

1 CHAIRPERSON JAMES: What I would like to do and what
2 we're trying to do is finish up the recommendations from the last
3 meeting, then do the new recommendations, and then move to the
4 chapter discussions. Commissioners were working on changed
5 language, particularly on campaign finance reform and several
6 others, and it is being typed and Xeroxed as we speak, but we will
7 do that as soon as it is available.

8 Commissioners, if you have in front of you -- if you
9 could take out the paper that was supposedly put in your hand, the
10 top one is alternative recommendation on Indian gambling
11 regulation. Do you have that in front of you? The next one then
12 would be there's an option two and proposed recommendations on
13 unattended minors. If would could take those in the order that
14 are there, that would be great. Then as the other materials
15 becomes available, we will do that. The current 6.1 you see at
16 the top of the page, Paul, who is recommending the replacement,
17 this language here?

18 COMMISSIONER LOESCHER: Madam Chair, I am.

19 CHAIRPERSON JAMES: Thank you, Bob. Bob, would you
20 like to speak to that and offer it as a motion?

21 COMMISSIONER LOESCHER: I'd like to speak to it. This
22 was considered favorably at the last meeting as 6.1 current
23 language, but since then we've had second thoughts. It doesn't
24 really say what we really want to say in terms of encouragement to
25 Native American tribes to undertake the accountability that this
26 Commission is searching for, and also to assist those tribes who
27 are struggling to keep going forward with minimum standards and
28 participating in regulatory structure.

29 So what we did, Madam Chair, the current language that

1 the commission recommends to the President and Congress and NIGC
2 that federal laws concerning Native American tribal gambling
3 should be strengthened to insure adequate regulatory oversight
4 fiscal accountability. One vehicle for this would be increase
5 funding and authority for the NIGC.

6 The proposed language applies to the intent a lot
7 better. It reads, the Commission acknowledges that the central
8 role of the National Indian Gaming Commission as a lead federal
9 regulator of the tribal government gambling, the Commission
10 encourages the Congress to assure adequate NIGC funding for proper
11 regulatory oversight. To insure integrity in fiscal
12 accountability, the commission supports the NIGC's new minimum
13 internal control standards developed with the help of the National
14 Tribal Gambling commissioners and regulators as an important step
15 to insure such fiscal accountability.

16 We recommend that all tribal gaming commissions work to
17 insure that the tribal gaming operations they regulate meet or
18 exceed these minimum standards and that NIGC focus special
19 attention on tribal gambling operations struggling to comply with
20 these and other regulatory requirements.

21 COMMISSIONER LANNI: I'll second that motion.

22 CHAIRPERSON JAMES: Discussion?

23 COMMISSIONER LANNI: Move for question.

24 CHAIRPERSON JAMES: Move for then question. All in
25 favor? Opposed? I think we have just broken with the precedent
26 that we set about not pointing out particular entities or
27 organizations, and we did that in this motion, where it
28 acknowledges the central role of the NIGC and the lead -- we
29 hadn't done that in any others.

1 COMMISSIONER LOESCHER: This instance is --

2 CHAIRPERSON JAMES: Well, it's irrelevant because we
3 passed it.

4 COMMISSIONER McCARTHY: This is a statutorily created
5 agency versus a private groups.

6 CHAIRPERSON JAMES: As long as there's no inconsistency
7 there because we don't want to establish a precedent that someone
8 will come back with tomorrow. So that passes. This option two
9 that you have in front of you?

10 COMMISSIONER McCARTHY: Madam Chair, the language is a
11 provision in our recommendations. The marked-out language
12 currently exists. Anyway, the language says the Commission
13 recommends that classes of gambling must be clearly defined so
14 that there's no confusion as to what gambling constitutes a Class
15 II and Class III gambling activities. Previous language included
16 further the Commission recommends that Class III gambling
17 activities should not include any activities that are not
18 available to other citizens of the state, regardless of
19 technological similarities. Indian gambling should not be
20 inconsistent with the state's overall gambling policy.

21 CHAIRPERSON JAMES: Is there a second?

22 COMMISSIONER LANNI: I have a question. What's it mean
23 by option two?

24 COMMISSIONER McCARTHY: Madam Chair, I had struggled
25 with the language last time around and I had some of my friends
26 write several options. I just happened to choose this one because
27 I like it.

