

1 CHAIR JAMES: We have a quorum. We're going to get
2 started. I'm going to start with recommendation 6.1. For the
3 benefit of those who are trying to follow these proceedings,
4 again, I will read the recommendation.

5 I am aware that there are amendments. I will listen to
6 see if someone will offer the recommendation. If not, we move
7 on.

8 COMMISSIONER LOESCHER: Madame Chair, I was going to
9 yield to my esteemed chairman if he wanted to move these each
10 one; but if not, I'll move them one by one.

11 CHAIR JAMES: Okay that's up to you, how you want to do
12 that. Maybe you all can alternate. One will move and one will
13 second.

14 COMMISSIONER LOESCHER: Okay.

15 CHAIR JAMES: 6.1, the Commission recommends to the
16 President, Congress and NIGC that federal laws concerning Native
17 American tribal gambling should be strengthened to ensure
18 adequate regulatory oversight fiscal accountability.

19 COMMISSIONER LOESCHER: I so move.

20 CHAIR JAMES: Wait a minute. One vehicle for this
21 would be increased funding and authority for the NIGC.

22 So moved?

23 COMMISSIONER LOESCHER: So moved.

24 COMMISSIONER WILHELM: Second.

25 CHAIR JAMES: It has been moved and seconded.
26 Discussion?

27 COMMISSIONER LOESCHER: Madame Chair, I wanted to raise
28 the point with my dear friend, Mr. Bible, from the great State of
29 Nevada, --

30 COMMISSIONER BIBLE: You're off to a good start.

1 (Laughter.)

2 COMMISSIONER LOESCHER: In IGRA, Madame Chair, the
3 second line it says Class III gambling activities should not
4 include any activities that are not available to other -- it says
5 citizens. And I would propose to delete the "citizens of" and
6 insert the words "persons."

7 Or are we on the wrong one?

8 CHAIR JAMES: Yeah, we're on 6.1.

9 COMMISSIONER LOESCHER: How did I get off the beam
10 here?

11 COMMISSIONER BIBLE: Your enthusiasm to get things
12 solved.

13 COMMISSIONER LOESCHER: Okay.

14 CHAIR JAMES: We're on 6.1 right now and that has been
15 moved and seconded, and we're open for discussion on 6.1.

16 COMMISSIONER LANNI: Question.

17 CHAIR JAMES: All in favor?

18 (Chorus of ayes.)

19 Any opposed? Any abstentions?

20 COMMISSIONER LEONE: I'll abstain.

21 COMMISSIONER WILHELM: You're for it.

22 Bob, these numbers are just one behind, that's all.

23 COMMISSIONER LOESCHER: Oh, I see. Okay, I'm sorry.

24 CHAIR JAMES: And we're going to be going by the
25 document that we have in front of us, and we'll try to --

26 COMMISSIONER LOESCHER: Madame Chairman, I move 6.2.

27 COMMISSIONER LANNI: Second.

28 CHAIR JAMES: Well, for the benefit of those who are
29 following, let me read that so that they'll know what it is.

1 Imagine if you were sitting at home with your cup of coffee and
2 following these proceedings, --

3 COMMISSIONER LANNI: You have nothing else to do.

4 CHAIR JAMES: -- 6.2 --

5 COMMISSIONER WILHELM: Your brain waves should be
6 examined.

7 (Laughter.)

8 COMMISSIONER MOORE: Bob's trying to get these things
9 approved.

10 CHAIR JAMES: Yes, I am trying to convince people that
11 the public policy process is interesting and exciting, and that
12 all American citizens should be involved.

13 COMMISSIONER LANNI: Good luck.

14 CHAIR JAMES: Good luck.

15 The Commission recommends that IGRA's three classes of
16 gambling should -- must be clearly defined so that there is no
17 confusion as to what gambling activities constitute Class II and
18 Class III gambling activities.

19 Further, the Commission recommends that Class III
20 gambling activities should not include any activities that are
21 not available to other citizens of the state regardless of
22 technological similarities.

23 Indian gambling should not be inconsistent with the
24 state's overall gambling policy.

25 Is there a motion?

26 COMMISSIONER LANNI: So moved.

27 CHAIR JAMES: Is there a second

28 COMMISSIONER MOORE: Second.

29 CHAIR JAMES: It has been moved and seconded.

30 Discussion?

1 COMMISSIONER LOESCHER: Madame Chair, I have two
2 concerns. Do you want me to do one first or do them both?

3 CHAIR JAMES: That's -- do them both.

4 COMMISSIONER LOESCHER: Madame Chair, the language on
5 about the fourth line down, it says "other citizens of." I would
6 like to change the words so that it's more consistent with IGRA,
7 change citizens to persons or entities.

8 And actually, the language in IGRA is persons,
9 institutions or entities.

10 CHAIR JAMES: Would you prefer it say persons,
11 institutions or entities --

12 COMMISSIONER LOESCHER: I would.

13 CHAIR JAMES: -- to make it consistent?

14 COMMISSIONER LOESCHER: -- Madame Chair. And that
15 would be one motion I would like to make.

16 CHAIR JAMES: Well, that would be an amendment to your
17 motion --

18 COMMISSIONER LOESCHER: Right.

19 CHAIR JAMES: -- that is already there. Is there any
20 objection from the seconder of that --

21 Dr. Moore, would you have any objection?

22 COMMISSIONER MOORE: No objection.

23 CHAIR JAMES: Persons, institutions or entities?

24 COMMISSIONER LOESCHER: Yes, and the word citizens.

25 COMMISSIONER BIBLE: That would mean that if a state,
26 for instance, being an entity, operated a lottery, the tribe
27 could operate a lottery? First word in the fifth line of 6.2.

