts, for example, bear little resemblance to "convenience" gambling. The former provides numerous jobs, restaurants, shopping, and entertainment as well as a number of games in a highly regulated setting. The latter involves a relatively small number of games, creates few or no jobs, is far less regulated, and fails to create significant beneficial economic impact.

Legalized gambling has unquestionably had certain positive economic effects in some of the communities in which it has been introduced. Hundreds of employees in several cities enthusiastically described to the Commission the new and better jobs they had obtained with the advent of casinos. They described the homes and cars they had been able to purchase and the health and retirement benefits that they had obtained by going to work for the casinos. In other locations, tribal members testified that the advent of casinos on tribal lands had provided jobs where none had existed before and that casinos had made possible improved hospital and clinic facilities and schools for the benefit of their children. Several tribal representatives testified that gambling revenues are providing tribes with enough resources to make investments in other industries and enterprises.

Regarding the quantifiable economic benefits of legalized gambling, the Commission heard testimony that in 1995 the industry posted revenues of between $22 billion and $25 billion, paid a total of $2.9 billion in taxes, directly employed 300,000 people, and paid $7 3 billion

in wages and salaries In 1996, 83 percent of Atlantic City's unionized casino workers received employer-paid family health insurance, almost twice the percentage of New Jersey and U.S. service workers with family coverage. In 1993, 95 percent of Atlantic City's unionized casino workers were earning pension benefits, compared with 45 percent of the private sector force nationally The pari-mutuel horse-racing industry reported revenues of $3 25 billion and employed approximately 119,000 people

But there were other factors brought to the attention of the NGISC. In Atlantic City and elsewhere, small business owners testified to the loss of their businesses when casinos came to town. Other citizens testified to the lack of job security they had encountered in tribal casinos as well as the absence of federal and state antidiscrimination laws and the lack of workers' compensation benefits In one of the surveys contracted by the NGISC, NORC conducted case studies in 10 communities in which they interviewed 7 or 8 community leaders regarding their perceptions Respondents in five of the nine communities cited new employment opportunities as a "very positive advantage." However, respondents in the other four communities indicated that unemployment remained a problem despite former hopes to the contrary

Much of the analysis of the economic effects of gambling is, in fact, poorly developed and incomplete Almost all of the studies have been conducted by interested parties. These typically have gone no further than to estimate local jobs and income from the gambling industry. But since the economic effect of an activity is its value added above what the same resources would be adding to value if employed elsewhere, these studies are deficient and may mislead readers to conclude that the introduction of gambling activities in an area will result in significant benefits without attendant costs, costs which may, in fact, overwhelm the benefits Without an estimate of the opportunity cost of the resources used in gambling, the NGISC can generate no meaningful estimate of its net effect. Furthermore, the social costs of gambling are so important to regulatory decisions that even an accurate estimate of the net income generated by the gambling industry would constitute only the start of a full cost-benefit analysis. No one—not tribal leaders, governors, mayors, or citizens—should make, or should be forced to make, a decision

regarding gambling in their community without a thorough and accurate assessment of both economic and social costs

The sad fact is that many policymakers have been forced to make decisions about expanding gambling with virtually no credible studies to rely on and, at best, only an assessment of the perceived social impacts Indeed, the social impacts of gambling are even less well documented than the economic impacts However, even if there were not a lack of research in this area, Commissioners found themselves at a loss when it came to quantifying the emotional damage suffered by millions of pathological gamblers and their families How does one quantify the tragic actions of the 16-year-old boy in Atlantic City who slit his wrists after losing $6,000 on lottery tickets? How does one categorize the deaths of the middle-aged couple from Joliet, Illinois, who committed suicide after the wife accumulated $200,000 in casino debt? How can one calculate the "cost" of the two children that died while locked in cars as their parents or caregivers gambled in nearby casinos? It was these hidden costs—the emotional costs of problem and pathological gambling behavior—that concerned the NGISC far more than the annual dollar expense of problem and pathological gamblers

The NGISC recognizes that some policymakers and citizens have struggled and will continue to struggle with gambling's often conflicting impacts. The net effect of gambling on people and places is clearly an immensely complicated issue It demands not only considerably more research but also the highest powers of judgment by both citizens and leaders

Future Research Needs

To date, the NGISC's congressionally mandated research program, conducted by NORC, the Cook-Clotfelter team, and NRC, has achieved two valuable goals. First, useful data have been developed that will be immediately helpful to federal, tribal, and state officials. Second, after careful reflection on the existing research, the Commission has set forth an aggressive agenda for future research based on what we need to know about gambling's impact on our lives.

The need for quality research on gambling is urgent, especially because of profound changes now occurring within the gambling industry. Chief among these is the blurring of the traditional lines that once clearly defined each segment of the industry. States are

granting horse-racing track owners the right to install slot machines at tracks State-run lotteries are becoming more interstate in character. The number of gambling venues continues to multiply. Today, eight states allow betting on horse racing from home. And if gambling continues to proliferate unchecked, every American in the immediate future will be able to play a high stakes game from anywhere over the Internet. Secondly, the public, Congress, and tribal and state leaders are debating gambling issues, both within the political arena and the private sector, without grounding their perspectives in an objective body of available knowledge. Policymakers, and indeed all Americans, deserve to have access to impartial data from which to develop sound judgments

To that end, the NGISC recommends that Congress and the states set forth two comprehensive gambling research agendas The following are summaries of the recommended agendas. (Complete detailed agendas are presented within the "Future Research" chapter of the *Final Report*)

The NGISC recommends that Congress adopt a general research strategy to build a knowledge base of gambling behavior and its consequences on individuals and communities Such a strategy would add "gambling components" to existing data sets being collected by federal agencies and national institutes on related areas. The Commission recommends, for example, that Congress direct the Department of Justice and the Department of Health and Human Services to add gambling components to their existing surveys, including the National Household Survey on Drug Abuse and the Arrestee Drug Abuse Monitoring System Such a strategy would also include the addition of longitudinal and cross-sectional research on the general population and major subgroup populations similar to that being conducted in the area of substance abuse Recommended research studies would focus on the prevalence of gambling behaviors, including pathological gambling and gambling by adolescents, as well as the prevention and treatment of problem and pathological gambling In addition, the Commission recommends that Congress request the National Science Foundation to establish a multidisciplinary research program on the social and economic impacts of legal gambling in the United States, including the benefits associated with legalized gambling as well as its costs

Although many aspects of the private sector gambling industry have become international, national, or regional, state-specific

research on gambling is indispensable. The regulation of most legal gambling forms has been, and will continue to be, under the purview of state governments. States must be fully informed by quality research to make decisions as to whether gambling should be initiated, expanded, limited, or terminated. To that end, the Commission recommends that governors and state legislatures: (1) authorize and fund every 4 years an objective study of the prevalence of problem and pathological gamblers among their states' residents; (2) fund research, public awareness education, and prevention and treatment programs for those who are or are likely to become problem or pathological gamblers among their resident populations; and (3) as a condition of the granting of a license to operate a gambling facility or to sell goods or services to a gambling facility, the licensee provides full cooperation in any research undertaken by their states to fulfill the legislative intent of federal and state statutory policy

Recommendations

Chapter 3. Regulating Gambling

3-1 The Commission recommends to state governments and the federal government that states are best equipped to regulate gambling within their own borders with two exceptions—tribal and Internet gambling. (See separate recommendations on tribal and Internet gambling in their respective sections.)

3-2 The Commission recommends that all legal gambling should be restricted to those who are at least 21 years of age and that those who are under 21 years of age should not be allowed to loiter in areas where gambling activity occurs

3-3 The Commission recommends that gambling "cruises to nowhere" should be prohibited unless the state from which the cruise originates adopts legislation specifically legalizing such cruises consistent with existing law.

3-4 The Commission recommends that warnings regarding the dangers and risks of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities.

3-5 The Commission recognizes the difficulty of campaign finance reform in general and an industry-specific contribution restriction in particular. Nonetheless, the Commission believes that there are

sound reasons to recommend that states adopt tight restrictions on contributions to state and local campaigns by entities—corporate, private, or tribal—that have applied for or have been granted the privilege of operating gambling facilities.

