

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

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

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

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

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

25 As indicated in my earlier remarks, and in the dialogue
26 that just occurred, the technology to a large extent is
27 attempting to drive the policy decision here, because of the
28 technology and the representation that it is very, very difficult
29 to regulate internet gaming we should make the policy to prohibit

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1 it, that we should make the policy choice to regulate it, or
2 allow it, or legalize it, or do whatever, because if you tried to
3 prohibit it simply is not possible from a technological
4 standpoint.

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

10 CHAIR JAMES: Was that a unanimous -

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

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

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

26 Now, you do have, and you had distributed to you this
27 morning a paper that describes as internet gambling technology
28 and policy challenges. This was prepared by Valerie Rice of the
29 Commission staff, and I commend it to your review.

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1 It would be my intent that this document become the
2 basis, after further review and modification, of the
3 subcommittee's report to the full Commission, and hopefully it
4 will provide a foundation for that chapter of the Commission's
5 report that deals with internet and internet wagering issues.

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

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

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

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

23 But I think these recommendations, more than almost any
24 others, except perhaps those about problem with pathological
25 gambling where there is an argument about what we are talking
26 about, these recommendations need to be backed up with whatever
27 evidence we can bring forward, that they are practical
28 recommendations, that they are plausible.

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1 Otherwise I'm afraid that a recommendation like this
2 would be featured in a context in which somebody at some media
3 lab somewhere says, well that is all well and good, but that is
4 impossible, and the conversation moves on.

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

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

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

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

24 COMMISSIONER LEONE: One other question I have, which is
25 the international aspect. I know on the recent encryption treaty
26 that was negotiated over a period of time, and which has a number
27 of signatories, the United States led in that effort, it was
28 decided that it had to be, and it is an internet issue, it had to
29 be an international agreement, and I wonder if there are aspects

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1 to regulation that would require an international agreement as
2 well, and whether we shouldn't address that, because -- and there
3 are such things, there are things, there are already agreements
4 that affect where countries have one thing possible in their
5 country, but not in others, and reach agreements about how that
6 will be handled.

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

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

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

23 That just does not seem to me to be responsible public
24 policy. But, interestingly enough, New South Wales is one of the
25 leaders in doing that, and apparently they now are concerned
26 about some internet marketing that is occurring within their
27 jurisdictions, and are taking some prohibitive approaches to some
28 wagering activities coming in from some island off of their
29 coast, because they are losing part of the racetrack gamble.

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1 I guess it just depends on where you are situated as to
2 how you react. But I think your comments, obviously, are well
3 taken. We have looked at that issue, and the issue has been
4 looked at by a number of people, and it is going to be very
5 difficult to do that because some of these, at least the third
6 tier countries I see this as a potential source of revenue, and
7 it gives the internet operators some credibility if they say they
8 are operating from some island in the Caribbean, or something of
9 that nature.

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

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

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

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

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

24 To preface it, I have lived long enough to be a father,
25 and now a grandfather, and I sit back and I look at things as
26 they go, over a lifetime, and I have seen and heard that the days
27 of prohibition, and what happened to those notions of prohibiting
28 something in America, and what has occurred in history when the
29 Congress had prohibition on this or that.

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1 But I -- over Christmas I have a little three and a
2 half year old grandson, and we have computers at my house, and
3 I'm amazed, at three and a half years old he can play child's
4 games on the computer, and I had to study, figuring out what he
5 was doing But it is amazing what is going on.

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

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

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

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

26 But they are going to invest in internet gambling
27 themselves, they have to, because it is going to grow. And that
28 is where the growth can be. And I think that is already
29 occurring.

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1 The business of states, Madam Chair, I would like to
2 ask the committee to invite the states back to the table, the
3 National Governor's Association, the Attorney Generals, maybe the
4 legislative -- National Representatives of Legislators to appear,
5 because I don't think we have heard enough from the states on
6 this issue.

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

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

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

21 In the public policy debate over gambling on the
22 internet NAG has taken the unusual position that this activity
23 must be prohibited by federal law, and that state regulation
24 would be in effect. Gambling laws and regulations have more
25 state to state variety than almost any other area of law. Each
26 state's gambling policy is carefully crafted to meet its own
27 moral, law enforcement, consumer protection, and revenue
28 concerns.

