CHAIR JAMES: With that we can do one of two things, we can break now, or we can go ahead and get the internet's -

COMMISSIONER BIBLE: Why don't we do the internet? If I can get Commissioner McCarthy to get back to his seat, maybe I can't. There we go.

The internet committee, as the members of the Commission know, is composed of myself, Commissioner McCarthy, and Commissioner Moore.

We have held several meetings. We had one extensive full day meeting in Washington, D.C. that was in conjunction with an internet symposium of users, so it kind of gave us a kind of sampling environment, much like the patron survey where we had a rich environment to sample from, of opinion, and we had quite a bit of testimony.

It was representative of thoughts on the issue, representatives of organizations such as Mr. Angel who advocated regulation of internet activity, representatives of the Attorney Generals, and Attorney General, in one instance, Attorney General Doyle, I believe, testified via telephone from an airport to indicate that, you know, that they at least organizationally were opposed to any regulation, and thought prohibition was the appropriate policy response to internet wagering, and we did have some testimony from people who just simply indicated, don't do anything, just allow the mechanism to exist.

As indicated in my earlier remarks, and in the dialogue that just occurred, the technology to a large extent is attempting to drive the policy decision here, because of the technology and the representation that it is very, very difficult to regulate internet gaming we should make the policy to prohibit
it, that we should make the policy choice to regulate it, or allow it, or legalize it, or do whatever, because if you tried to prohibit it simply is not possible from a technological standpoint.

And the subcommittee has considered all of those particular issues, and we will recommend to the full Commission that internet wagering be prohibited, at least in terms of the policy consideration, the subcommittee has crossed that threshold, we have not discussed –

CHAIR JAMES: Was that a unanimous –

COMMISSIONER BIBLE: That was a unanimous vote. And we have not at this point talked about or discussed any possible exemptions, the current legislation had some exemptions, we still have an issue to look at in terms of telephone wagering, or account wagering, which is of interest to the pari-mutuel industry, and we are going to look at that and consider it further.

But at least in terms of the general policy conclusion the subcommittee is going to recommend that the full Commission adopt a policy position that would prohibition of internet wagering activities.

We are going to have a further meeting where we will discuss some of the potential exemption type issues, also talk about some of the enforcement type issues that are involved in internet wagering activities.

Now, you do have, and you had distributed to you this morning a paper that describes as internet gambling technology and policy challenges. This was prepared by Valerie Rice of the Commission staff, and I commend it to your review.
It would be my intent that this document become the basis, after further review and modification, of the subcommittee’s report to the full Commission, and hopefully it will provide a foundation for that chapter of the Commission’s report that deals with internet and internet wagering issues.

I would be happy to respond to any questions, should the -

COMMISSIONER LEONE: Bill, I thought the paper was very good, and I'm sympathetic to the recommendation. I have this question, and actually suggestion.

I think that there are a great many technological devices that all of us use every day without understanding how they work, but we've arrived with some of the more familiar ones, at a common understanding of what is possible, what is not possible, what the limitations are.

I find that in discussions about the internet the arguments about its potential, or the inability to control, to limit people's access or what they get out, and a variety of other things, are very plausible to most of us, at least as plausible as other propositions because we, really, being non-experts, don't know the answers. Maybe the experts don't know the answers.

But I think these recommendations, more than almost any others, except perhaps those about problem with pathological gambling where there is an argument about what we are talking about, these recommendations need to be backed up with whatever evidence we can bring forward, that they are practical recommendations, that they are plausible.
Otherwise I’m afraid that a recommendation like this would be featured in a context in which somebody at some media lab somewhere says, well that is all well and good, but that is impossible, and the conversation moves on.

I mean, I think we need to bring to the table some evidence of why we are convinced it is possible, if we make the recommendation.

COMMISSIONER BIBLE: And as I indicated earlier, we are going to have a subsequent meeting and talk about the enforcement aspects of it, because it does present a very difficult enforcement problem, just because it is a difficult enforcement problem, at least in my opinion, doesn’t mean you should not try to enforce it, and I think there are some mechanisms that can be developed to do enforcement.

COMMISSIONER LEONE: If we said we didn’t want casinos in X location, people would know how that would be enforced. This is much harder.

COMMISSIONER BIBLE: Again, at least if you look at the issue, the issue has been described in a number of different manners, one is as simply as a free speech issue, and to me it is not a free speech issue because it involves financial transactions, it is a transactional issue, and I believe that is probably the key to enforcement.

COMMISSIONER LEONE: One other question I have, which is the international aspect. I know on the recent encryption treaty that was negotiated over a period of time, and which has a number of signatories, the United States led in that effort, it was decided that it had to be, and it is an internet issue, it had to be an international agreement, and I wonder if there are aspects
to regulation that would require an international agreement as well, and whether we shouldn’t address that, because -- and there are such things, there are things, there are already agreements that affect where countries have one thing possible in their country, but not in others, and reach agreements about how that will be handled.

And I don’t know if that can be part of our recommendation, or if at least we can indicate it as an area where the federal government has to prepare a plan.

COMMISSIONER BIBLE: I think the difficulty there, and that is an area that is going to have a lot of difficulty, is that a number of the jurisdictions, we are now up to jurisdictions that have established governments, and governments that are held in high regard, such as Australia, have legalized the activity.

I was kind of surprised the approach, for instance, some of the Australian governments have taken to indicate that they don’t care whether they are marketing the product in the jurisdictions that have outlawed wagering, which makes no sense to me from a responsible government standpoint, that you would allow people within your jurisdiction to market a product that is illegal in some other jurisdiction to that jurisdiction.

That just does not seem to me to be responsible public policy. But, interestingly enough, New South Wales is one of the leaders in doing that, and apparently they now are concerned about some internet marketing that is occurring within their jurisdictions, and are taking some prohibitive approaches to some wagering activities coming in from some island off of their coast, because they are losing part of the racetrack gamble.
I guess it just depends on where you are situated as to how you react. But I think your comments, obviously, are well taken. We have looked at that issue, and the issue has been looked at by a number of people, and it is going to be very difficult to do that because some of these, at least the third tier countries I see this as a potential source of revenue, and it gives the internet operators some credibility if they say they are operating from some island in the Caribbean, or something of that nature.

It is not the kind of issue that I see the federal government sending the troops in to cure.

COMMISSIONER LEONE: No, but we have agreements on the amount of losses that you can claim for baggage losses that are international, involving airlines, or if you are killed in a plane crash.

So it is possible to reach agreements on a variety of issues that are not -- where it is not immediately obvious that you can do that.

COMMISSIONER LOESCHER: Madam Chair -- COMMISSIONER LEONE: If you make the effort.

COMMISSIONER LOESCHER: Madam Chair, I would like to say a few things about the recommendation that is evolving out of the internet committee. Just a couple of comments.

To preface it, I have lived long enough to be a father, and now a grandfather, and I sit back and I look at things as they go, over a lifetime, and I have seen and heard that the days of prohibition, and what happened to those notions of prohibiting something in America, and what has occurred in history when the Congress had prohibition on this or that.
But I -- over Christmas I have a little three and a half year old grandson, and we have computers at my house, and I’m amazed, at three and a half years old he can play child’s games on the computer, and I had to study, figuring out what he was doing. But it is amazing what is going on.

The other thing is that technology is overwhelming us. The technology is there, it is proven technology, and big companies in telecommunications, and what not, are investing huge amounts of money, billions of dollars to make the telephone, and the cable TV almost interchangeable to our homes now.

The same service can be done through that technology. And as those things get spread across America, more and more services are going to be had on the telephone and through cable, right into our TV living rooms.

And I’m troubled, you know, by the notion that you could have gambling right in your living room, and it is a scary thought, and we all have to live in our homes, and try to govern what goes on in our own house. But the technology is so overwhelming, the investments are so overwhelming, the availability can be overwhelming. And then in the gaming industry there is huge amounts, billions upon billions of dollars already invested in this business.

And those who are invested in casinos and infrastructure, are going to protect their interests for a while, till they amortize those interests off, and that infrastructure.

But they are going to invest in internet gambling themselves, they have to, because it is going to grow. And that is where the growth can be. And I think that is already occurring.
The business of states, Madam Chair, I would like to ask the committee to invite the states back to the table, the National Governor’s Association, the Attorney Generals, maybe the legislative -- National Representatives of Legislators to appear, because I don’t think we have heard enough from the states on this issue.

And I don’t think our record has enough in it to support that aspect of the business. And I think we should try to get some kind of preliminary record as to what the position of the states might be from at least these three groups.

CHAIR JAMES: Commissioner Loescher -- COMMISSIONER BIBLE: Let me respond to that just briefly, because we have asked for input from the states, we did ask the National Attorney Generals Association, which are the chief law enforcement officials of each state jurisdiction for input on this particular issue.

And they raised the same issue you did, and let me read from a letter, just briefly, from James E. Doyle, who is the Attorney General of Wisconsin, this was provided from the National Association of Attorney Generals.

In the public policy debate over gambling on the internet NAG has taken the unusual position that this activity must be prohibited by federal law, and that state regulation would be in effect. Gambling laws and regulations have more state to state variety than almost any other area of law. Each state’s gambling policy is carefully crafted to meet its own moral, law enforcement, consumer protection, and revenue concerns.
Each state believes it has crafted the combination of law and policy to address its population’s need. The internet threatens to disrupt this.

