

1 CHAIRPERSON JAMES: That brings us to Chapter 6.  
2 Looking at how to approach this so that we can get through it in  
3 some form, some reasonable way, can I suggest that -- who's edit  
4 is this on page six, page No. 16, second paragraph, last line?

5 COMMISSIONER WILHELM: That's mine.

6 CHAIRPERSON JAMES: And I'm going to ask that we hold  
7 all of those until after we go through Commissioner Loescher's  
8 because we don't know what we'll end up with. Commissioner  
9 Loescher? I'm sorry.

10 COMMISSIONER WILHELM: Just for clarity here, and at  
11 least in the packet the way it was assembled that I have, the very  
12 first change which was in my packet Chapter 6, page No. 9, line  
13 No. 14, and the cover sheet is handwritten. It has a one-page  
14 typed attachment on page nine. That was Commissioner Loescher's,  
15 and then free standing from the big document.

16 CHAIRPERSON JAMES: Right.

17 COMMISSIONER WILHELM: And then the next three were  
18 Commissioner Dobson's, and then comes Commissioner Loescher's big  
19 document.

20 CHAIRPERSON JAMES: Right, that's correct. We're going  
21 to go straight to the big document. Just for the record, no one  
22 gets lunch until this is done. Commissioner Moore?

23 COMMISSIONER MOORE: The subcommittee has worked hard  
24 on this. We thought we had an acceptable document. To find out  
25 at 5:00 yesterday afternoon that we didn't was a little bit  
26 disturbing. Certainly everyone has the prerogative to go through  
27 each line, I suppose, as we practically did just on the previous.  
28 I'm hoping that we do not find too many things that will be  
29 necessary to change or rewrite. This has been pretty much of an

1 agreement among all of us, we thought.

2               In reading the document that was handed out yesterday,  
3 it would appear to me that at least 95 percent of it is already in  
4 the previous document, the one that came from the staff. I bet  
5 it's not three footnotes different in all of the footnotes or  
6 references that are given.

7               The way an attorney might interpret some things might  
8 be different from the way a semi-retired radiologist would  
9 interpret it, but I don't believe that the American people in  
10 particular reading this, and this is who I am interested in  
11 reading this report, the American people. I don't care whether a  
12 politician reads it or not, because a politician is not going to  
13 do any changes until the American people and our society forces  
14 him to do it.

15              So I want this to be to read so that someone like  
16 myself can sit down and read it, half way understand it, and then  
17 be able to take actions pro or con. We get into a lot of these  
18 case and we start reading all this lawyer stuff, it's hard for me  
19 to understand. I understand that the more words they write, they  
20 more they charge.

21              So as we go through this, I'm asking the Commission to  
22 listen, and I know who will, and they'll ask questions. Goodness,  
23 they ask questions. But I believe that we can go through this and  
24 do the necessary changes. I certainly want to give -- all of us  
25 want to give Mr. Loescher, as I said previously, you know we've  
26 been together two years, as our Chairlady says, and Mr. Loescher  
27 and I, he might make me a member of his tribe. I'm working on it.

28              COMMISSIONER LOESCHER: That depends on today, doesn't  
29 it.

1                   CHAIRPERSON JAMES: Commissioner Loescher, why don't we  
2 do this. If you have any opening comments or overall comments,  
3 and then we need to go page-by-page, I would appreciate it if you  
4 would offer each thing as a motion, see if there is a second, and  
5 hopefully we can get through this document. Mr. Loescher.

6                   COMMISSIONER LOESCHER: Thank you, Madam Chair. I  
7 really appreciate the opportunity to advance these changes. I  
8 would like to say a number of things. One is that I do appreciate  
9 being the only Native American Plinket Indian from Alaska on this  
10 distinguished panel, and I think it's important that this panel,  
11 unlike what the race commission did in its report, it didn't have  
12 an American Indican on its panel, and it lacked sensitivity as to  
13 its report.

14                  I think my goal here is to try to provide that  
15 sensitivity and understanding in the work product that we're  
16 trying to accomplish here. I really would like to see that we get  
17 a quality product. One of the most important things to me after  
18 serving two years with you folks on this Commission is to have the  
19 representation of the report on Native Indian tribal governmental  
20 gaming to be representative of what actually is at this moment in  
21 time.

22                  Over the last couple of months Dr. Moore, and John  
23 Wilhelm and I have reviewed and edited, and we've sort of broke  
24 our work down to two parts. One was the recommendations which we  
25 have gone through as a full Commission, and also the narrative.  
26 Both were advanced to the Commission and to the Commission staff.  
27 It may be that only maybe two of us out of our three were in full  
28 concert with the narrative, and maybe that's where we have fallen  
29 down in our work.

1           The other thing is I did receive by e-mail the draft of  
2 this text that came from the Commission staff on May 19th, which  
3 is about two weeks ago. Some members of my committee indicated I  
4 had a lot more time to do this work, and if you reflect on time,  
5 May 19th is not very far away in terms of our recent history. So  
6 I have tried to be timely in this regard, and I'm sorry that at  
7 this last moment we're looking at so many things.

8           My work in this revision sort of focuses on two sets of  
9 things. One is deleted topics, and the other are factual errors.  
10 I just -- under the deleted topics, as an overview, there are  
11 four areas of concern. Number one is a complete review of the  
12 Cabazon (phonetic) decision, the foundation of Indian gaming, and  
13 that's on pages one through three.

14           Number two, a full and complete review of the legal  
15 basis for Indian gaming. That on pages four. Then number three,  
16 information provided by the tribes concerning economic development  
17 initiatives in Indian country. As you know, the statute asked the  
18 Commission to look at alternative revenues, and this is an  
19 important item to Indian country what we say about that. And  
20 number four, the findings for several of the recommendations  
21 adopted by the Commission, including that -- those that address  
22 National Indian Gaming Commission's minimum internal control  
23 standards and the Class II bingos. That's on pages seven, eight,  
24 and 22.

25           Under the factual errors there are five items. There's  
26 the language in here using the word decertified. The language in  
27 Indian country is terminated. That's on page six. Number two, it  
28 misstates -- the paper misstates the effect of the Seminole  
29 decision. That's on pages nine and 10. And number three, we're

1 trying to clarify the Fort Apache Timber case, which is on page 18  
2 through 20. Number four, we need to correct a misstatement of the  
3 federal tax code relative to tax obligations of individual tribal  
4 members. That's on page 20 and 21. Fifthly, the inclusion of  
5 sections relating to off-reservation gaming that were rejected by  
6 the Commission during the formulation of our recommendations.  
7 That on page 22 and 23.

8                 Then this morning's meeting, John Wilhelm acknowledged  
9 that we took that out of the recommendations, but indicated that  
10 the language for the report might stay. I have no objection,  
11 Madam Chair, when we come to that, to leave that narrative in  
12 there, so we might have some consensus on at least one.

13                 So as an overview, Madam Chair, I'd like to just focus  
14 the work on these areas, deleted topics and factual errors, and I  
15 think we can get through this rather quickly.

16                 CHAIRPERSON JAMES: All right. Let's go page-by-page.  
17 We'll start with the first page. I'll ask you to introduce it as  
18 a motion, and we'll go from there.

19                 COMMISSIONER LOESCHER: Madam Chair, I'd like to --  
20 there's three -- there's three words or three things that need to  
21 be changed on page one. In the middle is changing 100 tribal, and  
22 you used the word "members." I'd like to use the word leaders.  
23 There's a factual problem with regard to the Hila (phonetic) River  
24 Indian. They have two casinos, not three. Then we omitted the  
25 Bureau of Indian Affairs as who we've heard from officials.

26                 CHAIRPERSON JAMES: Commissioner Loescher, can I  
27 suggest you offer those three as a bundle in a motion?

28                 COMMISSIONER LOESCHER: I so move.

29                 CHAIRPERSON JAMES: Moved and seconded. Question. All

1 in favor? Any opposed?

2 COMMISSIONER DOBSON: Madam Chair?

3 CHAIRPERSON JAMES: Commissioner Dobson.

4 COMMISSIONER DOBSON: May I ask for a response from the  
5 Chair in regard to what we're doing here? Maybe I'm the only  
6 person that approaches things like this, but we have two documents  
7 in front of us. We almost have to decide which one we're going to  
8 edit from to the other one. There are things here that ought to  
9 be over here, and things here that ought to be over there, but  
10 you've got to start with a document. We'll work our way totally  
11 through the new document, which assumes we disregard the old one,  
12 or are we going to work our way through the new one and then try  
13 to assimilate it into the old one? I don't understand exactly how  
14 this is going to work.

15 CHAIRPERSON JAMES: There is only one document, and  
16 Commissioner Loescher used the original document as his point of  
17 departure for this edit. I'm sorry, can someone else --

18 COMMISSIONER WILHELM: Jim, Kay's quite right. If you  
19 look at what Bob has done here, as Kay says, he's using a Chapter  
20 6 that we have been presented, and although it doesn't have that  
21 cover sheet that we were asked to use, he's got for example, this  
22 first page here is page one from the draft, and he's shown us on  
23 here the three changes he's made.

24 COMMISSIONER DOBSON: Okay, I see.

25 COMMISSIONER WILHELM: Secondly, pages one and -- one  
26 to three, he's got some more changes here he wants to make and so  
27 forth. So it is based on the same document.

28 COMMISSIONER DOBSON: Thank you.

29 COMMISSIONER MOORE: Just as a point of clarification,

1 and maybe someone in the audience -- the chief at the Hila River  
2 reservation approached me and introduced himself again last couple  
3 of weeks when we were in Washington, and was telling me about a  
4 new resort that they were building. Is this a resort at one of  
5 the existing casinos, or was this a resort that's added to make it  
6 three?

7 AUDIENCE MEMBER: It's a stand alone resort that would  
8 be next to an existing, not a third one. It's a stand alone.

9 CHAIRPERSON JAMES: That takes us to page two.

10 COMMISSIONER McCARTHY: Page two in Bob's packet.

11 CHAIRPERSON JAMES: Page two in Bob's package, which is  
12 actually pages one through three in the document.

13 COMMISSIONER LOESCHER: Madam Chair, on page two the  
14 words, "Large scale Indian casino gambling is barely a decade  
15 old," and then it's footnoted with a No. 2, and the footnote says  
16 there is extensive anthropological evidence of Aboriginal gaming  
17 among virtually all Indian tribes. It doesn't connect.

