

1 CHAIR JAMES: Good morning. Rick, I want to welcome
2 you here, you've been an integral part of this process from the
3 very beginning, and we are most anxious to hear from you this
4 morning.

5 I would remind everyone that we are looking, Rick if
6 you would summarize your comments, and what we want to most hear
7 from you this morning is recommendations that you would like to
8 see this Commission consider.

9 And with that, I'm just going to go ahead and ask you
10 to give about 10 or 15 minutes of remarks, and we will go right
11 from that into discussion.

12 MR. HILL: Thank you. You have my written testimony,
13 and the full testimony will be entered into the record.

14 CHAIR JAMES: Absolutely.

15 MR. HILL: I will summarize my remarks here.

16 Madam Chair and Commissioners, I'm honored to be here
17 today at your invitation to provide you and the Commissioners
18 with our final recommendations. I'm also both honored and
19 humbled that the 168 Indian Nations, who are the National Indian
20 Gaming Associations, have entrusted me with this important
21 responsibility to be with you here today.

22 I think it is important to look back and to understand
23 why we are all here today. In this endeavor I humbly mention
24 that I am as qualified as any member of this Commission to
25 discuss the reason this Commission came into existence.

26 The National Indian Gaming Association was there at the
27 beginning of the legislative process related to this Commission.

28 We represented the Indian Nations in testifying before
29 the Senate Governmental Affairs Committee, the House Judiciary

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1 Committee, as well as the Senate Indian Affairs Committee, and
2 the House Research's Subcommittee on Native Americans.

3 We worked with those Congressional Committees, and
4 those staffs. NIGA met with former Senator Simon, who is the
5 original author of the legislation creating this Commission. He
6 was, and he is, a good friend, and I have told this story before.

7 The first batch of this legislation was bad, it was
8 written without a thorough knowledge and understanding of gaming.
9 It assumed gaming was wrong, it assumed that Indian gaming was
10 wrong.

11 We asked our good friend Senator Simon, who was also a
12 member of the Senate Indian Affairs Committee, how can Indian
13 Nations be wrong for trying to find a better way of life for our
14 people. This is the path that we have been left with, this
15 gaming.

16 Indian Nations have taken their gaming revenues and
17 have made successes. There is nothing wrong with making a better
18 life for our people.

19 Indian Nations, though Indian gaming brought jobs,
20 they never existed before. We hired both Indian and non-Indian
21 people, so that everyone could share in the benefits. We made
22 our governments better, we made our communities better, we made
23 our societies better, and for the first time we put a plentiful
24 amount of food on our family's tables, on the table for our
25 families.

26 Senator Simon, and the Congressional Committee, and
27 Staffs, went to work. They took our advice, and our advice was
28 simple. This Commission has to tell the whole story, this

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1 Commission has to be fair, this Commission has to be equitable,
2 this Commission has to be unbiased.

3 And this is an important point, this Commission is
4 unfair, it is -- if it is inequitable, this Commission is biased,
5 this Commission report will mean nothing.

6 Regulation: Indian gaming is the most regulated gaming
7 in the United States, and probably the world. Indian gaming
8 regulation is a complex mix of jurisdictions concerned with
9 regulation. The federal government, the Indian Nations
10 government, and through compacts, the state government.

11 Federal regulation of Indian gaming is not only
12 carried out by the National Indian Gaming Commission, but is also
13 included in the scope of duties of the Department of Justice, and
14 the many offices of U.S. Attorneys, the Department of the
15 Interior, the Bureau of Indian Affairs, the Department of
16 Treasury, and the Internal Revenue Service, and the Financial
17 Crime Enforcement network.

18 And I may add that the National Indian Gaming
19 Commission also issued this minimum internal control standards on
20 January the 5th, 1999, and the tribes have to be in compliance by
21 August 4th of this year.

22 The Seminole problem. In our opinion the states are
23 breaking federal law. The Seminole case removed the means to
24 bring states into Federal Court to enforce the Indian Gaming
25 Regulatory Act, but it did not remove the Indian Gaming
26 Regulatory Act requirements that states negotiate in good faith.

27 Without the means to enforce states can break federal
28 law without consequences. This Commission should advocate

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1 correct illegal situations, not to advocate for their
2 continuance. Secretarial procedures should be supported.

3 Replacement funding: The Commission did not receive as
4 much information on this topic, as it ideally might have. There
5 is simply no governmental replacement for gaming funds, or the
6 jobs created by gaming, and associated businesses. And it would
7 add up to the tribal debt to set up these facilities, as well.

8 Taxation: Governments do not tax other governments.
9 And I think some people think that we have some kind of special
10 privilege, but they don't recognize us as nations who govern an
11 activity. In fact, in essence we are governments similar to
12 states in terms of providing governance, and providing a better
13 life for our people, in services and what not.

14 Besides Indian gaming is already taxed 100percent by
15 the Indian Nations. Indian gaming revenues is limited by the
16 Federal Indian Gaming Regulatory Statute to the very few
17 purposes, including spending for tribal governments, local
18 non-Indian governments, economic development, charities, and
19 social community programs.

20 According to the recent President's Race Relations
21 Report, Indian Nations remain the poorest of the poor in the
22 United States. Taxing Indian gaming revenues, besides forcing
23 the closure of substantial number of Indian gaming facilities,
24 would remove funding from the poorest, and the neediest, and send
25 it away from the local community to Washington, D.C. This is a
26 poor public policy.

27 Employment rights: A statement was made regarding
28 Indian Nation's employment rights. That is not just about
29 providing jobs. Indian Nations agree. The record is clear, and

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1 shows Indian Nations provide good jobs, often with wages in
2 excess of the federal minimum wage, health care, retirement,
3 burial insurance, and other fringe benefits.

4 Payments to the state: If organized crime were to come
5 to a tribe and say, give me a percent a year I won't let you run
6 your business, it would be called extortion. When the state
7 governor does the same thing, the state calls it negotiation.

8 The Indian Gaming Regulatory Act says that making
9 payments to state other than the cost of regulation cannot be a
10 condition of compacting. 25USC25D4. Indian Nations are willing
11 to pay reasonable regulatory costs to states. Anything further
12 is an impermissible payoff.

13 Pathological or compulsive gambling: NIGA has
14 reviewed, and generally support, their commendations of the
15 National Council on Problem Gambling. And I think the Committee
16 hearings chaired by Dr. Moore, it showed that the vast
17 differences between the commercial, and what the Indian Nations
18 are doing relative to compulsive gaming.

19 And I think it demonstrated the commitment that the
20 Nations have in terms of addressing this issue, because we
21 understand what social issues are, and problems with individuals,
22 and we try to address that appropriately, and I think we have
23 demonstrated that through the testimony, and the record will also
24 show that.

25 Morality of gaming: There are individuals who would
26 shut down all gaming as immoral. We respond that poverty is
27 immoral, hunger is immoral, hopelessness is immoral, disease is
28 immoral.

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1 For Indian Nations gaming is a means to an end,
2 immorality is heaped on us through the history of the United
3 States. The unemployment rate in Indian country today is 50
4 percent. Half of Indian country is without work.

5 These are figures more associated with the third world
6 countries. Indian Nations are diversifying from gaming.
7 However, gaming is in a very real sense, today, is a primary hope
8 for many Indian Nations to succeed.

9 I raise this history and these issues for several
10 reasons. First to remind this Commission that you are a large
11 part, but a single part, of a process that has been going on for
12 several years.

13 Next summer your report will be completed, and you
14 Commissioners will all be getting on with your lives. I, on the
15 other hand, will be sitting in front of a Senate or a House
16 Committee interpreting for them why this Commission reached the
17 conclusions it has.

18 NIGA testified before this Commission five times. NIGA
19 provided this Commission a study plan to make the path to
20 understand Indian gaming easier. NIGA also was available, and
21 worked with this Commission for two years to make sure that the
22 Commissioners and their staff always had a place to go for
23 questions.

24 There are several witnesses against Indian gaming, or
25 Indian Nations. Every single one of those issues was responded
26 to in testimony. The record is clear in this matter.

27 I must tell you, in all truthfulness, that Indian
28 Nations have lost a great deal of hope in this Commission. In
29 spite of the more than 100 tribal leaders and representatives

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1 testifying to the benefits, and the strict regulation of tribal
2 governmental gaming, we were not convinced that you have received
3 this message.