And I believe the states are taking the fairly unusual position that because of the technological aspect of the internet that they are finding that their resources are not adequate to enforcement, and they are reaching out to the federal government to assist them, and they have been very, very active in providing support for the Kyl Bill, in the last session of Congress, and they are going to take a similar policy position in the next session.

CHAIR JAMES: Excuse me just a minute. I know you know this, but some of our observers may not, and that is that those organizations have been invited, repeatedly, to participate, and they will be invited again for our March meeting, because it is very important for us to hear from them, but I didn’t want the impression left that they had not been consulted with, or invited to participate.

COMMISSIONER LOESCHER: And we are sitting in the Hall of Government at Regent University, and this place more than ever knows that government has several parts, the Courts, the Legislature, and the Administration.

We haven’t heard, uniformly, from states, or even the federal government. We have had testimony from several governmental officials, but I really don’t think we have heard from the government, the federal government as well.

But the states attorney generals are interesting people, they seem to have an opinion on everything, and -- but across America only a few places are attorney generals elected,
for the most part they are not And I believe that the real place
that decisions are going to be made with regard to the internet
are not in the offices of attorney generals, but they are going
to be made in the offices of legislators in these various states,
and that is how I see it happening.

And we need to scope out, you know, what the attitude
across America is from the representatives as best we can,
because I think the record is not complete in that regard.

The other thing is telecommunications industry, I think
we should invite at least a couple of executives from the
telecommunications industry from the major associations to come
and visit us, to talk about this business.

Because I honestly believe that the technology and the
investments that are being made in telecommunications in America
are really going to make this kind of business available, as well
as other services available that we cannot even begin to believe
that will be available in the next decade.

And the other business that I’m curious about is the
business of licensing and regulation. If anybody in America has
even the beginning notion of what kind of model forms of statutes
and regulations might be coming forth in this regard, so that at
least somebody could look at them and get an idea of the range of
the kind of laws that might govern this kind of business.

But in conclusion, Madam Chair, I think the notion of
prohibition as a recommendation from this Commission defies what
we know about technology and the availability of the
telecommunications to provide this kind of access in the future.
And although I think there is some grave dangers to our individual homes, I think a recommendation of prohibition is not realistic.

CHAIR JAMES: Thank you. Commissioner Dobson?

COMMISSIONER DOBSON: Bill, I appreciate the work of your committee. I haven’t had a chance to read this entire thing, but I appreciate what I have heard you say.

And I think we do have an obligation to try to address this problem of internet gambling. But I’m not optimistic for some of the same reasons that others have expressed.

I served on the Attorney General’s Commission on pornography in 1985 and ’86, which dealt specifically with that which is illegal, obscenity as opposed to pornography.

And we made 26 recommendations for the change in the law as a result of that Commission. All 26 were passed by the Congress, and signed by the President, and became law.

And the internet has totally turned that upside down, destroyed all of that work. I mean, the effort that was made to try to limit that most offensive material that the Supreme Court in Miller v California in ’73 said we can’t limit.

But it is not, Bob, I think the legislators that are going to be our problem, it is the courts. Just two weeks ago a court decision overturned the second effort by the Congress on the child on-line protection act, which was simply designed to keep the providers of pornography from giving teaser material free to draw children into those sites.

And they just declared that unconstitutional. So, you know, the possibility that they will let stand an effort to limit free speech, however it is defined in this regard, does not seem
very likely to me. We still have to do it, but I fear for the long term outcome.

COMMISSIONER BIBLE: And I would share your lack of optimism. This is going to be a very, very difficult area to deal with.

COMMISSIONER MCCARTHY: Having said all that, we spent a lot of hours thinking about the difficulties of either a regulatory or a total ban on internet gambling. And I think Chairman Bible, and Paul Moore and I agree that either course you take is extremely complex, and extremely difficult.

I certainly subscribe to what Dick Leone said, that we have to make as thorough a case as we can in showing how we could technologically and legally try to make what the recommendation of the subcommittee is on this issue, how we can make a total ban work.

But we are all very aware that this is extremely difficult. It takes the political will, however, of the top leadership in the country, and the willingness to go to whatever lengths possible if they think this public policy is something that is important.

But we are aware that internet betting will never be subject to the same kind of thorough regulatory scheme that stationary betting is, where you can get your hands on it.

It is not that every state does a thorough job, but we have some pretty good models in Nevada and New Jersey. You and I might point out some additional changes that could be made, but it is a pretty good model of regulation.

It keeps out the criminal element, and does a good job in other respects. That will never be the case with internet
betting, no matter how you try to put this together. And if you
feel strongly about keeping betting out of the homes, as I think
John Wilhelm referred to, I think this is the course we are going
to have to try to follow here.

Frankly, people who are opposed to all forms of
betting, I think, could arrive at the conclusion, allow this
internet betting to go on, because it will lead much sooner to
the American public getting to the point where they say, my God,

enough is enough, and let’s really start putting a ban on a lot
of forms of gambling in a lot of places.

I think that is what finally might cause a revolution,
in the final analysis, an over-saturation of this. But the
other side of that coin is that there can be an awful lot of
destruction on the way in to that by allowing internet betting to
be so pervasive it is in homes and everywhere else.

So I subscribe to what the Chairman is saying on that.

COMMISSIONER DOBSON: I can’t think of any other example
where that saturation has occurred, not in recent years, anyway.

Again, going back to obscenity, you look at the stuff
that is on the internet today, it is unbelievable. The stuff
that we saw in 1985 that sickened me, as a grown man, is now
available to any 12 year old with a modem, and people don’t seem
cconcerned about it, or alarmed by it, you know? COMMISSIONER
MCCARTHY: I think the subcommittee is going to have to make some
tough recommendations. Do you move against ISPs, what are you
going to do against those that are part of the instrument to
allow internet betting to occur.

And it may be that we will have to extend some comments
about treaties. But until we domestically do everything that we
could conceivably do to see what the results are, and until we
stick with what the Chairman said about no exemptions, that
includes powerball, and you can bet we are going to hear from the
states that want those multi-state lotteries, that includes any
other forms of what Kyl has already put in, Senator Kyl has put
into his bill, because this or that constituency wanted it.

As soon as you start allowing the fabric to be torn,
then it is open to everybody else, and it is the pattern that
exists elsewhere. What starts out to be a limited form of
gambling is used as a stepping stone for yet larger and larger
gaping holes in what was supposed to be a regulatory position.

COMMISSIONER DOBSON: One last comment in that regard,
that ultimately we need to address the market, we need to address
the people, we need to use, I think, use this report to help
educate the populace about this, because they will have what they
want, eventually.

COMMISSIONER LEONE: Just let me make a comment, because
I think it touches on something you said, Jim, and touches on the
thing about the internet that bothers me the most.

I don’t believe, I think it is a mistake to think of
the internet in one respect as broadening people’s horizons, or
their world view. In fact, the internet uniquely enables an
individual to narrow to things that interest them.

An example that somebody wrote for the fund is that
because of his interest he could wake up in the morning and have
his own personal paper printed out, and on the first page there
would be a bunch of things that interest him. It might not
mention, at all, that Libya had invaded the United States, was
the example he used, because over the years his own personal
package had screened out the fact that he wasn’t interested in the international news stories, he had so many other things.

And I think people who, because the universe is so immense on the net, and people’s minds require them to organize it, and there are not mediators, one person might have their entire menu designed by the southern baptist, and other by the ACLU, and they would live in different worlds in terms of the information stream they were getting, and never be aware of this other material that might be affecting, that obviously would be of interest to most 12 year olds at a certain stage, at least in passing, and never be aware that that was even part of their experience.

And I think the frightening thing to me about the internet is that I’m not yet convinced that it creates community of shared values, or of interaction, or more importantly, and I think what really makes a diverse community work, and that is what makes even this little Commission work, is that your ideas get out, and they get debated and tested, and not everybody agreed with you to start with, and you argue about them.

And I think my concern is, however, the one I expressed earlier. I have absolutely no idea of how to change this pattern we have. I think we have only seen the beginning of investment in it.

I will give you an example from the business I’m in, which is books. The revolution in our business was the superbookstores. And many of us have bemoaned the fact that a lot of little stores were driven out of business.

I live in a town, Princeton, that had a lot of little stores, they are gone, with one exception.
But at least it was interesting that the bookstores created a space where they served coffee, and in some cases meals, and people came together in a world of books.

It is pretty clear now that books are going on line, and that the share of books are being bought on line. And when you go on-line, you become a book buyer on-line, as I do, they learn about you, and they will tell you, you are interested in nautical stories, here is a whole set of additional nautical stories. You get on mailing lists about sailing, and the sea, and nautical stories.

And you wind up spending more and more of your time at sea, in my case, I guess. One might say, I don’t even bother to go to the super bookstore. And I don’t think that is the way a democracy works best, I don’t know the answer to it.

I think in the gambling case, you know, again, what worries me is that gambling is -- I will shift to my neutral economist stand. Gambling is of concern to us because of the externalities, because of the costs associated with it.