18 COMMISSIONER McCARTHY: We knocked it out of some other  
19 thing. Madam Chair, may I make a suggestion? Rather than go  
20 through the process of voting, if there are no objections, then --

21 CHAIRPERSON JAMES: We just go on.

22 COMMISSIONER McCARTHY: Is that acceptable to everyone?

23

24 COMMISSIONER LOESCHER: Madam Chair, the next one three  
25 lines down is the spin problem with words. I say it one way and  
26 staff says it another. Staff says it, with regard to the Cabazon  
27 band of Mission Indians decision, this decision in effect  
28 eliminated the ability of states to regulate commercial gambling  
29 on Indian reservations. I would prefer to say this decision, and

1 I add the word held that the State of California had no authority  
2 to apply its regulatory statutes to gambling activities conducted  
3 on Indian reservations. And that's cited, the statute.

4 CHAIRPERSON JAMES: Would you offer that as a motion?

5 COMMISSIONER LOESCHER: I offer that as a motion.

6 CHAIRPERSON JAMES: Is there a second? Commissioner  
7 Dobson?

8 COMMISSIONER DOBSON: My attorney, Mr. Reed, who is  
9 here with me, behind me, informs me that this represents a legal  
10 opinion which he said he can't say at this point one way or  
11 another about what the court held in that case. May I ask him to  
12 speak to that? Would that be appropriate?

13 CHAIRPERSON JAMES: Certainly.

14 MR. REED: My only question is whether or not that is  
15 the representation of the holding. The words, "The court held,"  
16 is a term of art. It means something. It means that's exactly  
17 what the case stands for, and it may be, I don't know. I got this  
18 as you did last night.

19 COMMISSIONER WILHELM: Madam Chair, I'm not an  
20 attorney, but I am somewhat familiar with this subject. In my  
21 layman's opinion, that's a fair -- the proposed substitution is a  
22 fair depiction of the Cabazon case.

23 CHAIRPERSON JAMES: Call for question.

24 COMMISSIONER MOORE: The only question I have about  
25 this, and this is one I brought up before. I mean, this states  
26 the State of California, but most every time that I've ever heard,  
27 unlike the other statement, because it's more general -- and I  
28 believe that if any state decided to try to interfere with Indian  
29 gaming, the judge at that particular case would state the case in

1 California and would decide the case on that. So I believe that  
2 this lawsuit, even though I'm not an attorney, is more broad and  
3 applies more than just the State of California, even though that  
4 might be the state that it happened. I like the original language  
5 because I think it speaks to the subject of what we're here about.

6 COMMISSIONER LOESCHER: Madam Chair, just to clarify  
7 the record, the case, the Cabazon case, is a United States Supreme  
8 Court case. It's the law of the land of all jurisdictions in  
9 America. Not to get into the fine points of the discussion, but  
10 the words in effect eliminated the ability of states to regulate  
11 commercial gambling on Indian reservations. The court basically  
12 said that the states did not have that -- did not have that right  
13 in the first place, and the language connotes that idea. We  
14 want to just basically say what the court finally held as a result  
15 of the US Supreme Court decision. I think it's better reflective  
16 of what is.

17 CHAIRPERSON JAMES: The question has been called. It  
18 has already been seconded. All in favor? Any opposed? Motion  
19 fails.

20 COMMISSIONER LOESCHER: Come again?

21 CHAIRPERSON JAMES: The motion failed.

22 COMMISSIONER DOBSON: Madam Chair, I would like a roll  
23 call.

24 CHAIRPERSON JAMES: Sure. Were there any abstentions?

25 COMMISSIONER LEONE: I abstained. I don't understand  
26 what the issue is between these two versions.

27 CHAIRPERSON JAMES: Commissioner Bible?

28 COMMISSIONER BIBLE: No.

29 CHAIRPERSON JAMES: Commissioner Dobson?

1           COMMISSIONER DOBSON: No.

2           CHAIRPERSON JAMES: Commissioner Lanni?

3           COMMISSIONER LANNI: Aye.

4           CHAIRPERSON JAMES: Commissioner Leone?

5           COMMISSIONER LEONE: Abstain.

6           CHAIRPERSON JAMES: Commissioner Loescher?

7           COMMISSIONER LOESCHER: Yes.

8           CHAIRPERSON JAMES: Commissioner McCarthy?

9           COMMISSIONER McCARTHY: Abstain.

10          CHAIRPERSON JAMES: Commissioner Moore?

11          COMMISSIONER MOORE: No.

12          CHAIRPERSON JAMES: Commissioner Wilhelm?

13          COMMISSIONER WILHELM: Yes.

14          CHAIRPERSON JAMES: Commissioner James abstains.

15          That's three to three to three. The reason I abstained is because  
16         it just, as a point of clarification, is because of the two words  
17         held that, and that's what I want to know. That's what I want to  
18         know. What is the legal -- what exactly did the court hold? And  
19         because I don't know the answer to that. John, you said your best  
20         understanding of this issue --

21          COMMISSIONER WILHELM: As I said, I think the new  
22         version is a perfectly adequately statement of the case, but the  
23         motion failed.

24          CHAIRPERSON JAMES: Bob?

25          COMMISSIONER LOESCHER: It's going to be a long day,  
26         Madam Chair, with regard to the spin management around here, but  
27         we're --

28          CHAIRPERSON JAMES: Well, we're going to stay here  
29         until it's done.

1           COMMISSIONER LOESCHER: I just can't understand why the  
2 Commission can't -- can't deal with the facts. You have lawyers.  
3 This Commission has a lawyer. Why don't you ask him before you  
4 misstate something. I just have a hard time with it. There's  
5 more to this that is going to come up that you're going to have  
6 trouble with, I'm sure, but let's go on.

7           On page three in the second line here we're talking  
8 about tribal gambling revenues consistently have grown at a faster  
9 rate than commercial gambling revenues in large part because, and  
10 we delete the word many and we add the words, "A relatively small  
11 number of Indian gambling facilities opened in a," and I add the  
12 words, "Densely populated markets that have previously had  
13 little." That's --

14           COMMISSIONER WILHELM: I have a question about that,  
15 Bob. Do you have the actual numbers so we could define what  
16 relatively small number would be?

17           COMMISSIONER LOESCHER: Yes.

18           COMMISSIONER WILHELM: Six out of what? Two fifty-  
19 eight or sixty. If it's six and that's factual, I don't have a  
20 problem with that.

21           CHAIRPERSON JAMES: Hearing no objection, keep going.

22           COMMISSIONER LOESCHER: Madam Chair, in the same  
23 paragraph, we add a sentence at the end, "There is a degree of  
24 economic concentration in a relatively small number of --

25           CHAIRPERSON JAMES: Wait a minute. We didn't do  
26 densely populated.

27           COMMISSIONER LOESCHER: I'm sorry, densely populated.

28           COMMISSIONER WILHELM: Those go together.

29           CHAIRPERSON JAMES: Okay. There is a degree.

1           COMMISSIONER LOESCHER: Madam Chair, "There is a degree  
2 of economic concentration in a relatively small number of gaming  
3 tribes. The 20 largest revenue generates in Indian gaming account  
4 for 50.5 percent of the total revenue. The next 85 account for  
5 41.2 percent." We footnote that.

6           COMMISSIONER BIBLE: Does that also come out of the GAO  
7 data?

8           COMMISSIONER LOESCHER: Madam Chair, we cite a letter  
9 from Penny Coleman, Deputy General Counsel, NIGC, in a letter to  
10 the Commission dated December 4th, 1998.

11          COMMISSIONER WILHELM: It's already in here someplace?

12          COMMISSIONER LOESCHER: Yes.

13          CHAIRPERSON JAMES: Do you want to stop there or do you  
14 want to consider the --

15          COMMISSIONER WILHELM: These are two separate subjects.

16          COMMISSIONER LANNI: If it's redundant, why don't we  
17 wait until we get to that section where it is and either strike it  
18 there or strike it here? If it's redundant it's nothing  
19 different.

20          COMMISSIONER LEONE: If it's factual. I don't think we  
21 can deal with a redundancy the way Terry said.

22          CHAIRPERSON JAMES: If it's factual --

23          COMMISSIONER LEONE: I recollect it's the same numbers  
24 we've been using all along.

25          COMMISSIONER LANNI: The GAO breakdown was the largest  
26 eight as 40-some odd percent, but it's the same thrust.

27          CHAIRPERSON JAMES: It's been moved, is there a second.

28          COMMISSIONER LANNI: I think we're moving on the basis  
29 if we don't object.

1 CHAIRPERSON JAMES: Okay, great.

2 COMMISSIONER LOESCHER: Madam Chair, the next paragraph  
3 we add,

4 "There's a natural limit to the growth of  
5 gaming on existing Indian reservation lands.  
6 The growth in Indian gambling revenues is a  
7 function of the proximity of the Indian  
8 reservations to highly populated urban areas,  
9 whether or not full casino style gambling is  
10 permitted under a compact between the state and  
11 the federally recognized Indian tribe, and  
12 competition from charitable, state and commercial  
13 gaming. The vast majority of tribes are neither  
14 located near highly populated urban areas, nor  
15 currently fully authorized to conduct full casino style  
16 gambling."

17 COMMISSIONER BIBLE: What was that black mark there?

18 COMMISSIONER LOESCHER: Madam Chair, that was existing  
19 language, and we're recommending to strike the existing language.

20 COMMISSIONER MOORE: Whatever it might be. It says --  
21 I looked at it. I put it on the hot light. We use hot lights at  
22 radiology. It says that there are places that are located close  
23 to urban areas that do not have compacts.

24 COMMISSIONER BIBLE: Were operating gambling without  
25 having compacts.

26 COMMISSIONER MOORE: Well, they didn't say they was  
27 operating. Indians that are located next to highly populated  
28 areas but they do not have compacts with the states.

29 COMMISSIONER LANNI: Bob, that's not existing language.

1 That's language that --

2 COMMISSIONER LOESCHER: No, I don't think it's existing  
3 language. It's language that I had proposed that I had deleted.