4 Instead, Indian Nations are particularly concerned with
5 unfounded allegations of Indian gaming as unregulated and
6 untaxed. The Commission's decision, without hesitation, to
7 intervene in the process of a federal department with authority
8 and responsibility to act on procedures for alternative
9 compacting, at the same time the Commission opted not to ask
10 Congress to refrain from acting on Internet gaming legislation,
11 and await the Commission's report.

12 Madam Chair, I remain hopeful. I remember clearly your
13 remarks during the business meeting of the Commission's in Las
14 Vegas on November 10th, 1998, when you said that this Commission
15 was smart enough when witnesses, and even Commissioners were
16 expressing an opinion, or stating a fact.

17 You also mentioned that most decisions, including
18 issues of taxation and regulation should be made at a level of
19 government closest to the people, at the local and the state
20 level.

21 We firmly believe Indian Nations should be included in
22 consideration of this statement. All the rhetoric, and all of
23 those who have charged that Indian gaming is unregulated, not a
24 single case of unregulated Indian gaming has been documented as
25 fact.

26 So, in this case, it is incumbent upon this Commission
27 to dismiss these baseless charges as opinion, and nothing more.
28 What is said after that is up to this Commission.

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1 I urge you, in the strongest manner, to get it right,
2 and I urge you to resist personal and professional prejudice, and
3 complete your task fairly, as you are directed to do by statute,
4 that Indian Nations and NIGA helped to write.

5 I urge you to do your job well. I want to thank the
6 Commissioners for all their work on this thankless and difficult
7 task. Attached you will find our final recommendations culled
8 from the many hours of testimony submitted to the Commission over
9 the past two years. Please consider these recommendations an
10 addendum to the NIGA testimony.

11 If there are any further questions or comments, NIGA
12 is prepared to respond. Thank you.

13 CHAIR JAMES: Please?.

14 COMMISSIONER WILHELM: Both a question and also a
15 request for Mr. Hill. With respect to your statement about
16 payments to states, I appreciate your position here, and I must
17 confess that I previously, prior to this statement, didn't fully
18 understand your position on this.

19 I understood that the gaming tribes certainly believe
20 that a state should not be permitted to require payments to
21 states as a condition of a compact; that much I understood.

22 Your statement says that, if I'm reading it right, and
23 this is what I would like you to clarify for me, or explain to me
24 a little bit, your statement says that anything beyond paying
25 reasonable regulatory costs to the state is an impermissible
26 payoff.

27 Does that mean, for example, that payments that the
28 Mashantucket Pequats make to the State of Connecticut, pursuant
29 to their governmental agreements is an impermissible payoff?.

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1 MR. HILL: I wouldn't include the Pequats in that
2 segment, because there is also a section under that law, I think,
3 that provides for a voluntary payment to a state. But I think
4 the negotiation there was for a term that is loosely used,
5 oftentimes as exclusivity.

6 COMMISSIONER WILHELM: Sure, it was a trade-off between
7 exclusivity and the payment.

8 MR. HILL: But in other instances, where there are
9 renegotiations, where governors want to include hunting, and
10 fishing, and treaty rights, and also ask for a substantial amount
11 of revenue because they didn't include that in the first
12 negotiation, as a condition for the governor's signature on a
13 compact, on renewal instances, for example, my tribe was a good
14 example of that.

15 Our government was put in a position, it was either,
16 right up to the ninth hour on the renewal notice, and whether or
17 not the tribe was going to agree to those conditions or not, and
18 receive no cooperation in that regard, and we were forced to pay
19 over 25 million over a five year period of time..

20 I think that is a good example of how this is evolving
21 on these re-negotiations. And I think that the term exclusivity
22 doesn't apply there, because when you go into a convenience store
23 in Wisconsin, you can, you know, play a slot machine. You go
24 into a tavern, you can play a slot machine. So the term
25 exclusivity isn't really appropriate in that instance.

26 So I think in that instance, that the tribe, my
27 government was really forced to either layoff 4,000 people and
28 assume a debt load that we couldn't pay if we didn't continue
29 with gaming.

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1 So, you know, being -- the decision that we had to
2 make, we signed the compact, reluctantly. And then that was
3 appealed to the Secretary of the Interior, to make applicable
4 this law, as it is written, specifically. It clearly says it is
5 only for regulatory costs, and for these other items it
6 mentioned, and it doesn't move on further that says that this
7 methodology could be used to complete the compact.

8 So we really take issue with that.

9 COMMISSIONER WILHELM: I'm not trying to put words in
10 your mouth, I'm just trying to understand this. Would it be your
11 position, then, that payments to states by tribes as a part of a
12 compact are okay if they are fairly arrived at, or fairly
13 bargained, but not okay if they are not fairly bargained?

14 MR. HILL: I think it is above and beyond what the law
15 requires, and if a sovereign nation chooses to enter into a
16 compact with that exception, then it would be their decision to
17 make. I'm saying what the law says, as it has been written.

18 These dollars are for tribal governments, to build
19 strong tribal governments, self-sufficiency, and economic
20 development. It is not for people who don't do any heavy
21 lifting, you know? And to be held at bay, or to be held in a
22 manner that if you don't do this, you don't get that, I don't
23 think that is appropriate quid pro quo for doing a gaming
24 compact.

25 COMMISSIONER WILHELM: There is a real problem which I
26 certainly am familiar with, in my own work with the good faith
27 model of bargaining which is in IGRA, which was lifted from the
28 Labor Relations Law, because it sounds nice, but at the end of
29 the day, in labor relations, and I believe in your context as

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1 well, it is an exercise of whose got the most strength, rather
2 than something about what would really constitute good faith.
3 Just an observation.

4 With regard to, there is a reference in your testimony
5 today to 400,000 jobs being created by Indian gaming. I want to
6 ask you, as I asked Mr.Christiensen yesterday when he was
7 testifying about gaming.

8 It would be helpful, and if this is repetitive, and it
9 is something that is already in their cord, I apologize in
10 advance. But I think it would be helpful to the Indian Gambling
11 Subcommittee if you could provide a little documentation of that
12 number, because the Indian Gambling Subcommittee, I think, is
13 clearly unanimous on the proposition that the -- that Indian
14 gaming has been extremely positive in terms of economic
15 development on reservations.

16 And part of that, although not -- part of that, of
17 course, is tribal governmental revenue, but part of it is jobs..

18 So if you could provide us with a little bit of
19 documentation for that number, that would be very helpful.

20 MR. HILL: I would be happy to, Commissioner.

21 COMMISSIONER WILHELM: Thank you.

22 COMMISSIONER BIBLE: Your statement indicates that the
23 NIGC recently increased their annual appropriation by some four
24 times. Do you feel that they are adequately funded now?

25 MR. HILL: I think so. I mean, I don't know.

26 COMMISSIONER BIBLE: -- comments in thereabout
27 regulation, and make observations. Do you feel adequately
28 funded?

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1 MR. HILL: Well, I'm not trying to pick an argument
2 with Mr. Bible, I'm just saying that he would be more responsive
3 in terms of their budget, and the control of their budget, the
4 many people they've had in the field. I know they have had some
5 field offices established with that increase to provide moreover
6 sight in specific regions.

7 I think what is ultimately missing, and misunderstood,
8 and sometimes not appreciated, is the fact that we are
9 governments who regulate ourselves. And with that layer, and that
10 is in compliance with the Indian Gaming Regulatory Act that the
11 tribes underclass II gaming are the front runners, front running
12 type of that.

13 So I think it is always misunderstood that when it is
14 recited -- I mean, I've heard a lot of testimony that would say
15 that the Commission is inadequately staffed and under funded,
16 over and over again. And I think that they made a proposal to
17 the tribes, and the tribes, under a reasonable assessment for
18 regulatory purposes have agreed to those assessments.

19 COMMISSIONER BIBLE: You think they are inadequately
20 funded in the past? MR. HILL: Well, I think that the
21 federal government has a responsibility here, as well. You know,
22 they have created a federal Commission that is funded by the
23 Indians. This isn't the Indian regulatory body, it is a federal
24 body. And I think that the federal government has a
25 responsibility that they have neglected to fulfill.