It is a concern to Terry Lanni that way, just as much as to Jim Dobson. They may assess the costs and benefits differently, but they both say, this isn’t like a laundromat, or a chinese food restaurant.

When you create gambling online, in every home, efficiently and electronically, you not only reduce the positive benefits that John Wilhelm always talks about, the good jobs, or you reduce the community benefits in terms of the effects on indian country, or Atlantic City, or Biloxi, some other place.

And you, even in addition, sort of segregate off the people who suffer the negative externalities, the breakdowns of
family, the debt, the pathologies that go with it. They become
divorced from the rest of us, we don’t intercept with them, or
interact with them.

And I think we have a Court which has very broadly
defined speech, money is speech, we have no limits on a lot of
campaign finance because of speech. But we decide that some of
those costs are worth it to protect speech.

If we have to make a case that gambling is not
necessarily speech, and it is not necessarily identical to other
forms of activity that ought to be, information that ought to be
available to people.

I wouldn’t object, for example, to information about
where to go to gamble being available on the internet. I think
it would be an infringement of speech to say you can’t provide
that information.

But I do think we can draw a distinction. For our
recommendations to have force, though, I think we have to get
into questions like that, or we will be seen just as, you know,
just a voice in the wilderness.

COMMISSIONER DOBSON: It was well said.

CHAIR JAMES: You’ve got mail.

COMMISSIONER BIBLE: I saw that too.

CHAIR JAMES: I would add a concern, however. I agree
with you, Richard, that you can develop your own little narrow
interest world on the internet, and it is wonderful. If you look
at my favorite places you can tell exactly what I’m interested
in, and go there and avoid all the rest.

My concern, however, is the curious adolescent who
surfs the net, and goes all sorts of places. And what I have
learned, much to my dismay, in understanding how the technology works is, once you’ve been there, they’ve got you, and they know about you.

And having done a little bit of research, because I was not quite aware of the prevalence of internet gambling sites, and so in my capacity as Chair, surfed and said, let me see what is out there.

COMMISSIONER MCCARTHY: Did you win?

CHAIR JAMES: Didn’t get quite that far, because you have to put in a credit card. But it was much of a shock to my secretary the next morning when she turned on my computer, and I had lots of invitations to come to Las Vegas, and to Reno, and to other places to gamble, on the internet.

So there is the danger, I think, when people -- especially adolescents who are curious about that experience, and they tend to surf the net. Do they pick up your cookies, or do they leave cookies? They leave cookies, and as a result of that can come back, and children then are exposed to a wide variety of things.

Commissioner Dobson?

COMMISSIONER DOBSON: We were thinking the same thought, and that is what I didn’t say a minute ago, but now will.

I met with students here last night, and I was talking about the fact that children are obviously interested in certain things, they are interested in toys. So if they click on toys, one of their options is sex toys.

They didn’t intend to go looking for pornography, but they were lured into it because of toys. If they click on
horses, one of their options will be love horses, and you click on that, and you get bestiality.

You cannot -- a child cannot avoid this stuff, he cannot avoid it. And whether you are trying to stay in a narrow range or not, the way the enticements are laid out there, I agree with the Chair that we will have adolescents who find themselves getting into this stuff when they had no intention of doing so.

CHAIR JAMES: I want to thank the Chair of our subcommittee, and we are looking with a great deal of anticipation, as you all complete your work and bring forward recommendations for the Commission.

I’m going to call a brief break right now, and come back. And let me say that I think that based on how we are progressing, that we will hold our final session here, as opposed to over lunch, because I think we can be finished by lunch time. So we will do that here instead of upstairs.

With that, a 15 minute break.

(Whereupon, the above-entitled matter went off the record at 11:03 a.m. and went back on the record at 11:24 a.m.)

CHAIR JAMES: I would like to call our Commission meeting back to order. And at this point I would like to return to a more formal discussion.

As was -- I don’t think we have any pending old business, except I would say to Commissioners, that as we look forward to the future, and how we are going to get from where we are, we will be on the telephone, I will be calling you, we will be working through many of those issues.

Thank you for your flexibility with dates, and I think you will see some of that final timeline changing.
Are there any issues that need to come before the Commission at this particular point?

COMMISSIONER LOESCHER: Madam Chair, I have a couple of issues I would like to ask you and management to deal with.

One is I would like to have a memoranda, maybe circulated to the Commission regarding what happened to the records from the San Diego and Phoenix Hearings of the Indian subcommittee.

I have had some disturbing information, but I’m willing to wait for the report.

CHAIR JAMES: What, specifically, are we looking for, just transcripts, if they exist? Transcripts or notes? Because I know that some meetings were not taped, but notes were taken by staff. Minutes of the meetings were done.

So is that what you want, Bob?

COMMISSIONER LOESCHER: Yes, I would like to understand from the executive director what has occurred here, and what is going on.

CHAIR JAMES: Okay. Anything else.

COMMISSIONER LOESCHER: Madam Chair, I have another enquiry. I have been made aware, last night and this morning, that your office, and maybe others of this Commission have sent enquiries to the Congress regarding Montie Deer’s confirmation hearings, and making specific enquiries into what Montie Deer would be doing with regard to providing information to this Commission.

And if that is the case I would like to understand what it is you’ve done, and what kind of communications, and what formalities are involved in that business.
CHAIR JAMES: I think in my specific office I asked them

to check for me in terms of if there was a Hearing, and when the

Hearing was going to be held.

COMMISSIONER LOESCHER: Madam Chair, I just would like
to express, for the record, that this Commission has tried to

interfere with Congress' activities with regard to the Indian

affairs at least once already. And if this is another event in

that regard, I think we are exceeding our mandate under the

Statute, and I would like, for the record, to note my objection
to this kind of approach to life.

CHAIR JAMES: Duly noted. Any other comments on that?

Certainly, go ahead.

COMMISSIONER MCCARTHY: I was unaware of the approach

regarding -- I don't know anything about this nominee, is this a

current member, a reappointment member, or is this someone who is

being submitted by the President for appointment to this

Commission? This is the first I've heard about it. I didn't

hear the Chair was proposing any Commission action on this. Is

there a suggestion that that is what we are talking about here,
or what is the -

COMMISSIONER LOESCHER: Madam Chair, I was enquiring of

the Chair and of others if there is a formal action by this group

going from this Commission to the Congressional Hearing regarding

this confirmation, I would like to know about it.

And it is a practice, in Congress, to provide questions

for senators, and to enquire of a confirmation nominee, of what

they intend to do in their office.

And it was told to me that those kinds of questions may

have been advanced. And if there were questions being advanced
from this Commission, I wanted to know the content of the questions.

But since the Chair did not volunteer that such events had occurred, I was satisfied. But I do express my position that I don’t believe this Commission should be extending their opinions to Congress until we complete our final report, on any of these matters.

COMMISSIONER MCCARTHY: Well, I think I’m secure in the belief that that would not be done without Commission discussion.

COMMISSIONER BIBLE: Well, the Commission met all day yesterday and we took no action to ask for anything to be done.

COMMISSIONER LEONE: Well, now that it comes up, though, it is not implausible that we would. I mean, --

COMMISSIONER BIBLE: I certainly think it is --

COMMISSIONER LEONE: -- the issue I wanted to raise --

CHAIR JAMES: Or inappropriate.

COMMISSIONER LEONE: -- this is part of the discussion I wanted to have about what sort of plan we have in place if we have difficulty getting information from the commercial interests as well as the Native American interests or operations, gambling establishments, and who have received these questionnaires.

Maybe if it is appropriate to turn to that maybe we can get an update on where we are on the lottery stuff, to begin with, in terms of responses, and then move to where we are on -- we did discuss yesterday where we were on the Indian gambling, and I don’t think we need to discuss that again.

But where are we on the lotteries, and where are we on the commercial sphere?
DR. KELLY: If I could? All 37 states with lotteries have responded. In some cases there are little bits and pieces that we are still working out, but the vast, vast majority, I don’t know what the percentage is, 99 percent, I would guess, is in and has been transferred down to Duke University where Doctors Cook and Clotfelter are working on the data now. So we are pretty comfortable with that.

COMMISSIONER LANNI: Does that include the District of Columbia?

DR. KELLY: Let me just check. Yes it does. So we are thrilled, actually, with the response rate from the state lotteries, they have actually worked very hard to cooperate with us, and I feel very comfortable to say that we will have a full data set coming in from the states.

As far as the casino –

COMMISSIONER LEONE: Does that cover things like the so-called convenience gambling –

DR. KELLY: No.

COMMISSIONER LEONE: -- in five states? DR. KELLY: No, just the state lotteries.

COMMISSIONER LEONE: Just the lotteries.

DR. KELLY: As far as the casinos is concerned, both the industry and the Native American casinos, that questionnaire went out just a couple of weeks ago, so we don't have any information in terms of response rates.

Of course we will be getting back with you just as soon as we have some indication positive or negative on that topic, but we gave them, I believe, 30 days for one wave of information, was it 60 days for a second? No, just 30 days. We gave them 30
days for the information that we are requesting. So we should know something within a few weeks.

COMMISSIONER MCCARTHY: Could I add that in the letter that Chair James and I co-signed to hundreds of casino owners and operators across the country, that is tribal and non-tribal, we made a very soft and polite reference to the subpoena power that the Commission has.