3-6 The Commission received testimony that convenience gambling, such as electronic devices in neighborhood outlets, provides fewer economic benefits and creates potentially greater social costs by making gambling more available and accessible Therefore, the Commission recommends that states should not authorize any further convenience gambling operations and should cease and roll back existing operations

3-7 The Commission recommends that betting on collegiate and amateur athletic events that is currently legal be banned altogether.

3-8 The Commission recommends that in states where there is little regulatory oversight for organizations contracted to help manage or supply the lottery, states should put all individuals, entities, and organizations involved with managing or supplying the lottery through a rigorous background check and licensing process

3-9 The Commission recommends to states with lotteries that the states should publicly develop and review model regulations for their lottery in the form of "best practices," designed to be adopted legislatively.

3-10 The Commission urges states with lotteries to not allow instant games that are simulations of live card and other casino-type games. Generally, the outcome of an instant game is determined at the point of sale by the lottery terminal that issues the ticket

3-11 The Commission recommends that all relevant governmental gambling regulatory agencies should ban aggressive advertising strategies, especially those that target people in impoverished neighborhoods or youth anywhere.

3-12 The Commission recommends that states should refuse to allow the introduction of casino-style gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community or for the purpose of competing with other forms of gambling.

3-13 The Commission recommends to state and tribal governments, the NCAA, and other youth, school, and collegiate athletic organizations that because sports gambling is popular among adolescents and may act as a gateway to other forms of gambling, such organizations and governments should fund educational and prevention programs to help the public recognize that almost all sports gambling is illegal and can have serious consequences. The Commission recommends that this effort should include public service announcements, especially during tournament and bowl game coverage. The Commission recommends that the NCAA and other amateur sports governing bodies adopt mandatory codes of conduct regarding sports gambling education and prevention. The Commission also calls upon the NCAA to organize America's research universities to apply their resources to develop scientific research on adolescent gambling, sports gambling, and related research.

3-14 The Commission recommends that each gambling operation, state lottery, tribal government, and associations of gambling organizations voluntarily adopt and then follow enforceable advertising guidelines. These guidelines should avoid explicit or implicit appeals to vulnerable populations, including youth and low-income neighborhoods. Enforcement should include a mechanism for recognizing and addressing any citizen complaints that might arise regarding advertisements. Additionally, the Commission recommends that Congress amend the federal truth-in-advertising laws to include Native American gambling and state-sponsored lotteries.

3-15 The Commission recommends that Congress should delegate to the appropriate federal agency the task of annually gathering data concerning lottery operations in the United States, including volume of purchase; demographics of lottery players and patterns of play by demographics; nature, content, accuracy, and type of advertising spending regarding problem and pathological gamblers; spending on regulation; and other relevant matters.

3-16 The Commission recommends that states and tribal governments should conduct periodic reassessments of the various forms of gambling permitted within their borders for the purpose of determining whether the public interest would be better served by limiting, eliminating, or expanding one or more of those forms.

3-17 The Commission recommends that federal, state, and tribal gambling regulators should be subject to a cooling-off period that prevents them from working for any gambling operation subject to their jurisdiction for a period of 1 year. Federal, state, or tribal lottery employees should be subject to a cooling-off period that prevents them from working for any supplier of lottery services for a period of 1 year.

3-18 The Commission recommends that jurisdictions considering the introduction of new forms of gambling or the significant expansion of existing gambling operations should sponsor comprehensive Gambling Impacts statements. Such analyses should be conducted by qualified independent research organizations and should encompass, in so far as possible, the economic, social, and regional effects of the proposed action.

3-19 The Commission recommends that states with lotteries reduce their sales dependence on low-income neighborhoods and heavy players in a variety of ways, including limiting advertising and number of sales outlets in low-income areas.

3-20 The Commission recommends that states with lotteries create a private citizen oversight board. The board would make data-based policy decisions on types of games to offer, marketing strategies to follow, etc.

3-21 The Commission recognizes that lotteries and convenience gambling may play a significant role in the development of youth gamblers. Further, with respect to all forms of legal and illegal gambling, the Commission recommends that all relevant governmental gambling regulatory agencies enact and enforce harsh penalties for abuse in this area involving underage gamblers. Penalties and enforcement efforts regarding underage gambling should be greatly increased.

3-22 Heavy governmental promotion of lotteries, largely located in neighborhoods, may contribute disproportionately to the culture of casual gambling in the United States. The Commission, therefore, recommends that states curtail the growth of new lottery games, reduce lottery advertising, and limit locations for lottery machines.

Chapter 4. Problem and Pathological Gambling

The Commission respectfully recommends that all governments take every step necessary to implement all relevant components of the recommendations listed here before lotteries or any other

form of legalized gambling is allowed to operate or to continue to operate. Such requirements should be specifically itemized in a state statute as applicable to a state-run lottery. Similarly, such requirements should also be specified and made applicable for inclusion in tribal government law and tribal-state compacts.

4-1 The Commission respectfully recommends that all relevant governmental gambling regulatory agencies require, as a condition of any gambling facility's license to operate, that each applicant adhere to the following:

- Adopt a clear mission statement as to applicant's policy on problem and pathological gambling.
- Appoint an executive of high rank to execute and provide ongoing oversight of the corporate mission statement on problem and pathological gambling.
- Contract with a state-recognized gambling treatment professional to train management and staff to develop strategies for recognizing and addressing customers whose gambling behavior may strongly suggest they may be experiencing serious to severe difficulties.
- Under a state "hold harmless" statute, refuse service to any customer whose gambling behavior convincingly exhibits indications of a gambling disorder.
- Under a state "hold harmless" statute, respectfully and confidentially provide the customer (as described above) with written information that includes a state-approved list of professional gambling treatment programs and state-recognized self-help groups.
- Provide insurance that makes available medical treatment for problem and for pathological gambling facility employees.

4-2 The Commission recommends that each state and tribal government enact, if it has not already done so, a gambling privilege tax, assessment, or other contribution on all gambling operations within its boundaries, based upon the gambling revenues of each operation. A sufficient portion of such monies shall be used to create a dedicated fund for the development and ongoing support of problem gambling-specific research, prevention, education, and treatment

programs. The funding dedicated for these purposes shall be sufficient to implement the following goals:

- Undertake biennial research by a nonpartisan firm experienced in problem-gambling research to estimate the prevalence of problem and pathological gambling among the general adult population. Specific focus on major subpopulations including youth, women, elderly, and minority group gamblers should also be included. An estimate of prevalence among patrons at gambling facilities or outlets in each form of gambling should also be included.
- Initiate public awareness, education, and prevention programs aimed at vulnerable populations. One such purpose of such programs will be to intercept the progression of many problem gamblers to pathological states.
- Identify and maintain a list of gambling treatment services available from licensed or state-recognized professional providers, as well as the presence of state-recognized self-help groups
- Establish a demographic profile for treatment recipients and services provided, as state and federal laws permit. Develop a treatment outcome mechanism that will compile data on the efficacy of varying treatment methods and services offered, and determine whether sufficient professional treatment is available to meet the demands of persons in need.
- When private funding is not available, subsidize the costs of approved treatment by licensed or state-recognized gambling treatment professionals for problem and pathological gamblers as well as adversely affected persons. Additionally, such funds shall ensure that persons in need of treatment can receive necessary support based upon financial need. Treatment cost reimbursement levels and protocols will be established by each state.

4-3 Despite the fact that pathological gambling is a recognized medical disorder, most insurance companies and managed care providers do not reimburse for treatment. The Commission recommends to states that they mandate that private and public insurers and managed care providers identify successful treatment programs, educate participants about pathological gambling and treatment options, and cover the appropriate programs under their plans

4-4 The Commission recommends that each gambling facility must implement procedures to allow for voluntary self-exclusion, enabling gamblers to ban themselves from a gambling establishment for a specified period of time.