26 So I think the tribes have picked up that end of the
27 log and funded it to the level that they have requested, and
28 which was reviewed by OMB, and whoever else has to review those

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1 particular budgets, that was advocated by the Chairman, and we
2 have complied.

3 So I think it remains to be see, Mr.Bible, whether or
4 not they are going to come back and ask for further assessments,
5 or whether or not the federal government is going to carry their
6 end of the log and supplement their budget accordingly.

7 I would think the credit should go to the Indian
8 Nations for doing an admirable job. And I think that is never
9 appreciated enough.

10 COMMISSIONER BIBLE: So in the three-tier structure,
11 though, you only represent that the tribes are more heavily
12 regulated than any other gaming entity, because there is a
13 three-tiered structure; the tribal governments, the state
14 governments, and the federal government.

15 You have no position as to whether the federal
16 government in the past has been adequately or inadequately funded
17 to do its job?

18 MR. HILL: I think the record is clear that they have
19 been inadequately funded. There is no question about that, in
20 terms of the manpower that is necessary to fulfill their
21 responsibilities under the law..

22 The other thing is that when these compacts are
23 negotiated, they are negotiated for a setoff regulations for the
24 state. So I think some credit should go to the state in those
25 negotiations for whatever set of regulations they finally arrive
26 with, that would be adequate.

27 Because, you know, who has the most to lose in this
28 deal? It is the Indians. You know, if they are not running fair
29 and clean operations, and they are regulated appropriately,

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1 people are going to vote with their feet, they are not going to
2 come into our facilities.

3 So I think that the tribes have really bent over
4 backwards and done what they can. Certainly it isn't perfect, it
5 is not a perfect world.

6 And I think with the issuance of the minimum standards
7 that the Commission has issued, really enhances a standard that
8 everyone seems to be advocating for, that there would be a
9 standard and methodology that the tribes would be in compliance
10 with.

11 And I think a lot of that was borrowed from what the
12 tribes have put together, far before that.

13 COMMISSIONER BIBLE: -- understanding was kind of the
14 catalyst that --

15 MR. HILL: We had a document that was a standard, you
16 know, far before they adopted the standard. We don't have a
17 universal fix, but we had to come up with a document and
18 regulations that would fit a small casino, a medium sized casino,
19 and a large casino, and would be cost effective for
20 implementation.

21 And I think we have done a decent job, and that
22 document is constantly under review.

23 COMMISSIONER BIBLE: But up until the adoption they
24 were voluntary?

25 MR. HILL: They certainly were. But I'm saying, again,
26 I think if you would examine the linear research people, finish
27 their job, I think that the compacts would demonstrate that there
28 is probably a consistently higher standard than the minimum.

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1 COMMISSIONER BIBLE: But if you take your arguments on
2 the three levels of regulatory approach, and you apply it to some
3 jurisdictions, I can think of California being one, New Mexico
4 being one, until the recent compacting processes, the state of
5 Washington where, as you know, we heard that we do have a number
6 of tribes operating up there without compacts.

7 You have no state involvement, you have a federal
8 commission that just recently increased their funding by four
9 times, which at least to me implies that they are inadequately
10 funded to do their job previously.

11 What is the regulatory approach, other than
12 self-regulation? So you would then make the case that the
13 self-regulation is really the strongest component of the three-
14 part system?

15 MR. HILL: I think it is one of the strongest
16 components, in cooperation with others. And I think the instance
17 that you mentioned about uncompacted tribes, I think if the U.S.
18 Attorney has the authority to come and shut those facilities down
19 he would exercise his authority to do such under the Court order,
20 and whatever legal dispositions there are occurring.

21 They don't see fit to do that, so I think that it is
22 beyond the jurisdiction --

23 COMMISSIONER BIBLE: They did up in Washington, did
24 they not?

25 MR. HILL: Well, it is beyond the jurisdiction of the
26 tribe alone just to run an operation without somebody having some
27 oversight.

28 CHAIR JAMES: Let me ask a question for the majority of
29 the people who probably don't have as in-depth of knowledge of

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1 this particular subject areas, you all obviously do, Bill and
2 Rick.

3 If I were to take the set of regulations that apply to
4 casinos in Las Vegas, the federal, state, local, and I put them
5 right here, every applicable regulation, and then I took every
6 applicable regulation that applied to, pick one, any Indian
7 gaming facility, and put them right here, and did a cross
8 comparison, what would I find?

9 MR. HILL: Me?

10 CHAIR JAMES: I would like to hear from both -- I mean,
11 really, what would I find if I did this?

12 COMMISSIONER BIBLE: From my perspective I think it
13 depends upon which jurisdiction, or which tribal jurisdiction --

14 CHAIR JAMES: Pick one, I don't care.

15 COMMISSIONER BIBLE: -- you compare the regulations to.
16 They just recently adopted minimum internal control standards, at
17 least at the federal level, and made it applicable to tribal
18 governments.

19 That at least tells me that for 10 years we've been
20 operating without mandated internal control standards. And I
21 think that Mr. Hill just testified that they have been voluntary
22 up until this time period, which voluntary compliance is probably
23 a hit and miss affair, you don't have a third party, nor do you
24 have an independent party that is verifying those particular
25 items..

26 If you go through the regulations you probably find a
27 great deal of similarities, but I suspect that it is probably a
28 lot of differences in terms of the applicability, and how they

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1 are applied, and the people that are applying them, both in terms
2 of skill levels and independence.

3 CHAIR JAMES: Where are we on our ACIR report?

4 DR. KELLY: Yes, Madam Chair. That very question is
5 one of the prime tasks that we gave ACIR, and when they give us
6 their report in March, it will include a comparison of the
7 regulatory oversight for both the Indian facilities, and the
8 non-Indian gaming facilities.

9 CHAIR JAMES: So that is March?

10 DR. KELLY: March.

11 CHAIR JAMES: It is difficult --

12 COMMISSIONER BIBLE: And Mr. Hill's organization does
13 not have responsibility to a --

14 CHAIR JAMES: Right.

15 COMMISSIONER BIBLE: -- large extent, for class III
16 gaming, they are responsible for class I and class II gaming.
17 Actually these regulations in under some of the revenue sharing
18 provisions, they are contained within IGRA.

19 CHAIR JAMES: One of the reasons I think that the work
20 that ACIR is doing is so important is because for those who are
21 trying to follow this issue, you hear on one hand it is so
22 under-regulated, and then you hear on the other hand it is
23 probably the most regulated, and it is very important to be able
24 to sift through all of that, for us, I think as a Commission, and
25 come to some conclusions.

26 COMMISSIONER BIBLE: And by and large, at least in my
27 experience, and I have dealt with a number of tribal governments,
28 and a number of state governments, is that you are going to find
29 the same sort of thing.

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1 I think a number of the tribal governments have done a
2 very good job in regulating themselves. I particularly point to
3 the Oneida Tribe up in New York who have a very comprehensive set
4 of regulations, they have a very sophisticated application to
5 apply those regulations.

6 That is not true across the board. I think if you
7 take a look at the state governments, you are going to find some
8 states do a better job than others. I can think of those that do
9 a pretty good job, and those, at least in my opinion, that do a
10 job that is a little bit lesser quality.

11 MR. HILL: I think your question is a good question,
12 and I appreciate what Mr. Bible had to say in reference to his
13 expertise in that, and I would agree with most of his
14 observation.

15 But to say that, you know, we have borrowed from
16 Atlantic City, we have borrowed from Nevada, and we have borrowed
17 from ourselves, and we have created this document that is, you
18 know, useful to the different sizes, so the applicability of a
19 total document wouldn't be apropos like to a very small operation
20 in South Dakota, or something like that, you know?.

21 So we use what is appropriate in terms of what our
22 standards should be.

23 CHAIR JAMES: You know, I'm having a problem with
24 picking up the conversation. I think apart of it is this table
25 is very conducive to conversation, and that is what we want to
26 have. But at the same time we want to make sure that we are
27 hearing each other, so I would ask everyone can speak up.

28 COMMISSIONER MCCARTHY: Can the audience hear this
29 conversation?.

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1 CHAIR JAMES: My understanding is the audience can hear
2 far better than we can, and that the sound out there is
3 excellent. And maybe what we need is a speaker down here,
4 because you all can hear, but we can't hear.