28 COMMISSIONER LANNI: I see. So there's no option one?

29 CHAIRPERSON JAMES: There is no option one. This is

1 the only option.

2 COMMISSIONER LOESCHER: Madam Chair, before you
3 entertain a motion, I need to explain why I'm concerned about this
4 and Commissioner Bible and I exchanged a colloquy last time, and
5 not that I'm revisiting it, but I'm trying to revisit the focus of
6 what's occurred here. By deleting this sentence we would at least
7 leave alone the existing law, IGRA law, which recognizes persons
8 and entities and organizations. This language here only
9 recognizes citizens, entities, and organizations. The other two
10 are left out.

11 Then the language, technological similarities, is a
12 matter of dispute that is in court right now, and rather than
13 having these ambiguities in the recommendations which tend to
14 enter the debate that's occurring in other forums, and also
15 limiting, we're sending a sense from this Commission that we're
16 trying to limit what is occurring, what is established in law,
17 which I don't think is the intent of this Commission. If it is
18 the intent of this Commission, then I think the Commission should
19 be more specific as to recommended changes in the statutory
20 language.

21 So this sentence is a problem from those two
22 perspectives. Rather than having the problem, I recommend to the
23 Commission that we delete this sentence and still have the
24 language that Indian gambling should not be inconsistent with the
25 state's overall gambling policy and leave it at that.

26 CHAIRPERSON JAMES: Are you prepared to offer that as a
27 motion?

28 COMMISSIONER LOESCHER: I'd like to offer it as a
29 motion.

1 CHAIRPERSON JAMES: Is there a second?

2 COMMISSIONER BIBLE: I second and ask for discussion.

3 CHAIRPERSON JAMES: It's been moved and properly
4 seconded. Discussion?

5 COMMISSIONER LANNI: I would move a friendly amendment,
6 just to clarify. When you say so that there is no confusion as to
7 what, I would add forms of gambling constitute. Forms of I would
8 add in there so that it's not confusing as to what gambling is.

9 COMMISSIONER LOESCHER: Madam Chair, I accept the
10 friendly amendment.

11 COMMISSIONER LANNI: It's the second line. So that
12 there's no confusion as to what forms of gambling constitute. If
13 you say what gambling I think it's a little less specific.

14 COMMISSIONER LOESCHER: Madam Chair, I accept the
15 amendment.

16 CHAIRPERSON JAMES: Further discussion? Commissioner
17 McCarthy?

18 COMMISSIONER McCARTHY: As I read this, this goes to
19 the heart of that much-disputed section of the federal law which
20 presently seems to give states the power to prohibit gambling from
21 tribal gambling operations if it is not allowed to any other
22 citizens of that state. Am I correct on that, Mr. Loescher?

23 COMMISSIONER LOESCHER: You are partially correct. The
24 law says citizens -- there's three things, citizens, entities, and
25 organizations. There's three and you've left out the other two by
26 just limiting our language to citizens. What I want is the
27 broader language that is included in IGRA's law. I don't think
28 that should be objectionable in this context.

29 COMMISSIONER McCARTHY: Does the effect of your

1 striking these lines diminish the authority, current authority of
2 a state government under federal law --

3 COMMISSIONER LOESCHER: No.

4 COMMISSIONER McCARTHY: To prohibit gambling by any
5 tribal casino if they do not allow other citizens of their state
6 the right, the privilege, to operate gambling?

7 COMMISSIONER LOESCHER: Madam Chair, I believe not,
8 because the last sentence of this proposal, Indian gambling should
9 not be inconsistent with the state's overall gambling policies.

10 COMMISSIONER McCARTHY: The way I interpret the
11 language that's being proposed stricken is that that language
12 would not allow tribes to operate other forms of gambling not
13 available to the citizens of that particular state. For instance,
14 here in California, since we don't have slot machines, tribes
15 would not be allowed to operate slot machines. Then there's the
16 argument that they're technologically similar to lotteries.