Regarding lotteries, there were only one or two states that were refusing to comply with that, and they were reminded, at the time, that this Commission did have subpoena powers, so they then did comply, and it wasn’t necessary to come before the Commission to ask for full action.

Regarding the casino questionnaire, there is absolutely no reason to assume, at this point, that there will be any failure of compliance. And it would be wholly premature to think in terms of any subpoena, it may be totally unnecessary.

In some 30 days we will see what the compliance is, and then there could be some discussion of it. But it may never come up.

CHAIR JAMES: Did you have anything to add?

DR. KELLY: Yes, just to clarify. The date of the letter that went to the casinos was on the 29th, January 29th. Now, as always, there is some variation on how long it takes to get places, but it went out on the 29th.

COMMISSIONER LEONE: Just to refresh my memory from yesterday, we are now going to send communication to the Bureau of Indian Affairs, which we had not done, right?

CHAIR JAMES: Well, that is a point of discussion, and that is what is on the table right now. How would the Commission
like to proceed with both the request before the NIGC and the BIA on the information?

COMMISSIONER BIBLE: My understanding of the discussion yesterday is that the information, at this point, is contained in two parts, and any one part is not going to assist us in our deliberations, and give us the knowledge that we need to have.

We have the revenue data, which is apparently the revenue data for the tribal gaming operations, plus the expenses, and whatever ancillary financial data they will have for the casino operations available through the National Indian Gaming Commission.

The BIA, apparently, has -- and then they make a transfer, apparently, to the regular tribal governance funds, or their enterprise funds, or something of that nature, and that information resides over at BIA, which we have not requested.

I have been told, at least informally, that people have those records, or at least that implies to me they may even be public in terms of the BIA records, as to the financial operations of the tribe.

But I think we are going to need both components in order to get a totality of the picture of the nature of the financial status of tribes that operate gaming.

CHAIR JAMES: Well, I think we have several choices before us. We can do nothing, we can wait to see how both BIA and the NIGC respond, we could send another letter, we could move towards using our subpoena authority that we have been given. But it will be completely at the discretion of the Commission.

COMMISSIONER BIBLE: I don’t have a copy of the Act before me, but I know there is a provision in the Act for
information sharing between federal agencies. Why don’t you just -- if you have the Act, to refresh at least my memory.

Does somebody have the Act?

DR. KELLY: I don't have the Act, maybe –

AUDIENCE MEMBER: We don't have the Act handy, but the position by the NIGC was that that information was confidential, and didn't fall into that provision.

COMMISSIONER BIBLE: And my recollection was, at least in, and I'm working strictly off my recollection from reading the legislative history of the Act is that there were some protections put in primarily for criminal justice that we are not, at least in my opinion, wouldn't run to financial data that you need to conduct an analysis.

COMMISSIONER LOESCHER: Madam Chair, I find that very interesting. Looking at Title 25, chapter 29, 25 USC 2716, subsection B it says: Provision -- this is dealing with the Indian gaming regulation, it says: Provision to law enforcement officials, the Commission shall, when such information indicates a violation of federal, state, or tribal statutes, ordinances or resolutions, provide such information to the appropriate law enforcement officials.

At this point I don't believe this Commission can say that there is a violation of law. So I don't know how this provision would be activated unless we found a violation of law, which I don't see occurring here.

COMMISSIONER BIBLE: Has our Counsel been asked the question?
CHAIR JAMES: Yes, our Counsel has been asked the question, and it is his opinion that this Commission is, indeed, entitled to that particular information.

I don’t know if we have anything in writing? We can get that opinion in writing if necessary, but that has been his opinion.

COMMISSIONER BIBLE: Well, whatever the hourly rate is, we may not want to ask for it in writing at this point.

COMMISSIONER MOORE: It is amusing, to me, and disturbing also, that a federal Commission like this, that is given the responsibility to study the impact of gaming on the people of America, including the Indian, it specifically says, including Indian tribes, would not be available to them.

I can see why the Indians, the NIGC and the BIA probably might be unlawful, or would not have to give something to MGM Grand. I understand that.

But one government agency, so to speak to another one, or a Commission that has the charge to study them. We come down to what do we want to do? I believe, in my small understanding of this Act that we are acting under, that we do have, and everyone has said that we do have the power for subpoena.

How much a subpoena, and how much this information would help us then, we have to stop and think about that. The recommendations will come forth, I believe, out of this subcommittee, even supported by Mr. Loescher, that something does need to be done on a few of the recommendations and regulations.

I think that it would be in our recommendations, in the final report, what information that we need and do not get, we
need to make note of that, we need to footnote that, and let the American people, let the Congress, and let the Senate, and let the President, and whoever else we send this too, know that this information did not come forth, and we were not privy to it.

In my opinion that may say enough. My opinion, and I have talked to the Indian tribes, some of them, I believe that all of this would add credibility to them, instead of hurting them, I believe that this Commission, as I have heard each of you, almost each of you state at this table, from time to time, no one has a hatred or wants to do away with Indian gaming, I don’t believe.

And I believe that whatever will come out of this Commission, if we could do the right thing, would probably strengthen their credibility.

COMMISSIONER BIBLE: So you would recommend, instead of going through a subpoena process, or some formal process, you would simply make a finding that they refused you the information, didn’t cooperate, and let it stand at that?

COMMISSIONER MOORE: That is what I would suggest, but it is open for discussion, and I’m pretty easy going guy, but that would be my recommendation.

COMMISSIONER DOBSON: I strongly disagree with that. We are entitled to that information, and I think we ought to go for it. Who knows what is in it.

COMMISSIONER BIBLE: I’m just concerned, it wasn’t really triggered until Commissioner Leone made the comment that the testifier, Mr. Hill, indicated they didn’t want to supply the information as a matter of trust, and they were concerned that the information might be used against them.
I mean, at least the implication there is a fairly negative implication that there may be something in the information that would be usable against them.

COMMISSIONER MOORE: Let me say this, people’s statement like that, it would irritate me more back home than it does out in public, and on a national Commission. He wouldn’t have gotten by with that, and he would have been punished for saying that, if I had a vote, to vote against such statements as that. He would have been voted down in a minute if he had been coming up for an appointment, or a job, or anything, I guarantee you, he wouldn’t have gotten that job.

But in a public forum as this, and he is entitled to say what he wants to say, I think from my remarks yesterday you could tell it irritated me a little. I don’t like to be accused of being a racist, biased, or anything. I just like it all straight up, and voted up, or voted down, if it includes the impeachment of the President.

CHAIR JAMES: You had to get that impeachment word in so we could hear it at least once in three days. For the record, he has been impeached.

COMMISSIONER MOORE: I have no -- CHAIR JAMES: Let me just remind Commissioners of -- in our enabling legislation in section 5C, information from federal agencies. The Commission may secure directly from any federal department or agency such information as the Commission considers necessary to carry out its duties under Section 4 upon the request of the Commission. The head of such department or agency may furnish such information to the Commission.
I was also reminded that after the refusal to give that information, we did get a written opinion from our attorney, which I will copy and make available to all Commissioners that says that we are, indeed, entitled to that information.

With that -- you certainly can, both the enabling legislation, and that.

What is the sense of the Commission, what do we want to do at this point, do we want to proceed? We put forward the request for information, how do we want to proceed? COMMISSIONER LEONE: I think this is unlikely to be the only case we have where information is not provided. As I understand it, some of the commercial operations are not public companies, and probably will feel that certain questions are intrusive, and don’t fall into categories they normally have to deal with.

I think that the states, that set of governments have been responsive, in part, because they operate in a political environment where they are quite used to having to answer these questions. It is not an option. It used to be an option in some states, but it is not an option.

The tribal governments are in a different category, as I was reminded yesterday, and operate in a different political environment in which the routine provision of this kind of information is, for general perusal, is not always the case.

But I think our obligation is to seek the information by whatever means we can. I hate to set up an adversarial situation over this, my sympathies are with what Paul said, because I don’t think it is in the interest of the other parties to make this an issue You know, there is a tendency to make a lot politically, and from a media point of view, over information
that is withheld, in some ways more than information that is put forward. I would give that advice. I don't quite understand the judgement that goes into this.

But, nonetheless, people are entitled to make their own judgements about their own situations, as are we. And I think our judgement, at the end of the day has to be that we are going to seek this information, and seek help in seeking this information.

Whether this is the right time to do it, or we should wait and see how people respond in the next couple of weeks. We have made something of a fuss about it here, we can make it clear that we are willing to push it.

COMMISSIONER BIBLE: We have one period between meetings, and it seems to me you go after it voluntarily, you set some kind of deadline, if you don't get it voluntarily, you authorize the Chair to proceed according to the statute.

CHAIR JAMES: Let me offer this as a suggestion, because we were very clear that there would be a progression in terms of asking for information, and trying to get that information through that process, and then moving towards using the subpoena power.

In our early days as a Commission, when we were getting to know each other well, we made sure that we were very clear in our operating rules, that we would not go from nothing to a subpoena. That it would have to go through a progression.

I think we have several outstanding requests for information right now. I think all of the lotteries are in, and have complied, if that is my understanding? DR. KELLY: Yes.
CHAIR JAMES: We have information outstanding, right now, with casinos and the Native American. What I would like to request from the Commission, then, is that you would give me the authority to move to subpoena power only in those designated areas that you have already voted on that you request the information.