5 MR. HILL: Is this better?.

6 CHAIR JAMES: Yes, that is much better. So I would ask
7 Commissioners and presenters to really, even though we are having
8 a conversation, to try to speak up, that would be very helpful.

9 COMMISSIONER LANNI: Mr. Hill?.

10 MR. HILL: Yes, sir?.

11 COMMISSIONER LANNI: A couple of questions. If you
12 take a look at the regulatory process at the federal level,
13 through the Department of the Interior and the appropriate
14 agencies there, fifths Commission were to reach a conclusion,
15 clearly if it were to reach a conclusion, that there would be a
16 recommendation to the Department of the Interior, the federal
17 government, possibly the Congress of the United States to find
18 some way to increase the representation in their regulatory
19 process, would that be something that your organization would
20 respond to favorably, or neutrally, or negatively? Excluding the
21 cost factor.

22 MR. HILL: Personnel for the National Gaming
23 Commission?.

24 COMMISSIONER LANNI: Exactly.

25 MR. HILL: I think the tribes would have to consider
26 that if there is -- we have never been opposed to funding a
27 regulatory system that is apropos. And we have been asked to
28 fund a certain level.

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1 Some tribes had a disagreement with that because they
2 said, we are paying three times for the same service, so we don't
3 want to pay three times for the same service that we are doing on
4 background checks, or those things of that nature.

5 So what we would ask to be done is that all these
6 things be examined so that it would be appropriate in terms of
7 what is being asked for, in terms of the regulatory system that
8 is appropriate.

9 So I think we would have to seriously look at the
10 different, you know, what we are getting for our money. I mean,
11 if we are asked to fund a federal Commission in its totality,
12 then I would also ask the federal government that they should
13 weigh in, because it is a federal agency.

14 Those are things we would have to look at. But I think
15 after you hear the testimony from Commissioner Hogan, and what
16 they are doing in terms of setting up their offices in the
17 regions to do further checks and balances on what is occurring in
18 the field, it may be enough, you know? Time will tell.

19 COMMISSIONER LANNI: The second point that I would
20 have, again, assuming this Commission reaches a conclusion that
21 it would make a recommendation that all forms of gambling in the
22 United States -- I'm used to saying gambling now, and gaming, we
23 have come along way in this Commission in that area.

24 If it were determined that it would be desirable for
25 the Native American Gambling, lotteries, pari-mutuel, non-Native
26 American casino gambling, that they would participate in some
27 kind of a program, funding program in some form, be it a portion
28 of the existing privilege tax, what have you, to deal with
29 problem in pathological gambling.

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1 Would that be something that your organization would
2 support, even if you were not required to, legally, from a
3 financial standpoint?.

4 MR. HILL: I think it is something for the industry
5 that we would examine that to, you know, cure this issue that is
6 in front of the industry.

7 COMMISSIONER LANNI: The philosophic -- .

8 MR. HILL: Philosophically, yes. And morally, I think
9 that would be appropriate, that there would be some kind of
10 organized way to deal with this issue.

11 The tribe would caucus on it, but I'm sure that you
12 would probably -- they already do this. So, once again, are we
13 going to double our costs in terms of funding a program, or is
14 there some middle ground we can reach.

15 I think it is worth serious discussion.

16 COMMISSIONER LANNI: Thank you, sir.

17 COMMISSIONER BIBLE: When you say they do it, do they
18 do it both for tribal members and non-tribal members?.

19 MR. HILL: Yes, sir.

20 COMMISSIONER BIBLE: Do you have any idea as to the
21 proportions?.

22 MR. HILL: No, I don't.

23 COMMISSIONER BIBLE: So if there is an individual who
24 is in a tribal casino, and they have some sort of problem the
25 tribe will provide treatment for them?.

26 MR. HILL: What I go back to is what our tribe does,
27 and we have bulked up our social services program, we've trained
28 our individuals in the casino, they have also trained folks at
29 the health center, and we make individual referrals.

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1 And then eventually, if it is a member, we choose to
2 work with the whole family in terms of, you know, what the
3 specific issues are, and what the imbalances are.

4 COMMISSIONER BIBLE: Does a member get treated
5 differently than a non-member?.

6 MR. HILL: There probably wouldn't be as intensive a
7 referral, but there would be some type of referral for a
8 non-member. But just because he is a member that is in the
9 community, because if you -- a lot of the people that don't live
10 in the community who come into the casino.

11 So how much help we can lend to a person who doesn't
12 reside in the community is, we do the best we can with them.

13 COMMISSIONER BIBLE: But if they seek assistance
14 through your programs they can obtain assistance?.

15 MR. HILL: Yes. I mean, it is a silent problem, and it
16 is something we don't want to hide under the rug about. You
17 know, it is a problem, we want to face it frontally, and I think
18 a number of tribes have faced the issue frontally, and it is
19 demonstrated in the record what programs are in place, and I
20 think they have done an admirable job.

21 COMMISSIONER MCCARTHY: I tell you what would really
22 help us understand these issues regarding tribal gambling. Maybe
23 I better start saying tribal gaming now. Tribal gaming and
24 non-tribal gambling is to fully answer the questionnaire that the
25 Commission mailed out, because we asked a lot of the questions,
26 with particularity, that have been raised here this morning with
27 you..

28 You know, I had the impression you are trying to
29 address fully, but there is such an enormous diversity of tribal

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1 gambling operations, and non-tribal gambling operations, that
2 only complete answers to the questionnaire that we have sent out,
3 and that questionnaire gives a number of opportunities for tribal
4 and non-tribal casinos to state just what kind of programs they
5 do have for treatment for their own employees, or for their
6 customers, you know, what efforts they make..

7 But in a number of other areas that have been asked
8 here as well. So anything you can do. And I know you are
9 already sensitive to this issue. Anything you can do to encourage
10 complete responses from tribes would be helpful to us in
11 compiling the information we need toward finally writing the
12 report that we have to submit.

13 MR. HILL: I think we are more than willing to
14 cooperate, and we have met with the people doing the research,
15 immediately. The notice went out way, way late, and we will
16 continue to encourage the tribes to comply with the
17 questionnaire. I would be happy to.

18 COMMISSIONER MCCARTHY: Thank you.

19 COMMISSIONER MOORE: Mr. Hill, let me go from a
20 different situation on this. I've read the regulations that have
21 just come out in January, they are very elaborate. And as far as
22 I know about regulations they are very good.

23 I don't believe anyone on this Commission has ever said
24 that you did not have regulations written down, and what could
25 be.

26 Now, I'm going to go to the very top, and probably the
27 most unimportant to some people. But when I was in medical
28 school I had this summer job. I worked for an oil company, and
29 one of my jobs was high tech, I tore down gasoline pumps and

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1 cleaned them, and put in new parts, anywhere that they needed
2 one..

3 And then I had this five gallon bucket, and I would sit
4 the five gallons, and I would pull the trigger to see if it would
5 fill it up. And that had a lot to do with where you filled it
6 up, I mean, what was the level?.

7 Because in a big business, in selling a lot of
8 gasoline, a little more than five gallons, or a little bit less
9 than five gallons is a big business.

10 So I could not understand what all of this was about.
11 And then we would put them out, here would come the state man
12 around, you know, with his bucket. So I got to thinking, why are
13 we checking this so much?.

14 Well, the oil company didn't want to give more than
15 five gallons, the state did not want them to give more than half
16 gallons, even though it would be good for the constituents,
17 because they were losing road tax. So they wanted it to be just
18 right.

19 Now, what bothers me about the self-regulation and not
20 having compacts and someone checking, and this is no reflection,
21 because I don't even want Americans checking Americans on a
22 business that I have, unless I have a hand in it.

23 A lot of your setups on your regulations, if you will,
24 are Indians checking Indians. I'm talking about when you count
25 the money to the casino. Now, I know there is a name for that,
26 but I don't know it.

27 Is the money counted correctly, is any of it skimmed
28 off? I haven't seen any reports, it is hard to get financial
29 reports. And the thing that concerns me is the money, the proper

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1 amount of money, I don't care how much you make, but is that
2 money that you make, is it all there for the government?
3 We are always talking about the sovereign government. I'm for
4 the sovereign government. Is that money there for it, and does
5 it get to trickle down to the least little man? I'm a little
6 man, I'm a little man's man. Or is it staying at the top?.