28 CHAIR JAMES: That's a question?

29 COMMISSIONER BIBLE: That's a question.

30 CHAIR JAMES: Yes.

1 COMMISSIONER LOESCHER: Yeah, Madame Chair, and under
2 this --

3 CHAIR JAMES: Yeah, that's question that we should
4 discuss is what I'm saying here.

5 COMMISSIONER LOESCHER: Madame Chairman, under this,
6 yes, the language here is broader and that's what the law says,
7 and it is broader. The way the language is here, it says
8 "citizens of," and that's pretty narrow. And I was broadening it
9 to have persons, which would be comparable to citizens,
10 institutions or entities, and that would cover all.

11 CHAIR JAMES: But I think Commissioner Bible is asking
12 a very important question: Is this Commission prepared to say
13 that, if a state has a lottery, that a tribal government,
14 thereby, automatically has the right to have a lottery based on
15 this?

16 COMMISSIONER BIBLE: Or, conversely, I guess you have
17 institution, so if -- say the state law permits charitable
18 gambling and VFW has Las Vegas nights once every six months or
19 every year and they have 21, can then a tribe operate a 21 game
20 24 hours a day, seven days a week?

21 CHAIR JAMES: My view is that that fundamentally
22 changes what the consensus was, and that we would probably be
23 well served just to change citizens to persons.

24 COMMISSIONER BIBLE: Well, persons legally normally
25 means individuals, corporations and other entities if you look up
26 the person section of the standard state code.

27 CHAIR JAMES: What's your pleasure? Is that what you
28 mean to say?

29 COMMISSIONER McCARTHY: I think what Mr. Bible is
30 trying to get at is, if there is a very infrequent kind of

1 gambling exemption that may be practiced by an organization like
2 a veterans group or something, that that ought not to open the
3 door to full time gambling that could be classified as Class III.

4 COMMISSIONER BIBLE: That's what I was trying to get
5 at.

6 COMMISSIONER McCARTHY: And I agree with his point.

7 COMMISSIONER MOORE: And the sad thing about that
8 though -- and I agree with that point also. But the sad thing
9 about that, I believe that the courts have already ruled that
10 that's not necessarily means that we have to recommend it.

11 That any type of gambling in any place by any person --
12 and I believe the District Court has ruled that --

13 COMMISSIONER BIBLE: Well, depends, to some extent,
14 upon which circuit you're in.

15 COMMISSIONER MOORE: Well, that's true.

16 COMMISSIONER BIBLE: But in this particular instance,
17 the way I had interpreted this regulation was that the federal
18 statute be amended so you would not have the kind of litigation
19 in the future and the scope of gaming be clearly defined so the
20 tribes would not be allowed to operate gambling that's not
21 available to other citizens of the state.

22 So that's probably on the same terms.

23 COMMISSIONER MOORE: I believe that's what we -- I
24 mean, I know that's what we meant. And I was just wondering if
25 the last Indian gaming should not be inconsistent with the
26 state's overall gaming policy? Does that have any strength?

27 CHAIR JAMES: That language is currently there.

28 COMMISSIONER MOORE: Yeah.

29 COMMISSIONER WILHELM: And Bob's not proposing to
30 delete that.

1 COMMISSIONER MOORE: I'm not, that's right.

2 COMMISSIONER BIBLE: I believe he's proposing to delete
3 the term regardless of technological similarities.

4 COMMISSIONER LOESCHER: Yes, Madame Chair, I wanted to
5 deal with one first. Maybe I could advance my discussion on the
6 second phrase.

7 COMMISSIONER BIBLE: But they're kind of linked.

8 COMMISSIONER LOESCHER: They are sort of linked.

9 Madame Chair?

10 CHAIR JAMES: Certainly.

11 COMMISSIONER LOESCHER: And I, Madame Chair, am
12 proposing in my amendment to delete the words "regardless of
13 technological similarities." And this matter is subject to
14 extensive litigation already between and among states and tribes.

15 The other thing, the thing about this business is that
16 the tribes have a right of self determination, and they are
17 sovereign in their own right. And they have a process of
18 compacting, and the issue of scope of gaming in the technical
19 definitions of whether there's a permutation of one kind of game
20 or another is subject to negotiation.

21 And if we basically don't recognize that the tribes
22 have a right of self determination, have a right to be creative
23 as they proceed to develop their business, we're basically saying
24 that the states are regulating the tribes, and that's not the --
25 that's not the intent, you know, of the compact approach to life.

26 And basically, so what we're suggesting to you is that
27 that language should be deleted as well, and we'd appreciate your
28 support on that point.

29 I might also say, Madame Chair, that the Secretary of
30 Interior has stated that the United States' position on scope of

1 gaming is the Solicitor General's brief in Rumsey. The tribes
2 don't like that position necessarily, but they have to live with
3 it.

4 And the proposal that Commissioner Bible has advanced
5 in this language here, the words regardless of technological
6 similarities, is even narrower than what the court has defined
7 and what the Solicitor General has interpreted.

8 So I believe that we're on firm ground if we ask for
9 this.

10 CHAIR JAMES: Commissioner Leone.

11 COMMISSIONER LEONE: I would like someone, if they can,
12 to explain -- I don't understand the significance of "regardless
13 of technological similarities" in this context. I don't know
14 what the real issue is.

15 COMMISSIONER BIBLE: Well, my interpretation of that is
16 that if you have a device, for instance, that has a random number
17 generator within it like a lottery terminal, that that,
18 therefore, does not enable a tribe to operate a device which may
19 not be a lottery terminal, but instead a slot machine.

20 So a lottery terminal does not earn you a slot machine.
21 And that's the case of the argument down in California now. The
22 court, in Rumsey, articulated this sort of standard. This may be
23 somewhat narrower than they articulated.