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1 Each state believes it has crafted the combination of
2 law and policy to address its population's need. The internet
3 threatens to disrupt this.

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

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

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

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

27 But the states attorney generals are interesting
28 people, they seem to have an opinion on everything, and -- but
29 across America only a few places are attorney generals elected,

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1 for the most part they are not And I believe that the real place
2 that decisions are going to be made with regard to the internet
3 are not in the offices of attorney generals, but they are going
4 to be made in the offices of legislators in these various states,
5 and that is how I see it happening.

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

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

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

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

24 But in conclusion, Madam Chair, I think the notion of
25 prohibition as a recommendation from this Commission defies what
26 we know about technology and the availability of the
27 telecommunications to provide this kind of access in the future.

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1 And although I think there is some grave dangers to our
2 individual homes, I think a recommendation of prohibition is not
3 realistic.

4 CHAIR JAMES: Thank you. Commissioner Dobson?
5 COMMISSIONER DOBSON: Bill, I appreciate the work of your
6 committee. I haven't had a chance to read this entire thing, but
7 I appreciate what I have heard you say.

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

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

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

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

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

27 And they just declared that unconstitutional. So, you
28 know, the possibility that they will let stand an effort to limit
29 free speech, however it is defined in this regard, does not seem

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1 very likely to me We still have to do it, but I fear for the long
2 term outcome.

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

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

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

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

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

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

28 It keeps out the criminal element, and does a good job
29 in other respects. That will never be the case with internet

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1 betting, no matter how you try to put this together. And if you
2 feel strongly about keeping betting out of the homes, as I think
3 John Wilhelm referred to, I think this is the course we are going
4 to have to try to follow here.

5 Frankly, people who are opposed to all forms of
6 betting, I think, could arrive at the conclusion, allow this
7 internet betting to go on, because it will lead much sooner to
8 the american public getting to the point where they say, my God,
9 enough is enough, and let's really start putting a ban on a lot
10 of forms of gambling in a lot of places.

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

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

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

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

28 And it may be that we will have to extend some comments
29 about treaties. But until we domestically do everything that we

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1 could conceivably do to see what the results are, and until we
2 stick with what the Chairman said about no exemptions, that
3 includes powerball, and you can bet we are going to hear from the
4 states that want those multi-state lotteries, that includes any
5 other forms of what Kyl has already put in, Senator Kyl has put
6 into his bill, because this or that constituency wanted it.

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

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

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

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

24 An example that somebody wrote for the fund is that
25 because of his interest he could wake up in the morning and have
26 his own personal paper printed out, and on the first page there
27 would be a bunch of things that interest him. It might not
28 mention, at all, that Libya had invaded the United States, was
29 the example he used, because over the years his own personal

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1 package had screened out the fact that he wasn't interested in
2 the international news stories, he had so many other things.

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

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

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

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

28 I live in a town, Princeton, that had a lot of little
29 stores, they are gone, with one exception.

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1 But at least it was interesting that the bookstores
2 created a space where they served coffee, and in some cases
3 meals, and people came together in a world of books.

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

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

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

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

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

28 And you, even in addition, sort of segregate off the
29 people who suffer the negative externalities, the breakdowns of

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1 family, the debt, the pathologies that go with it. They become
2 divorced from the rest of us, we don't intercept with them, or
3 interact with them.

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

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

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

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

20 COMMISSIONER DOBSON: It was well said.

21 CHAIR JAMES: You've got mail.

22 COMMISSIONER BIBLE: I saw that too.

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

28 My concern, however, is the curious adolescent who
29 surfs the net, and goes all sorts of places. And what I have

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1 learned, much to my dismay, in understanding how the technology
2 works is, once you've been there, they've got you, and they know
3 about you.

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

8 COMMISSIONER MCCARTHY: Did you win?

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

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

20 Commissioner Dobson?

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

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

27 They didn't intend to go looking for pornography, but
28 they were lured into it because of toys. If they click on

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1 horses, one of their options will be love horses, and you click
2 on that, and you get bestiality.