Because it would require, and I think that that is so important, that we would have to get back together again, we certainly wouldn’t want to do it by telephone. I think the timing would be very difficult in terms of calling the Commission meeting.

I certainly would not progress to that point without at least doing a sort of a consensus to see where we all are, and to be sure, and touching back. But I think it is important that we have a discussion of that today, and have some sort of a vote, for the record, before we would move to that particular point.

COMMISSIONER LEONE: I have a procedural question, and I didn’t notice until this got passed to me. It says that the -- if somebody fails to supply information we can, by majority vote, issue a subpoena. And then it says we should transmit the Attorney General a confidential notice that we have done it. How can we do that, since our meetings have to be in public? CHAIR JAMES: Very quietly. I don’t know how confidential it will be, but -- COMMISSIONER MCCARTHY: May I ask -- CHAIR JAMES: Well I would imagine that there may have been a case where for proprietary reasons we made the decision to issue a subpoena in closed session. I mean, I can see how that may have happened, so then it would be a confidential memo to the attorney general.
COMMISSIONER LEONE: It says we are supposed to do this ten days before we issue a subpoena, send them a confidential notice. If they are watching in the Justice Department, turn this off.

CHAIR JAMES: The Chair recognizes Mr. McCarthy.

COMMISSIONER MCCARTHY: There was some mention of the possibility that release of some of this information in a certain form might be prejudicial. I’m not sure I understood that. Could someone who was privy to that conversation expand on that?

By the National Indian Gaming Commission.

Was there some conversation about the nature of the information? I’m asking because we have made an accommodation, certainly, with the non-tribal casinos in terms of trying to protect -- what we are interested in is the information, and not site specific information.

So as to this information, if any individual tribal gambling operation is concerned as was the non-tribal casino, that somehow some specific information flowing from that company’s operations might be used to their competitive disadvantage, is there that kind of issue here with the information that is at the Commission? CHAIR JAMES: The Chair recognizes the Executive Director.

DR. KELLY: There were two concerns raised by the NIGC when we met with them. One was that they would feel that some of their operations would be put at competitive disadvantage if the specific name of the facility was included in the data.

And I think we offered, at that time, to redact the names of the specific facilities. They also did mention they were greatly concerned that somehow this information would be
released to the public, and we made it very clear that that was not, in fact the case, that none of the information would be released to the public.

COMMISSIONER MCCARTHY: So you gave the same assurances -- MR. BIDWILL: I was at the same meeting. The NIGC’s concern was that if we were to release one of the audits, all of the audits would lose their confidential status and would become public documents. And that was why they were refusing to release those documents.

COMMISSIONER MCCARTHY: Now, did we in writing give very clear assurance on these two points to the leadership of the NIGC? MR. BIDWILL: Yes, we cited our legislation.

COMMISSIONER MCCARTHY: Do we have a copy of that letter that was passed out to the members of this Commission? CHAIR JAMES: I think it was copied at the time to the Commissioners.

DR. KELLY: Last fall it was copied, but we can certainly get you a copy.

CHAIR JAMES: Yes, I think you got it at the time, Leo.

COMMISSIONER MCCARTHY: And did we run that by our attorney to make sure that that -- CHAIR JAMES: Yes.

DR. KELLY: Yes.

COMMISSIONER MCCARTHY: Because I think what they are requesting -- DR. KELLY: Yes, our attorney in fact was with us at that meeting, Steve Katsarinus.

COMMISSIONER MCCARTHY: Our attorney did review it? DR. KELLY: Yes.

COMMISSIONER MCCARTHY: So in effect we responded in the same manner that we did to non-tribal casinos when we were
attempting to gain information there? DR. KELLY: Yes, and addressed all of their concerns.

COMMISSIONER LANNI: Madam Chair? CHAIR JAMES: Certainly.

COMMISSIONER LANNI: The question is of Mr. Kelly, and I guess it is also of Mr. Bidwill. If there is an audit, and it is released, and everything else is released, is that released in a redacted form, or not? MR. BIDWILL: My impression was that our legislation would allow us to summarize data in our report, which I think is necessary for the report, but that would not compromise that information.

CHAIR JAMES: Leo, do you still have the enabling legislation over there? Thank you.

COMMISSIONER BIBLE: I think you have a little bit different type dispute in getting information, because we are requesting information from a governmental agency. They are asserting that the information is confidential by virtue of their enabling statutes, that they are not allowed to release it, which is somewhat different than, say, a tribal casino or a commercial casino, or someone else in terms of going and getting data.

COMMISSIONER MCCARTHY: I appreciate the difference you are pointing out, but I think I understand what they are getting at. That they have to have the confidence of the constituency that they are supposed to regulate, complete information.

And I think if we can give them the same assurances -- now, on the other hand, if they reject those assurances, and we point out that they are similar to what we have given non-tribal casinos, and lotteries, state run lotteries, then I think we are at a different point.
COMMISSIONER BIBLE: But are they asserting a legal argument, or a confidence argument? MR. BIDWILL: They are citing their legislation, they are bound to keep that information confidential.

COMMISSIONER BIBLE: They are asserting a legal argument that they do not have the legal ability to give us that particular information.

CHAIR JAMES: It has been a progression. I think it started out as a confidential argument, and then it progressed to a legal argument.

COMMISSIONER BIBLE: At least in terms of the agency I used to administer, I was precluded from releasing information pursuant to federal subpoena, unless there was a court order, in which case the issue would have to get to court, and adjudicated by a Judge.

MR. BIDWILL: They cited for us three instances where they could release that, one was upon a court order, two was for a criminal investigation, number three is when they have reporting requirements to the GAO.

COMMISSIONER BIBLE: So you have conflicting statutes?

MR. BIDWILL: Yes.

COMMISSIONER BIBLE: And they are taking a very conservative position in terms of their obligation to protect the information which -- CHAIR JAMES: What was the third one? MR. BIDWILL: GAO.

CHAIR JAMES: So we could get it through GAO? That is a novel idea.
(General laughter.) CHAIR JAMES: What is the pleasure of the Commission? COMMISSIONER LOESCHER: Madam Chair? CHAIR JAMES: Mr. Loescher, the Chair recognizes Commissioner Loescher.

COMMISSIONER LOESCHER: I have about three points I would like to make. First of all, when we were back last summer some time, this was taken up in a closed session of this Commission, and there is a record of what was said there.

And, basically, I was advocating that we go through a progression of trying to meet with these people, and at that time I had a very specific request that we define what it is we want. And to this date I have not seen any documentation of what it is we want. At least it hasn’t arrived at my house in the mails. I have no record of the conversation that took place between the staff and the National Indian Gaming Commission, so I have no idea what was said and done there.

But to this point I’m not sure we know what it is we want. And I think that is a point of concern.

CHAIR JAMES: Well, let’s stop right here and see if we can have that question answered for you.

DR. KELLY: I believe that we copied the Commissioners on the letter that we sent back to the NIGC following that meeting, it was a follow-up letter memorializing the meeting, and the understanding that we had reached with them.

If not we will certainly get it out to you immediately, but I believe that was sent out in the fall time.

COMMISSIONER LOESCHER: Thank you. Madam Chair, if I could continue? CHAIR JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: Then I had indicated that we ought to go through a specific progression of encouragement, that
if there was an impasse we ought to not only deal with the Commission itself and try to get a dialogue going at their policy level, of course they haven’t had anybody there until this confirmation hearing today, to fulfill their governance structure over there.

So now we might be in a position to get a better answer. The other was I don’t even think the information that we are requiring is even available to, but maybe one or two congressional chairmans. And that is how secure this information has been dealt with in the past, according to my sources.

The other is this. I don’t think the information exists in the form that we probably wanted to have it, as we have been trying to detect here, in the last month or so, there is no requirement for the National Indian Gaming Commission to have disclosure of other than the amounts of money that they have in revenues, and where it is used in and dispersed in the tribal governments, is not really -- is not a requirement of reporting.

So the information may not exist in the form that we want it. The Bureau of Indian Affairs, through an elaborate analysis of their budgeting process might have some kind of reflection of how other tribal revenues impact other federal funding, but it would be an exercise that would have to, by experts, to try to figure that out.

So what I’m trying to say is that, you know, we could issue a subpoena, all right, but you are not going to -- you may not get back what it is that we are after, because the government isn’t required to record it, and it probably doesn’t exist.

The issue is, what do we want, and can we get it in a timely way. I have some other concerns, Madam Chair, about your
request for unilateral subpoena power for anybody who hasn’t
given us anything.

I’m not willing to grant you that authority. Maybe I’m
only one of the nine votes. But where does it end? BIA doesn’t
give it to you, you can subpoena them, the NIGC, you could
subpoena them, they are going to tell you the source is the
tribes, are you going to subpoena tribal chairmans across
America? I don’t think so.

CHAIR JAMES: No, I -- COMMISSIONER LOESCHER: I’m not
going to sit here and see the only subpoena issued by this
Commission against Native Americans. I cannot believe, sitting
in the hall of law and government at Regent University, we are
considering such an idea, and that would be a black mark against
this Commission.

I have other concerns about this business.