24 The Solicitor's brief was considered by the court when
25 they developed the standard in the Rumsey decision, but it's a
26 fairly narrow interpretation. And the issues on scope are really
27 a couple. One is the nature of the device itself: Is it a card
28 game? Is it a house bank game? Does it have a random number
29 generator?

1 And the other is in terms of the operation. If you
2 operate an on occasional basis, like in Connecticut, and you had
3 -- Las Vegas nights were for charitable purposes, certain
4 organizations offered some forms of gaming on very occasional
5 basis and that was used to justify a full time, 24 hour a day
6 casino gambling.

7 The way I interpret this to be narrow is that tribes
8 can offer the same sort of gambling within the state jurisdiction
9 as any other citizen in the state could also offer. That's the
10 way I read this recommendation.

11 And I believe Bob's amendment -- and I don't want to
12 put words in your mouth -- is intended to broaden that out to
13 some degree.

14 COMMISSIONER LOESCHER: Madame Chair, I rest my case.

15 (Laughter.)

16 CHAIR JAMES: Having said that, there is a motion
17 before us with two -- or did you lump them in one?

18 COMMISSIONER LOESCHER: We'll lump them.

19 CHAIR JAMES: One amendment. I think we need to vote
20 on the amendment first and then on the motion.

21 COMMISSIONER LANNI: Madame Chair, I have a language
22 issue in the beginning. It says, "The Commission recommends
23 IGRA's three classes of gambling must be clearly defined so
24 there's no confusion as to what gambling activities constitute
25 Class II and Class II gambling activities," without any reference
26 to Class I.

27 COMMISSIONER WILHELM: Class I doesn't need
28 clarification, but the relationship between and among the three
29 do.

1 COMMISSIONER LANNI: I know they do. But, I mean, by
2 mentioning three and then only talking about the two, I just
3 think that that may be confusing to the casual reader of this
4 document. I would suggest we drop the word three and say, "The
5 Commission recommends that IGRA's classes of gambling must be
6 clearly defined so that there's no confusion as to what" -- and I
7 wouldn't put gambling activities again because it gets very
8 confusing.

9 What I'm proposing, --

10 CHAIR JAMES: What constitutes --

11 COMMISSIONER LANNI: -- if we drop the word three and
12 drop the word activities, the first activities, and make
13 constitute "constitutes," I think it read more clearly.

14 And if I may, it would read, "The Commission recommends
15 that IGRA's classes of gambling must be clearly defined so that
16 there's no confusion as to what gambling constitutes Class II and
17 Class III gambling activities."

18 CHAIR JAMES: Would you accept that as a friendly
19 amendment?

20 COMMISSIONER LOESCHER: Yeah, we have no objection to
21 that.

22 CHAIR JAMES: Okay.

23 COMMISSIONER LANNI: I don't think that's changing the
24 substance.

25 CHAIR JAMES: Commissioner McCarthy.

26 COMMISSIONER McCARTHY: Not on this. On the amendments
27 in front of us -- and I'm with Dick Leone. I'm not sure I yet
28 comprehend what the fine points are between regardless of
29 technological similarities, although I understand Mr. Bible's
30 explanation of that.

1 I don't know if it goes beyond that, or if that covers
2 exactly what it means.

3 CHAIR JAMES: Well, if that's the case, then do you
4 want to table this until you have an opportunity to -- because I
5 don't want you to have to take --

6 COMMISSIONER McCARTHY: No, I'm not going to support
7 it, and I want to explain why.

8 CHAIR JAMES: Okay.

9 COMMISSIONER McCARTHY: We're in a very complicated --
10 a very complicated area here where we want to show the utmost
11 respect for Native American tribal government. And yet, we also
12 have a strong pull towards the fact that -- and everybody keeps
13 saying that it's not at the federal level, it's at the state
14 level where gambling is going to be regulated.

15 Certainly Class III gambling. And Congress seemed to
16 say, in the legislation that passed, although there was sure some
17 tap dancing that kept this from being absolutely clear, but it
18 seemed to say that the people of each state could regulate the
19 kind of gambling that it wanted.

20 And if it did not permit gambling -- and common sense
21 says to me full time operational gambling, not two nights a year
22 at the VFW Chapter 17 in Taleri County -- if the people of the
23 state, through its elected officials, did not allow a roulette or
24 blackjack or whatever it might be, then that ought not to be
25 permitted to anyone else.

26 And I still believe that is a proper approach to public
27 policy. So while I have enormous respect for Bob, I think the
28 amendments that are being proposed go in the opposite direction
29 of trying to clarify just what authority the states really do
30 have over controlling certain forms of gambling.

1 So I'm going to vote no on these amendments unless
2 further discussion somehow shows me that I'm misunderstanding the
3 amendments.

4 COMMISSIONER LOESCHER: Madame Chair, call for the
5 question.

6 COMMISSIONER LEONE: I have --

7 CHAIR JAMES: Well, do you mind Commissioner Leone
8 getting his discussion point in?

9 COMMISSIONER LEONE: I have a question really, which is
10 relevant to the state lottery. As I understand it, although
11 lotteries are legal in the state, and I know there's been
12 litigation about this, it has not been legal for the tribes to
13 start a statewide lottery.

14 Is that right?

15 COMMISSIONER BIBLE: A statewide lottery? Yes. No, I
16 think tribes could do statewide lotteries.

17 COMMISSIONER LEONE: They could do statewide lotteries?

18 COMMISSIONER BIBLE: If they wanted to, sure.

19 COMMISSIONER LEONE: Have they done so?

20 COMMISSIONER BIBLE: I assume they have to compact for
21 it under Class III.

22 COMMISSIONER LEONE: Have they done so?

23 COMMISSIONER BIBLE: Well, the only lottery I can
24 remember is the Coeur D'Alene tribe where they tried to expose it
25 via the Internet.