4-5 The Commission recommends encouraging private volunteerism of groups and associations working across America to solve problem gambling, especially those involving practitioners who are trying to help people who are problem gamblers. This should include strategically pooling resources and networking, drawing on the lists of recommendations these organizations have presented to the Commission, and working to develop uniform methods of diagnosis.

4-6 The Commission recommends each state-run or approved gambling operation be required to conspicuously post and disseminate the telephone numbers of at least two state-approved providers of problem-gambling information, treatment, and referral support services.

Chapter 5. Internet Gambling

5-1 The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the federal government should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction. Further, the Commission recommends that the President and Congress direct the DOJ to develop enforcement strategies that include, but are not limited to, Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions. Because it crosses state lines, it is difficult for states to adequately monitor and regulate such gambling.

5-2 The Commission recommends to the President, Congress, and state governments the passage of legislation prohibiting wire transfers to known Internet gambling sites or the banks who represent them. Furthermore, the Commission recommends the passage of legislation stating that any credit card debts incurred while gambling on the Internet are unrecoverable.

5-3 The Commission recognizes that current technology is available that makes it possible for gambling to take place in the home or

the office without the participant physically going to a place to gamble. Because of the lack of sound research on the effects of these forms of gambling on the population and the difficulty of policing and regulating to prevent such things as participation by minors, the Commission recommends that states not permit the expansion of gambling into homes through technology and the expansion of account wagering.

5-4 The Commission recommends to the President and Congress that because Internet gambling is expanding most rapidly through offshore operators, the federal government should take steps to encourage or enable foreign governments not to harbor Internet gambling organizations that prey on U.S. citizens.

Chapter 6. Native American Tribal Gambling

6-1 The Commission acknowledges the central role of the NIGC as the lead federal regulator of tribal governmental gambling. The Commission encourages Congress to assure adequate NIGC funding for proper regulatory oversight to ensure integrity and fiscal accountability. The Commission supports the NIGC's new Minimum Internal Control Standards, developed with the help of the National Tribal Gaming Commissioners and Regulators, as an important step to assure such fiscal accountability. The Commission recommends that all tribal gaming commissions work to ensure that the tribal gambling operations they regulate meet or exceed these minimum standards and the NIGC focus special attention on tribal gambling operations struggling to comply with these and other regulatory requirements.

6-2 The Commission recommends that IGRA's classes of gambling must be clearly defined so that there is no confusion as to what forms of gambling constitute Class II and Class III gambling activities. Further, the Commission recommends that Class III gambling activities should not include any activities that are not available to other citizens, entities, or organizations in a state, regardless of technological similarities. Indian gambling should not be inconsistent with the state's overall gambling policy.

6-3 The Commission recommends that labor organizations, tribal governments, and states should voluntarily work together to ensure the enforceable right of free association—including the right to organize and bargain collectively—for employees of tribal casinos.

Further, the Commission recommends that Congress should enact legislation establishing such worker rights only if there is not substantial voluntary progress toward this goal over a reasonable period of time.

6-4 The Commission recommends that tribal governments, states and, where appropriate, labor organizations should work voluntarily together to extend to employees of tribal casinos the same or equivalent (or superior) protections that are applicable to comparable state or private-sector employees through federal and state employment laws. If state employee protections are adopted as the standard for a particular tribal casino, then they should be those of the state in which that tribal casino is located. Further, the Commission recommends that Congress should enact legislation providing such protections only if there is not substantial voluntary progress toward this goal over a reasonable period of time

6-5 The Commission recognizes that under IGRA, Indian tribes must annually report certain proprietary and nonproprietary tribal governmental gambling financial information to the NIGC through certified, independently audited financial statements. The Commission recommends that certain aggregated financial Indian gambling data from reporting tribal governments, comparable by class, to the aggregated financial data mandatorily collected from commercial casinos and published by such states as Nevada and New Jersey should be published by the NIGC annually. Further, the Commission recommends that the independent auditors should also review and comment on each tribal gambling operation's compliance with the Minimum Internal Control Standards promulgated by the NIGC.

6-6 The Commission recommends that upon written request, a reporting Indian tribe should make immediately available to any enrolled tribal member the annual certified independently audited financial statements and compliance review of the MICS submitted to the National Indian Gaming Commission. A tribal member should be able to inspect such financial statements and compliance reviews at the tribal headquarters or request that they be mailed.

6-7 The Commission recommends that tribal and state sovereignty should be recognized, protected, and preserved.

6-8 The Commission recommends that all relevant governmental gambling regulatory agencies should take the rapid growth of com-

mercial gambling, state lotteries, charitable gambling, and Indian gambling into account as they formulate policies, laws, and regulations pertaining to legalized gambling in their jurisdictions. Further, the Commission recommends that all relevant governmental gambling regulatory agencies should recognize the long overdue economic development Indian gambling can generate.

6-9 The Commission has heard substantial testimony from tribal and state officials that uncompacted tribal gambling has resulted in substantial litigation. Federal enforcement has, until lately, been mixed. The Commission recommends that the federal government fully and consistently enforce all provisions of the Indian Gaming Regulatory Act

6-10 The Commission recommends that tribes, states, and local governments should continue to work together to resolve issues of mutual concern rather than relying on federal law to solve problems for them

6-11 The Commission recommends that gambling tribes, states, and local governments should recognize the mutual benefits that may flow to communities from Indian gambling. Further, the Commission recommends that tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects of the activities that may occur in other communities and to balance the rights of tribal, state, and local governments; tribal members; and other citizens.

6-12 IGRA allows tribes and states to negotiate any issues related to gambling. Nothing precludes voluntary agreements to deal with issues unrelated to gambling either within or without compacts. Many tribes and states have agreements for any number of issues (e.g., taxes, zoning, environmental issues, natural resources management, hunting and fishing) The Commission recommends that the federal government should leave these issues to the states and tribes for resolution.

6-13 The Commission recommends that Congress should specify a constitutionally sound means of resolving disputes between states and tribes regarding Class III gambling. Further, the Commission recommends that all parties to Class III negotiations should be subject to an independent, impartial decisionmaker who is empowered to approve compacts in the event a state

refuses to enter into a Class III compact, but only if the decision-maker does not permit any Class III games that are not available to other citizens of the state and only if an effective regulatory structure is created.

6-14 The Commission recommends that Congress should adopt no law altering the right of tribes to use existing telephone technology to link bingo games between Indian reservations when such forms of technology are used in conjunction with the playing of Class II bingo games as defined under the Indian Gaming Regulatory Act.

6-15 The Commission recommends that tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as "seed money" to further diversify tribal economies and to reduce their dependence on gambling.

Chapter 7 Gambling's Impacts on People and Places

7-1 Because the easy availability of automated teller machines and credit machines encourages some gamblers to wager more than they intended, the Commission recommends that states, tribal governments, and pari-mutuel facilities ban credit card cash advance machines and other devices activated by debit or credit cards from the immediate area where gambling takes place.

7-2 While the Commission recognizes that the responsibility for children and minors lies first and foremost with parents, it recommends that gambling establishments implement policies to help ensure the safety of children on their premises and to prevent underage gambling. Policies that could be implemented include the following:

- Post local curfews and laws in public areas and inform guests traveling with minors of these laws.
- Train employees working in appropriate areas to handle situations involving unattended children, underage gambling, and alcohol and tobacco consumption or purchase.

7-3 The Commission recommends to state, local, and tribal governments that (when considering the legalization of gambling or the repeal of gambling that is already legal) they should recognize that especially in economically depressed communities, casino gambling has demonstrated the ability to generate economic development through the creation of quality jobs.

7-4 The Commission recommends to state, local, and tribal governments that (when considering the legalization of gambling or the repeal of gambling that is already legal) they should recognize that lotteries, Internet gambling, and non-casino EGD's do not create a concentration of good quality jobs and do not generate significant economic development.

7-5 The Commission recommends to state, local, and tribal governments that (when they are considering the legalization of casino gambling) casino development should be targeted for locations where the attendant jobs and economic development will benefit communities with high levels of unemployment and underemployment and a scarcity of jobs for which the residents of such communities are qualified.