7 That is what worries me about the regulations, and I
8 believe, personally, that it would add prestige to the indian
9 tribe, if each one of you could have a real workable contract or
10 compact with each state that you do business in.

11 I have always been told that when two sides come away
12 from a business deal, everybody is happy, and they want to go
13 back and do another one. This is a part of regulation that
14 concerns me a little bit. Is there someone, at some level other
15 than family members, or tribe members, or things of that?.

16 I'm not implying that there is any dishonesty at all.
17 Would you comment on that?.

18 MR. HILL: I think we went through that drill at the
19 subcommittee meeting already, and described how these
20 computerized systems track the quarters that are sent in, and
21 they go through all this elaborate process, and it is checked two
22 or three times as to how much is dropped in the machine, how much
23 is paid out..

24 In terms of the count room, I think you have cameras,
25 surveillance, you have a number of requirements in any count room
26 that is probably similar to what the commercial industry -- .

27 COMMISSIONER MOORE: I understand that, but who does
28 that?.

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1 MR. HILL: I think you are trying to make the point
2 that there is something inherently wrong if we count our own
3 money?.

4 COMMISSIONER MOORE: It would be something wrong if --
5 .

6 MR. HILL: There is nothing -- .

7 COMMISSIONER MCCARTHY: -- were out of work, if just
8 the administrator counted it. I wouldn't like that.

9 MR. HILL: I think that the tribes have been very
10 responsible in their court rooms to count the cash. I think
11 there are systems in place, there is internal management controls
12 for counting, you know, every penny in the casinos.

13 And there are audits that are sent to the-- probably
14 the state and to the National Indian Gaming Commission. I think
15 there is enough checks and balances to --.

16 COMMISSIONER MOORE: Even without a compact?.

17 MR. HILL: Even without a compact, I would submit. I
18 think that we have been responsible enough. This is the first
19 time in our history that tribal governments have money to use for
20 governmental programs. As the federal dollars are shrinking,
21 these dollars are very important.

22 I mean, you can go to certain tribes, Sioux, whatever,
23 where machines were purchased to help the littlest man in the
24 reservation who didn't have any health care, to build health care
25 facilities for elders, provide extra services for them.

26 There is one testimony in the subcommittee where the
27 average income was 8,000 dollars. Where this community was
28 buying Christmas presents for children. I think you've got --
29 these dollars are so important, that the Council are responsible

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1 enough to make sure that there are internal management controls
2 within the facility that are being adhered to.

3 And that is why the tribes have gaming commissions, and
4 they have inspectors on-site, because if there is any deviation,
5 or any variances in a given area, then they are flagged, and
6 reports are sent to management, reports are sent to the security
7 department, and it is being looked into by the appropriate
8 internal controls.

9 In addition to that there is internal auditors that
10 review these things and standards that are administered
11 appropriately.

12 COMMISSIONER LEONE: I have difficulty understanding is
13 what model would be appropriate for government owned and
14 sponsored casino in the United States. If the casinos in New
15 Jersey were not owned by private companies, but were owned and
16 operated by the state, there would be a variety, it seems to me,
17 of structures put in place to provide for oversight and
18 transparency so that the public and the press would be able to,
19 essentially, police these activities, which is the way we police
20 activities by sovereign governments in democratic societies.

21 In addition, in this country we depend heavily on the
22 separation of powers, with three branches checking each other, so
23 that the Judicial Branch and all of its officers, including
24 prosecutors and others, can look into things, subpoena records,
25 do oversight, use police.

26 The Legislature can have hearings, oversight body of
27 the federal government is the General Accounting Office, the
28 states have usually state auditors, and then an Executive Branch
29 which is responsible for functions.

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1 I understand a little bit about tribal government, it
2 is obviously not identical. But I think from the outside looking
3 in the checks and balances that one would look for in a publicly
4 operated activity of this type, let's just accept for the sake of
5 discussion, that it ought to be publicly operated, don't look
6 very much like the ones one would expect, particularly in terms
7 of the transparency, public reporting, information about where
8 the money is spent.

9 I mean, if a state, again if the State of New Jersey
10 ran these casinos, there would be intense scrutiny, and there
11 would be a lot of politics about how the money was spent that was
12 made from, not only with -- and if I -- the biggest reason that
13 there would be pressure to make sure the count was correct, I
14 don't know if that is a real issue.

15 But whether it is or not, is because people would have
16 lots of ideas about how much should be spent, different
17 legislators, different governors, and they probably would be
18 arguing about this in Court.

19 That part of a political process which is the way we
20 govern publicly operated facilities, as opposed to privately
21 operated facilities, is opaque to us. It probably goes on, but
22 it doesn't get reported, I guess, in the conventional way.

23 And there doesn't seem to be -- and one of the
24 allegations is, there is not enough information about how the
25 money is spent, how much this guy or that guy winds up getting,
26 how much -- and it does not seem to be some of the conventional
27 safeguards that would make publicly operated facility tolerable,
28 if not ideal..

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1 And maybe you could address that, because I think that
2 is an important question for us.

3 MR. HILL: I would just submit to the folks here and
4 others that, you know, we are nations who govern an activity. So
5 through that process of being a nation who governs an activity,
6 we have different branches of our government, as well, in the
7 tribe.

8 The government, our legislative body writes an
9 ordinance, writes a law, and that law defines a separate body who
10 is the Gambling Commission, or regulatory body for the nation.

11 And they have a separate autonomy from the legislative
12 body. And those ordinances have to go up for the checks and
13 balances you are referring to, have to go up through the National
14 Indian Gaming Commission, and they have a certain standard for
15 that ordinance to be met with -- to meet that check and balance,
16 and how that is constructed.

17 And if it is lacking in construction they will send it
18 back, and it finally has to be approved by the National Indian
19 Gaming Commission to have this regulatory oversight in-house for
20 our nations.

21 COMMISSIONER LEONE: When we visited the Foxwoods
22 Casino and had a conversation with a variety of officials there,
23 I was surprised to learn that it wasn't necessarily clear, or
24 made clear how the money was allocated within the tribe. There
25 was an elaborate formula, some of which made pretty good sense to
26 me..

27 But, in fact, in terms of every member having kind of
28 one man, one vote, or one person one vote say on it, and detailed
29 information about how the money -- how much money there was, and

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1 how the money was spent, that did not seem to be -- there seemed
2 to be a certain, again, limit to how much information was
3 available to the members.

4 And that concerned me, because it would concern me if
5 in my hometown I couldn't get good information about the local
6 budget, and where the tax revenues were going.

7 And you are right, this is 100 percent tax on the
8 revenues, and I think one of the questions I have, and one of the
9 reasons I think these issues come up about oversight and
10 regulation, is a question about whether the political process in
11 place provides enough oversight and participation, and
12 transparency.

13 Again, I'm a believer in public and private entities,
14 but the most important thing is that the information be available
15 to everybody. And I believe that in public and private entities,
16 most of the time, most people who are running them, find that a
17 burden, and have a tendency to not want the information around.

18 I mean, for obvious -- it is a lot of trouble to have
19 it around.

20 COMMISSIONER BIBLE: I think what you observe is pretty
21 accurate, if it were a very private casino and regulated by the
22 state, the state would have all the information about its
23 financial affairs, and that may be proprietary and not open.

24 The state would clearly have all the information about
25 the casino and its financial activities as to where the financing
26 came from to finance the activity, where the monies go after they
27 are earned by the facility, were it a private entity.

28 And even though some of that data may be proprietary,
29 not released to the public unless it is a public company and they

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1 are subject to certain disclosure because of the SEC, that
2 information would be available at least to a government.

3 Now, if it is a governmentally owned or operated
4 casino, I think the pattern is, you don't have those types of
5 casinos in the United States, other than tribal operations.

6 But if you look at casinos that are publicly owned, for
7 instance, up in Canada or in other parts of the world, there is a
8 lot of information that is available about the financial
9 activities of that casino.