26 COMMISSIONER LEONE: Right.

27 COMMISSIONER BIBLE: I can't believe economically that
28 a tribe could market a lottery because you need very wide
29 population dispersion and a number of people to make the thing go
30 because you have to have sufficient prices.

1 COMMISSIONER LEONE: But could you -- I guess my
2 question was, they can't market it off Indian country, right?

3 COMMISSIONER BIBLE: No, should not be able to.

4 COMMISSIONER LEONE: So they couldn't franchise it
5 within a state boundaries?

6 COMMISSIONER BIBLE: No.

7 COMMISSIONER LEONE: Okay.

8 COMMISSIONER MOORE: This technological similarities,
9 aren't we -- I thought what we were discussing here and why this
10 was in there and why I thought we agreed upon this, I thought the
11 big problem -- and you can -- I think personally I can put --
12 share the responsibility with the State of California as well as
13 the tribal governments there, is that the State of California,
14 through its lottery, had all of this technology and all of these
15 dispensing machines and different games, that they were almost
16 having casino gaming, is what the tribal -- Indian tribal Native
17 Americans were contending, isn't it?

18 And so if they had all of these machines that put out
19 all of these different type tickets and games, then that should
20 entitle them to have slot machines. Isn't that basically --

21 COMMISSIONER BIBLE: That was the argument. That was
22 the argument.

23 COMMISSIONER MOORE: And so that's why this was sort of
24 the --

25 CHAIR JAMES: Put in. Let me -- I heard a call for the
26 question. If there isn't further discussion, I'd like to --
27 there is?

28 COMMISSIONER LANNI: No, is that a question on the
29 amendments?

30 CHAIR JAMES: This is on the amendments only.

1 COMMISSIONER LANNI: Are you taking them separately? I
2 think they should be taken separately.

3 CHAIR JAMES: That's up to the controller of the
4 amendment.

5 COMMISSIONER LOESCHER: Madame Chair, we'll split the
6 amendments.

7 CHAIR JAMES: We will split the amendments. The first
8 vote then will be on citizens and changing that language to
9 persons, entities or institutions.

10 COMMISSIONER LANNI: It doesn't say institutions in
11 there. I'm looking at their language they gave us. It says
12 persons or entities.

13 CHAIR JAMES: That came up in the discussion.

14 COMMISSIONER LANNI: Oh, it was added?

15 CHAIR JAMES: Yeah, and was added in order to reflect
16 the language as it exists in IGRA.

17 So the vote right now is on the first amendment, which
18 is person, entities or institutions.

19 All in favor?

20 (Chorus of ayes.)

21 Any opposed?

22 (Chorus of no's.)

23 I think the motion fails. I don't think we need a roll
24 call on that.

25 COMMISSIONER WILHELM: Please record me as abstaining.

26 CHAIR JAMES: And one abstention, Commissioner Wilhelm.

27 COMMISSIONER LOESCHER: Madame Chair, I move the second
28 amendment.

29 CHAIR JAMES: The second amendment.

1 All in favor of the second amendment, which would be to
2 strike the language "regardless of technological similarities,"
3 please signify by saying aye.

4 COMMISSIONER LOESCHER: Aye.

5 COMMISSIONER LEONE: I misunderstood that. I'm not
6 voting for it.

7 CHAIR JAMES: Okay.

8 All opposed?

9 (Chorus of no's.)

10 CHAIR JAMES: The no's carry. And one abstain.

11 COMMISSIONER LOESCHER: Madame Chair, I move the motion
12 as amended.

13 CHAIR JAMES: With that --

14 COMMISSIONER LOESCHER: Or as not amended.

15 (Laughter.)

16 COMMISSIONER LANNI: Second.

17 COMMISSIONER WILHELM: Well, it was slightly amended in
18 the first sentence.

19 CHAIR JAMES: It was because now it reads "IGRA's
20 classes of gambling" -- we took out three -- "must be clearly
21 defined so that there is no confusion as to what gambling
22 constitutes Class II and III" is how it reads right now.

23 COMMISSIONER LANNI: Second.

24 CHAIR JAMES: Any discussion? I think we've had quite
25 a bit.

26 All in favor?

27 (Chorus of ayes.)

28 Any opposed? Any abstentions?

29 The ayes have it.

30 6.3.

1 COMMISSIONER LOESCHER: Madame Chair, I move and ask
2 the unanimous consent that 6.3 be adopted.

3 COMMISSIONER LANNI: Second.

4 CHAIR JAMES: It has been moved and seconded. For the
5 benefit of those following, let me -- Commissioner Wilhelm?

6 COMMISSIONER WILHELM: May I ask, with the concurrence
7 of Commissioner Loescher and Commissioner Moore, that 6.3 and
8 6.4, in their introductory phrases, be returned to where the
9 committee had them? This is a minor point.

10 But the form in which the committee made these
11 recommendations with respect to 6.3, it said, "The Commission
12 recommends that labor organizations, tribal governments and
13 states should voluntarily," etc.

14 "The Commission recommends that labor organizations,
15 tribal governments and states should voluntarily work together,"
16 etc. And similarly, 6.4, as long as we're at it, the
17 subcommittee's recommendation was, "The Commission recommends
18 that tribal governments, states and, where appropriate, labor
19 organizations."

20 So the principal change is to eliminate the phrase
21 "organizations such as." And it's not a change. Somehow this
22 draft got moved around.

23 CHAIR JAMES: Turned around. That does reflect the
24 language coming out of the subcommittee, and we apologize for the
25 problem. With that, let me read the --

26 COMMISSIONER DOBSON: Madame Chair.

27 CHAIR JAMES: Commissioner Dobson.

28 COMMISSIONER DOBSON: Excuse me. I'm really not
29 amending this. I think there's a typo, if you don't mind. 6.3,

1 three lines up, right in the middle, isn't that -- shouldn't
2 "Congress" be changed to "Commission?"