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

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

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

17 With that, a 15 minute break.

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

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

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

28 Thank you for your flexibility with dates, and I think
29 you will see some of that final timeline changing.

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1 Are there any issues that need to come before the
2 Commission at this particular point?

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

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

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

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

15 So is that what you want, Bob?

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

19 CHAIR JAMES: Okay. Anything else.

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

27 And if that is the case I would like to understand what
28 it is you've done, and what kind of communications, and what
29 formalities are involved in that business.

1 CHAIR JAMES: I think in my specific office I asked them
2 to check for me in terms of if there was a Hearing, and when the
3 Hearing was going to be held.

4 COMMISSIONER LOESCHER: Madam Chair, I just would like
5 to express, for the record, that this Commission has tried to
6 interfere with Congress' activities with regard to the Indian
7 affairs at least once already. And if this is another event in
8 that regard, I think we are exceeding our mandate under the
9 Statute, and I would like, for the record, to note my objection
10 to this kind of approach to life.

11 CHAIR JAMES: Duly noted. Any other comments on that?
12 Certainly, go ahead.

13 COMMISSIONER MCCARTHY: I was unaware of the approach
14 regarding -- I don't know anything about this nominee, is this a
15 current member, a reappointment member, or is this someone who is
16 being submitted by the President for appointment to this
17 Commission? This is the first I've heard about it. I didn't
18 hear the Chair was proposing any Commission action on this. Is
19 there a suggestion that that is what we are talking about here,
20 or what is the -

21 COMMISSIONER LOESCHER: Madam Chair, I was enquiring of
22 the Chair and of others if there is a formal action by this group
23 going from this Commission to the Congressional Hearing regarding
24 this confirmation, I would like to know about it.

25 And it is a practice, in Congress, to provide questions
26 for senators, and to enquire of a confirmation nominee, of what
27 they intend to do in their office.

28 And it was told to me that those kinds of questions may
29 have been advanced. And if there were questions being advanced

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1 from this Commission, I wanted to know the content of the
2 questions.

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

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

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

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

14 COMMISSIONER BIBLE: I certainly think it is -

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

16 CHAIR JAMES: Or inappropriate.

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

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

27 But where are we on the lotteries, and where are we on
28 the commercial sphere?

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

8 COMMISSIONER LANNI: Does that include the District of
9 Columbia?

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

15 As far as the casino -

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

18 DR. KELLY: No.

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

21 COMMISSIONER LEONE: Just the lotteries.

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

26 Of course we will be getting back with you just as soon
27 as we have some indication positive or negative on that topic,
28 but we gave them, I believe, 30 days for one wave of information,
29 was it 60 days for a second? No, just 30 days. We gave them 30

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1 days for the information that we are requesting. So we should
2 know something within a few weeks.

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

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

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

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

20 CHAIR JAMES: Did you have anything to add?

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

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

28 CHAIR JAMES: Well, that is a point of discussion, and
29 that is what is on the table right now. How would the Commission

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1 like to proceed with both the request before the NIGC and the BIA
2 on the information?

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

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

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

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

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

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

28 COMMISSIONER BIBLE: I don't have a copy of the Act
29 before me, but I know there is a provision in the Act for

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1 information sharing between federal agencies. Why don't you just
2 -- if you have the Act, to refresh at least my memory.

3 Does somebody have the Act?

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

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

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

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

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

26 COMMISSIONER BIBLE: Has our Counsel been asked the
27 question?

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1 CHAIR JAMES: Yes, our Counsel has been asked the
2 question, and it is his opinion that this Commission is, indeed,
3 entitled to that particular information.

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

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

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

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

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

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

28 I think that it would be in our recommendations, in the
29 final report, what information that we need and do not get, we

1 need to make note of that, we need to footnote that, and let the
2 American people, let the Congress, and let the Senate, and let
3 the President, and whoever else we send this too, know that this
4 information did not come forth, and we were not privy to it.

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

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

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

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

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

25 COMMISSIONER BIBLE: I'm just concerned, it wasn't
26 really triggered until Commissioner Leone made the comment that
27 the testifier, Mr. Hill, indicated they didn't want to supply
28 the information as a matter of trust, and they were concerned
29 that the information might be used against them.