COMMISSIONER BIBLE: Let me respond to that, just
briefly. I think they can solve that black mark by walking down
this aisle and bringing the documents, the same as the state
lottery people did.

COMMISSIONER LOESCHER: Madam Chair, I have other
concerns.

CHAIR JAMES: Let me just interject here. One thing
that I heard consistently, throughout our deliberations, is that
we be fair, and we be balanced, and we make the same request of
all.

And at this point we have had nothing but cooperation
from all sectors of the gambling industry in terms of coming
forth with information. And the request that I made, and
suggested, was not that I have that authority only for Native
Americans, but I asked the Commission for anyone who was not forthcoming with the information that they had already authorized and requested.

So it was not singling out Native Americans, and I want to be very clear about that.

COMMISSIONER LOESCHER: Madam Chair, I would still object to having you have a subpoena power for any American, at this point, whether it be Native American or not.

CHAIR JAMES: Commissioner Loescher, that I do not object to, but I do object to the extrapolation that somehow it is something that is only for Native Americans. What I requested was -- now, you can object to all, which I certainly respect, and that would be fine.

But to suggest that somehow sitting in the law and government building at Regent University, that there is a black, or red, or brown mark on this Commission because of singling out Native Americans, I would take great issue with.

There was no intention of singling out any one population or segment. I think that we should get the information from all that were requested, and I would not single out any one particular constituency.

COMMISSIONER LOESCHER: Madam Chair, if I could continue a couple more points? CHAIR JAMES: The Chair recognizes Commissioner Loescher.

COMMISSIONER LOESCHER: Thank you very much.

The business of competition, you know, the button has been pushed a number of times, mainly from the Las Vegas people, pushing on Indian Americans, Native American gaming and casinos.
And you know I have a problem, as time goes on, with the constant pressure that is being exerted by Las Vegas people trying to get at Native American gaming.

I don’t think it is the proper place of this Commission to use its tools to further the interests of Las Vegas, the interest in this regard. And if that is the nature of the business, then we will act accordingly with that in mind.

The other point is this. If there is going to be a subpoena issued I would hope that the Commission, whether it is for Native Americans, or whether it is for any American group, entity, or business, that they issue a subpoena to, we would examine the content of the subpoena, we would see that subpoena as a full Commission, we would know its terms and conditions, what it is we are after, who we are going after, and we would get advice of Counsel to look at the content of the subpoena.

I don’t think issuing subpoenas should be at the discretion of the Chair. I think it would be at the full review, and public daylight review of this full Commission. And it should be done, the law says it should be done in concert with review and advise of the Department of Justice before we issue such a subpoena.

I would certainly hope that the full Commission would examine the subpoena.

And then lastly, I’m not going to sit here and condone issuing subpoenas to tribal government officials. I think it is inappropriate concept to do that kind of thing, they represent sovereign governments, and this Commission in its statute recognizes the sovereignty of the tribal governments.
And if we are going to use this power to issue subpoenas to sovereign officials, then we ought to really think what we are doing here.

Anyway, I am opposed to the Chairmans request for unilateral subpoena power to any American, including tribal and government officials related to tribal gaming. And I just want to make it clear.

CHAIR JAMES: Thank you. The Chair recognizes Commissioner Leone, and I will get to you in a minute.

COMMISSIONER LEONE: I yield and go next, go ahead.

CHAIR JAMES: I think the next -- excuse me -- COMMISSIONER MCCARTHY: I was going to say just to -- CHAIR JAMES: -- Commissioner McCarthy, the next person I saw was Lanni. I'm trying to get it in order, and then I recognize you.

COMMISSIONER MCCARTHY: I was just going to say, Kay James and I don’t always agree on things, we don’t publicize some of those disagreements, but we have had a couple of strains. So she doesn’t need me to be her advocate.

But I have to, in fairness say, what I heard her say was that she would check with the members of the Commission before any subpoena was issued. So it wasn’t a unilateral authority that was being requested. That is what I heard her say.

Now, let me ask you a question. There came point in the casino -- pardon me, in the lottery questionnaire that the research subcommittee members put in a lot of hours on devising, and then mailed out a draft to all of the members of the Commission for their comments.
There came a moment when there were one or two states that didn’t want to give us the answers we were asking. They were contending that it was proprietary information, and we gave assurances, as had been discussed here, that only information in the aggregate form would be published, there would be no state-specific references, you know, the other things we have been talking about.

Would you have objected if to get full state compliance with that I came to this Commission and asked for a vote to subpoena those one or two states? Would you have objected to that? COMMISSIONER LOESCHER: Madam Chair? CHAIR JAMES: The Chair recognizes Commissioner Loescher.

COMMISSIONER LOESCHER: The answer is yes, but a conditional yes. I think we should use every ounce of influence that we can muster to encourage people to comply with the request of this Commission before we issue a subpoena.

Subpoena power is absolute power.

COMMISSIONER MCCARTHY: It is the heavy hand of the law, I absolutely agree, totally agree. And it is totally appropriate to ask what steps have been taken, in any situation, so as to the state issues, there were a series of conversations, there were references as to how almost all other states had complied, there were assurances given on the several points raised.

Now, after all of that had been done, and we came asking you for a vote on issuing subpoenas, what would you have said? COMMISSIONER LOESCHER: Madam Chair, I would say I want to look at the record fully, I want to see it stacked in front of me, I would like to enquire of the people who were in the process of that exercise, and then I would request a full review of the
terms and conditions of the subpoena, with advice of Counsel, and
require a vote of the full Commission, one by one, as to whether
or not we should exercise this power.

COMMISSIONER MCCARTHY: I agree and subscribe to all of
that, but there is a point you would reach after those conditions
were fulfilled, where you could vote to issue a subpoena on the
states that didn’t respond? COMMISSIONER LOESCHER: Madam Chair, I
do not demur from my responsibility, but I would take you a long
ways before I did it.

CHAIR JAMES: Point well taken.

COMMISSIONER MCCARTHY: And the same question, of
course, as to non-tribal casinos. If they absolutely refuse to
respond to the casino questionnaires we sent out, which is vital
information that we will need to complete the final report of
this Commission, if we went through the same process, giving a
series of assurances, and we found out 30 days from now we had 50
important non-tribal casinos saying to us, go to you know where,
we aren’t going to answer.

And we went through the same careful nuanced, sensitive
steps that you just outlined, would we reach a point where you
might agree to subpoena those non-tribal casinos to get that
information so we could complete the work of this Commission?
COMMISSIONER LOESCHER: Madam Chair, the question is the same as
the other, then it has been asked and answered.

COMMISSIONER MCCARTHY: Fine.

CHAIR JAMES: Commissioner Lanni? COMMISSIONER LANNI: A
couple of matters. One relative to the request for the
information, and the request for a subpoena power, one thing that
might be more helpful to not only Native American casinos, but to
commercial casinos, or non-Native American, I’ve never quite figured out what we are, but on that respect I would recommend the following.

I think they do need to have the names and addresses redacted, as has been suggested and discussed by the staff, by the executive director.

I think, further, not only I think, I would recuse myself from looking at any of those documents for either Native American or non-Native American facilities to ensure that there wouldn’t be any concern about a competitive advantage or disadvantage.

I would go on record, I don’t want to see any of that, I will not accept seeing any of that.

One aspect, if I could, of Mr. Loescher’s and I understand your point of view, and I respect your right to have that, Bob. I want you to know one thing, is that when you talk about Las Vegas interests, and I don’t know if I’m Las Vegas interests, either, but assuming that I am, just for the record, so that you know, if you are referring to the California initiative and the funding against proposition 5, I took a lot of grief, and my company took a lot of grief on the basis that we did not contribute one penny to that campaign, either in favor, or in opposition to the campaign.

And there were substantial interests by Nevada casinos, which they have the right to do, under the law, to oppose the campaign, unsuccessfully.

But I think I have gone on record, I am not at all opposed to Native American gaming. I have some questions about regulations that you and I may not agree on, and I have some
questions about the participation that I raised yesterday in the pathological and problem gaming areas of how the Native American casinos could participate in that, in my opinion.

But those are separate issues. I’m not opposed to it, I have never, ever had a statement in my life, I have never been involved in that. So you can rest assured, at least from this standpoint, this is one Commissioner who has a very open -- maybe I don’t have an open, I have a closed view but it is favorable to Native American gaming.

But having said that, I think if that could help the tribal members, and the leaders of the tribal concerns that have gaming, I can’t speak for the National Indian Gaming Commission, that is a separate issue.

But if that could be of any help I automatically will recuse myself, which I want to be on record, of anything that is sent in. I think that will be helpful to competitors within our form of the gambling industry, who have expressed interest, and concern, frankly, that I would see this.

They give me more credit for my ability to probably decipher something from it, but having said that, I have recused myself from it, and I just wanted to go on record with that.

CHAIR JAMES: Commissioner Wilhelm? COMMISSIONER WILHELM: Two points. I have been advised that some of the commercial casinos have raised the question as to whether, I guess somewhat analogous to what Commissioner Lanni was just referring to, as to whether or not it might not be disadvantageous to some of the commercial casinos if I were to see some of the questions that have to do with employment practices.
And I would join Commissioner Lanni in gladly surrendering the opportunity to look at either the commercial casino questionnaire responses, or the tribal casino questionnaire responses in the event that anybody thinks that there is a conflict of interest.