3 COMMISSIONER WILHELM: Yes.

4 CHAIR JAMES: All right, let me read that as it is now.

5 "The Commission recommends that labor organizations,
6 tribal governments" -- no, how does that read?

7 COMMISSIONER WILHELM: And states.

8 CHAIR JAMES: "And states should voluntarily work
9 together to ensure the enforceable right of free association,
10 including the right to organize and bargain collectively for
11 employees of tribal casinos. The voluntary agreement between the
12 Menomene" -- did I not do that correctly -- "Nation."

13 COMMISSIONER LANNI: It's the Menomene.

14 CHAIR JAMES: "Menomene Nation and a group of unions
15 covering a proposed tribal casino in Kinoshka, Wisconsin is a
16 useful prototype. Further, the Commission recommends that
17 Congress should enact legislation enabling such worker rights
18 only if there is not substantial voluntary progress toward this
19 goal over a reasonable period of time."

20 It has been moved. It has been seconded. And the
21 question has been called.

22 All in favor?

23 (Chorus of ayes.)

24 Any opposed? Any abstentions? Hearing none, 6.4.

25 COMMISSIONER LOESCHER: Madame Chair, I move 6.4.

26 COMMISSIONER BIBLE: And I'll second that.

27 CHAIR JAMES: Great, we have a motion and second.

28 "The Commission recommends that labor organizations,
29 tribal governments and states, where appropriate, should work
30 voluntarily together to extend two employees of tribal casinos

1 the same or equivalent or superior protections that are
2 applicable to a comparable state or private sector employee
3 through federal and state employment laws.

4 "If state employee protections are adopted as the
5 standard for a particular tribal casino, then they should be
6 those of the state in which the tribal casino is located.
7 Further, the Commission recommends that Congress should enact
8 legislation providing such protections only if there is not
9 substantial, voluntary progress toward this goal over a
10 reasonable period of time."

11 It has been moved, it has been seconded. Any
12 discussion?

13 All in favor?

14 (Chorus of ayes.)

15 Any opposed? Any abstentions?

16 6.5.

17 COMMISSIONER LOESCHER: Madame Chair, I move 6.5.

18 COMMISSIONER LANNI: Second.

19 CHAIR JAMES: It has been moved and seconded.

20 "The Commission recognizes that, under IGRA, Indian
21 tribes must annually report certain proprietary and
22 non-proprietary tribal governmental financial information to the
23 National Indian Gaming Commission through certified,
24 independently audited financial statements.

25 "The Commission recommends that certain aggregated
26 financial Indian gambling data from reporting tribal governments,
27 comparable by class to the aggregated financial data mandatorily
28 collected from commercial casinos and published by such states as
29 Nevada and New Jersey, should be published by the National Indian
30 Gaming Commission annually.

1 "Further, the Commission recommends that the
2 independent auditor should also review and comment on each tribal
3 gambling operation's compliance with the minimal internal control
4 standards promulgated by the NIGC."

5 Any discussion?

6 COMMISSIONER LANNI: Question.

7 CHAIR JAMES: All in favor?

8 (Chorus of ayes.)

9 Any opposed? Any abstentions?

10 6.6.

11 COMMISSIONER LOESCHER: Madame Chair, I move 6.6.

12 CHAIR JAMES: Do I hear a second?

13 COMMISSIONER LANNI: Second.

14 CHAIR JAMES: It has been moved and seconded that "the
15 Commission recommends that, upon written request, a reporting
16 Indian tribe should make immediately available to any enrolled
17 tribal member the annual, certified, independently audited
18 financial statements and compliance review of the MICSS to
19 inspect such financial statements and compliance reviews at the
20 tribal headquarters or request that they be mailed."

21 Any discussion?

22 COMMISSIONER LANNI: Question.

23 CHAIR JAMES: All in favor?

24 (Chorus of ayes.)

25 Any opposed? Any abstentions?

26 "The Mississippi band of Choctaw should be examined as
27 a role model for Indian gaming." I wonder where this came from?

28 COMMISSIONER BIBLE: Where did this come from?

29 (Laughter.)

1 COMMISSIONER MOORE: I would be not opposed to
2 withdrawing that statement.

3 CHAIR JAMES: Well, it's on the record.

4 COMMISSIONER MOORE: Well, I think that it is.

5 CHAIR JAMES: It's on the record and you've now said it
6 on national television. So with that, if you'd like to withdraw,
7 we can move on.

8 COMMISSIONER LOESCHER: Madame Chair, I second Dr.
9 Moore's affirmative motion to adopt 6.7.

10 (Laughter.)

11 COMMISSIONER BIBLE: Question.

12 CHAIR JAMES: Well, the motion is there.

13 COMMISSIONER WILHELM: I guess he wants to leave it in.

14 CHAIR JAMES: He wants to leave it in.

15 All in favor?

16 (Chorus of ayes.)

17 Any opposed? Any abstentions?

18 COMMISSIONER LEONE: I have to abstain. I don't know

19 --

20 COMMISSIONER LANNI: I'm abstaining also.

21 CHAIR JAMES: I would have to abstain because I don't
22 know --

23 COMMISSIONER WILHELM: This may pass two to one.

24 (Laughter.)

25 COMMISSIONER MOORE: The point of putting this in, I
26 realize that there's only one tribe that has a casino in
27 Mississippi, and that does make it quite easy for them to
28 operate. They have a governor that is very agreeable with them
29 on most things.