7-6 The Commission recommends to state, local, and tribal governments that studies of gambling's economic impact and studies contemplating the legalization of gambling or the repeal of gambling that is already legal should include an analysis of gambling industry job quality—specifically income, medical benefits, and retirement benefits—relative to the quality of other jobs available in comparable industries within the labor market.

7-7 The Commission recommends to state, local, and tribal governments that when planning for gambling-related economic development, communities with legal gambling or that are considering the legalization of gambling should recognize that destination resorts create more and better quality jobs than casinos catering to a local clientele

7-8 The Commission recommends to state, local, and tribal governments that communities with legal gambling or that are considering the legalization of gambling should look to cooperation between labor unions and management as a means for protecting job quality.

7-9 The Commission recommends that students should be warned of the dangers of gambling, beginning at the elementary level and continuing through college.

Chapter 8. Future Research

8-1 The Commission recommends that Congress encourage the appropriate institutes within the National Institutes of Health (NIH) to convene a multidisciplinary advisory panel that will

help to establish a broad framework for research on problem and pathological gambling issues within its range of expertise.

8-2 The Commission recommends that Congress direct the Substance Abuse and Mental Health Services Administration (SAMHSA) or other appropriate agency to add gambling components to the National Household Survey on Drug Abuse. To understand the expanding dimensions of problem and pathological gambling nationwide, gambling prevalence studies need to be of sufficient volume and with annual updates to record changes brought about by expanding legalization, greater accessibility, technological advances, and increasingly sophisticated games. This survey would examine not only the general population but also sizable subgroups like youth, women, elderly, and minority gamblers if no other more appropriate longitudinal studies focusing on each of these groups are available.

In any event, no data gathering pursuant to these recommendations should violate any person's right to medical privacy in seeking treatment for problem or pathological gambling.

8-3 The Commission recommends that Congress direct all federal agencies conducting or supporting longitudinal research panels to consider the feasibility of adding a gambling component to such surveys and, where appropriate, entertain applications to add such components that are determined to be of high scientific merit through scientific peer review. In addition to addressing gambling behavior, these components should include questions about treatment-seeking behavior in order to begin to address the issue of the unmet need for treatment, which is currently unknown.

8-4 The Commission recommends that Congress encourage NIH to issue a revision of the special research program announcement for research applications on pathological gambling to foster research designed to identify the age of initiation of gambling, influence of family and correlates with other youth high-risk behavior such as tobacco, alcohol, and other drug use, early sexual activity, and criminal activity evaluated separately for illegal and legal forms of gambling.

8-5 The Commission recommends that Congress direct the appropriate institutes of NIH to invite, where appropriate, applications for supplemental funds to add legal and illegal gambling compo-

nents of high scientific merit to appropriate and relevant existing surveys and to issue a revision of the special program announcement for research applications on pathological gambling to include the following areas:

—Effects on family members, such as divorce, spousal and/or child abuse, severe financial instability, and suicide.

—Analysis of public awareness education and prevention programs offered at federal, tribal, state, or corporate levels.

—Analysis of the development of gambling difficulties associated with electronic gambling machines and the risk factors that accompany this evolution for customers most likely drawn to this form of gambling.

—Effects on the workplace, such as economic losses arising from unemployment, loss of productivity, and workplace accidents.

—A study that would establish reliable instruments to measure nonmonetary costs associated with legal gambling, including, without limitation, divorce, domestic violence, child abuse and chronic neglect, suicide, and the secondary effects of bankruptcy and gambling-related crimes, and other outcomes of a similar character.

8-6 The Commission recommends that Congress direct the appropriate institutes of NIH to invite, where appropriate, applications for supplemental funds to issue a revision of the special program announcement for research applications to commence a study of American adult problem gamblers below the pathological gambler threshold (APA DSM–IV). The gambling behavior of those in this large group of 11 million adults and juveniles reveal warning signs that require thorough analysis. The gamblers in this group could go either way—that is, toward diminishing risks or toward pathological status.

8-7 The Commission recommends that Congress direct SAMHSA or other appropriate agency to add specific gambling questions to its annual surveys of mental health providers, which are conducted by the Center for Mental Health Services. The survey should map the availability of both privately and publicly funded treatment services for gamblers. This should include a count of

treatment slots for gambling; how many, in a given period, are in treatment for gambling problems alone or for multiple disorders that include problem gambling; a demographic profile of those receiving treatment, an assessment of the level of the gambling disorder; and a description of the services they are receiving. It would identify barriers to treatment, such as a lack of insurance coverage, exclusion of treatment for pathological gambling from HMO and other private insurance policies, stigmatization, or the lack of availability of treatment (including a lack of qualified treatment providers).

8-8 SAMHSA or another appropriate agency should initiate treatment outcome studies conducted by scientists in the treatment research field. Such studies should include formal treatment, self-help groups (Gamblers Anonymous), and natural recovery processes. These studies should encompass the general treatment population and should specifically include youth, women, elderly, and minority gamblers.

8-9 The Commission recommends Congress request the National Science Foundation to establish a multidisciplinary research program that will estimate the benefits and costs of illegal and separately each form of legal gambling allowed under federal, tribal and/or state law, particularly lottery, casino, pari-mutuel, and convenience gambling. Further, the research program should include estimates of the costs and benefits of legal and illegal Internet gambling, assuming Congress prohibits this form of gambling with certain exemptions. Such a program, at a minimum, should address the following factors:

—Benefits associated with different kinds of legal and illegal gambling, including increased income, creation of net new jobs and businesses, improvement in average wages and benefits, increased tax revenues, enhanced tourism and rising property values, and reductions in unemployment, if any.

—Costs associated with different kinds of legal and illegal gambling, including problem and pathological gambling; increased crime, suicide, debts, and bankruptcies; displacement of native inhabitants; traffic congestion; demand for more public infrastructure; and demand for more public services from the courts (criminal, bankruptcy, divorce) and from schools, police, and fire departments.

—The study should include benefits derived or costs incurred not only in "host" communities or states in which gambling facilities are located, but also in so-called feeder communities or states in which a significant number of the gamblers live and work who patronize facilities in the host communities.

8-10 The Commission recommends that Congress direct NIJ or other appropriate agency to research what effect legal and illegal gambling have on property and/or violent crime rates. Such research should also examine whether gambling-related criminal activity is increased in neighboring jurisdictions where the arrest/gambler lives and/or works but does not gamble.

8-11 The Commission recommends that Congress direct NIJ, the Bureau of Justice Statistics (BJS), or other appropriate agencies to add gambling components to ongoing studies of federal prison inmates, parolees, and probationers who manifest disorders that frequently coexist with pathological gambling.

8-12 The Commission recommends that Congress direct NIJ or other appropriate agency to investigate and study the extent of adolescent participation in illegal gambling and all forms of legal gambling separately. Further, that NIJ focus on sports betting in the nation; work cooperatively with school authorities at high school and college levels; and recommend what effective steps should be taken by federal, state, and school authorities to avoid the corruption of collegiate and amateur sports and reverse steady increases in adolescent gambling.

8-13 The Commission recommends that Congress direct the Department of Labor or other appropriate agency to research job quality in the gambling industry as measured by income levels, health insurance coverage and affordability, pension benefits, job security, and other similar indicators. The research should include a comparison between gambling jobs in a variety of communities and regions of the country. It should also compare job quality and availability in the gambling industry versus other comparable industries within those labor markets. Finally, it should also compare job quality at casinos with distinguishing characteristics, such as those that derive a significant part of their revenues from non-gambling components—like hotels, food, and beverage service and shopping

and entertainment (often referred to as destination resorts)—versus those dependent almost wholly on gambling revenues

8-14 The Commission recommends that if Congress acts to prohibit Internet gambling that it also require NIJ or other appropriate agency 12 months after the effective date of the enabling statute to measure its effectiveness for a period of 1 year. An estimate should be made of how much illegal Internet betting continues despite the statutory prohibition. The factors contributing to successful evasion of the prohibition should be described in detail. Recommendations to Congress as to methods of closing the channels used to evade the prohibition should be made.