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1 I mean, at least the implication there is a fairly
2 negative implication that there may be something in the
3 information that would be usable against them.

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

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

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

21 COMMISSIONER MOORE: I have no -- CHAIR JAMES: Let me
22 just remind Commissioners of -- in our enabling legislation in
23 section 5C, information from federal agencies. The Commission
24 may secure directly from any federal department or agency such
25 information as the Commission considers necessary to carry out
26 its duties under Section 4 upon the request of the Commission.
27 The head of such department or agency may furnish such
28 information to the Commission.

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1 I was also reminded that after the refusal to give that
2 information, we did get a written opinion from our attorney,
3 which I will copy and make available to all Commissioners that
4 says that we are, indeed, entitled to that information.

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

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

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

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

24 But I think our obligation is to seek the information
25 by whatever means we can. I hate to set up an adversarial
26 situation over this, my sympathies are with what Paul said,
27 because I don't think it is in the interest of the other parties
28 to make this an issue You know, there is a tendency to make a
29 lot politically, and from a media point of view, over information

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1 that is withheld, in some ways more than information that is put
2 forward. I would give that advice. I don't quite understand the
3 judgement that goes into this.

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

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

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

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

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

26 I think we have several outstanding requests for
27 information right now. I think all of the lotteries are in, and
28 have complied, if that is my understanding? DR. KELLY: Yes.

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1 CHAIR JAMES: We have information outstanding, right
2 now, with casinos and the Native American. What I would like to
3 request from the Commission, then, is that you would give me the
4 authority to move to subpoena power only in those designated
5 areas that you have already voted on that you request the
6 information.

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

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

17 COMMISSIONER LEONE: I have a procedural question, and I
18 didn't notice until this got passed to me. It says that the --
19 if somebody fails to supply information we can, by majority vote,
20 issue a subpoena. And then it says we should transmit the
21 Attorney General a confidential notice that we have done it How
22 can we do that, since our meetings have to be in public? CHAIR
23 JAMES: Very quietly. I don't know how confidential it will be,
24 but -- COMMISSIONER MCCARTHY: May I ask -- CHAIR JAMES: Well I
25 would imagine that there may have been a case where for
26 proprietary reasons we made the decision to issue a subpoena in
27 closed session. I mean, I can see how that may have happened, so
28 then it would be a confidential memo to the attorney general.

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1 COMMISSIONER LEONE: It says we are supposed to do this
2 ten days before we issue a subpoena, send them a confidential
3 notice. If they are watching in the Justice Department, turn
4 this off.

5 CHAIR JAMES: The Chair recognizes Mr. McCarthy.

6 COMMISSIONER MCCARTHY: There was some mention of the
7 possibility that release of some of this information in a certain
8 form might be prejudicial. I'm not sure I understood that.
9 Could someone who was privy to that conversation expand on that?
10 By the National Indian Gaming Commission.

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

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

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

27 And I think we offered, at that time, to redact the
28 names of the specific facilities. They also did mention they
29 were greatly concerned that somehow this information would be

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1 released to the public, and we made it very clear that that was
2 not, in fact the case, that none of the information would be
3 released to the public.

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

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

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

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

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

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

21 DR. KELLY: Yes.

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

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

27 COMMISSIONER MCCARTHY: So in effect we responded in the
28 same manner that we did to non-tribal casinos when we were

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1 attempting to gain information there? DR. KELLY: Yes, and
2 addressed all of their concerns.

3 COMMISSIONER LANNI: Madam Chair? CHAIR JAMES:
4 Certainly.

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

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

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

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

25 And I think if we can give them the same assurances --
26 now, on the other hand, if they reject those assurances, and we
27 point out that they are similar to what we have given non-tribal
28 casinos, and lotteries, state run lotteries, then I think we are
29 at a different point.

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1 COMMISSIONER BIBLE: But are they asserting a legal
2 argument, or a confidence argument? MR. BIDWILL: They are citing
3 their legislation, they are bound to keep that information
4 confidential.