1 But the thing that impresses me most about them, and I
2 would like to see it happen to other tribes whether this passes
3 or not, is that before gaming came to Mississippi, the
4 reservation -- the tribal members under their chief had economic
5 development on that such as electrical -- making electrical
6 harness for Ford Motor Companies, making speakers for the Ford
7 Motor Company, a nursing home, a stationer printing plant and
8 things of that nature.

9 So they did not wait until gaming came to Mississippi
10 to try to find something for their tribe members. And I think
11 that that's very, very important that all of them have something
12 besides the gaming to make their livelihood.

13 CHAIR JAMES: Commissioner Lanni.

14 COMMISSIONER LANNI: I'm sure it's quite meritorious,
15 but I think we're not being very consistent because we had talked
16 before about not offering praises to organizations or entities,
17 and that's the reason I don't think this is appropriate.

18 COMMISSIONER MOORE: That's why I'll withdraw it.

19 COMMISSIONER LANNI: Which I concur.

20 CHAIR JAMES: Good.

21 COMMISSIONER BIBLE: They also hired a Nevada licensee
22 to manage their casino.

23 CHAIR JAMES: "The Commission recommends that tribal
24 and state sovereignty should be recognized, protected and
25 preserved."

26 COMMISSIONER LOESCHER: Madame Chair, I so move 6.8.

27 CHAIR JAMES: Is there a second?

28 COMMISSIONER LANNI: Second.

29 COMMISSIONER DOBSON: Madame Chair.

30 CHAIR JAMES: Commissioner Dobson.

1 COMMISSIONER DOBSON: I understand the concept of
2 state's rights. I do not understand state sovereignty.

3 COMMISSIONER WILHELM: States have sovereign immunity
4 under the Constitution.

5 COMMISSIONER DOBSON: Sovereignty means independence.
6 It means it can't be challenged.

7 COMMISSIONER WILHELM: Well, sovereignty is not
8 necessarily without limits. But both states and tribes, under
9 our law, have sovereignty.

10 COMMISSIONER DOBSON: Well, I still think this item
11 goes beyond the scope of this Commission and I will oppose it.

12 CHAIR JAMES: Any further discussion?

13 COMMISSIONER LOESCHER: Madame Chair, just for the
14 record, I believe that the concept of sovereignty is very
15 fundamental. You know, states have sovereignty. And the fact
16 that we have a Congress is recognition that there are many
17 states, that we have an electoral system that supports it.

18 States are protected from suits, certain kinds of suits
19 under the U.S. Constitution. And they have rights and all part
20 of sovereignty. And also, tribes do the same -- have the same
21 thing. And this business of recognizing this statement is very
22 fundamental in terms of looking at gaming and it rises in a whole
23 number of aspects of gaming.

24 And so I believe that this Commission would be doing
25 the right thing by recognizing state sovereignty and tribal
26 sovereignty as a fundamental concept that should be preserved.

27 COMMISSIONER DOBSON: Madame Chair, the way
28 Commissioner Loescher just described that is what I would call
29 state rights.

30 CHAIR JAMES: Well, let me --

1 COMMISSIONER DOBSON: And I'm really bothered by the
2 term sovereignty here.

3 COMMISSIONER WILHELM: If I may, --

4 COMMISSIONER DOBSON: You had tribal sovereignty and
5 states' rights should be recognized. To lump those together as
6 though they are the same bothers me.

7 COMMISSIONER WILHELM: If I may, I think that the
8 objective of this one sentence recommendation was to point out to
9 those who get entangled in this extremely complex area that
10 essentially neither the tribes, nor the states, should get run
11 over.

12 That is to say that tribes have sovereignty and that
13 some people don't want to recognize that fact, and that they need
14 to recognize that fact. But likewise, so do states. So I don't
15 think it's a legally improper thing to say, first of all.

16 But secondly, the objective here, which I think is
17 relatively straightforward, was to say that, in order for these
18 issues to be balanced, those two sets of rights have got to be
19 balanced.

20 COMMISSIONER BIBLE: And my presumption is that the
21 recommendation does not go beyond current practice.

22 COMMISSIONER WILHELM: Doesn't go beyond what the
23 subcommittee understands to be the current law.

24 COMMISSIONER BIBLE: Yeah.

25 COMMISSIONER WILHELM: I move the question.

26 CHAIR JAMES: Well, you've called for the question.

27 "The Commission recommends that tribal and state
28 sovereignty should be recognized, protected and preserved."

29 All in favor?

30 (Chorus of ayes.)

1 Opposed?

2 COMMISSIONER DOBSON: Aye.

3 CHAIR JAMES: No?

4 COMMISSIONER DOBSON: No.

5 CHAIR JAMES: The motion carries.

6 Any abstentions?

7 "The Commission recommends that federal, state, local
8 and tribal governments should take the rapid growth of commercial
9 gambling, state lotteries, charitable gambling and Indian
10 gambling into account as they formulate policies, laws and
11 regulations pertaining to legalized gambling in their
12 jurisdictions.

13 "Further, the Commission recommends that federal,
14 state, local and tribal governments should recognize the positive
15 economic impacts of Indian gambling, including the long overdue
16 economic development it can generate."

17 COMMISSIONER LOESCHER: Madame Chair, I so move 6.9.

18 CHAIR JAMES: It has been moved.

19 Is there a second?

20 COMMISSIONER WILHELM: Second.

21 CHAIR JAMES: Hearing a second, is there a discussion?

22 COMMISSIONER McCARTHY: May I just make this comment?

23 In other places of this report, we are examining the need to try
24 to understand the economic benefits and costs of all forms of
25 gambling. And we have tried to stay away from making that
26 judgement unless there was some really compelling circumstance.

27 And mentioning that there are clearly net economic
28 benefits in a severely economically depressed area is one of
29 those that occurs to me that it's clear there is. In a desperate
30 situation, quality jobs uplift the lives of a number of people.