8-15 The Commission recommends that Congress direct the appropriate institutes within NIH to invite, where appropriate, applications for supplemental funds to issue a revision of the special program announcement for research applications to commence a study of prevalence of problem and pathological gambling among gambling industry employees in all forms of legal gambling, including, without limitation, pari-mutuel, lottery, casino and, where feasible, convenience-stop employees.

8-16 The Commission recommends that the appropriate institutes conduct research to determine if an analysis of available gambling patron data derived from banks and other credit agencies can assist in the identification of problem and pathological gamblers.

8-17 The Commission respectfully recommends to state and tribal governments that they should authorize and fund every 2 years an objective study of the prevalence of problem and pathological gamblers among their state's residents by a nonpartisan research firm whose work meets peer review standards. Specific focus on major subpopulations including youth, women, elderly, and minority group gamblers should also be included. An estimate of prevalence among patrons at gambling facilities or outlets in each form of gambling should also be included.

8-18 The Commission recommends to state and tribal governments that they should authorize and fund research programs for those who are or are likely to become problem or pathological gamblers in their resident population.

8-19 The Commission recommends to state and tribal governments that they should require, as a condition of the granting of a license to operate a gambling facility or to sell goods or services in a gambling facility, full cooperation in any research undertaken by the state needed to fulfill the legislative intent of the federal and state statutory policy

8-20 The Commission recommends that state and tribal governments consider authorizing research to collect and analyze data that would assess the following gambling-related effects on customers and their families resident in their jurisdictions:

—The extent to which gambling-related debt is a contributing factor to personal bankruptcies.

—The extent to which gambling problems contribute to divorce, domestic violence, and child abuse and neglect.

—The extent to which gambling problems contribute to incidents of suicide (or suicidal behaviors)

—The number, types, and average monetary values of gambling-related crimes perpetrated for the primary purpose of gaining funds to continue gambling or to pay gambling debts.

—The extent to which practices of some gambling facilities to provide free alcohol to customers while gambling, the placement of cash advance credit machines close to the gambling area, and the offer of similar inducements are likely to be significant factors in magnifying or exacerbating a gambling disorder.

THE SIGNIFICANCE OF THIS REPORT

In the preceding pages, the Commission has presented an overview of the current state of gambling in the United States. The Commission has offered findings and recommendations for federal policymakers, state and tribal officials, government regulators, research organizations, advocacy groups, treatment facilitators, operators of gambling establishments, and individual citizens. And since legalized gambling

is a complex, fluid, and fast-changing policy issue, the Commission has also suggested further areas of study to supplement available knowledge. Clearly, there is a need to know more about gambling, especially about its economic and social impacts. The Commission has found that the more they explore the terrain, the more work they determine remains to be done.

Given the size and range of the gambling industry, there is a need for an informal national debate about gambling. Some advocates for the gambling industry believe that gambling has reached a saturation point—that more gambling cannot be sustained in this country. Yet every such prediction to date has proven to be wrong. Regardless of the truth of either view, the wisdom of widespread gambling, much of it government owned and operated, needs to be examined.

The members of the Commission agree that there is a need for a "pause" in the growth of gambling. The purpose of the pause is not to wait for definitive answers to the subjects of dispute, because those may never come. Instead the purpose of this recommended pause is to encourage governments to do what, to date, few, if any, have done to survey the results of their decisions and to determine if they have chosen wisely; to ask if their decisions are in accord with the public good, if harmful effects could be remedied, if benefits are being unnecessarily passed up. Because the search for answers takes time, some policymakers may wish to impose an explicit moratorium on gambling expansion while awaiting further research and assessment.

While some communities may ultimately decide to restrict or even ban existing gambling, there is little prospect of it being outlawed altogether. It is clear that the American people want legalized gambling, and it has already sunk deep economic roots in many communities. Its form and extent may change, but gambling is here to stay. However, the balance between gambling's benefits and costs is not fixed. That lies within our power to determine. We live in a democracy, and in a democracy it is the people who are responsible for shaping the world they live in. As Thomas Jefferson wrote more than two hundred years ago, "I know of no safe repository of the ultimate power of society but the people themselves." It is in this spirit that the Commission's *Final Report* is offered.

ACKNOWLEDGMENTS

COMMISSIONERS

Kay C. James, Chairman

William A. Bible
Dr. James C. Dobson
J. Terrence Lanni
Richard C. Leone
Robert W. Loescher
Leo T. McCarthy
Dr. Paul H. Moore
John W. Wilhelm

The Commission recognizes and appreciates the efforts made in the last two years by those who have served the public and the Commission as staff. Through their support and hard work, Commissioners were able to achieve the mandate set forth by the United States Congress.

CURRENT COMMISSION STAFF

Timothy Kelly, Ph.D., Executive Director

Doug Seay, Deputy Executive Director

Mark Bogdan
Deborah DuCre'
Dawn Hively
Janet Newkirk
Valerie Rice
Katherine Spilde, Ph.D.
Craig Stevens

FORMER COMMISSION STAFF

Timothy Bidwill, J.D.
Allison Flatt, J.D.
Nancy Mohr Kennedy
Amy Ricketts
Martha Roberts
John Shosky, Ph.D.
Carol Simpson, J.D.
Stephen Watters
Stephen White, J.D.

RESEARCH INTERNS

Carlos Armintor
Maria Giordano
Erik Heckman
Daniel Hughes
Jennifer Johnson
S. Ryan Meyer
Kathleen O'Keefe
Sohee Park
Ralucca Popovici
Asli Robolok
Jason Specht

APPENDIX:

COMMISSIONERS' STATEMENTS

Statement of William A. Bible

As a former Chairman of Nevada's Gaming Control Board and as a Member of the National Gambling Impact Study Commission, I have had the unique opportunity of being involved with, and becoming knowledgeable about, gambling in the United States. This Commission, like its predecessor Commission in 1976, observed that gambling has widespread public support and that most Americans, whether or not they agree or disagree with gambling as a form of recreation, feel strongly that government should not attempt to regulate their own individual conduct. While most Americans would agree that gambling must be closely regulated to exclude criminal elements and to provide fair games, collection of tax revenues, protection from adolescent involvement and location suitability, they would also agree that each individual, and not the government, is best able to decide for himself or herself about engaging in gambling for recreation and entertainment. I would endorse this viewpoint and would likewise agree with those who argue that decisions concerning the legalization of gambling are best implemented locally and that government's role in gambling should be limited to regulatory activities and the provision of assistance to those compulsive individuals who do not deal with gambling responsibly.

This Commission's recommendations wisely leave untouched the historic Federal-State relationship where the authorization, taxation and regulation of gambling is primarily a State, and not a Federal, matter. The two exceptions, which in my view are appropriate exceptions, are gambling operated by Native American governments and gambling over the Internet. Because of the unique nature of tribal sovereignty and the Federal government's trust obligations to Native Americans, there is a clear Federal responsibility in tribal gambling. And while Native American gambling has accomplished, for some tribes who possess well situated lands, the economic development goals articulated in the Indian Gaming Regulatory Act, the provisions of the Act need to be clarified to make it crystal clear that a tribe cannot engage in gambling activities that are not available to other citizens of the state and to provide an arbitration process in the event a State is unwilling to compact for the same types of games that are available to other citizens. Because of the nature of the Internet's technology, Federal

involvement is both appropriate and necessary to assist the states in enforcing their policy determinations on the types of gambling that are lawfully available within their borders.

This Commission less wisely recommended, by only a one vote majority, that the gambling industry be excluded from financial participation in state and local elections and that all legal wagering on intercollegiate athletic events be prohibited. The Commission's record simply does not support a recommendation to ban campaign contributions by the gambling industry. While I strongly support campaign finance reform, singling out one industry, in this manner, is fundamentally unfair. Also, there is no support in the Commission's record for further extending the Federal prohibition on intercollegiate sports wagering. Not one college sports scandal is the result of legal sports wagering. To the contrary, legal sports wagering in Nevada has assisted athletic leagues in their enforcement activities aimed at preventing game fixing and point shaving. Instead of further restricting legal sports wagering, the Commission would have been better served to recognize sports wagering's overwhelming participatory acceptance by the American people and to recommend, instead, further legalization and strict regulation.