4 COMMISSIONER LANNI: That's right, language once  
5 proposed that you deleted from here.

6 COMMISSIONER MOORE: Basically what he's saying here I  
7 think also is in the report elsewhere.

8 COMMISSIONER WILHELM: Are you moving this language,  
9 Bob?

10 COMMISSIONER LOESCHER: Yes.

11 COMMISSIONER WILHELM: From where?

12 COMMISSIONER LANNI: In the sense of a motion he's  
13 moving.

14 COMMISSIONER WILHELM: Well, he claims he's moving it  
15 from some place in the report.

16 COMMISSIONER LOESCHER: No.

17 COMMISSIONER MOORE: I said --

18 COMMISSIONER WILHELM: I think the Chair had indicated  
19 we would operate on the basis if there's no objection that --

20 COMMISSIONER LOESCHER: I'd like to move the language.

21 CHAIRPERSON JAMES: Is there a second?

22 COMMISSIONER WILHELM: I'll second it. Madam Chair,  
23 I'd like to take the opportunity if I might. The other two  
24 members of the Indian gambling subcommittee have addressed the  
25 overall situation with respect to this report, and I'd like to add  
26 my perspective as well, and I'll try not to be any more long  
27 winded than I unfortunately sometimes am.

28 I am, to be perfectly frank, and I don't think it's too  
29 strong a word, heartbroken about this development that we were

1 presented with late yesterday afternoon. I want to be clear I do  
2 not believe that Bob Loescher has proceeded in any way, shape, or  
3 form in bad faith or with any ill will or anything of the kind.  
4 Quite the opposite. Bob has the extraordinarily difficult  
5 assignment of representing an extremely diverse constituency here,  
6 and that's not easy. I believe that Bob, along with Dr. Moore and  
7 myself, I believe that Bob has worked extremely hard to try to  
8 arrive at something that the majority of the commissioners could  
9 adopt.

10 Having said that, I was crestfallen when this packet  
11 arrived because I had taken some degree of pride, along with Bob  
12 in particular, and Dr. Moore and myself as well, in the fact that  
13 this Indian gambling subcommittee I thought had been able to  
14 arrive at a consensus document which we felt comfortable in  
15 recommending to our fellow commissioners.

16 While I don't believe there's any useful purpose served  
17 in trying to unravel the question of who saw which document when  
18 and who he mailed whom when and all of that, and again, there's no  
19 bad faith here in my view in any way, shape, or form.

20 Nevertheless, I took some pains along with Eric Altman  
21 to work very hard with Bob and with Chris McNeal, at the time  
22 representing the Piquat Tribe, to arrive at a consensus document,  
23 and I asked on a number of occasions whether all three of us were  
24 content with what I understood to be the draft. I thought until  
25 yesterday that we were.

26 There are some things that Bob and I agreed upon at one  
27 point that didn't make its way into the draft, but I thought we  
28 agreed on the overall draft. There are some things that have  
29 reappeared here in terms of Bob's proposals as of yesterday

1 afternoon that I feel compelled to support because I originally  
2 agreed with them. There are others that were removed after rather  
3 torturous and difficult negotiations and compromise by everyone.

4           This is an example. This particular paragraph I don't  
5 agree with, I never agreed with it, and it was missing from the  
6 subcommittee draft for a reason. I just simply don't think it's  
7 accurate. So I wanted to make those overall comments. I'm  
8 trying, as I know Dr. Moore is, to be supportive of everything  
9 that I feel able to support at the risk of prolonging the process,  
10 which no one wants to do.

11           On the other hand, obviously we would all agree that  
12 Bob has the same right to propose changes that anybody else has,  
13 so I'll try not to be extended in my remarks hereafter in this  
14 chapter, but I do oppose this particular paragraph simply because  
15 I don't think it's accurate.

16           COMMISSIONER LOESCHER: Madam Chair, I appreciate John  
17 Wilhelm's observations, but I'd like to draw his attention to the  
18 previous page, page two. The reasons that I added this language  
19 was to give some balance to the perspective. On page two, the  
20 bottom paragraph, it says, "The result of these two developments  
21 was rapid expansion of Indian gambling. From 1998 IGRA passed,  
22 1997 tribal gambling revenues grew more than 30 fold from \$212  
23 million to \$6.6 billion." And then it goes on, "By comparison,  
24 the revenues from other non-Indian casino gambling have roughly  
25 doubled over the same period from \$9.6 to \$20.5."

26           So what it's doing is in one paragraph it's -- it's  
27 giving the characterization of dramatic growth and what-not, and  
28 when I looked at that I said to myself, "Well, there are limits to  
29 this growth." So I offered this language here to balance off that

1 perspective.

2 COMMISSIONER BIBLE: There are limits, but IGRA does  
3 have a provision in it that allows states to take land into trust  
4 purposes, and with the consent of the governor, would allow tribal  
5 gambling to expand on land not currently in ownership.

6 COMMISSIONER WILHELM: But this particular proposal is  
7 limited to existing Indian reservation lands by its terms in the  
8 first sentence. Bob, I understand what you're saying. I don't  
9 agree that there is a natural limit to the growth of gaming either  
10 on existing Indian reservation lands or any place else. I think  
11 it's one of the points that Richard's been making. I think that  
12 any time you've got an interstate highway and a piece of land, you  
13 can grow in the gambling industry.

14 CHAIRPERSON JAMES: What I want to do in order to help  
15 us get through this huge document and have lunch is if we could  
16 confine our comments to points of clarification or questions,  
17 rather than to try to debate all of these issues, I think we could  
18 get through a lot sooner. Unless there's another point of  
19 clarification for informational purposes that a Commissioner  
20 needs, the question has been called. All in favor of the language  
21 starting with, "There is a natural limit," down to, "Casino style  
22 gambling," please say aye. All opposed? Motion fails.

23 COMMISSIONER LOESCHER: Madam Chair, I would like to  
24 draw your attention to page seven first before we look at pages  
25 four through six. Page seven in my draft.

26 COMMISSIONER LEONE: I take it this is the language  
27 that the committee --

28 COMMISSIONER LOESCHER: This is the language the staff  
29 put forward. Madam Chair, I looked at this, these paragraphs

1 here, and I said to myself, "I have a hard time with the spin."  
2 Let me just cite some of this to you. In the first paragraph  
3 there it says, "In the view of some observers, tribal sovereignty  
4 is extensive and at least on par with that of states. Proponents  
5 of this view commonly cite the Constitution's commerce clause  
6 which characterizes Native American tribes as nations, albeit on  
7 US territory."

8 I have a hard time with the spin, the words, "In the  
9 view of some observers, proponents cite, that albeit on US  
10 territory." It connotes something that we don't need to say  
11 this way. That's just an example of spin. Down the page in the  
12 bottom lines of the same paragraph, "Other federal court decisions  
13 have expanded on the principle, noting that sovereignty." It's  
14 not just other court opinions, it's the US Supreme Court. That's  
15 the highest court and it's the law of the land. So again, it's  
16 the spin, the characterization.

17 Then the bottom of the paragraph, "Others contend,  
18 however, that tribal sovereignty is far more restricted in scope.  
19 Congress may in fact limit tribal sovereignty as frequently done  
20 so in the past. The Congressional power over Indian affairs is  
21 plenary subject to federal court's interpretation of applicable  
22 national constraints which have changed over time." Again, it's  
23 spin. It's a half truth.

24 Congress has authority over Indian affairs, but in most  
25 recent history, in the last 10, 20, 30 years, the US Supreme Court  
26 has restrained and defined the parameters of Congress's authority  
27 over Indian affairs. What I'm trying to say, Madam Chair, when I  
28 looked at this I said to myself, "We need a more neutral writing  
29 of this." A lot of what's in my writing on pages four through six

1 contain the content of what's in this language but without the  
2 spin.

3                   So on pages four through six I offer this language  
4 which is more neutral, more factual, and defines what is without  
5 the characterizations that the writer had put into it. So I offer  
6 that as a motion.

7                   CHAIRPERSON JAMES: Point of clarification. We're  
8 talking about in the current document page three.

9                   COMMISSIONER LEONE: Four, five, six, and the very top  
10 two lines on page seven being substituted for what is on page  
11 seven and eight, right Bob?

12                  COMMISSIONER LOESCHER: Yes.

13                  CHAIRPERSON JAMES: In the new document.

14                  COMMISSIONER DOBSON: Madam Chair?

15                  CHAIRPERSON JAMES: Commissioner Dobson.

16                  COMMISSIONER DOBSON: I plan to oppose the motion  
17 because of the number of legal references here and decisions that  
18 we have not had a chance to verify, and because the language in  
19 the original document is more clear.

20                  COMMISSIONER LEONE: May I ask a question?

21                  CHAIRPERSON JAMES: Certainly.

22                  COMMISSIONER LEONE: Let me put it in the context.  
23 Obviously it's not unreasonable for a commissioner who was a  
24 member of the subcommittee and is unhappy with the results to come  
25 back and appeal to the full committee, which is what's going on  
26 here, but I think -- and that situation is also reasonable for us  
27 to ask the other committee members who have gone through this and  
28 done the kind of -- and lived with the language. As Commissioner  
29 Moore said, a lot of this language was sorted out.

1           So I'm asking -- John Wilhelm seconded this. I assume  
2 that means that you believe this version does not raise any red  
3 flags as far as factually or otherwise?

4           COMMISSIONER WILHELM: In order to respond to your  
5 question --

6           COMMISSIONER LEONE: Reading it, to me it seems  
7 reasonable, but I don't know. I'm a little bit with Jim. I don't  
8 know if I'm missing something because I didn't fight through this  
9 particular chapter.

10          COMMISSIONER WILHELM: That's a very fair question and  
11 that's an example of why all three of us fervently hoped that we  
12 wouldn't put the rest of you in this position, because we did  
13 spend a lot of time on it and I thought productively. But  
14 specifically on this language, I seconded Bob's motion because I  
15 had originally agreed on the language Bob is now proposing  
16 personally.

17          COMMISSIONER LEONE: And the two of you were outvoted  
18 by Paul? He's a tough man.

19          COMMISSIONER WILHELM: If I might, in response to your  
20 question, Richard, attempt to shed a little bit of light on the  
21 process without being too long, because of the complexity of this,  
22 Bob Loescher, and myself, and Eric Altman, and Chris McNeal  
23 undertook, at Dr. Moore's suggestion, to try to work out something  
24 for the subcommittee to consider as a whole, and we did that with  
25 considerable effort and considerable compromise on everyone's  
26 part.