10 I believe Commissioner Dobson, for instance, asked the
11 owner of Foxwoods about the per capita grant systems, and where
12 the money went, and how much, and that type of information. To
13 my knowledge we still have not obtained that information as to
14 where the money goes.

15 So I guess the tribes are arguing that they are a
16 government, but they are not going to disclose where the monies
17 go, and their financial activities, the same as the government
18 would, were it operating a casino.

19 You can go pick up a statement from the lotteries and
20 it will give you a lot of financial information. You may
21 disagree with the concept of the lottery, but at least you can
22 get the data as to what their financial activities are.

23 MR. HILL: I think it is clear in that answer, just to
24 cut to the chase on this, you know, where does the money go. We
25 don't trust you to give you the information. It is that clear.

26 Every time we give our financials to someone, someone
27 has used it against us. So the tribe is proprietary information,
28 the tribes have a right, under the law, to hold this information,

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1 the tribes use -- disclose that information to their members, at
2 our annual meetings.

3 You know, not only do we have a legislative body, but
4 we have a general council who scrutinizes more than you all..

5 CHAIR JAMES: Who is the "you" that you don't trust?.

6 MR. HILL: Our general body. I mean, who do we not
7 trust? We don't trust people who will take this information and
8 turn it around on us.

9 CHAIR JAMES: Who would that be?.

10 MR. HILL: If this Commission has an inclination to get
11 this type of information and turn it around and use it against
12 us, in any form or fashion, I think the tribes would strongly
13 resist furthering that information.

14 HAIR JAMES: So it would be this Commission, the
15 federal government?.

16 MR. HILL: I think there is a law we provide these
17 audits, already, to the appropriate bodies. So I don't know what
18 the overriding concern is about how we spend the money, because
19 under the law it is designated that we have to spend it for
20 governmental uses and purposes.

21 Those audits are sent to the Commission, sent to the
22 state -- .

23 CHAIR JAMES: So it is basically this Commission?.

24 MR. HILL: -- it is reported to our people. If the
25 tribes want to -- .

26 COMMISSIONER BIBLE: -- activities?.

27 MR. HILL: They are negotiating compacts. I don't know
28 what requirements they are going to finally come up with in the
29 State of California.

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1 COMMISSIONER BIBLE: So if the compacts are entered
2 into they will send audits at that time?.

3 MR. HILL: Whatever they negotiate, and that is good,
4 and I think the folks in Nevada are probably very interested in
5 those financials.

6 COMMISSIONER BIBLE: They probably are.

7 MR. HILL: To be used against us, ultimately.

8 COMMISSIONER DOBSON: Mr. Hill, let me ask a difficult
9 question that does not reflect a value judgement. I'm genuinely
10 interested in the answer to the question, particularly with
11 regard to your presentation about the benefits of gambling to the
12 tribes, and so on.

13 Can you tell me why that there are many tribes that
14 have lucrative gambling interests, which do still have a very,
15 very high unemployment rate, and when many of the casino jobs do
16 not go to the members of the tribes, but perhaps the majority of
17 them are held by non-Indian employees.

18 Is there a way to bring those two ideas together?.

19 MR. HILL: You are saying that some of the higher level
20 jobs are held by non-Indians?.

21 COMMISSIONER DOBSON: No. What I'm saying is that you
22 made a case, which I've heard many times before, and obviously
23 most Indian representatives agree with, that gambling has been
24 very beneficial economically to members of the tribes.

25 And yet the unemployment rate is still very, very high
26 in those tribes. You said 50 percent overall.

27 MR. HILL: Right.

28 COMMISSIONER DOBSON: And the jobs that should be
29 available are held by non-Indians. Not high level jobs, all

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1 jobs. The lower level jobs. Can you explain where the disparity
2 is there?.

3 MR. HILL: Well, some of the more successful operations
4 around like the place in Minnesota, near the city of Minneapolis
5 and St. Paul, that particular -- their nation has a small
6 membership, so then they would have to hire other people to run a
7 large facility because of demographics to run those jobs for that
8 particular casino.

9 The case in South Dakota where, in Pine Ridge, where a
10 lot of unemployment was probably like 70 or 80 percent, and a lot
11 of people had moved off the reservation, and some federal policy
12 in the past really encouraged moving off the reservation to where
13 jobs, relocating in the '50s, and my father was a part of that
14 program, and a lot of other people were.

15 But when they heard about the casino being built, a lot
16 of people had moved home, okay? So a lot of people moved home,
17 but there weren't enough jobs. So it really increased their local
18 unemployment rate to go higher..

19 So you would really have to look at it case by case
20 situation in terms of what the dynamics are to kind of look into
21 that particular situation. And there is about probably six or --
22 at least six states where they haven't been able to compact yet
23 for one reason or another.

24 So I think that 50 percent would probably, like
25 Oklahoma, parts of California, Florida, Alabama, and other
26 places, where they haven't been able to get that far after ten
27 years of battling it out in courts and other arenas to try to get
28 a compact.

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1 So I think there is efforts being made to do career
2 paths for individual members, to advance them in different types
3 of careers, and I think this is a good opportunity, and different
4 levels of occupations within a casino structure.

5 So I think we are trying to make some inroads into that
6 50 percent. But, you know, gaming isn't for everyone. And it is
7 not going to cure everything in our communities. It is just a
8 small part of an economic development that we are trying to
9 advance to create some extra revenues so that we can look at a
10 more balanced diversification portfolio for our nations.

11 So that is kind of where we are headed, and we hope to
12 be at ten years from now. This is the seed money to help advance
13 those members to create other kinds of jobs, to create
14 partnerships for jobs, to buy other existing businesses, to start
15 businesses, to start entrepreneurship.

16 If you look at any country, we are still third world
17 conditions, and it isn't the same things where you guys have a
18 library, you have running water, you eat three meals a day. I
19 mean, you have all these things that you just take for granted.

20 You go to some parts of Indian country, you know, they
21 don't have those luxuries. So it is a start. It is not a means
22 to an end, it is a means to a small beginning with these revenues
23 to try to, you know, get into the millennium here, and we are far
24 behind in all the categories, socially, educationally,
25 employment, you name it we are behind.

26 I mean, we are making some -- I mean, the little inches
27 that we make are considerable, where a person has a job, the
28 pride is up in the family that they can put the food on the
29 table, that they can get credit, they can do these things.

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1 But it isn't transcendent to all of our people yet.

2 COMMISSIONER DOBSON: The election that just concluded
3 in November, it is my understanding 100 million dollars was spent
4 in California, and most of those ads promoted the proposition
5 that passing that initiative would allow self-sufficiency in the
6 tribes and so on.

7 And yet it is difficult to understand that economic
8 benefit when 50 percent of the people can't find a job. I find
9 it difficult to see the advantages. Obviously somebody is
10 benefiting from it, and that is why the questions that are asked,
11 very interesting to me, where that money is going.

12 But there is still an awful lot of people who are not
13 touched by it, apparently, if they are unemployed.

14 MR. HILL: Well, that is what I'm saying, there is
15 certain barriers to getting compacts in certain jurisdictions. I
16 think you would see that number reduced if there was compacts,
17 under the law, that the tribes would have a remedy under the law
18 to obtain these compacts, that number would probably go down.

19 I mean, those people in California were fighting for
20 their lives, you know, they weren't happy to spend that type of
21 money to protect their inherent sovereign interest in this
22 effort, but that is the kind of commitment it takes. And they
23 have a debt load, as well as the funding of big political and PR
24 campaign..

25 And those dollars could have been used much better in
26 the communities to help the elders, and help the children, to buy
27 land, to build houses, to build infrastructure, to do all these
28 things that need to be done yet. I mean, they weren't happy to
29 do that.

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1 CHAIR JAMES: I'm going to ask that we take a pause
2 right here to go ahead and hear from Phil Hogan, and then we will
3 open it back up for --absolutely.

4 COMMISSIONER LEONE: Are we going to comeback to Mr.
5 Hill?.

6 CHAIR JAMES: Yes, for sure.

7 COMMISSIONER WILHELM: If I might, before you go on to
8 Mr. Hogan.

9 Mr. Hill, in your written statement submitted to the
10 Commission this morning you object to my participation in these
11 proceedings. I have been a-- in the proceedings of the
12 Commission I have been a vigorous supporter of the value of
13 gaming to the economic development of the tribes.