Professionally I’m somewhat offended, because that implies I don’t know what these people are paying, but that is okay.

(General laughter.) COMMISSIONER WILHELM: Secondly, the Chair made reference earlier to earlier periods in the life of this Commission when she rather delicately put it, we were getting to know one another.

And during one such period, about a year and a half ago, in the research subcommittee I was having a colloquy with my friend Commissioner Dobson, who challenged me as to whether or not I would, if the necessity arose, support the issuance of subpoenas to commercial casino operators, if the Commission needed to do that in the course of its work, and I said, try me.

And in that context I see that there is a representative of the American Gaming Association here, and likewise of the National Indian Gaming Association, and I would like to strongly suggest to those organizations that they listen very carefully to Commissioner McCarthy’s comments of a few moments ago.

I think the provision of the information requested is of the utmost importance, so I think Commissioner McCarthy is right in that, and I wouldn’t have any hesitancy in supporting whatever action is necessary to gather that information from whichever of the sources we’ve requested it from.
CHAIR JAMES: The Chair recognizes our executive
director, and then I will go to Commissioner Leone.

COMMISSIONER LEONE: Yes, I didn’t mean to yield to
everybody, but I will go last.

(General laughter.) DR. KELLY: Commissioner Loescher,
I just thought it might be helpful for me to let you know that
we, the staff, I think followed a progression very similar to the
one that you laid out, I think you are exactly right, and we at
the direction of the Chair, and Commissioner McCarthy were very
careful in the steps that we followed, for instance, pursuing the
lottery data.

So when it came to the point for -- actually, it was
two final states that were kind of holding out on us, I can tell
you we can document I would guess dozens of phone calls, a series
of letters, every effort was made over a period of several weeks,
and only then did we get to the point of writing one letter which
actually mentioned the "S" word, the subpoena word.

We mentioned the word and that all of a sudden brought
the information. But even if that hadn’t been successful, there
would have been more steps between that and bringing it to the
Commission for a final review.

Likewise, in working with the NIGC, let me assure you
that there have been numerous telephone calls, there was an
exchange of letters before there was a formal request, then there
was a formal request on behalf of the Commission, asking for the
information.

Then there was a meeting with NIGC staff, I believe if
I remember right, they had about 12 people there, we had myself,
our lawyer Mr. Bidwill, and also the lawyer that we were working
with from McGuire Woods, Steve Katsarinus there with us.

And then after that we memorialized the meeting very
carefully with a follow-up letter, and after that there was more
telephone calls, and a final response from the NIGC to us.

I just thought it might help, Commissioner Loescher,
for you to know that we concur completely with you, and would not
consider moving any of those steps unless it was absolutely
necessary, and we were very careful and detailed in that
progression.

CHAIR JAMES: The Chair recognizes Commissioner Leone.

COMMISSIONER LEONE: Thank you.

COMMISSIONER MCCARTHY: Thanks for yielding to me and my
friends.

COMMISSIONER LEONE: I think it is important that people
listen, have a context, and don’t misunderstand what is going on.

And I want to just say a couple of things quickly. One
is, some people might have to, or want to recuse themselves
because of the businesses they are in. I have no interest, I’m a
big picture guy, I have no interest in a specific report from a
specific operator, I’m more interested in the other stuff.

But I think what is important to understand is why the
information is important. There is one thing that this
Commission is unanimous about.

Putting aside the issues of whether we believe there
ought to be gambling, or how it ought to be regulated, everybody
recognizes there are costs, that it is not cost-free. It affects
individuals, it affects communities.
And we have all agreed upon that, and many of our recommendations are going to probably talk about that.

We have limited information, despite all our research and all the wisdom people bring about how much it costs. And how much of this there is, or how much of that there is. We have trouble quantifying some of these things.

I began this process with a hunch, that I still have, that in terms of costs and benefits, even apart from the unionization, or non-unionization, that one of the best cases could probably be made for Native American gambling, because the benefits, relative to the needs, were very great. And while there are, undoubtedly, costs; and I don’t accept the notion of acceptable casualties.

But if we are going to have to tally up this number, that you could make a pretty good case there. I don’t know how to make that case without better information.

I have been told not to rely on anecdotal evidence, although in the future I will rely more on parables. I tend to be an Old Testament guy, I should say, which is maybe part of my problem.

But I think in this particular case we have a special responsibility to pursue this information. I began by believing, and it was my understanding of the legislative history, that it was the industry, the commercial industry that resisted the subpoena power being given to this Commission for a variety of perfectly reasonable commercial concerns. And they got certain assurances.

I think we should provide whatever assurances are necessary to people, and go through the steps that Bob has ably
laid out, and that you followed in the other cases. But at the end of the day, I hope we don’t have to face this question, but we may have to face this question, and be prepared to make every effort to make the best case we can for people.

I recognize that people who don’t trust us will never believe we are going to make the best case we can for them. Nonetheless we are going to make a case, as a Commission, and we ought to have all the tools we can have to make that an informed case.

CHAIR JAMES: What is the sense of the Commission? How would you like to proceed? COMMISSIONER MOORE: Madam Chair, even though what I suggested earlier that I would be, myself, perfectly satisfied to put a note that we would not receive the information, I make the motion, as chairman of the Indian subcommittee meeting, that we seek this information by whatever method it is legally accessible to us.

Because I think that this would give a better report, and I believe it will, in the long run, will give credibility to American Indian gaming.

COMMISSIONER DOBSON: I will second that motion, being like Paul, an easy going guy that is -- I think it is appropriate that I second it.

COMMISSIONER BIBLE: And I think for purposes of the record you need to clarify, you are asking for information from the National Indian Gaming Commission, you are asking for information from the BIA, you are going to exhaust all voluntary compliance measures, and then the Chair would be authorized to seek, or serve a subpoena for the information on behalf of the Commission? COMMISSIONER MOORE: Yes.
COMMISSIONER MCCARTHY: I like the way the Chair framed it earlier.

CHAIR JAMES: We have a motion on the floor, and I do want to be very careful at this point, and it has been moved, and it has been properly seconded, and if you want a point of clarification, or a friendly amendment, I would be happy to entertain it at this point.

COMMISSIONER MCCARTHY: I want to make sure that what the maker of the motion, and the second of the motion have put on the table before the Commission is what the Chair framed earlier, that we are talking about not just information from the two agencies cited, but carefully, given the shortness of time between now and June 20th, and the need to collect that information, so that we can intelligently write the final report, we are talking about any arbitrary non-compliance.

CHAIR JAMES: Right.

COMMISSIONER MCCARTHY: Not just from these two agencies.

COMMISSIONER WILHELM: In other words, meaning to include the other questionnaires the Commission has authorized?

COMMISSIONER MOORE: Or other casinos that may not have come forth. The private type, or whatever you -- CHAIR JAMES: And I -- COMMISSIONER MCCARTHY: And the other point, if I may suggest, to emphasize a point that Bob Loescher was making, that this will -- may I recommend that this be included, Madam Chair, that there be, if you intend to make a recommendation to use a subpoena, there be a conference call, that the form of the subpoena will be sent to every member of the Commission, and that there be a conference call in which this will be discussed.
CHAIR JAMES: Yes. And I would add to that, first of all we need to make sure that the maker of the motion would accept your amendment. And I would clarify it even further by saying that we follow, as closely as we can, all public, you know, all of the necessary requirements to inform the public as well.

COMMISSIONER BIBLE: Are we including information that is currently being requested, or information that may be requested? CHAIR JAMES: No, only what has currently been requested, no future -- COMMISSIONER BIBLE: Okay, that is fine, I don’t have a problem with that.

COMMISSIONER LANNI: In the questionnaires? CHAIR JAMES: Yes.

COMMISSIONER BIBLE: Some of the questionnaire generated next Monday, that is not includible. Did you hear about that one? COMMISSIONER BIBLE: I heard you mention that you had some free time.

(General laughter.) CHAIR JAMES: The Chair’s understanding, only currently requested information, what you have already requested.

And Hearing no objection from -- Commissioner Wilhelm?

COMMISSIONER WILHELM: Do we have a current request to the Bureau of Indian Affairs? CHAIR JAMES: No, only this and -- COMMISSIONER MCCARTHY: So it would be understood, from what John has just raised, that you have to go through the progression of steps and conversations with the BIA, because that is totally appropriate, what Bob has been, and echoed by others here.
CHAIR JAMES: Let me see if I can summarize what I understand the motion to be at this point, and Commissioner Moore, if I don’t capture it all, please step in.

Your motion, at this point says that you would authorize the Chair to seek the subpoena -- to issue a subpoena for BIA, NIGC, and any currently already sought information with the understanding that before such action is taken, that it will be brought before the full Commission for review and that we will notify all appropriate public entities, and follow all procedures in order to do that.

I’m sure that is not the correct language, but I hope you get the spirit of it.

COMMISSIONER MOORE: Did I hear you say, a moment ago, that maybe there are six, some other type of public casinos that have not responded, did I hear you say that? CHAIR JAMES: No.

DR. KELLY: No, no.