It is my earnest hope that this Commission's legacy will be its recommendations calling for identification and treatment of, and research about, those individuals who do not deal with gambling responsibly and who, in many cases, manifest other forms of compulsive behavior such as drug and alcohol abuse. Even if only partially implemented, the Commission's far reaching research recommendations will lead to a much-needed expansion of the body of knowledge about problem and pathological gambling. The recommendations that deal with the identification and treatment of problem and pathological gamblers, who are a small percentage of the population but a large number of troubled people, address a societal problem that has gone unrecognized and neglected for far too long.

Summary Statement by Commissioner James C. Dobson, Ph.D.

The central mission of the NGISC was to study the various implications of gambling and to assess the scope of problem and pathological gambling and its effects on individuals and families. The Commission's findings, from any reasonable perspective, depict a depth of pain and devastation in this country that compels a change in the way betting activity is regarded.

Clearly, gambling is a destroyer that ruins lives and wrecks families. A mountain of evidence presented to our Commission demonstrates a direct link between problem and pathological gambling and divorce, child abuse, domestic violence, bankruptcy, crime and suicide. More than 15.4 million adults and adolescents meet the technical criteria of those disorders. That is an enormous number—greater than the largest city in this country. When other activities, such as smoking, have been shown to be harmful, the hue and cry for regulations to warn and protect the public has been loud and long. Today, the silence of most of our leaders about the risks of gambling is deafening. It is well past time for a Paul Revere to sound the alarm. Gambling is hazardous to your—to our—health!

There can be no doubt from the evidence that gambling—like many compulsive behaviors—is addictive and progressive in nature. It is especially dangerous to the young, who are enticed by exciting and risky behaviors. Eighty-five percent of our young people are already gambling on everything from card games to sports teams to casinos and lotteries. Worse, more than 15 percent have been shown to be problem or pathological gamblers. These statistics forewarn of even more serious gambling-related problems in the future.

Some of the most troubling evidence received by the Commission concerned the manner in which the gambling industry and its allies in government work together to cultivate betting habits in the next generation. In South Carolina, children have ready access to 30,000 video poker machines located in convenience stores, pizza parlors and bowling alleys. South Carolina law does not prevent children from playing; it only prohibits them from collecting any winnings. Casino complexes appeal to children with amusement rides and arcades that offer virtual copies of adult casino games. At the same time, states promote lottery tickets in virtually every corner store while inundating the airwaves with get-rich-quick fantasies. What kind of message are we sending to our children?

One of the most scandalous features of the gambling industry, engaged in by many of our state governments, is the vigorous promotion of gambling among the poor, less-educated and senior populations. Gambling is touted as the "ticket out of poverty," offering a last chance to riches. As such, it overtly preys on the desperation of the poor by peddling false hope.

The gambling industry pours vast sums into the campaign coffers of gambling-friendly politicians. It is time for the public to scrutinize those who are regularly jetted off to Las Vegas and other gambling centers to pick up these enormous contributions. We must ask, what service is being provided in return for this generosity? Republicans have been given $6.1 million and Democrats $7.6 million in recent years. During the last election in California, nearly $100 million was spent by casino interests to influence the outcome of various races and measures.

In summary, the illusion of pain-free riches promoted by the gambling industry has been exposed. The very appeal of gambling belies the claims of the gambling industry, which is sown in greed and the exploitation of human weakness. It robs from the poor and exploits the most vulnerable. It undermines the ethic of work, sacrifice and personal responsibility that exemplify the best qualities of American society. And if you scratch beneath the veneer of gambling-induced prosperity, the pain, despair and hopelessness of problem and pathological gamblers is recognized as a stark tragedy.

The Commission has adopted numerous important—indeed—critical recommendations for further research into the effects of gambling and for corrective action to be adopted by state and tribal governments. Among the most important are a moratorium on further expansion, a ban on neighborhood gambling operations, restrictions on political contributions, curbs on lotteries targeting the poor and their deceptive advertising practices, and raising (and enforcing) the gambling age limit to 21 universally. It is imperative that our government leaders immediately embrace these recommendations

This Commission's greatest legacy will be to change the way the American public thinks about the harms associated with gambling. We must reject the fantasy that wagering is innocuous entertainment and deal earnestly with the destruction and pain that it causes to individuals, families and society.

I would like to thank my colleagues on the Commission, including our gifted Chair, Mrs. Kay James, for having the courage to tackle this difficult social problem. My prayer is that our effort will not have been in vain.

Personal Statement of
J. Terrence Lanni

Most of my professional life has been spent in the casino industry, roughly paralleling the time frame between the last federal Commission to study legal gambling in 1976 and the National Gambling Impact Study Commission, on which I have recently had the honor to serve. During those 20-plus years, I have managed commercial casinos from Nevada to Atlantic City, and watched the industry's expansion into the river towns of the Midwest and the South. On behalf of MGM Grand, Inc., I am now involved in the newest jurisdiction to legalize commercial casinos - Detroit, Michigan. My participation on this Commission has given me the opportunity to reflect on that period of growth, and raised my awareness of the challenges this industry will face in the future. In my view, however, much of what this Commission learned about commercial casinos over the course of two years only confirms what I have come to know throughout my career.

With a budget of $5 million, the Commission conducted extensive research, traveled to numerous gaming destinations throughout the U S., and heard from scores of local officials and residents in jurisdictions where casinos are located in an effort to comprehensively study the social and economic impacts of gaming. Although the views of my fellow Commissioners included those of strong anti-gaming advocates as well as strong gaming advocates such as my own, the vast majority of the recommendations approved by the Commission received our unanimous support. Moreover, most of the Commission's recommendations were either suggested or supported by the commercial casino industry, or are already being implemented by that industry today.

The final report of that two-year effort reconfirms what the first federal gambling Commission said in 1976 and what the casino industry has been saying for some time. Specifically, decisions regarding the legalization and regulation of gaming are matters for the states to decide. Moreover, commercial casinos are credited by the Commission as being a well-regulated, responsible segment of the industry. Of the 19 recommendations regarding gaming regulation adopted by the Commission, 14 address perceived deficiencies in other aspects of gaming, such as the Internet and so-called convenience or neighborhood gambling. In my view, this confirms what we in the industry already know - the public has great confidence in the integrity of this form of entertainment - and that gaming is best left to the states to decide. (In that context, I recommended that future expansion of pari-mutuel account wagering be left to state determination. It is also why I voted against a Commission-adopted recommendation to prohibit casino-style gambling at racetracks.)

The Commission's examination also highlighted clearly discernible differences among the various forms of gaming in other ways. Although the gaming industry is often mistakenly viewed as a monolith, this Commission draws clear distinctions among its various segments. One of those important distinctions was the Commission's conclusion that, especially in historically impoverished, underdeveloped communities, casinos have had a net positive economic impact. This conclusion was reinforced firsthand by the hundreds of individuals who testified before the Commission about the good jobs casinos provide.

In addition, I strongly endorse and support the Commission's recommendations with regard to pathological gambling. The research clearly shows that the vast majority of Americans who gamble do so for entertainment and with no measurable negative side effects related to their gambling. Unfortunately, some individuals gamble in ways that harm themselves or their families. Congress charged the National Research Council (NRC) of the National Academy of Sciences to report to this Commission on the issue of pathological gambling. The findings of the NRC - which the commercial casino industry accepts - indicate that an estimated one percent of the population are pathological gamblers in any given year. This percentage is

consistent with a study completed in 1997 by Harvard University and funded by the commercial casino industry. The research also indicates that the impacts of pathological gambling are significantly smaller than the impacts of other health problems such as alcohol abuse.

The casino industry recognizes that, although the percentage is small, pathological gambling affects a significant number of individuals. Many of the Commission recommendations in this area were based on steps we in the commercial casino industry have already undertaken. For example, commercial casinos created the first and only foundation to date dedicated to funding research in the area of pathological gambling - the National Center for Responsible Gaming. I also believe that more needs to be done, and that all segments of the legalized gaming industry, including lotteries, convenience gambling, charitable gaming, tribal gaming and pari-mutuels, should join the work in which we are currently engaged to help those who are in need.