27          But then we had to consider it as a whole subcommittee  
28 and arrive at something. Our goal was to get a unanimous  
29 recommendation, so a number of things got compromised and changed

1 around. I think all three of us thought that we had arrived at a  
2 unanimous recommendation. How that unravelled I don't think it's  
3 worth trying to belabor here.

4 The reason I seconded this particular motion is because  
5 I had originally agreed to this particular language. I don't see  
6 a problem with it. On the other hand, I don't see much of a  
7 problem with the language for which it substitutes, either.

8 CHAIRPERSON JAMES: The question has been called. All  
9 in favor of substituting the language presented by Commissioner  
10 Loescher for the language that's in the document on his page  
11 seven, please signify by saying aye. All opposed? I think the  
12 ayes have it. I counted four nos. The ayes have it. Did you  
13 abstain?

14 COMMISSIONER MOORE: I abstained. I'll vote for the  
15 substituted -- I'll say aye.

16 CHAIRPERSON JAMES: Then the motion carries.

17 COMMISSIONER LOESCHER: Thank you, Madam Chair. I  
18 appreciate the support here. Madam Chair, on page nine we're  
19 dealing with the federal policy, the failure of the trust  
20 responsibility and alternative revenue to Indian gambling. As you  
21 remember, the statute requires that we take a look at this issue,  
22 and we have a couple of spin problems right on the first page,  
23 three lines down. Change the words, "in the same." Just put in  
24 the Cherokee decision that proponents of sovereignty often quote.  
25 Delete the words, "The proponents of sovereignty often quote."  
26 That's the first spin problem. I'd like to offer, I hope there's  
27 no objection.

28 The second one is, "This trust relationship," and there  
29 was a word left out, "Is a term," and just change the tense

1 derived from treaties between the United States and Indian tribes  
2 involving massive land successions and -- and that just clarifies  
3 what that business was.

4               Then the next line down, add the word, "It, hyphen,"  
5 add the word, "also," and those are the changes on that page,  
6 Madam Chair.

7               CHAIRPERSON JAMES: Hearing no objections.

8               COMMISSIONER LOESCHER: Madam Chair, I'm on page 10 of  
9 my mark up. Madam Chair, this section was added, and there's like  
10 two or three pages which discuss the economic alternative issue.  
11 It starts on page 10 and it indicates what we were charged to do,  
12 that we were to make a -- conduct an assessment of the extent  
13 which gambling provided revenues to Native American tribal  
14 government and the extent to which possible alternative revenue  
15 sources may exist for such governments, and traces the history of  
16 what Congress has done towards that end of creating economic  
17 opportunity.

18               Then on page 11 we describe in the first paragraph,  
19 starting with about five lines up with the words, "However,  
20 discussing federal spending has declined to Native American  
21 country," and that's cited to GAO reports and what-not, but  
22 basically it just outlines that it's very tenuous as to whether  
23 there are any economic alternatives at this time for tribal  
24 government gaming business. That's concluded on page 12.

25               So Madam Chair, it's important, I think, that the  
26 Commission has spoken in its recommendations of encouraging --  
27 recognizing and encouraging economic -- that the monies from  
28 gambling received by Indian tribes from their casinos and what-not  
29 be used for economic development. We've acknowledged that, but in

1 the narrative it was totally left out that we speak to economic  
2 development alternatives. So we offer this language, and I would  
3 like to move the language.

4 CHAIRPERSON JAMES: Is there a second?

5 COMMISSIONER WILHELM: I would second for purposes of  
6 offering an amendment. Well, I would second. And I would like to  
7 move an amendment.

8 COMMISSIONER MOORE: I don't believe the second  
9 paragraph there is true. There exists no viable alternate sources  
10 of revenue for tribes that authorizes gaming. I'd hate to think  
11 that this country has to depend that the Native Americans that  
12 never knew more than a baby that comes into this world that's  
13 going to have to think that his livelihood comes from gambling. I  
14 just can't -- I just can't swallow that. I can take you to  
15 Mississippi, which is regularly the t poorest state in the nation,  
16 and I can take you to an Indian reservation that they have viable  
17 sources of income before gaming hit Mississippi. We can do  
18 sometimes what we want to do.

19 CHAIRPERSON JAMES: Commissioner Leone?

20 COMMISSIONER LEONE: I think that there are two  
21 thoughts represented or two lines of thinking represented in this  
22 section. I think that the line of argument that's in the first  
23 paragraph, the second, third, fourth, and fifth paragraph, which  
24 is basically in my view a largely factual recitation of the  
25 economic circumstances on reservations over time, is something  
26 that should be in our report and should in some fashion should be  
27 adopted.

28 I think that the second paragraph and the section that  
29 begins, "Revenues from gaming operations," is a set of assertions

1 about casino gambling and conclusions that fall into a different  
2 category, and in some respects out to be dealt with separately.

3 CHAIRPERSON JAMES: Where is that second paragraph that  
4 you're talking about?

5 COMMISSIONER LEONE: The second paragraph is the one  
6 that Commissioner Moore just referred to. That paragraph, if you  
7 -- I think belongs in the category with the section that begins,  
8 "But the revenues from gaming," on page 11. Those paragraphs  
9 together, there are four of them, in my judgement are a set of  
10 assertions which may or may not be true, which may or may not be  
11 supported by the Commission about legalized gambling.

12 The other paragraphs I'm referring to, the one that  
13 begins, "Congress directed the commission since the early 19th  
14 century. Today Congress continues," those seem -- and the poor  
15 economic conditions in Indian country, those seem to me  
16 observations that quite properly we're being reminded of -- and  
17 their relevance is quite direct to our task.

18 I think that if Indian country included Silicon Valley  
19 there would be less incentive to adopt legalized gambling, and  
20 frankly that's just the reality. The history is a particularly a  
21 sad history of public policy. So I don't know. John said he had  
22 an amendment. I was going to --

23 COMMISSIONER WILHELM: Go ahead.

24 COMMISSIONER LEONE: -- propose an amendment to take --  
25 to first substitute a vote on those historical paragraphs which I  
26 could support and advocate, and then go on to a discussion of  
27 these other assertions.

28 CHAIRPERSON JAMES: Would you number those paragraphs  
29 that you would support?

1                   COMMISSIONER LEONE: Well, it's the paragraph starting  
2 on page 10 which begins, "Congress directed the commission."

3                   CHAIRPERSON JAMES: That's one. The next one?

4                   COMMISSIONER LEONE: The second one is, "Since the  
5 early 19th century," also on page 10. The next one begins on page  
6 10, "Today Congress continues," and goes over, and the last one,  
7 the fourth paragraph in this group is, "The poor economic  
8 conditions in Indian country have fostered extensive social,"  
9 etcetera. Those four paragraph, it seems to me, whatever one  
10 thinks about gambling or gambling on Indian country or the rest of  
11 it, belong in this report. So I would like to -- and it seems to  
12 me, to my knowledge, they're all accurate, including the decline  
13 in inflation adjusted dollars and support for Indian reservations,  
14 as well as almost all social programs.

15                  COMMISSIONER LANNI: And what would you do with the one  
16 --

17                  COMMISSIONER LEONE: I think that that thought, whether  
18 there's a viable alternative, belongs with -- at least the  
19 argument for whomever wants to advocate it, belongs with the  
20 arguments about casino gambling, which I consider a separate  
21 debate, a separate argument, this language that's later on.

22                  COMMISSIONER WILHELM: Richard, I don't know if you  
23 would consider it a separate subject or not, but continuing on  
24 where you left off, the paragraph beginning, "But with revenues  
25 from gaming operations," and the next one, "Tribes also use gaming  
26 revenues," those are both descriptive paragraphs that I think are  
27 amply supported by our record. I don't know if you'd feel  
28 comfortable five and six to your group or if you consider it a  
29 separate matter?

1           COMMISSIONER McCARTHY: I believe them to be true.

2           COMMISSIONER LEONE: I would consider it. Those are  
3 also part of the story.

4           CHAIRPERSON JAMES: Which one is that? Beginning what?

5           COMMISSIONER WILHELM: The two beginning, "But with  
6 revenues from gaming operations," which would be five in Richard's  
7 grouping, and then the next one, "Tribes also using gaming  
8 revenues to support tribal governmental services," would be six.  
9 I think again our record of the subcommittee amply supports those  
10 to and is descriptive.

11          CHAIRPERSON JAMES: This is in purely philosophical and  
12 I'm sure will cut along philosophical lines, but I would  
13 -- I'm with you, Dick, on all accept I'm not prepared to say the  
14 evidence exists in any community that economic conditions generate  
15 social ills like crime, abuse, illiteracy, poor nutrition, and  
16 poor health care access. I think that there's enough out there  
17 that demonstrate that those conditions could be caused by a number  
18 of things and not just economic conditions. Some would say family  
19 breakdowns, some would  
20 say --

21          COMMISSIONER LOESCHER: Right, but --

22          COMMISSIONER WILHELM: She's on the second paragraph on  
23 page 11.

24          CHAIRPERSON JAMES: That's paragraph No. 4. That this  
25 commission is going to issue a statement saying that poor economic  
26 conditions generate high crime rates, child abuse, illiteracy,  
27 poor nutrition, and poor health.

28          COMMISSIONER WILHELM: Why don't we just strike that?

29          COMMISSIONER LEONE: What if we said have contributed

1 to? Correct me if I'm wrong, but most people would concede that  
2 poverty contributes to those things.

3 CHAIRPERSON JAMES: I would feel much better with, "Is  
4 one of the contributing factors," or, "Contributes to."

5 COMMISSIONER LEONE: Obviously we disagree profoundly  
6 on that, but this is not the place to have that argument, and for  
7 example, discuss the merits of a capital gains tax. I think  
8 economic conditions -- I think poor economic conditions are  
9 causative, but --

10 CHAIRPERSON JAMES: Can we say contribute to, which  
11 would be one of the causes? Would you do that?

12 COMMISSIONER WILHELM: I agree with your statement, and  
13 I also agree that for this purpose we not try to solve this. Bob,  
14 are you okay with contributes to?