17 CHAIRPERSON JAMES: Commissioner Wilhelm?

18 COMMISSIONER WILHELM: I'm trying to listen carefully
19 to Commissioner Loescher's comments here. I think it's fair to
20 say that the Indian gambling subcommittee worked quite hard to try
21 to fashion a set of recommendations that the subcommittee could,
22 and in fact did, as you know, unanimously agree upon. Secondly,
23 that we tried to write a set of recommendations that we felt
24 hopefully would be able to be supported by most or all of the
25 commissioners. In fact that's what happened.

26 So I'm, from the perspective of having devoted a great
27 deal of time, as did the other two members of the subcommittee, to
28 that balancing effort, if you will, I'm reluctant to try to begin
29 to try to unravel these things. So I have some difficulty with

1 the revision as proposed. I do think, however, that Bob makes a
2 good point, which he made in our last meeting and which I failed
3 to get my arms around mentally, and that is that in the second
4 sentence, the one he's proposing to strike, it really should say,
5 I think he's right, citizens, entities and organizations. I think
6 Bob's 100 percent right about that. And so to that extent, I'd be
7 willing to entertain, or rather to support an amendment that would
8 fix that particular problem.

9 CHAIRPERSON JAMES: Bob, would you be prepared to
10 accept a friendly amendment that changes that to citizens,
11 entities and organizations?

12 COMMISSIONER LOESCHER: Madam Chair, I think the
13 progression should be to consider this motion, and if it fails
14 then entertain that one.

15 COMMISSIONER WILHELM: I think Bob's right, and again,
16 I -- just speaking for myself as one member of the subcommittee,
17 I'm reluctant to substantively undo the balancing act that we
18 worked --

19 CHAIRPERSON JAMES: The motion that we have before us
20 is the motion which has been seconded. It's the motion to strike
21 that language. Are you ready for a vote? All in favor of
22 striking the language? Any opposed? The motion fails. Two
23 abstentions.

24 COMMISSIONER BIBLE: I would move, Madam Chair, to
25 amend the second sentence to reflect this, as Bob has suggested,
26 citizens, entities and organizations.

27 COMMISSIONER WILHELM: I would second the motion. Call
28 the question.

29 CHAIRPERSON JAMES: That sentence would -- go ahead,

1 your voice is better than mine.

2 COMMISSIONER WILHELM: Further, the Commission
3 recommends that Class III gambling activity should not include any
4 activities that are not available to other citizens, entities or
5 organizations, I guess it should be in the state, regardless of
6 technological similarities. I think what it means is available in
7 the state.

8 COMMISSIONER LANNI: Shouldn't it be "a" state instead
9 of "the" state?

10 COMMISSIONER WILHELM: Yes.

11 COMMISSIONER McCARTHY: It's your feeling that this
12 does not diminish in any way current authority of states to
13 prohibit gambling proposals by tribal casinos, for that matter
14 non-tribal casinos, if that form of gambling is not allowed to
15 other citizens, entities, corporations, etcetera, of that state?

16 COMMISSIONER BIBLE: The answer to the question would
17 be yes. I think Bob's point is that if we limit it only to
18 citizens, we might -- in a particular sense, as Bob says, we're
19 not tracking IGRA, that limiting it only to citizens and not
20 encompassing other entities and organizations, we might
21 inadvertently be recommending a narrower range of opportunities to
22 tribes than to others in that states.

23 COMMISSIONER MOORE: Probably should be further amended
24 so that it would be on the same term, because if you expand it
25 into organizations, for instance if you have Las Vegas nights in
26 the State of Connecticut where you offer roulette once a quarter,
27 would that entitled you to operate roulette 24-7?

28 COMMISSIONER WILHELM: For the same reason that I
29 opposed the deletion of the second sentence, I would oppose trying

1 to rescramble this. I think we've done as good as we can do with
2 this except for this conforming --

3 CHAIRPERSON JAMES: The question has been called. The
4 sentence as it currently stands is -- would you read it one more
5 time?

6 COMMISSIONER WILHELM: Further, the Commission
7 recommends that Class III gambling activities should not include
8 any activities that are not available to other citizens, entities
9 and organizations in a state, regardless of technological
10 similarities.

11 CHAIRPERSON JAMES: All in favor? All opposed? Motion
12 carries.

13 COMMISSIONER LOESCHER: Thank you, Madam Chair.

14 CHAIRPERSON JAMES: Thank you, Commissioner Loescher.