While I am supportive of the majority of the Commission's recommendations, I am disappointed in some of the rhetoric that doesn't represent our findings, and will no doubt be used in the future by critics to distort what actually was found. One example is relative to the issue of research. Although the report states repeatedly that there was not enough research to draw conclusions, the record clearly shows that at least on the issue of commercial casino gambling that is not the case. The Commission's emphasis on this point implies that states and communities have not given their decisions to legalize commercial casinos full consideration. The record before us was quite to the contrary, and this impression does a grave disservice to the community and state leaders as well as the voters who have made those decisions.

In conclusion, I believe that any important decision affecting communities should be fully researched to consider all of its possible impacts. The Commission has done a great service for the states and communities that have legalized gaming, as well as those that may consider the legalization of gaming in the future by adding to the store of knowledge on this industry.

PERSONAL STATEMENT OF RICHARD C. LEONE
JUNE 7, 1999

I believe that, on balance, the American people are net losers in a society of pervasive gambling. This judgment is based on the ravages caused by pathological gambling and the hypocrisy of government sponsored games. I also am troubled by the message embedded in many familiar lottery advertisements: the notion that, for most Americans, the only hope of big time financial success--the kind celebrated in the news every day--is a ticket in a multi-million-to-one Powerball game. We need to ask ourselves: do we promote the pursuit of the American Dream through hard work and diligence--or through a roll of the dice?

This report will be criticized, by some, for going too far, and by others, for not going far enough. Our work is far from perfect, and none of the commissioners is completely satisfied. Still, we have made an important start in the process of reassessing and, I hope, reforming the nation's policies toward gambling.

Our report now goes to the President, the Congress, the governors, and the state legislatures. Its fate, however, depends not on their reaction, but rather on the response of the American people. Without a shift in public opinion, we cannot expect much leadership on these issues from our elected officials. That is why I devote my last and personal statement to considering the prerequisites for a sea change in public policy toward widespread legalized gambling.

First, we have to be realistic about the extent to which modern politics and many policy decisions are driven by fund raising. Campaigns are outrageously expensive and candidates and office holders must engage in a relentless--some would say shameless--pursuit of campaign contributions. Gambling interests, like other businesses that are heavily dependent on governmental decision-making, have become high rollers in the campaign money game. These interests are sure to be a part of any conversation about change and to resist proposals to curtail gambling's growth.

Second, the same cause--the high cost of campaigns--will continue to give gambling's supporters an advantage in referenda about gambling. California is only the most recent example of this phenomenon in action. More grass roots participation, itself dependent on more public education, is the only practical antidote to this imbalance.

Third, we must recognize that, to politicians, gambling revenues often seem like free money--taxes without the downside of public disapproval. And, as long as government leads the way on gambling, it is folly to hope that private interests will be restrained. It may be no coincidence that the surge in legal games of chance fits neatly with the fact that, starting in the 1970s, campaigns increasingly became dominated by anti-government and anti-tax rhetoric. In this context, is it any wonder that gambling, a source of revenue that takes advantage of public weakness and the myth that no tax is involved, has become increasingly important? While we hear little from most public officials about the human cost of gambling addiction and the destructive psychology of state-sponsored get-rich-quick schemes, we hear lots about the economic advantages and revenue enhancements from more gambling.

Lotteries, especially, seem to bring out the worst in politicians. They are heavily and misleadingly advertised; they pay back to bettors the smallest share of the take of any legal game; and they are an extremely regressive form of taxation, hitting hardest those with least ability to pay. Yet, lotteries have proven to be catnip for elected officials who fear taxation. Sure, some political leaders sincerely disapprove of gambling. But, like gamblers themselves, they appear to believe that they can have it both ways. Convinced that elections depend on a combination of opposing taxes without making painful choices, they are now trapped. So, they hope to get lucky and put off tough choices about taxes and spending by chasing increased gambling revenues. For them and for us, it's a sucker's bet.

The situation, however, is far from hopeless. Our system can be marvelously responsive to the public will--when that will is informed and manifest. But the public needs help. It needs the media to report more than jackpots, and it needs leaders of every type--conservative and liberal, business and non-profit--to join hands in a public education effort. There are, as well, recommendations in the report that would force governments to disclose more information about state-sponsored gambling. Getting the facts out will make a real difference here, as was the case with information campaigns about smoking.

I am confident that an informed public can and will effect a change of direction on gambling. Our elected officials, after all, do not suffer from a lack of polling information. They may lack courage or foresight, but they can't be beat for marching to the pulse of the public. I wish that it were realistic to ask more of them, but, in the absence of an interested and aroused citizenry, the odds favor more gambling, not less.

So the task for those of us who would change the current course is clear: we must find ways to reach all sorts of people and help them to understand the complex issues generated by gambling's spread and incite their interest in reform proposals--including those put forward by this commission. If we make a beginning on this task, then the work of the commission will be well remembered as a turning point. It won't be easy, but, after two years of work on this subject, I am convinced that it can and must be done.

Statement of
Commissioner Robert W. Loescher
Of the National Gambling Impact Study Commission
June 7, 1999

President Clinton appointed me to serve as the only Native American on the National Gambling Impact Study Commission. The Commission was charged by Congress to study, among other things, the status of tribal governmental sponsored gaming in the United States. The Commission came to realize that this was a complex task and appointed a Tribal Gambling Subcommittee. The Subcommittee had six field hearings in addition to the full Commission hearings. It sought the views of tribal leaders throughout Indian Country. Over 100 tribal leaders came to testify at their own expense and their views influenced the tone and texture of the final report.

In further recognition of the importance and complexity of the task, the Subcommittee sought and received concurrence by the Commission to have its own separate chapter in the final report. The report on Indian gaming is simply a snapshot of the status of Indian gaming in America today. The Commission concluded that the right of tribal governments to operate gaming is deeply entrenched in the tribes' special relationship with the federal government in the United States Constitution And this distinguishes Indian tribal governmental gaming from all other gaming in the United States. Congress created a second critical distinguishing attribute of Indian gaming in the Indian Gaming Regulatory Act (IGRA) of 1988 — the revenues from Indian gaming must be used for the social and economic benefit of tribal members who desperately need it. In my view, the benefits from Indian gaming are just a tiny downpayment on the deficit of stupendous social and economic needs facing the vast majority of Native American citizens. The Commission record strongly supports the conclusion that the economic benefits under IGRA are being realized.

Indian gaming furthers Indian Self Determination through tribal ownership and control of its gaming operations. It furthers economic benefit to the surrounding communities by employing at least 100,000 people regardless of race, color or creed.

Tribal governments were some of the first to recognize that gaming has social costs and did something about it. The Commission's record shows that tribal governments made the first real financial commitments to help identify and alleviate problem and pathological gambling.

I was very disappointed that the Commission declined to include a narrative that objectively and clearly described the structure, operation and implementation of the regulation of Indian gaming. For all of its early weaknesses, Indian gaming is increasingly well regulated by a partnership of the tribal, state and federal governments. The National Indian Gaming Commission (established by IGRA) has ordered the implementation of Minimum Internal Control Standards (MICS) that provide a uniform standard of Indian gaming regulation throughout the United States. The Commissioners indicated that Indian gaming regulation was extremely complex and legalistic and wouldn't deal with it. At the same time, it is my view that Indian gaming is increasingly viewed as a threat and viable competitor to commercial gaming. The severe criticism of the Indian Gaming Regulation was one way to slow it down. In my view, the Commission was obligated to objectively describe the status of Indian gaming regulation and it did not do so.

Two of the most contentious issues between tribes and states are the scope of gaming and the compacting procedures. The Commission's report has not shed any new light on these issues. I strongly object to limiting tribal gaming rights under existing law as the second recommendation on scope of gaming suggests.