15 COMMISSIONER LOESCHER: Yes, Sir.

16 COMMISSIONER DOBSON: I'm still concerned about that  
17 second paragraph there --

18 COMMISSIONER WILHELM: That's not in this.

19 COMMISSIONER DOBSON: But you have noted it, though.

20 COMMISSIONER WILHELM: He skipped it.

21 COMMISSIONER LEONE: I'm not moving it -- I'm not  
22 moving it in order to support it. I'm saying that there are --  
23 that paragraph and the last paragraph are different. They're not  
24 part of my amendment. My amendment is to take the other  
25 paragraphs and vote on them and leave these two paragraphs which I  
26 view as representing an assertion about gambling for a separate  
27 discussion. I don't want to lose all these other paragraphs.

28 I don't agree -- I agree with Dr. Moore about the  
29 viable alternatives, although I'm more cynical about the country's

1 history of providing viable alternatives perhaps than some of the  
2 members. I certainly don't want to sign on to the last paragraph,  
3 but I wouldn't want to lose all the rest of this because we vote  
4 it up or down on those two paragraphs that I find troubling.

5 COMMISSIONER WILHELM: In order to try and save the  
6 Chair's voice, Bob, would you be agreeable to voting on these  
7 things in two different motions?

8 COMMISSIONER LOESCHER: Yes, I would.

9 COMMISSIONER WILHELM: So Dick, your motion was the  
10 paragraph we numbered one beginning, "Congress directed the  
11 Commission," paragraph we numbered two beginning, "Since the early  
12 19th century," the paragraph we numbered three beginning, "Today  
13 Congress continues," the paragraph we numbered four beginning,  
14 "The poor economic conditions," but we changed it to, "The poor  
15 economic conditions in Indian country contribute to the same  
16 extensive social ills," etcetera.

17 COMMISSIONER LOESCHER: Have contributed to.

18 COMMISSIONER WILHELM: Have contributed to.

19 COMMISSIONER McCARTHY: I wasn't going to weigh in on  
20 this one, but I think I agree with what I heard Dick Leone saying.  
21 When you're talking about poverty, it should at least be listed  
22 as a major contributor. It's more significant than anything else  
23 that's been identified.

24 COMMISSIONER WILHELM: The paragraph we numbered five  
25 which is, "But with revenues from gaming operations," and the  
26 paragraph we number six which is, "Tribes also use gaming  
27 revenues." That would leave, as Dick said, the second paragraph  
28 and the last one for a separate discussion.

29 COMMISSIONER LANNI: I second that.

1 CHAIRPERSON JAMES: Call for the question. All in  
2 favor? Any opposed? Motion carries. That leaves the remaining  
3 paragraphs to be discussed.

4 COMMISSIONER WILHELM: That's the paragraph beginning,  
5 "There exists no viable alternative," and the last paragraph  
6 beginning, "If tribal gaming were eliminated or restricted."

7 COMMISSIONER LANNI: It's been moved?

8 CHAIRPERSON JAMES: Is there a second for that?

9 COMMISSIONER DOBSON: For what?

10 COMMISSIONER WILHELM: Those two paragraphs.

11 COMMISSIONER LEONE: Then the way this would read is  
12 then you would pick up the second paragraph and go to the last  
13 paragraph? It flows that way, and I'm assuming Bob is making that  
14 motion and you're asking if there's a second to that motion?

15 COMMISSIONER WILHELM: I second.

16 COMMISSIONER LEONE: So there's a second.

17 COMMISSIONER LANNI: I call the question.

18 CHAIRPERSON JAMES: All in favor? Opposed? Roll call?  
19 Commissioner Bible?

20 COMMISSIONER BIBLE: No.

21 CHAIRPERSON JAMES: Commissioner Dobson?

22 COMMISSIONER BIBLE: No.

23 CHAIRPERSON JAMES: Commissioner Lanni?

24 COMMISSIONER LANNI: No.

25 CHAIRPERSON JAMES: Commissioner Leone?

26 COMMISSIONER LEONE: No.

27 CHAIRPERSON JAMES: Commissioner Loescher?

28 COMMISSIONER LOESCHER: Yes.

29 CHAIRPERSON JAMES: Commissioner McCarthy?

1           COMMISSIONER McCARTHY: No.

2           CHAIRPERSON JAMES: Commissioner Moore?

3           COMMISSIONER MOORE: No.

4           CHAIRPERSON JAMES: Commissioner Wilhelm?

5           COMMISSIONER WILHELM: Yes.

6           CHAIRPERSON JAMES: Commissioner James votes no. The  
7 motion fails.

8           COMMISSIONER LOESCHER: Madam Chair, if I might prevail  
9 on the Chair, if there was a way to rescue the last sentence of  
10 the last paragraph and add it to the paragraph five before ending  
11 with the words, "Begin addressing them," then the words, "There  
12 was no evidence presented to the Commission suggesting any viable  
13 approach to economic development across the broad spectrum of  
14 Indian country in the absence of gaming."

15          COMMISSIONER WILHELM: I would second that.

16          CHAIRPERSON JAMES: All in favor? Any opposed? Ayes  
17 have it. Commissioner Loescher?

18          COMMISSIONER LOESCHER: Thank you, Madam Chair. Moving  
19 on, on page 13, we only have one little change, and it's again a  
20 term of art in Indian country on about eight or 10 lines down  
21 starting with the words, "Some tribes were decertified." We would  
22 prefer to use the word, "Terminated."

23          COMMISSIONER WILHELM: Decertified is what happens when  
24 employers terminate you.

25          COMMISSIONER LOESCHER: In my company we call it  
26 disengaged.

27          CHAIRPERSON JAMES: Hearing no objection, we're down to  
28 making sure both Republicans and Democrats are represented here.

29          COMMISSIONER LOESCHER: Madam Chair, we're on

1 page --

2 CHAIRPERSON JAMES: Hearing no objection.

3 COMMISSIONER DOBSON: Where did we get the blueprint of  
4 this change was made by President Johnson? I assume that's  
5 correct.

6 CHAIRPERSON JAMES: I have to assume it is.

7 COMMISSIONER DOBSON: Then we get at the bottom of the  
8 page that says, "These have meant (inaudible) President Clinton."

9 CHAIRPERSON JAMES: Right now we're on President  
10 Johnson, and we didn't hear any objection there, but now we're  
11 going down to Clinton. "These principles have been substantially  
12 expanded by President Clinton through five Presidential executive  
13 orders on various tribal issues.

14 COMMISSIONER WILHELM: Not to mention by his  
15 appointment of Commissioner Loescher.

16 CHAIRPERSON JAMES: Absolutely. I'm going to reserve  
17 the temptation to make any partisan jokes here.

18 COMMISSIONER LOESCHER: Madam Chair, where are we?

19 CHAIRPERSON JAMES: We are on President Clinton.

20 COMMISSIONER LOESCHER: Madam Chair, I would like to go  
21 to page 15 of my mark up.

22 CHAIRPERSON JAMES: Commissioner Loescher, can you just  
23 give us a cite for the Johnson and we'll include it?

24 COMMISSIONER LOESCHER: The Johnson? Okay, we have it,  
25 Madam Chair and we will provide it. We can provide Mr. Clinton's  
26 cites as well. Madam Chair, I'm moving right along. I'm on page  
27 15. Madam Chair, on page 15 through whatever it is, 19, 20, what  
28 we have here, Madam Chair, is something that was dropped from the  
29 -- from the original draft that we had submitted from the

1 committee. What appears in my opinion as a straight forward  
2 description of IGRA and its implementation and the minimum control  
3 standards that have been recently promulgated as regulations to  
4 which the tribes are now trying to implement.

5 We think that the review of regulations is very  
6 important to have as a part of the narrative in the report. It  
7 shows much progress by the tribes, it shows a state -- the state  
8 of the regulations and the conduct -- the conduct of those  
9 regulations. In the middle of this, Madam Chair, one of the  
10 things that the committee heard out of the over 100-some odd  
11 people that testified before the committee, we were benefited by  
12 having tribal gaming commissioners testify before our  
13 subcommittee. Those are the front line day-to-day people who are  
14 responsible for the gaming operations.

15 There was no reference to them in the report, and there  
16 is an amendment, which is a separate one which is in the middle of  
17 our -- of this draft which is a separate attachment, and we would  
18 like to include that reference as well. There's a place for it on  
19 page 19.

20 Anyway, Madam Chair, we think it's very important to  
21 have this straight forward description of IGRA and its  
22 implementation and the minimum internal control standards. I  
23 would like to move the addition of these pages.

24 COMMISSIONER McCARTHY: Madam Chair, just from a point  
25 of understanding. I'm trying to make sure we're on the same page  
26 here. Is this the page you're referring to, Bob?

27 COMMISSIONER LOESCHER: It's 15, 16, 17, 18 and 19.

28 COMMISSIONER McCARTHY: The underlined language is  
29 language you want to add to the report?

1 CHAIRPERSON JAMES: Correct.

2 COMMISSIONER WILHELM: Yes, it is.

3 COMMISSIONER LOESCHER: Pages 15 through 19.

4 COMMISSIONER McCARTHY: So is the import -- is the  
5 import that if a state has granted to the American Legion the  
6 ability to twice a year or once a year operate a casino night,  
7 that that would then allow any other -- any other citizen or  
8 entity of that state to operate on a full time basis a similar  
9 kind of casino? Is that what we're getting at here?

10 COMMISSIONER LOESCHER: Madam Chair, the answer is no.

11 The Rumsey decision does not allow that.

12 COMMISSIONER McCARTHY: Then I'm not sure I understand  
13 exactly what we're trying to achieve with this language. If a  
14 state has a public policy of complete prohibition against Class  
15 III gambling, then tribes within the borders of the state may not  
16 initiate such gambling. However, if the state has no completely  
17 prohibitive policy against Class III gambling, then the federal  
18 courts have held that the state may not prohibit gambling on  
19 reservations.

20 What I need to know is what do you mean by the states  
21 having no completely prohibitive policy? What kinds of activities  
22 do they allow that you feel provide an opening for others to have  
23 casinos on a full time operational basis? I'm just not familiar  
24 with what it is that you're citing there as the justification for  
25 this?

26 COMMISSIONER LOESCHER: Madam Chair, what the sentence  
27 is -- the purpose of adding the sentence here is to clearly state  
28 what the Cabazon case finally stated, and that's all that that  
29 sentence does is clarifies what the court said, no more, no less.