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

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

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

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

20 COMMISSIONER BIBLE: So you have conflicting statutes?
21 MR. BIDWILL: Yes.

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

26 CHAIR JAMES: So we could get it through GAO? That is a
27 novel idea.

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1 (General laughter.) CHAIR JAMES: What is the pleasure
2 of the Commission? COMMISSIONER LOESCHER: Madam Chair? CHAIR
3 JAMES: Mr. Loescher, the Chair recognizes Commissioner Loescher.

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

8 And, basically, I was advocating that we go through a
9 progression of trying to meet with these people, and at that time
10 I had a very specific request that we define what it is we want.

11 And to this date I have not seen any documentation of
12 what it is we want. At least it hasn't arrived at my house in
13 the mails. I have no record of the conversation that took place
14 between the staff and the National Indian Gaming Commission, so I
15 have no idea what was said and done there.

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

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

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

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

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

28 COMMISSIONER LOESCHER: Then I had indicated that we
29 ought to go through a specific progression of encouragement, that

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1 if there was an impasse we ought to not only deal with the
2 Commission itself and try to get a dialogue going at their policy
3 level, of course they haven't had anybody there until this
4 confirmation hearing today, to fulfill their governance structure
5 over there.

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

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

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

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

28 The issue is, what do we want, and can we get it in a
29 timely way. I have some other concerns, Madam Chair, about your

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1 request for unilateral subpoena power for anybody who hasn't
2 given us anything.

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

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

15 I have other concerns about this business.

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

20 COMMISSIONER LOESCHER: Madam Chair, I have other
21 concerns.

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

26 And at this point we have had nothing but cooperation
27 from all sectors of the gambling industry in terms of coming
28 forth with information. And the request that I made, and
29 suggested, was not that I have that authority only for Native

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1 Americans, but I asked the Commission for anyone who was not
2 forthcoming with the information that they had already authorized
3 and requested.

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

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

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

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

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

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

25 COMMISSIONER LOESCHER: Thank you very much.

26 The business of competition, you know, the button has
27 been pushed a number of times, mainly from the Las Vegas people,
28 pushing on Indian Americans, Native American gaming and casinos.

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1 And you know I have a problem, as time goes on, with
2 the constant pressure that is being exerted by Las Vegas people
3 trying to get at Native American gaming.

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

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

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

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

24 And then lastly, I'm not going to sit here and condone
25 issuing subpoenas to tribal government officials. I think it is
26 inappropriate concept to do that kind of thing, they represent
27 sovereign governments, and this Commission in its statute
28 recognizes the sovereignty of the tribal governments.

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1 And if we are going to use this power to issue
2 subpoenas to sovereign officials, then we ought to really think
3 what we are doing here.

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

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

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

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

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

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

24 Now, let me ask you a question. There came point in
25 the casino -- pardon me, in the lottery questionnaire that the
26 research subcommittee members put in a lot of hours on devising,
27 and then mailed out a draft to all of the members of the
28 Commission for their comments.

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1 There came a moment when there were one or two states
2 that didn't want to give us the answers we were asking. They
3 were contending that it was proprietary information, and we gave
4 assurances, as had been discussed here, that only information in
5 the aggregate form would be published, there would be no
6 state-specific references, you know, the other things we have
7 been talking about.

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

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

17 Subpoena power is absolute power.

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

24 Now, after all of that had been done, and we came
25 asking you for a vote on issuing subpoenas, what would you have
26 said? COMMISSIONER LOESCHER: Madam Chair, I would say I want to
27 look at the record fully, I want to see it stacked in front of
28 me, I would like to enquire of the people who were in the process
29 of that exercise, and then I would request a full review of the

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1 terms and conditions of the subpoena, with advice of Counsel, and
2 require a vote of the full Commission, one by one, as to whether
3 or not we should exercise this power.

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

10 CHAIR JAMES: Point well taken.

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

19 And we went through the same careful nuanced, sensitive
20 steps that you just outlined, would we reach a point where you
21 might agree to subpoena those non-tribal casinos to get that
22 information so we could complete the work of this Commission?

23 COMMISSIONER LOESCHER: Madam Chair, the question is the same as
24 the other, then it has been asked and answered.

25 COMMISSIONER MCCARTHY: Fine.

26 CHAIR JAMES: Commissioner Lanni? COMMISSIONER LANNI: A
27 couple of matters. One relative to the request for the
28 information, and the request for a subpoena power, one thing that
29 might be more helpful to not only Native American casinos, but to

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1 commercial casinos, or non-Native American, I've never quite
2 figured out what we are, but on that respect I would recommend
3 the following.