14 Likewise, I have been a vigorous supporter of the
15 importance of the concept of sovereignty. When I was appointed
16 to this Commission, the appointing authorities specifically
17 charged me with representing the interest of gaming employees, in
18 addition to my overall responsibilities as a member of the
19 Commission.

20 The fact is that there is a problem in Indian country
21 on the issue of employees. And that is what I'm supposed to be
22 doing here. The record shows that in many cases the great
23 majority of the employees of tribal casinos, at the rank and file
24 level, are not members of any tribe.

25 The record shows that Foxwoods, arguably the most
26 successful casino in the world, has between 5 and 600 members of
27 the tribe, as I understand it, although it grows, and between 12
28 and 13,000 employees.

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1 In California the record shows that there are at least
2 15,000 employees in the existing casinos. That number will
3 increase quite dramatically in the near future, and that
4 something like 98 percent of them, by the tribe's own estimates,
5 are not members of the tribes.

6 It is ironic, in the extreme that the response of the
7 tribes to the question of whether or not those employees ought to
8 have the rights that every other employee in the country has, the
9 right to worker's compensation, the right to unemployment
10 compensation, the right to health and safety laws, the right to
11 organize a union if they choose to do so, the right to bargaining
12 collectively, and so forth.

13 The response of the tribes to that is, well we take
14 good care of people. I think the record shows that in a number
15 of circumstances, indeed, the tribes do take good care of
16 employees, and similarly in a number of other circumstances, the
17 tribes don't.

18 I think the record shows that if you compare the
19 conditions of employment for rank and file workers in the major
20 commercial casinos, and compare them with the conditions of
21 employment of rank and file workers in the major tribal casinos,
22 you will find that with respect to -- and this would be true even
23 if you control for profitability, that with respect to wages,
24 wages in a tribal casinos are lower.

25 With respect to benefit packages, the benefit packages
26 in the tribal casinos are lesser. With respect to the stability
27 of work, both week by week, and long-term, the conditions in the
28 tribal casinos are less.

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1 Now, those can all be solved. But the tribes object,
2 and rightly so, object to being patronized by the federal
3 government. The tribes don't simply want to be told that they
4 are taken good care of, the tribes want to be empowered.

5 And that is the whole concept of sovereignty. And that
6 is as it should be. In the light of history, I think that it is
7 imperative that the tribes be empowered and have sovereignty.

8 And I have supported that not only in this Commission,
9 but elsewhere. But it is ironic in the extreme that people who
10 have learned from their own history of oppression that they need
11 not just someone to tell them they are being treated well, but
12 they need empowerment, say to their own employees, you are being
13 treated well, you don't need empowerment.

14 The issue is not someone's assertion about being
15 treated well. The issue is that workers everywhere, and this is
16 not a position that either the American labor movement or,
17 indeed, the American government takes only with regard to tribes.

18 It is the position of the American labor movement that
19 workers everywhere, Mexico, China, Indonesia, workers everywhere
20 ought to have these rights..

21 Likewise, it is the policy of the American government
22 that workers everywhere, not just in the United States ought to
23 have these rights.

24 So there is a problem. I believe it is a problem that
25 can be solved, I believe that the tribes are sincere when they
26 speak of their identification with ordinary working people, and
27 with oppressed people.

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1 But that sincerity has to be translated, at some point,
2 into accepting the notion that just as tribes should be
3 empowered, so also should employees of tribes..

4 That is my job here, I'm supposed to be here
5 representing gaming employees. Factually our union is not in
6 litigation against the tribes, we are in litigation in California
7 against the position that the tribes support.

8 Well, that is inherent in the give and take of ideas
9 and actions. So I make no apology for doing on this Commission
10 what I was appointed to do. And I have vigorously supported, and
11 not withstanding your view that it is not appropriate for me to
12 participate here, I will continue to vigorously support the
13 tribes with respect to their rights, and with respect to the
14 value of the gaming enterprises that you have engaged in.

15 Thank you, Madam Chair.

16 COMMISSIONER LOESCHER: Madam Chair, I would like to
17 ask for a recess.

18 CHAIR JAMES: Hearing no objection I certainly don't
19 mind doing that. Why don't we take about ten minutes, and we
20 will do just that.

21 MR. HILL: I would like to have the chance to comment
22 on those outrageous remarks.

23 CHAIR JAMES: As soon as we come back you may comment
24 on whatever you like.

25 (Whereupon, the above-entitled matter went off the
26 record at 9:40 a.m. and went back on the record at 10:02 a.m.).

27 CHAIR JAMES: I am going to go ahead and call us back
28 to order. And continue with our conversation, and remind us that
29 the way this is intended to operate is that there is a

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1 conversation around this table, and also with the invited
2 representatives of organizations who are seated at the front
3 tables, in case there is a question that any Commissioner wants
4 to direct to one of them, or in case they want to participate in
5 our dialogue.

6 And yesterday there were some technical problems in
7 terms of those individuals being heard. And my understanding is
8 that there is now a microphone, I believe, right here. So that
9 if you want to participate, just ask someone to pass you the
10 mike, and please join in that discussion.

11 Please feel free, and that is the only way it will work
12 if we do have that sort of free flowing conversation.

13 I think at the moment we stopped, Rick, you said you
14 wanted to have some comments, and I wanted to give you the
15 opportunity to do that.

16 MR. HILL: Thank you, Madam Chair, and Commissioners,
17 and I apologize if I went too far out of school here, but I need
18 to protect the tribal position here, and that is what I'm doing.

19 The tribal position in terms of our testimony regarding
20 Mr. Wilhelm's participation is a tribal position that I've
21 advanced, and I know that the -- .

22 CHAIR JAMES: Rick, can I ask you to speak up?.

23 MR. HILL: Let me start over. I said I apologize to
24 the Commission and anybody here that if I went too far out of
25 school, but what I'm trying to do is protect the tribal position.
26 And the tribal position regarding Commissioner Wilhelm is a
27 tribal position.

28 And the reason that it is a tribal position is
29 basically because the financial benefit that can be ultimately

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1 benefit the union that Mr. Wilhelm represents. I know there is
2 ongoing litigation in this regard, in terms of the union matters.

3 Also there is litigation in terms of being funded by
4 the here union to try to overturn the Prop5 initiative, which the
5 voters at a 63 percent approval rating in the State of
6 California.

7 I think his participation, you know, will affect the
8 Commission's integrity in these matters. Further, we asked in our
9 recommendations that we be treated similar to a state, where it
10 would be voluntary to participate in these union matters, and the
11 Vehaus is an example where the communication, workers over 6,000
12 members participate in that union, and that was negotiated by the
13 Vehaus.

14 So I think tribes are given the opportunity to discuss
15 this, I think issues of employment, I think that the employees
16 are generally treated very well in terms of having dispositions
17 in fair hearings in any complaints that are issued.

18 There may be some other isolated incidents where this
19 has not occurred, but I think overall, generally speaking, that
20 they have been afforded the same opportunity that the members
21 have in terms of fair hearings in matters of dispute within the
22 casinos.

23 We have had over 100 tribal leaders testify before this
24 Commission, and to say that that is, you know, sometimes I think
25 none of it has ever been heard, for some of this discussion.

26 So I think basically if those testimonies are not
27 believable, I mean, it is almost calling us a bunch of liars, and
28 I don't even appreciate that the 100 tribal leaders that came
29 forward to testify as to the benefits extended to their

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1 employees, and the dispositions in place to correct any things
2 that are wrong in the employment ranks, you know, is quite
3 accurate.

4 I don't remember hearing a lot of testimony on grieved
5 employees that came before the subcommittee. Unless I missed a
6 hearing where a number of people did come and complain about
7 those matters.

8 Further -- .

9 CHAIR JAMES: Can I ask a question for a point of
10 clarification?.

11 MR. HILL: Yes, sure.

12 CHAIR JAMES: Virginia is a right to work state, which
13 I absolutely whole heartedly, 100 percent endorse. In other
14 words, no one can be forced to join a union if they don't want
15 to.

16 I absolutely 100 percent, whole heartedly, endorse the
17 flip side of that as well, which is, if someone wants to organize
18 a union, and join one, they have the right to do that.