1                   COMMISSIONER MCCARTHY:         But hasn't it been  
2 substantially ratified by the Rumsey decision? That's what  
3 concerns me, Madam Chair. We have legal interpretations and  
4 representations. The Supreme Court decision referred to in  
5 essence, and I'm not qualified to assess this, whether we're on  
6 target or not.

7                   CHAIRPERSON JAMES:         Commissioner Loescher, you're  
8 offering 15, 16, 17, and 18, and 19 as a motion?

9                   COMMISSIONER LOESCHER: Yes, that's correct.

10                  CHAIRPERSON JAMES: Before we go any further I just  
11 need to know if there's a second for that motion?

12                  COMMISSIONER LOESCHER: Madam Chair, then I offer page  
13 15 --

14                  CHAIRPERSON JAMES: The motion dies. Yes?

15                  COMMISSIONER LOESCHER: Then Madam Chair, I then offer  
16 the changes on page 15.

17                  CHAIRPERSON JAMES: Didn't we just vote on that? We  
18 did 15, 16, 17, 18, and 19.

19                  COMMISSIONER LOESCHER: Madam Chair, then would it be  
20 your process then that all those pages would not have any  
21 consideration? You would not go page by page? Is that your  
22 procedure?

23                  CHAIRPERSON JAMES: That's correct.

24                  COMMISSIONER LOESCHER: Well, Madam Chair, I -- you  
25 know, I --

26                  CHAIRPERSON JAMES: That's why I asked the question,  
27 "Are you offering those pages as a motion?"

28                  COMMISSIONER LOESCHER: I'd like to.

29                  CHAIRPERSON JAMES: And you did, and we voted. We

1 didn't vote, there was no second.

2                   COMMISSIONER LOESCHER: Madam Chair, if that's the  
3 case, I just say to the Commission that I'm disappointed because  
4 you have a statutory mandate in the law that created this  
5 Commission to address the issue of the state of the law and the  
6 regulations which govern Indian tribal government gaming, and in  
7 your report you will not have any observation as to the state of  
8 that law and its conduct. This language that we have here is  
9 straight forward, factual, there's no amplification at all. I  
10 just don't understand why the Commission fails to do its  
11 obligations as required by the statute.

12                  COMMISSIONER DOBSON: Most of this is in your report  
13 elsewhere.

14                  COMMISSIONER LOESCHER: No, it's not.

15                  COMMISSIONER DOBSON: Oversight of gaming like on page  
16 16, the ruling in California was that if any person -- as to Leo's  
17 question, any person, club, anything in the State of California,  
18 then the Indians were entitled, the Native Americans were entitled  
19 to do that. They said it appeared that California was regulating  
20 gaming and not prohibiting, was a direct statement in that suit.

21                  COMMISSIONER LOESCHER: Madam Chair, that may be so,  
22 but also I'd like to point out to the Commission that there's no  
23 discussion at all anywhere in the report of the minimum control  
24 standards at all, which are very important to be recognized and  
25 provide for the accountability of gaming in Indian country, but if  
26 that be the wish of the commission, I certainly understand and I  
27 just register my objection to the lack of response to the statute  
28 that we were created under.

29                  CHAIRPERSON JAMES: We're up to page 21.

1           COMMISSIONER McCARTHY:   Was there a vote on some  
2 language yesterday, Madam Chair, or previously on minimum internal  
3 control standards?

4           COMMISSIONER WILHELM:   Yes.

5           CHAIRPERSON JAMES:   Yes, there was.

6           COMMISSIONER McCARTHY:   And what was the action taken  
7 by the commission? I don't remember.

8           COMMISSIONER LOESCHER:   Madam Chair, the Commission  
9 supported it in the recommendations but does not support providing  
10 any language in the text. Madam Chair, I'd like to move to page  
11 21, and as a factual problem on page 21 in the second paragraph,  
12 it says, "This decision which covers a plethora of legal issues  
13 has been widely interpreted. It did not, however -- I add the --  
14 anyway, I add the words to clarify and correct a misstatement,  
15 whoever wrote this. It says, "It did," and I add the word, "Not,  
16 however," and I add the word, "Declare, invalid," as opposed to  
17 invalidate, add the words, "Nor set aside any part of the Act."  
18 And then the word not should be changed to nor, "Nor did it set  
19 aside any Class III gambling pacts already negotiated." Madam  
20 Chair, this is a misstatement of the facts and I'd like the  
21 writers to acknowledge that.

22           COMMISSIONER LANNI:   I think they have it correct at  
23 the beginning. It's contained, not contains. IGRA originally  
24 contained. You don't originally contains. The substance of what  
25 Bob was reading was accurate.

26           CHAIRPERSON JAMES:   Drop the s and keep the ed.

27           COMMISSIONER LOESCHER:   Contained.

28           CHAIRPERSON JAMES:   Hearing no objections, we're on  
29 page 22.

1                   COMMISSIONER LOESCHER: Madam Chair, I offer that and  
2 hopefully the writers --

3                   CHAIRPERSON JAMES: We're done.

4                   COMMISSIONER LOESCHER: Thank you very much. I'm on  
5 page 22. This is -- this basically just clarifies the record. I  
6 guess I'm the second paragraph about the middle. It says, "For  
7 example, the secretary," I add the words, "The secretary would  
8 intervene only after a state had invoked sovereign immunity to  
9 block a suit regarding its failure to negotiate a compact in good  
10 faith. And that suit," and I add the words, "And that suit had  
11 been dismissed under the Seminole case." I think it's a better  
12 clarification of the process and I offer that to the writers just  
13 to conclude that thought properly.

14                  CHAIRPERSON JAMES: Hearing no objections.

15                  COMMISSIONER LOESCHER: Madam Chair, I'm on page --

16                  COMMISSIONER McCARTHY: I don't know how to object. I  
17 don't know enough about this one way or the other.

18                  COMMISSIONER DOBSON: Seminole -- actually the Eleventh  
19 Amendment --

20                  COMMISSIONER McCARTHY: So this would meet the approval  
21 of the subcommittee?

22                  CHAIRPERSON JAMES: Yes. Hearing no -- yes, I looked  
23 straight to them.

24                  COMMISSIONER LOESCHER: Madam Chair, I'm on page 23,  
25 and I offer a couple of changes here, starting with about the  
26 fourth line down, "Approval of the effected states, the department  
27 published its final rule," and I add the word, "that in effect,"  
28 and I add the word, "would implement the proposed procedures after  
29 30 days," I add the words, "After 30 days." Then, "This measure

1 was," and I add the word, "Immediately challenge and delete almost  
2 immediately in federal court by the States of Florida and Alabama  
3 which sought to block the new rules from taking effect."

4           Then Madam Chair, I conclude the latest information on  
5 Congressional action, which I think is important to the reader,  
6 and add the sentence, "Senator Enzi offered an amendment to an  
7 appropriations bill that would have prohibited the secretary from  
8 issuing the procedures. Senator Slade Gordon withdrew the  
9 amendment based upon a promise from the Secretary, Bruce Babbitt,  
10 that we would not implement the procedures until a federal court  
11 decided the issue of his authority to issue such procedures under  
12 IGRA," and then delete the words, "Absent Congressional action."  
13 Madam Chair, I offer that to --

14           CHAIRPERSON JAMES: Can I make a suggestion that we  
15 split that and take the edits on the after 30 days, the would,  
16 almost immediately and take that? Do I hear any objection to  
17 that?

18           COMMISSIONER McCARTHY: Could I just hear from  
19 Commissioner Loescher whether that statement is supported by  
20 evidence presented to this Commission? Senator Enzi?

21           CHAIRPERSON JAMES: We're not talking about that just  
22 yet. And hearing no objection on those, then I'd like to look at  
23 starting with Senator Enzi and go down through your changes there  
24 with absent Congressional acts.

25           COMMISSIONER McCARTHY: My question stands.

26           COMMISSIONER LOESCHER: Madam Chair, I think that's a  
27 fair question. This action happened within the last two weeks,  
28 and as you know, the Commission has extreme interest in what was  
29 occurring and has --

1 CHAIRPERSON JAMES: I'm hearing some potential  
2 objection. I want to ask if you're willing to offer that as a  
3 motion?

4 COMMISSIONER LOESCHER: I do. I offer it as a motion.

5 CHAIRPERSON JAMES: Is there a second?

6 COMMISSIONER WILHELM: I'll second so they can read  
7 this document.

8 COMMISSIONER LOESCHER: Madam Chair, I just have the  
9 letter from the Secretary of Interior to the Honorable Slade  
10 Gordon. I'm willing to offer that to Commissioner Dobson if he  
11 would like to look at it supporting this statement.

12 COMMISSIONER WILHELM: That supports a statement that  
13 he made -- based upon a promise from Secretary Bruce Babbitt?

14 COMMISSIONER LOESCHER: Yes, and here's the promise in  
15 my hand.

16 COMMISSIONER DOBSON: Just numerous occasions yesterday  
17 where the things we were suggesting were not supposedly in the  
18 record, and that was the source of the criticism that all of a  
19 sudden the rules change.

20 CHAIRPERSON JAMES: The rules haven't changed. There  
21 are other places in the document where we made a conscious  
22 decision not to do legislative history. We talked about that for  
23 a variety of reasons. That would be my concern.

24 COMMISSIONER LANNI: In fairness, Jim, you introduce a  
25 proposal today about an article that appeared in the Las Vegas  
26 Review Journal which hadn't been there, and I even supported that  
27 to be included, so we did include something that you proposed also  
28 that hadn't been part of the record.

29 CHAIRPERSON JAMES: It has been moved and seconded.

1                   COMMISSIONER DOBSON: May I clarify? That was about a  
2 subject that we'd had testimony about, however.

3                   CHAIRPERSON JAMES: It has been moved and seconded.  
4 Ready for the question?

5                   COMMISSIONER LOESCHER: Madam Chair, I'd just like to  
6 appeal to the Commission to at least complete the history of what  
7 finally occurred with regard to this business of compacting and  
8 what-not, the secretarial procedures. As you know, this full  
9 Commission on a vote of eight to one asked that things slow down  
10 until the Commission offered its thoughts, and I think this is  
11 just an accurate reflection of what has totally occurred with  
12 regard to this whole matter, and would bring the American public  
13 current on where the state of the affairs are.