1 Now, I mean, if that's what we're -- if we're saying
2 here that in areas -- and indeed, there are a number where people
3 have been so severely economically depressed that it's a benefit
4 and we want to stay with that line of thinking, that rationale, I
5 have no objection to that.

6 This seemed to go beyond that. You know, recognize the
7 positive economic impacts -- if we're trying to say that we
8 should analyze and balance the costs and benefits of all the
9 impacts, including the severely economically depressed conditions
10 on many Native American lands, that makes sense to me.

11 That's consistent with what we have been saying up to
12 this point.

13 Is that what we're trying to get at here, Bob?

14 COMMISSIONER LOESCHER: Madame Chair, that's correct.

15 CHAIR JAMES: Commissioner Wilhelm.

16 COMMISSIONER WILHELM: Well, I would add to that a
17 little bit. I don't know if either of the other members of the
18 Indian Gambling Subcommittee would agree with me or not.

19 But while I think that basically Leo's restatement of
20 what we're trying to say here is correct, and in that regard I
21 agree with Bob's support of Leo's statement, I also think it's
22 worth pointing out that the Indian Gambling Subcommittee, under
23 Dr. Moore's direction, held very extensive hearings in many parts
24 of the country, some attached to Commission site visits and some
25 not.

26 And one of the very striking things about those
27 hearings was that you never heard anybody, unlike the
28 Commission's record with respect to other forms of gambling --
29 you never heard anybody, that I can recall, who had anything

1 negative to say about the issue of tribal gambling as an economic
2 development tool.

3 Quite the opposite. You heard unanimity not only from
4 tribal representatives, but from a variety of other commentators
5 such as state and local governmental officials in areas that have
6 tribal gambling.

7 You heard unanimity that the economic developments are
8 substantial not just in terms of jobs, but in terms of the
9 ability of the tribes to take advantage of the revenues that have
10 flowed to the tribes from the gambling enterprises to do a whole
11 range of things in their -- or for their enrolled members, and in
12 particular on their reservations -- health care, educational
13 initiatives, housing and a whole variety of other things.

14 The record, I think, is unanimous. Now, elsewhere in
15 these recommendations there is reference to some of the other
16 problems that the record also shows, such as need to mitigate
17 effects sometimes on surrounding communities or the need that
18 we've already addressed to deal with the question of the rights
19 of workers who don't happen to be tribal members.

20 But on the issue -- on the specific issue of economic
21 development, the rather lengthy record of the subcommittee is
22 really quite unanimous, and I think that that's what we're trying
23 to say here. And I think it's a record that is very different
24 from the sort of pros and cons that exist in the record with
25 respect to other kinds of gambling and other kinds of
26 communities.

27 And I would finally just add that I don't believe
28 there's anything in the construction of 6.9 that negates the
29 concept that obviously is going to be replete in this report,
30 that there are downsides to gambling.

1 There's nothing in 6.9 that says that there aren't
2 negatives in terms of social cost and individual problems. So I
3 don't think 6.9 is intended to negate that. But the subcommittee
4 was operating on the, I think, sound assumption that there's
5 going to be plenty about that throughout the report.

6 CHAIR JAMES: Commissioner Leone.

7 COMMISSIONER LEONE: There are two things that make me
8 uncomfortable with this recommendation as it's written. One is
9 some tribes have chosen not to get into the gambling business.
10 And the way it's written, we're calling on them to recognize the
11 positive economic effects that are in there along with the
12 federal, state and local.

13 And I think it's presumptuous for us to do that when I
14 suspect that the tribes that have decided not to do this have had
15 a very good reason because it must be, in many cases, obvious
16 that other tribes have done well financially.

17 The second thing that bothers me about it I think can
18 be cured with a little change in language. While it is true that
19 at other places in the report we make clear that there are some
20 issues raised by the spread of gambling, and that other places we
21 use the language I'm about to highlight, I think it belongs
22 wherever we talk about expanding gambling opportunities, and that
23 is this:

24 This report should make clear that we view gambling as
25 an exception to the rule, not as something we've come to accept
26 as routine and that is only a matter of time before everybody has
27 it. Now, when one makes the case for gambling as an exception to
28 the rule on the basis of economic development, it's my belief
29 that, by and large, the case is strongest on Indian country and

1 stronger than it would be for Atlantic City or Detroit or the
2 Delta.

3 Going back in time, I would argue probably even stronger
4 than it was for Las Vegas 60, 70 years ago. So that if one
5 accepts the notion that if we are going to have gambling, it
6 ought to be an exception. and it ought to be limited, and it
7 ought to have a good justification, and the best justification we
8 can think of are the local, positive economic effects on the
9 people directly in a position to gain something from its
10 revenues, then the case for the exception in Indian country is
11 strong.

12 Language like that I could support. I think that's
13 true. I think that's different from recommending the positive
14 economic effects. I think it may be just the way -- I mean, I
15 would recommend and would have recommended and have recommended,
16 over the years, a lot of things government ought to do that would
17 have positive economic effects I believe on places where there's
18 high unemployment and where people are in distress or there's
19 considerable inequality.

20 I view this one as a last resort. But if you're going
21 to go this way, then I think the case is strong for Indian
22 country. And I think you -- in other words, I think you could
23 craft something like this that I could vote for, but I'm
24 uncomfortable with it as written.

25 And you may not need my vote.

26 CHAIR JAMES: Commissioner Bible.

27 COMMISSIONER BIBLE: I see this really as a finding
28 that the purpose of IGRA has been fulfilled. IGRA was created to
29 allow gambling as a means of economic development and
30 diversification for tribes.