19 As a point of clarification, is that the case if
20 workers on a -- in a casino, on a reservation, wanted to do that,
21 would they have the ability to do that? If they wanted to get
22 together and start a union and negotiate, could they do that?.

23 MR. HILL: We want to be afforded the same rights that
24 the states have, on a voluntary basis. If the tribes --.

25 CHAIR JAMES: But this -- .

26 MR. HILL: -- if Indian nations want to participate in
27 that activity -- .

28 CHAIR JAMES: The state doesn't control that. I mean,
29 Virginia does not say, or any state does not control whether or

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1 not its employees -- may be state employees, but employees or
2 workers in that jurisdiction have the right to join or not join a
3 union.

4 I'm missing something here, help me.

5 COMMISSIONER WILHELM: You are not missing anything.
6 There are -- the record shows that there are isolated
7 circumstances where tribes have entered into arrangements with
8 the unions with respect to gaming employees..

9 They are extremely isolated, and the arrangements that
10 have been entered into would not pass the scrutiny of any labor
11 law in this country with respect to giving workers free choice.

12 The overwhelming majority, on the order of 99 percent of
13 tribal casinos, take the position that workers do not have the
14 right and to bargaining collectively.

15 CHAIR JAMES: Okay. Can I stop you right there and ask
16 you to respond to that particular statement for clarification?.

17 MR. HILL: Can you restate your -- .

18 COMMISSIONER WILHELM: Yes. What I said was that there
19 are isolated circumstances, one of which you cited, the Vehaus.

20 MR. HILL: Exactly.

21 COMMISSIONER WILHELM: Where tribes have entered into
22 arrangements with unions, and that those arrangements, on their
23 face, would not pass the scrutiny of any reasonable law in this
24 country about the rights of workers, freely to choose whether or
25 not to organize and bargaining collectively.

26 And that even those isolated arrangements are, indeed,
27 extremely isolated, and 98 or 99 percent of the tribal casinos in
28 the country, the workers have no right to unionize or bargaining
29 collectively.

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1 That was the statement.

2 MR. HILL: Okay. I just think that here is looking for
3 more membership. Really, I really think that is -- .

4 CHAIR JAMES: I don't really care about --I mean, I
5 care about John, but I don't care about here, right now. Really,
6 if I -- .

7 MR. HILL: I agree with --.

8 CHAIR JAMES: I'm trying to understand where the
9 difference is.

10 MR. HILL: -- it is voluntary.

11 CHAIR JAMES: It is voluntary for the workers?.

12 MR. HILL: If the tribes want to participate in this
13 program or not.

14 CHAIR JAMES: Is it voluntary for the -- .

15 MR. HILL: It is their prerogative to choose whether
16 they want to enter into an agreement and that type of
17 arrangement.

18 CHAIR JAMES: Let me ask you this. If I were washing
19 dishes in the hotel, and is it voluntary for me, since I'm not a
20 member of the tribe?.

21 MR. HILL: I think everybody has an individual right to
22 advocate for the positions they want, they still have their -- .

23 CHAIR JAMES: So they could get together and form a
24 union?.

25 MR. HILL: Theoretically I think that is probably
26 possible.

27 COMMISSIONER WILHELM: But it is the stated position
28 of every tribe that has taken the position of it, with the
29 exception of the isolated circumstances that we described, it is

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1 the stated position, for example of Foxwoods, that unionization
2 of its employees is not appropriate, and they will not agree to
3 that. That is an open position.

4 CHAIR JAMES: Okay, I'm washing dishes at Foxwoods -- .

5 MR. HILL: I would agree with Mr. Wilhelm in terms that
6 he is supporting our sovereignty. So supporting the sovereignty,
7 the tribes have the right to make a decision that is in their
8 best interest.

9 So if the tribes choose to engage in those types of
10 arrangements, then -- I think the Vehaus what they did was they
11 ran an election, or they ran some kind of election to see if
12 their employees would want to participate in something like that.

13 So I think it is handled in different manners, Madam
14 Chair.

15 COMMISSIONER WILHELM: Just to repeat, Mr. Hill, in
16 case you didn't hear it just now. His question to me was, does
17 the National Labor Relations Board, the National Labor Relations
18 Act apply in Indian country with respect to tribal casinos?.

19 And the answer to that question is this. There is a
20 line of National Labor Relations Board cases which says that
21 tribal businesses -- there has never been one, to my knowledge,
22 in a casino. But other tribal businesses are not subject to the
23 jurisdiction of the National Labor Relations Board.

24 And historically those cases arose in circumstances
25 where the majority of the employees were members of the tribe
26 that owned the enterprise, as well as in most of those cases, so
27 were the customers, primarily members of the tribes.

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1 The question of whether or not the National Labor
2 Relations Act applies to the kinds of large tribal casinos that
3 have now entered the landscape, is an untested question.

4 Strictly from a legal perspective, an argument can be
5 made that because the underlying facts of the older cases in
6 non-gaming enterprises are not representative of the big new
7 casinos that we now see in Indian country.

8 That because the majority of the employees in most of
9 these places are not tribal members, and likewise the majority of
10 the customers are not..

11 A legal argument can be made that the National Labor
12 Relations Board, if it revisits this question, will assert
13 jurisdiction. That is not really a remedy in my view for either
14 the workers or the tribes.

15 It is not a remedy for the workers because that issue
16 will be tested for years in the courts, because it is a novel
17 issue, and because it does raise very thorny questions about
18 intra-governmental relationships.

19 One of the ironies of these issue is that our union
20 has quite purposefully never pressed that legal issue until quite
21 recently. And the reason we haven't pressed that legal issue
22 until quite recently is because we were trying to be respectful
23 of the notion of sovereignty, because I would think, and I
24 certainly can't substitute my judgement for the tribes, and if
25 they feel differently, obviously they will say so.

26 But I would think trying to understand the concept of
27 sovereignty, that the tribes would not want a determination by
28 the federal courts that the National Labor Relations Act should
29 apply to tribal employees, or tribal casinos, because that would

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1 be a rather dramatic assertion of federal jurisdiction over some
2 aspects of the operations of tribal enterprises.

3 So I would -- just to finish this, I don't mean to go
4 on so long, but it is a complicated issue, and an important one
5 that you raised, the -- I would have thought that the tribes
6 wouldn't have wanted that.

7 However, that issue will be tested, I think, because of
8 the intransigence of this particular issue. But as of now it
9 would be fair to say that under existing law, the National Labor
10 Relations Act does not apply to these enterprises or their
11 employees.

12 COMMISSIONER LEONE: I did not know that. I -- just to
13 display my ignorance further, I assumed though that laws like
14 minimum wage, and child work, and ARISA, and OSHA apply? They
15 don't apply either?.

16 COMMISSIONER WILHELM: None of them. And, again, there
17 has been a lot of dispute about this. There are cases, for
18 example, about worker's comp. And there are also tribes that --
19 .

20 COMMISSIONER LEONE: They apply to states, they apply
21 to other governments, they apply to local governments.

22 COMMISSIONER WILHELM: That is right, and there are --
23 in any given time there is a lot of litigation about employee
24 rights in these circumstances.

25 And there are also tribes that, to their credit, have
26 fairly and fully duplicated some of those kinds of laws, Richard.
27 There are tribes that fairly and fully duplicate worker's comp
28 laws, for example.

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1 There are many who say they do, and when you examine
2 the circumstances, don't. And there are many others who don't
3 bother. But at the present state of the law, you can find
4 contrary cases floating around, it is a fair generalization, in
5 my judgement, to say that none of those laws apply to the
6 employees of tribal casinos.

7 COMMISSIONER BIBLE: Is the same true of environmental
8 law?.

9 COMMISSIONER WILHELM: I have to defer to others on
10 that, that is beyond my area of expertise.

11 MR. HILL: Madam Chair, I need some help on this
12 answer, because it is not my expertise, and I have Mr. Tom Rogers
13 here, who helps NIGA and what not. He can probably give you a
14 more responsive answers.

15 CHAIR JAMES: Well, tell him to participate either from
16 there, or here, or wherever.

17 MR. HILL: Well, thank you for the help, because at
18 this particular matter I need a little bit of help. So I would
19 like to yield some time to Tom and let him respond.

20

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