14                  COMMISSIONER BIBLE: Does the promise run to a federal  
15 court or until the matter is adjudicated?

16                  COMMISSIONER LOESCHER: I have it right here. I  
17 believe until it's adjudicated. That's a promise from the  
18 Secretary to the Senator.

19                  COMMISSIONER BIBLE: That's federal court. The promise  
20 is only -- is contingent upon the matter being finally resolved  
21 and not a decision by the trial level court. I don't have the  
22 letter, I've never seen the letter, so I don't know.

23                  CHAIRPERSON JAMES: The motion before us right now,  
24 though, doesn't include that particular sentence, so let's do that  
25 motion and then we'll correct that sentence. It stops with,  
26 "Absent Congressional action." The existing language is, "The  
27 resolution of this problem will almost certainly."

28                  COMMISSIONER LOESCHER: Madam Chair, the language says,  
29 "The federal court."

1 CHAIRPERSON JAMES: Right, but --

2 COMMISSIONER LOESCHER: "A federal court," is what the  
3 language is.

4 CHAIRPERSON JAMES: My point is that the motion that is  
5 before us, however, is to add the language stopping with, "Absent  
6 Congressional action." There is a problem in that, and I agree  
7 that it needs to be changed to adjudicated, but it's not a part of  
8 the motion.

9 COMMISSIONER BIBLE: That may not be the promise,  
10 though.

11 CHAIRPERSON JAMES: What's that? I'm sorry, Bill, I  
12 didn't understand.

13 COMMISSIONER BIBLE: That may not be the Secretary's  
14 promise. He may have only promised not to implement the proposed  
15 rule until it was resolved by the trial court versus adjudicated.  
16 I don't know, I don't have the letter.

17 COMMISSIONER LOESCHER: Madam Chair, the commissioner  
18 is correct on this statement. It's the federal district court,  
19 the trial court.

20 COMMISSIONER BIBLE: So that's the promise. So this is  
21 a fair representation of the promise.

22 CHAIRPERSON JAMES: Any further discussion? All in  
23 favor of including this language please say aye. Opposed? Motion  
24 --

25 COMMISSIONER LANNI: Minor point. You should change  
26 the word -- it's become, not becomes.

27 CHAIRPERSON JAMES: Yes. Motion carries.

28 COMMISSIONER LOESCHER: Madam Chair, now I'm on page  
29 24, and what we're trying to do is insert language that reflects

1 the fact that even tribes that gain no net revenue can achieve  
2 greater employment for its members, so we add the words, "For  
3 some, Indian gaming provides substantial new revenue to tribal  
4 government. For others, Indian gaming has provided little or no  
5 net revenue to the tribal government, but has provided jobs for  
6 tribal members." Then delete the words, "A key benefit from  
7 Indian gambling is the employment opportunities it can provide."  
8 Then underneath that put a figure of 100,000 jobs.

9                   COMMISSIONER BIBLE: And the source footnote is  
10 missing. Can you help?

11                   COMMISSIONER LOESCHER: Madam Chair, we already adopted  
12 100,000 jobs yesterday in other paper.

13                   COMMISSIONER DOBSON: You're just restating showing  
14 that there is some benefit to a casino even though it doesn't make  
15 any money. It does give people jobs.

16                   COMMISSIONER LANNI: Is this something that came before  
17 the subcommittee and they found it to be factual?

18                   COMMISSIONER BIBLE: I think that this came before,  
19 didn't it, John?

20                   COMMISSIONER WILHELM: It's just restated. I don't  
21 have a problem with it.

22                   CHAIRPERSON JAMES: Do I hear any objections? Hearing  
23 none. Page 25.

24                   COMMISSIONER LOESCHER: Madam Chair, moving right  
25 along, page 25, the first paragraph there on my mark up draft,  
26 what we're trying to do is clarify the Fort Apache Timber case,  
27 and there the federal district court for the District of Oregon  
28 expressly agreed that the Board's position -- similarly ruled that  
29 the confederated tribes of the Warm Springs Reservation was not an

1 employer for purposes of the NLRA. The court held, however, that  
2 a business operated by tribal corporation under a Section 477  
3 charter and which existed independently and separately from the  
4 tribal government was covered by the NLRA. We offer that language  
5 as a clarification.

6 COMMISSIONER WILHELM: Madam Chair, both of the  
7 proposed changes on this page I object to. This language was --  
8 both of these sections were negotiated with excruciating care by  
9 various of us within the subcommittee. This is compromised  
10 language that was arrived at, and I would ask  
11 the --

12 CHAIRPERSON JAMES: Hearing an objection, I'll have to  
13 ask for a motion.

14 COMMISSIONER WILHELM: Thank you.

15 CHAIRPERSON JAMES: Is there a motion?

16 COMMISSIONER LOESCHER: Madam Chair, I was going to  
17 drop the second change on the page dealing with Foxwoods, but I  
18 was requesting consideration for clarification on the Fort Apache  
19 Timber case, so I move that that business on Fort Apache, the  
20 first paragraph.

21 CHAIRPERSON JAMES: Just the first paragraph? Is there  
22 a second for that? Hearing none, the motion dies. Page 26?

23 COMMISSIONER LOESCHER: Madam Chair --

24 COMMISSIONER WILHELM: Does that mean that we go from  
25 the bottom?

26 CHAIRPERSON JAMES: No, that was deleted.

27 COMMISSIONER WILHELM: Bob said he was leaving that in.

28 COMMISSIONER McCARTHY: That remains.

29 COMMISSIONER LOESCHER: Madam Chair, I'm on page 26.

1 What we're trying to do is strike the language here which is a  
2 misstatement of the law that federal tax obligations of Indian  
3 individual tribal members pay is well settle law. Many taxes  
4 arise in situations where the state is attempting to tax a tribe,  
5 its resources or enterprises.

6 COMMISSIONER LANNI: So it should be many, not may.

7 COMMISSIONER LOESCHER: Yes. So the language in the  
8 first paragraph, I'd like to recommend that we drop the words,  
9 "The disputes generally center around which taxes tribal members  
10 are liable for and which they are not."

11 COMMISSIONER LEONE: Bob's quite right. The dispute  
12 really is about whether the enterprise ought to be taxed by states  
13 or somebody else, so I think Bob's point is well taken.

14 CHAIRPERSON JAMES: Hearing no objection. Page 27?

15 COMMISSIONER LOESCHER: Madam Chair -- that was no  
16 objection? Madam Chair, I had changes on page 27, but I have  
17 decided not to advance those. Then Chair --

18 COMMISSIONER BIBLE: Did you do that other change on  
19 page 26 where the income is taxed on ordinary income?

20 CHAIRPERSON JAMES: No. Thank you, Bill. I did skip  
21 that.

22 COMMISSIONER BIBLE: Is there some reason why it would  
23 not be ordinary income? Is somebody trying to tax that somewhat  
24 differently?

25 COMMISSIONER LOESCHER: I'm sorry, I missed one.

26 COMMISSIONER BIBLE: I think you guys would want to say  
27 taxed at the capital gains rate or something like that.

28 COMMISSIONER LOESCHER: Madam Chair, I'm sorry --

29 CHAIRPERSON JAMES: Page 27.

1                   COMMISSIONER LOESCHER: Okay, you have no objection,  
2 Madam Chair, to that one? Thank you very much. And I passed on  
3 27.

4                   CHAIRPERSON JAMES: Page 27 has been passed.

5                   COMMISSIONER LOESCHER: I'm on page 20, Madam Chair.  
6 We offer -- we'd like to reinsert what the Indian gambling  
7 subcommittee had language put in earlier drafts, a recommendation  
8 concerning tribal mega-bingos. As you remember in our  
9 recommendations of yesterday, we had made sure that in the  
10 internet communications that the bingo business could use  
11 telephone lines and what-not. This language here would clarify  
12 that and we would like -- I would like to offer that as an  
13 amendment to the narrative.

14                  COMMISSIONER WILHELM: Bob is right that this language  
15 supports a recommendation we all agreed upon and we did discuss  
16 this. At one point it was in our draft. Subject to Dr. Moore, I  
17 don't see any objection to it.

18                  COMMISSIONER MOORE: It doesn't give them any more than  
19 they've got now. This is the existing situation and that's what  
20 we agreed on.

21                  CHAIRPERSON JAMES: Commissioner Dobson?

22                  COMMISSIONER DOBSON: Commissioner Loescher, what are  
23 the numbers in the last four lines there? What do those  
24 represent? Are those section numbers, 1303, 1307?

25                  COMMISSIONER LOESCHER: Madam Chair, those are USC  
26 section numbers.

27                  COMMISSIONER LEONE: We're only talking about the first  
28 paragraph, are we not? Are we talking about both paragraphs?

29                  COMMISSIONER LOESCHER: I was offering both paragraphs.

1           COMMISSIONER LEONE: The first paragraph looks okay.

2           COMMISSIONER DOBSON: We need to clarify those numbers  
3 down there, I think.

4           COMMISSIONER LOESCHER: Madam Chair, we would recommend  
5 just putting USC in front of those 1303-1307, and then in front of  
6 1852 through 1955.

7           CHAIRPERSON JAMES: That's fine.

8           COMMISSIONER LOESCHER: And 1961.

9           COMMISSIONER LEONE: Is this somehow part of the  
10 committee record and not part of the law?

11          COMMISSIONER WILHELM: He's making a reference to the  
12 Senate committee.

13          COMMISSIONER LOESCHER: Madam Chair, it's part of the  
14 Senate committee record.

15          COMMISSIONER DOBSON: And we're endorsing that record  
16 by putting this in here?

17          CHAIRPERSON JAMES: That what he's suggesting.

18          COMMISSIONER LOESCHER: I'm assuming we're not  
19 endorsing anything in these things. We're simply saying this was  
20 --

21          COMMISSIONER DOBSON: It could be construed to say that  
22 the National Gambling Impact Study Commission made a finding that.

23          COMMISSIONER LEONE: It said the committee went on to  
24 list the number of statutes, and I'm assuming that that  
25 observation is just a report of what the committee did. I'm being  
26 quiet here because I'm assuming that that's all we're doing. That  
27 the way I read the language.