CHAIR JAMES: There is no reason to believe that --

COMMISSIONER MCCARTHY: You have a problem from tribal and non-tribal casinos in response to our questionnaire that went out, only a couple of weeks ago.

COMMISSIONER BIBLE: Because the deadline hasn’t run yet, has it? CHAIR JAMES: That’s correct.

COMMISSIONER MCCARTHY: It has not run, and we don’t anticipate difficulty, we must await -- CHAIR JAMES: I want to act on this motion before we lose it.

COMMISSIONER DOBSON: I need to ask a question.

CHAIR JAMES: Absolutely.

COMMISSIONER DOBSON: We did hear, earlier, that the use of the S word brought the information that was requested. I
would hope that there -- that this would not come as a surprise to anybody.

I would hope that they would have an opportunity to comply, and not force us to do this. I’m sure that this being an open meeting, this word will get back to somebody. But if not, I think we ought to make sure they do.

COMMISSIONER LEONE: You know, as a matter of fact, having thought more about the language, I think this is probably the only way we can do it, is authorize it, and then if we were actually to do it, follow the statute and do the confidential notice to the Justice Department ten days ahead of time.

So I think we have stumbled into the right formulation.

CHAIR JAMES: In spite of ourselves.

CHAIR JAMES: With that in mind, we do have a motion before us, it has been moved, it has been properly seconded, we have had discussion -- COMMISSIONER LOESCHER: Madam Chair, I would like a point of order. I would like to understand, again, one more time what is the motion, and can we hear it very clearly so that there is no misunderstanding as to what the motion is.

CHAIR JAMES: I will try it one more time.

Perhaps you should read it back to make sure.

DR. KELLY: I was writing as the Chair was speaking.

The motion is to authorize the Chair to issue a subpoena, if necessary, concerning information requested from the BIA, the NIGC, and any other currently already sought information, understanding that this process, however, will be brought before the Commission for review, and then all other proper procedures, such as notifying any other entities that need to be notified in advance will be followed.
CHAIR JAMES: The Chair recognizes Commissioner Lanni.

COMMISSIONER LANNI: I have a great deal of respect for the Chair, but I don’t think she has the authority to issue a subpoena. She has the authority to request the attorney general to issue the subpoenas.

MR. BIDWILL: We have the subpoena power.

DR. KELLY: To prepare.

COMMISSIONER MCCARTHY: To prepare for consideration by the members of the Commission.

DR. KELLY: To prepare for issuing a subpoena, then?

COMMISSIONER MCCARTHY: To prepare the issuance of a subpoena, after all appropriate steps have been taken, and recorded, I might say.

DR. KELLY: Should I read this again?

CHAIR JAMES: Only if you feel you must.

COMMISSIONER LEONE: I think you better.

DR. KELLY: The motion, maybe it would be easier if we said this concerns information requested from the BIA, the NIGC, and any other currently sought information. The motion regarded those sources of information is to authorize the Chair to prepare the issuance of a subpoena after all appropriate steps have been taken and recorded, understanding that it will be brought, this process that is, the issuance process will be brought before the Commission for review, and all necessary procedures followed, such as the notification of relevant entities.

CHAIR JAMES: It has been moved, it has been properly seconded. Is there any further discussion? COMMISSIONER LEONE: I think we should let our attorney take a look at the form of that motion. We can vote on it, but I would certainly make sure --
CHAIR JAMES: Well, I don’t think the language of the motion ought to change, once we have voted on it.

COMMISSIONER LOESCHER: Madam Chair, I would like to move an amendment. The Chair, subject to the advice of Counsel.

COMMISSIONER LEONE: I will second that, that is fine.

CHAIR JAMES: We currently have a motion on the table, and we need to act on that motion before the Chair.

COMMISSIONER DOBSON: I accept.

CHAIR JAMES: It is a friendly amendment, it has been accepted, do you accept that amendment? COMMISSIONER DOBSON: I accept.

CHAIR JAMES: Then it is accepted. Are we ready for the vote? COMMISSIONER LOESCHER: Madam Chair, a roll call vote.

CHAIR JAMES: Absolutely, wouldn’t do it any other way, Commissioner. Mr. Bible? COMMISSIONER BIBLE: Aye.

CHAIR JAMES: Mr. Dobson? COMMISSIONER DOBSON: Aye.

CHAIR JAMES: Mr. Lanni? COMMISSIONER LANNI: Aye.

CHAIR JAMES: Mr. Leone? COMMISSIONER LEONE: Aye.

CHAIR JAMES: Mr. Loescher? COMMISSIONER LOESCHER: No.

CHAIR JAMES: Mr. McCarthy? COMMISSIONER MCCARTHY: Aye.

CHAIR JAMES: Dr. Moore? COMMISSIONER MOORE: Aye.


CHAIR JAMES: The Chair votes yes, and the motion is carried.

Is there any other business to come before the Commission at this time?
COMMISSIONER LOESCHER: Madam Chair, I have one humble request, and a point of clarification on the procedure, rules and procedures of the Commission.

CHAIR JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: I have it in my mind that the Commission is the Commission. The members are the Commission. Yesterday I enquired of the executive director that maybe one or two, or three of us, would like to meet with the Commission staff in Washington, D.C., or wherever.

And he informed me that we can’t meet with anybody as one, or two, or three Commissions, without having a public notice of a meeting.

And I am a bit flustered and frazzled over this concept. He indicated to me that the FACA rules governed, and GSA had a big thing to say about what we do, and as we get to the final months here, I have a need to visit with Dr. Moore, and Mr. Wilhelm, and I like to keep track of Mr. Bible, a little bit.

And I like to visit, meet with people and the --

COMMISSIONER MCCARTHY: I yield at my meetings.

COMMISSIONER LOESCHER: From time to time I like to ask staff to attend our little gatherings. And since staff works for the Commission I don’t see what the heck the problem is.

But notwithstanding all that, we need to figure out how in the heck we can conduct business, even to have a cup of coffee seems to require a formal public notice, and I’m having a hard time with the concept And I know that you are big on sunshine and daylight, but we need to have a way to communicate with one another, and I humbly request that you and Counsel and executive
director find a way for us to be able to communicate with one another so we can get to the end.

COMMISSIONER MOORE: May I just come right in and say two words? CHAIR JAMES: Commissioner Moore, always.

COMMISSIONER MOORE: I agree with him wholeheartedly.

COMMISSIONER BIBLE: So do I.

CHAIR JAMES: Commissioner McCarthy, it is all duly noted.

Having said that, and it is duly noted and I will tell you that I see, strongly, as one of my responsibilities as Chair, in spite of what Senator Bryan and others may think my motives are, is to make sure that these deliberations are held in an open way, and that members of organizations and individuals that have an interest in hearing what is going on, as well as the press, have access to that.

Having said that, there are provisions within FACA, and we are operating within the spirit if not, indeed, the letter of FACA, there are provisions in that for private meetings, as long as it is done according to those provisions.

And so I would encourage Commissioners to be very careful, and Commissioner Loescher I heard in your request that I contact Counsel, and of course I’m happy to do that. But I would warn each and every one of you against getting together in small groups to discuss business, or to deliberate, or to make decisions.

It would be far easier if we had the ability to do that, and I absolutely concur, we could move things along a lot faster.
But I think there are reasons why those provisions are in place.

Commissioner Lanni? COMMISSIONER LANNI: One last thing. I think this can reach unanimity, we obviously owe a great debt of gratitude for you, the staff and the students of this university, as well as the Founder’s Inn, and all the facilities, and the hospitality that you offered to us as Commissioners, and to the people who came with us. Thank you.

(Applause.) COMMISSIONER BIBLE: Before you accept that, I want to at least observe that last night when I arrived back in my room I found a little bag that had a cup and a t-shirt, and I immediately looked at it, and it was extra large, which I think is only appropriate after that meal you served us.

CHAIR JAMES: Well, you know, I figure I have union t-shirts in at least four colors now, and I found it appropriate that you not leave Regent University without that.

I do want to acknowledge, if you would, as a point of personal privilege allow me to do that in our last two or three minutes together, the individuals who have handled the logistics and made this possible.

My own personal assistant, and my GA, my graduate assistant. Don Hively would you stand and just be recognized? She has done a fantastic job.

And there are two gentlemen who this is actually class work for them, and they have handled all of the logistics, every meal you’ve had, every ride to the airport, all the setup for the meetings, made sure you had candy and water, Rob Beals and Steven Daniels, and I would like for them to stand to be recognized at this point.
Okay, can we have a point on the grade, A, B, what do you think? A plus. Having said that, Rob, when do you graduate? Steven when do you graduate? Dawn, when do you graduate? They are all looking for jobs so I want to make sure that you know who they are.

Also our regent staff, and there have been some gentlemen in that backroom who have handled the facility here, Sean Steward, Jerry Maurer, and I want to thank them for all that they have done, and they have done a great job with the sound and with the lighting.

And I want to thank my own staff, Sue Lippincot and Greta, they both have just phenomenal in the midst of some personal tragedy for Sue, her stepfather died and she had to leave in the middle of this. But even with that she wanted to stay and make sure that things were covered last night, and that you were accommodated and taken care of.

I have been delighted to have you here, and to welcome you on behalf of the university, to make sure that you had a taste of southern hospitality.

With that this Commission meeting is adjourned.