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

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

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

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

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

27 But I think I have gone on record, I am not at all
28 opposed to Native American gaming. I have some questions about
29 regulations that you and I may not agree on, and I have some

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1 questions about the participation that I raised yesterday in the
2 pathological and problem gaming areas of how the Native American
3 casinos could participate in that, in my opinion.

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

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

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

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

22 CHAIR JAMES: Commissioner Wilhelm? COMMISSIONER
23 WILHELM: Two points. I have been advised that some of the
24 commercial casinos have raised the question as to whether, I
25 guess somewhat analogous to what Commissioner Lanni was just
26 referring to, as to whether or not it might not be
27 disadvantageous to some of the commercial casinos if I were to
28 see some of the questions that have to do with employment
29 practices.

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1 And I would join Commissioner Lanni in gladly
2 surrendering the opportunity to look at either the commercial
3 casino questionnaire responses, or the tribal casino
4 questionnaire responses in the event that anybody thinks that
5 there is a conflict of interest.

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

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

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

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

25 I think the provision of the information requested is
26 of the utmost importance, so I think Commissioner McCarthy is
27 right in that, and I wouldn't have any hesitancy in supporting
28 whatever action is necessary to gather that information from
29 whichever of the sources we've requested it from.

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1 CHAIR JAMES: The Chair recognizes our executive
2 director, and then I will go to Commissioner Leone.

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

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

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

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

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

27 Then there was a meeting with NIGC staff, I believe if
28 I remember right, they had about 12 people there, we had myself,

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1 our lawyer Mr. Bidwill, and also the lawyer that we were working
2 with from McGuire Woods, Steve Katsarinus there with us.

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

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

11 CHAIR JAMES: The Chair recognizes Commissioner Leone.

12 COMMISSIONER LEONE: Thank you.

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

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

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

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

25 Putting aside the issues of whether we believe there
26 ought to be gambling, or how it ought to be regulated, everybody
27 recognizes there are costs, that it is not cost-free. It affects
28 individuals, it affects communities.

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1 And we have all agreed upon that, and many of our
2 recommendations are going to probably talk about that.

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

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

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

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

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

28 I think we should provide whatever assurances are
29 necessary to people, and go through the steps that Bob has ably

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1 laid out, and that you followed in the other cases. But at the
2 end of the day, I hope we don't have to face this question, but
3 we may have to face this question, and be prepared to make every
4 effort to make the best case we can for people.

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

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

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

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

23 COMMISSIONER BIBLE: And I think for purposes of the
24 record you need to clarify, you are asking for information from
25 the National Indian Gaming Commission, you are asking for
26 information from the BIA, you are going to exhaust all voluntary
27 compliance measures, and then the Chair would be authorized to
28 seek, or serve a subpoena for the information on behalf of the
29 Commission? COMMISSIONER MOORE: Yes.

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1 COMMISSIONER MCCARTHY: I like the way the Chair framed
2 it earlier.

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

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

16 CHAIR JAMES: Right.

17 COMMISSIONER MCCARTHY: Not just from these two
18 agencies.

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

21 COMMISSIONER MOORE: Or other casinos that may not have come
22 forth. The private type, or whatever you -- CHAIR JAMES: And I
23 -- COMMISSIONER MCCARTHY: And the other point, if I may suggest,
24 to emphasize a point that Bob Loescher was making, that this will
25 -- may I recommend that this be included, Madam Chair, that there
26 be, if you intend to make a recommendation to use a subpoena,
27 there be a conference call, that the form of the subpoena will be
28 sent to every member of the Commission, and that there be a
29 conference call in which this will be discussed.

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1 CHAIR JAMES: Yes. And I would add to that, first of
2 all we need to make sure that the maker of the motion would
3 accept your amendment. And I would clarify it even further by
4 saying that we follow, as closely as we can, all public, you
5 know, all of the necessary requirements to inform the public as
6 well.