28          COMMISSIONER MOORE: Agreeing to the first paragraph  
29 and deleting the second.

1 CHAIRPERSON JAMES: Mr. Loescher, would that be  
2 acceptable?

3 COMMISSIONER LOESCHER: Madam Chair, I would accept  
4 that.

5 CHAIRPERSON JAMES: Hearing no objection, page 29?

6 COMMISSIONER LOESCHER: Madam Chair, we get to the end  
7 except for the little amendment that came in from -- regarding the  
8 -- Madam Chair, I have -- I have -- yesterday we dropped a  
9 provision dealing with off-reservation gaming, and I have no  
10 language -- I have no objection to the existing language to be in  
11 the narrative, so John Wilhelm indicated to me this morning he  
12 would like to see the narrative in there, so I would recede from  
13 my motion to strike.

14 CHAIRPERSON JAMES: That take us to page 21. We're not  
15 done, yet.

16 COMMISSIONER LOESCHER: Madam Chair, going back  
17 to --

18 CHAIRPERSON JAMES: Let me just verify that we're all  
19 on the same page here.

20 COMMISSIONER LOESCHER: It's not handwritten, it's  
21 typewritten, and it's on the --

22 CHAIRPERSON JAMES: Let's go back and see it again. It  
23 looks like what happened -- can you hold just a second? It looks  
24 like what happened is when they copied it they copied page 20  
25 through 31 twice. So we've actually done that. Now we have to go  
26 back and do the smaller edits that were at the front of your  
27 packages when we got started. They may not still be relevant.

28 COMMISSIONER WILHELM: Three of those were from Jim and  
29 Bob had a handwritten one, but -- the cover sheet's handwritten, I

1 see.

2 CHAIRPERSON JAMES: The cover sheet from his was  
3 handwritten.

4 COMMISSIONER LOESCHER: Madam Chair, if I could, this  
5 is amendment which is to be inserted. On my handwritten -- I  
6 mean, on my mark-up draft it's on page 19. It would be inserted  
7 as a second paragraph on page 19, but let me read the language.

8 CHAIRPERSON JAMES: Excuse me just a minute.

9 Commissioner Loescher, do other commissioners have that language  
10 in front of them?

11 COMMISSIONER WILHELM: I think they do. If you look at  
12 Chapter 6, page nine, line 14, I think is -- and then it's typed.  
13 It says, "Insert on page nine." You said 19, it says nine here.

14 COMMISSIONER LOESCHER: It's nine on that paper, but --  
15 well, it doesn't matter.

16 COMMISSIONER WILHELM: Bob, it is page nine in the  
17 committee draft.

18 COMMISSIONER LOESCHER: I would like to make an  
19 amendment to page nine and add this -- add this draft. Basically,  
20 Madam Chair, it reads -- it has to do with the tribal gaming  
21 commissions and we're trying to highlight them in two paragraphs.

22

23 "The primary regulators of tribal government  
24 gaming are tribal gaming commissions with front  
25 line day-to-day responsibilities for monitoring  
26 the gaming operations. As noted by the NIGC's  
27 deputy counsel, the tribes generally serve as  
28 the primary regulators for gaming. They're the  
29 ones on the ground. They're the ones that are

1       there 24 hours a day. On occasion states are  
2       there 24 hours a day, too, if the tribal state  
3       compact provides for it, but by and large it is  
4       the tribes who are doing the primary regulating  
5       of Indian gaming."

6           And then the second paragraph,

7           "According to the National Indian Gaming  
8       Association, tribal governments spend in excess  
9       of \$100 million per year on regulation to  
10       oversee about 170 Class III or casino style  
11       facilities. For example, Oneida Indian Nation  
12       of New York spends in excess of \$8 million per  
13       year to regulate it's one casino."

14           Both of those things are footnoted here. All these  
15       cites are footnoted. I'd like to move this amendment, Madam  
16       Chair.

17           CHAIRPERSON JAMES: Is there a second?

18           COMMISSIONER WILHELM: I would second it. The only  
19       question I would have is that do we have cites that would indicate  
20       besides the cites that are here that based upon a person's  
21       testimony this is the case? Normally when we have things of this  
22       nature we go to other bodies that maybe are more independent that  
23       would provide this information. That the concern I would have.

24           COMMISSIONER BIBLE: And I think the practice varies.  
25       In some states, for instance in Nevada where the state has almost  
26       sole and primary jurisdiction, I don't even believe there are  
27       tribal gaming regulators. They may have adopted an ordinance, but  
28       I'm not familiar with those particular positions.

29           COMMISSIONER WILHELM: And I think we need to know

1 again if you're dealing with a state you know what the items are  
2 that are included in regulatory costs. I don't know what the  
3 regulatory costs in our area include. Is that available, Bob? Do  
4 you have that information available that's something more  
5 independent, shall we say, than just the comments --

6 COMMISSIONER BIBLE: And I think that's going to vary  
7 no matter what kind of regulatory cost number you kick out. For  
8 instance, in the tribal gaming regulatory costs, they probably  
9 have the cost of surveillance, which may not be a cost in Nevada  
10 where you don't have a regulatory cost associated with the agency  
11 to do -- but it's a cost to the licensee.

12 COMMISSIONER WILHELM: That's what I'm saying. I'm not  
13 so sure it would be concurring.

14 COMMISSIONER LOESCHER: Madam Chair, then I would  
15 propose to drop the second paragraph and just go with the first.

16 CHAIRPERSON JAMES: With that and hearing no objection,  
17 it passes. We have two remaining ones. Three, sorry.

18 COMMISSIONER DOBSON: Okay. Again going -- my  
19 references here to the first document which is no longer relevant,  
20 so the staff is going to have -- I understand that in terms of  
21 finding this, the pages are different. Page 16 of the original  
22 document, second paragraph, last line. First let me read it and  
23 then I'll explain something. The insert there is

24 "In many cases the tribal casinos employ only  
25 a small percentage of Native Americans. In  
26 California, for instance, 90 percent of casino  
27 jobs are held by non-Indians. In Minnesota and  
28 New Mexico the percentage of casino jobs held  
29 by non-Indians is 75 percent and 60 percent

1 respectively."

2 Now, you are, John, your organization is listed among  
3 the references here, and Commissioner Wilhelm tells me that this  
4 now appears in another place in the document?

5 COMMISSIONER WILHELM: It's statistics that we all, I  
6 think, agreed on and accepted appear on page 19 of this chapter,  
7 and also on page 10 of People and Places. So I don't believe it's  
8 necessary to add them again. There's some minor differences in  
9 the percentages, but I believe this issue has been fully  
10 addressed, in particular on page 19 of this chapter.

11 COMMISSIONER DOBSON: Madam Chair, may we table this  
12 while we look through the --

13 CHAIRPERSON JAMES: The other cites?

14 COMMISSIONER DOBSON: -- source he's talking about.

15 COMMISSIONER LEONE: Just so I understand what  
16 somebody's trying to say, a tribal casino could employ 100 percent  
17 of the tribal members and not have enough tribal members available  
18 to fill all of those jobs, so they have to hire another 90 percent  
19 of non-tribal members.

20 COMMISSIONER DOBSON: But we have testimony in other  
21 places that 50 percent of Native Americans are unemployed.

22 COMMISSIONER MOORE: I have concern also on Jim's  
23 point. We went about -- I don't understand why there's, other  
24 than maybe they'd be like me and some of my kids, they just don't  
25 like to work, why there would be any unemployed Native Americans  
26 on a lot of reservations. There's large reservations and large  
27 number of people, of course I can understand that. You can't put  
28 them to work if there's not a job, but I think that's what Jim is  
29 getting at. Why is that?

1                   COMMISSIONER WILHELM: With all due respect, Dr. Moore,  
2 we're not going to reopen and solve that subject today. Our  
3 report deals with the statistical issue that is raised in Jim's  
4 thing. On page 19 it says, "Although tribal members make up a  
5 majority of tribal casino employees in a few smaller rural tribal  
6 casinos, the great majority of tribal casino employees are not  
7 Native American. For example, in California it --"

8                   COMMISSIONER DOBSON: May I interrupt? Ron Reno tells  
9 me that we do have this point covered and we will delete this one.  
10 We also delete the next one, page 17, and we go to the third and  
11 final one. It's also page 17, first paragraph, line two. This is  
12 a quote of the -- from the chairman of the Hopi tribe. He  
13 testified before this commission, testimony of Wayne Tayler,  
14 Tempe, Arizona, July 3rd, 1998. Why don't I just let everybody  
15 read it instead of reading it to them? This is a motion.

16                  COMMISSIONER WILHELM: I believe for the record that's  
17 the Hopi tribe, H-o-p-i.

18                  COMMISSIONER DOBSON: The last word in the paragraph is  
19 misspelled, too. It should be respective instead of effective.

20                  COMMISSIONER WILHELM: Jim, you say this is a quote  
21 from an individual that you have?

22                  COMMISSIONER DOBSON: It is a quote from testimony  
23 before the Commission.

24                  COMMISSIONER LANNI: I think it would be helpful if you  
25 actually put the name of the person. You put down -- cite NRC,  
26 page four. One might assume that that was a determination of the  
27 NRC.

28                  COMMISSIONER DOBSON: Doesn't that say that at the  
29 bottom? Testimony of Wayne Taylor?

1 CHAIRPERSON JAMES: I was there with you, Terry.

2 COMMISSIONER DOBSON: It indicates the name --

3 COMMISSIONER LANNI: You dropped that one.

4 COMMISSIONER DOBSON: I'm sorry?

5 COMMISSIONER LANNI: You dropped the one that he was  
6 talking about?

7 COMMISSIONER DOBSON: Yes.

8 CHAIRPERSON JAMES: Jim, you've offered that as a  
9 motion. Is there a second?

10 COMMISSIONER LOESCHER: I thought we were doing these  
11 without objection. I don't think there is an objection to this.

12 CHAIRPERSON JAMES: There is no objection. Hearing  
13 none.

14 COMMISSIONER DOBSON: Is there a motion that we have  
15 lunch?

16 CHAIRPERSON JAMES: That brings us to the end of that.  
17 We are finished with that.

18 COMMISSIONER LOESCHER: Madam Chair?

19 CHAIRPERSON JAMES: Commissioner Loescher?

20 COMMISSIONER LOESCHER: I'd like to express my  
21 appreciation to the Commission for the consideration that we've  
22 received here. Thank you.

23 CHAIRPERSON JAMES: You are more than welcome. Thank  
24 you, Commissioner Loescher, for all of your hard work and for the  
25 subcommittee members. We will reconvene in one hour.