My goal as a Commissioner was to review all aspects of gaming in America, with strong emphasis on Indian gaming. The overall report is weighted heavily to a small percentage of the American public that are burdened with very real problem and pathological gambling. The report does little to acknowledge the fact that millions of Americans participate in and enjoy gaming as entertainment without any problems. This report and recommendations should help educate the American public on the positive role tribal governmental gaming has played in Indian Country. It has given hope and provided new economic resources to help alleviate long neglected social and economic problems. It also suggests positive recommendations to improve Indian gaming regulation.

In pursuing gaming, tribal leaders have done the best that they could do with very limited resources and opportunities, and at this point in history I believe they should be commended for what they have accomplished.

Personal Statement of Leo T. McCarthy

As one not connected to the gambling industry, nor driven by a desire to ban all forms of gambling as morally reprehensible, I have formed some opinions after two years work on the NGISC.

I learned gambling has some redeeming qualities, especially these three: (1) Some impoverished Native Americans have or will have a much better quality of life; (2) About 100,000 Americans, mainly union members, have much better jobs in the gambling industry than their former jobs in other sectors; and (3) Some economically depressed communities in which gambling facilities have been located are better off, because neither government nor the private has have chosen to economically develop such communities in order to create jobs, profits and a better life for the families trying to survive there.

There is a heavy price to pay for gambling's up side. Our *Final Report* reveals that about 15.4 million American adults and adolescents are problem or pathological gamblers. Multiply that number several times to include serious negative consequences to family members, employers, and the general taxpaying public and you begin to get an idea of the downside.

The gambling industry has reminded our Commission many times that the overwhelming number of adults who gamble, do so only occasionally without harming themselves or others. They are right on the numbers. About 125 million American adults gambled during a 12 month period in 1997-1998. In 37 states they bought lottery tickets, in almost 40 states they played slot machines, in eight states they bet from home on horseraces. They gambled in many other ways in venues now available almost everywhere.

The big problem for all of us are those 15.4 million adult and adolescent problem and pathological gamblers. They are the source of immense pain and cost.

So far, most state and tribal officials and gambling facility owners are refusing to share responsibility for developing solutions to this problem. Fortunately, there is a small number of tribal and state leaders, as well as some gambling facility owners, willing to take some serious steps.

The Commission has made numerous recommendations that will have as much impact as the Congress, President, and State and Tribal leaders decide they should.

If acted upon, many of these recommendations could effectively address the downside of gambling in America.

Among the most important to come out of this Commission's two years of work is a group of 15 research recommendations to Congress and to four the States supported by all nine Commissioners, including three who have been closely associated with the gambling industry. If most of that research is undertaken, policymakers and the public will be much better informed and will ultimately fight for serious answers.

Government-run gambling, such as lotteries, should be the first to aggressively address negative consequences they help create. For example, Commission research found that about 5% of lottery players buy around 51% of the value of lottery products sold. I could place a safe bet that many in this category are problem or pathological gamblers. The general response of State lottery regulators was that this research was flawed. The spokesmen for State officials were implicitly suggesting that lotteries are not responsible for producing problem or pathological gamblers.

As the Commission has recommended, each State should immediately undertake its own legitimate prevalence study and let the public weigh the facts.

Every State Legislature could ban gambling by anyone less than 21 years of age, as our Commission proposes. That would be a positive contribution to reducing the alarming rate of problem adolescent gamblers in many States.

There are many other important recommendations. In the final analysis, it is the political will of elected officials at federal, tribal and State levels that will decide many of these issues, in the face of an accelerating number of political campaign contributions from various stakeholders in the industry. Just as important will be the decision of many gambling industry leaders to actively cooperate with efforts to tackle the negative consequences of gambling.

I don't want my eight grandchildren to grow up in a society in which gambling advertising reinforces the notion that upward mobility is more likely to be achieved by random chance than by diligent study and hard work. I'm betting most American families share that sentiment.

Hotel Employees & Restaurant Employees International Union AFL-CIO CLC

1219 28TH STREET NW WASHINGTON, DC 20007 202-393-HERE 202-393-4373 FAX 202-393-0726

JOHN W WILHELM
General President
KEN C. PAULSEN
Director of Organization

TED T HANSEN
General Secretary-Treasurer
RON RICHARDSON
General Vice President

Office of the General President

Statement of John W. Wilhelm
Member, National Gambling Impact Study Commission

A mother of two fled Cuba for a job at $3.25 an hour with no benefits, in the Florida fields. Eventually, she found her way to a Union hotel casino job. She glowed with pride as she told this Commission about her ability, as a guest room attendant, to support her family with decent wages, excellent benefits, and a good pension.

A cook in a non-union restaurant worked long hours, with no benefits, and fell prey to alcohol abuse. He told this Commission how his life changed when he got a job cooking in a Union hotel casino. Because he has a decent wage, he only has to work an 8-hour shift, so he has time for his family. He left alcohol behind and became a committed Christian. He is a Union Steward, is registered to vote for the first time, and serves on the Republican National Committee.

In an America whose stability is threatened by a widening economic gulf between our wealthiest citizens and the great majority of us, we must meet the challenge of providing secure, family-friendly jobs, with good benefits, as we shift to a service-sector economy.

These two American success stories, and dozens like them, provided this Commission with eloquent proof that Union gaming jobs are part of the answer to that challenge. These compelling human stories moved every Commissioner, no matter their views on gambling.

Those who oppose legal gambling have a moral obligation to answer: If they would deny a good Union job to a family trapped in poverty because they oppose gambling, what alternative will they offer that family?

Those who call for analyzing the economic and social costs of gambling have a moral obligation to consider the economic and social costs of low-wage, no-benefit, high-turnover jobs that are becoming the norm for Americans.

Another inspiring message leaps from this Commission's record: The vital role of tribal gaming in long-overdue economic development on Indian reservations, where the

Statement of Commissioner John W. Wilhelm (Cont'd)

legacy of abject poverty and enduring social problems are America's shame. Those who seek to deny this economic tool to Native Americans have a moral obligation to provide an economic alternative. Gambling opponents offered no such alternative to this Commission.

I also believe that this Commission's work will result in collective bargaining rights for tribal gaming employees (most of whom are not Native Americans), and pave the way for an enduring alliance between Indian Country and the American labor movement.

This Commission has done an important public service by spotlighting problem and pathological gambling. Most Americans gamble, and do so responsibly. But we heard tragic stories from some of the millions of people, some of them gaming employees, whose lives are fractured by problem gambling. The gaming industry has a moral obligation to provide the primary response to this growing problem.

Another Commission conclusion is worth highlighting. Destination resorts – which include hotel, restaurant, entertainment, and shopping options in addition to gambling – produce greater economic benefits, and fewer downsides, than other forms of gambling. The Commission record confirms that the greatest economic benefits come from unionized destination resorts.

I am deeply grateful to House Democratic Leader Richard A. Gephardt for his belief that gaming employees deserved representation on this Commission.

Our Chair, Kay Coles James, willed us to a unanimous report by the strength of her talent, brains, skill, inclusiveness, and grace. She is a distinguished American. I am grateful to each of my fellow Commissioners for their dedication and open-mindedness. Robert W. Loescher, the able and persistent tribal representative, gave me the opportunity to collaborate with him on the Native American Tribal Gambling chapter. J. Terrence Lanni provided exemplary representation for his industry by the force of his character, integrity, fairness, and courtesy. Dr. James C Dobson went out of his way to listen to gaming employees, in spite of his sincere opposition to gambling. Dr. Paul H. Moore and Leo T. McCarthy did yeoman work as Chairs of the Indian Gambling and Research Subcommittees, on both of which I was privileged to serve. William A. Bible's wealth of regulatory experience and integrity were invaluable. Richard C. Leone's knowledge, experience, and insistence on challenging conventional wisdom were crucial.

Finally, I personally, and this Commission, owe an overwhelming debt of gratitude to Eric P. Altman, Senior Research Analyst for the Hotel Employees and Restaurant Employees International Union. I could not have functioned without his able, tireless, and congenial service. He was vital to this Commission's success, and to giving gaming employees the chance to tell their stories.

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