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

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

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

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

21 And Hearing no objection from -- Commissioner Wilhelm?
22 COMMISSIONER WILHELM: Do we have a current request to the Bureau
23 of Indian Affairs? CHAIR JAMES: No, only this and -- COMMISSIONER
24 MCCARTHY: So it would be understood, from what John has just
25 raised, that you have to go through the progression of steps and
26 conversations with the BIA, because that is totally appropriate,
27 what Bob has been, and echoed by others here.

1 CHAIR JAMES: Let me see if I can summarize what I
2 understand the motion to be at this point, and Commissioner
3 Moore, if I don't capture it all, please step in.

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

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

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

16 DR. KELLY: No, no.

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

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

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

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

26 COMMISSIONER DOBSON: I need to ask a question.

27 CHAIR JAMES: Absolutely.

28 COMMISSIONER DOBSON: We did hear, earlier, that the use
29 of the S word brought the information that was requested. I

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1 would hope that there -- that this would not come as a surprise
2 to anybody.

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

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

12 So I think we have stumbled into the right formulation.

13 CHAIR JAMES: In spite of ourselves.

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

20 CHAIR JAMES: I will try it one more time.

21 Perhaps you should read it back to make sure.

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

23 The motion is to authorize the Chair to issue a
24 subpoena, if necessary, concerning information requested from the
25 BIA, the NIGC, and any other currently already sought
26 information, understanding that this process, however, will be
27 brought before the Commission for review, and then all other
28 proper procedures, such as notifying any other entities that need
29 to be notified in advance will be followed.

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1 CHAIR JAMES: The Chair recognizes Commissioner Lanni.

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

6 MR. BIDWILL: We have the subpoena power.

7 DR. KELLY: To prepare.

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

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

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

14 DR. KELLY: Should I read this again?

15 CHAIR JAMES: Only if you feel you must.

16 COMMISSIONER LEONE: I think you better.

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

26 CHAIR JAMES: It has been moved, it has been properly
27 seconded. Is there any further discussion? COMMISSIONER LEONE: I
28 think we should let our attorney take a look at the form of that
29 motion. We can vote on it, but I would certainly make sure --

1 CHAIR JAMES: Well, I don't think the language of the motion ought
2 to change, once we have voted on it.

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

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

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

8 COMMISSIONER DOBSON: I accept.

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

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

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

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

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

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

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

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

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

22 CHAIR JAMES: Commissioner Wilhelm? COMMISSIONER
23 WILHELM: Aye.

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

26 Is there any other business to come before the
27 Commission at this time?

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1 COMMISSIONER LOESCHER: Madam Chair, I have one humble
2 request, and a point of clarification on the procedure, rules and
3 procedures of the Commission.

4 CHAIR JAMES: Commissioner Loescher?

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

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

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

19 And I like to visit, meet with people and the --
20 COMMISSIONER MCCARTHY: I yield at my meetings.

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

24 But notwithstanding all that, we need to figure out how
25 in the heck we can conduct business, even to have a cup of coffee
26 seems to require a formal public notice, and I'm having a hard
27 time with the concept And I know that you are big on sunshine and
28 daylight, but we need to have a way to communicate with one
29 another, and I humbly request that you and Counsel and executive

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1 director find a way for us to be able to communicate with one
2 another so we can get to the end.

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

5 COMMISSIONER MOORE: I agree with him wholeheartedly.

6 COMMISSIONER BIBLE: So do I.

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

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

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

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

26 It would be far easier if we had the ability to do
27 that, and I absolutely concur, we could move things along a lot
28 faster.

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1 But I think there are reasons why those provisions are
2 in place.

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

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

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

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

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

24 And there are two gentlemen who this is actually class
25 work for them, and they have handled all of the logistics, every
26 meal you've had, every ride to the airport, all the setup for the
27 meetings, made sure you had candy and water, Rob Beals and Steven
28 Daniels, and I would like for them to stand to be recognized at
29 this point.

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1 Okay, can we have a point on the grade, A, B, what do
2 you think? A plus. Having said that, Rob, when do you graduate?
3 Steven when do you graduate? Dawn, when do you graduate? They are
4 all looking for jobs so I want to make sure that you know who
5 they are.

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

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

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

20 With that this Commission meeting is adjourned.