1 I read this recommendation as saying that that has been
2 positive and tribes have benefited positively in terms of their
3 economic development and growth through the introduction of
4 gambling.

5 CHAIR JAMES: I think it says a little more than that,
6 and I think that's what's troubling me. It says that the
7 Commission recommends that federal, state and local tribal
8 governments should recognize the positive impact of Indian
9 gambling, including economic development.

10 And I just don't think that we have enough information
11 before us to make the statement that it has been positive
12 economic -- has a positive economic impact. I think there has
13 been testimony on the economic development, and I sort of
14 separate those two out.

15 COMMISSIONER BIBLE: Well, I think it's had a positive
16 economic development impact on the tribe. Maybe beyond that, if
17 there's some social costs, they're probably exported to tribal
18 land or something.

19 COMMISSIONER MOORE: Well, I think that basically
20 that's what we're trying to say. And certainly we would accept
21 any redistribution or new words here. I thought that we were
22 pretty good in getting this together, especially the first part
23 of this.

24 "The Commission recommends that federal, state, local
25 and tribal governments should take the rapid growth" -- la, la,
26 la -- "and regulations pertaining to legalized gambling in their
27 jurisdiction."

28 I thought that we was getting the point over that all
29 types -- maybe we won't use that word -- that they should pause

1 and think a little bit. But then I would be willing to accept
2 pertaining to the native tribes.

3 CHAIR JAMES: Are we suggesting there should be no
4 pause there?

5 Commissioner Wilhelm?

6 COMMISSIONER WILHELM: Some of the train of logic here
7 is strange to me. We have taken considerable care, I believe, in
8 all of these recommendations to apply them to all forms of
9 gambling enterprises including, among other things, tribal.

10 So when we say well, you know, there ought to be a
11 pause, applies to tribal. When we say some places may want to
12 have a moratorium, applies to tribal. When we say don't forget
13 about the negatives, as we say over and over and over again on
14 page after page, applies to tribal.

15 If we're going to follow the logic that anytime we say
16 anything positive, we've got to make sure and balance it with the
17 possible negative, then I think the reverse also ought to be
18 true. I think if that's the logic of this report, then every
19 single time we say anything negative, we also ought to lob in
20 some words balancing it with a possible positive.

21 This paragraph, taken in the entire context of this
22 report, seems to me it is perfectly obvious that, to the extent
23 that there may be some positives in some communities, and to the
24 extent that there undoubtedly are positives in Indian
25 reservations, there's also negatives on Indian reservations as
26 well as everywhere else.

27 So if we're going to insist every time anybody has the
28 -- I'm sorry, let me retract that. I'll be more neutral.

29 If we're going to insist every time there's any
30 positive statement about anything that has to do with gambling

1 here, that we've got to balance it with a negative, let's do it
2 the other way, too.

3 CHAIR JAMES: John, that's not my suggestion. What I'm
4 having a problem with is separating out the broader term of
5 positive economic impact with economic development and wanting to
6 say -- I'm not sure we have the data or have been able to see the
7 data that would substantiate positive economic impact generally.

8 But I think we have seen it to say economic
9 development. So my suggestion would be that it says, "Further,
10 the Commission recommends that federal, state and local tribal
11 governments should recognize the long overdue economic
12 development that gambling has generated or something like that,
13 and not make a statement about positive or negative economic
14 impacts.

15 COMMISSIONER DOBSON: Madame Chair, I'd like to make a
16 motion that we accept the language that you just suggested.

17 COMMISSIONER LOESCHER: I second the motion.

18 CHAIR JAMES: And I think we can get consensus on that.

19 COMMISSIONER WILHELM: If it's okay with Bob, it's okay
20 with me.

21 COMMISSIONER LOESCHER: Okay.

22 COMMISSIONER MOORE: Sounds good to me.

23 CHAIR JAMES: Okay, further the Commission -- then it
24 reads then -- the first sentence stands. "Further, the
25 Commission recommends that federal, state and local tribal
26 governments should recognize the long overdue economic
27 development that gambling can generate for" -- well, I don't know
28 that we need a for.

29 COMMISSIONER MOORE: Can generate. That Indian
30 gambling can generate, right?

1 CHAIR JAMES: That's correct.

2 CHAIR JAMES: All in favor?

3 (Chorus of ayes.)

4 Any opposed? Any abstentions?

5 COMMISSIONER DOBSON: Madame Chair.

6 CHAIR JAMES: Commissioner Dobson.

7 COMMISSIONER DOBSON: Would it be appropriate to ask
8 you and my fellow commissioners if an additional recommendation
9 can be put forward at this point right here?

10 CHAIR JAMES: Anything is appropriate, if you'd like to
11 suggest that.

12 COMMISSIONER DOBSON: I'm recommending a 6.9(a), if you
13 will, or (b), that would state "the Commission has heard
14 substantial testimony that the Federal Government has, until
15 lately, largely failed to enforce the provisions of IGRA. We
16 recommend that the Federal Government fully and consistently
17 enforce all provision of that law."

18 COMMISSIONER BIBLE: I'd second that.

19 CHAIR JAMES: We have a motion. We have a second.
20 Would you like to have some discussion?

21 COMMISSIONER LOESCHER: Madame Chair.

22 CHAIR JAMES: I'm sorry, I did not ask for abstentions
23 and we do have one, and that's Commissioner McCarthy on the last
24 vote.

25 So we have a motion before us now. Discussion?

26 COMMISSIONER LOESCHER: Madame Chair.

27 CHAIR JAMES: Commissioner Loescher.

28 COMMISSIONER LOESCHER: I kind of wonder about the
29 foundation for that recommendation. I happened to attend
30 subcommittee hearings with Dr. Moore and Commissioner Wilhelm all

1 across America, and I think I heard at least nine hearings where
2 Native Americans and others testified, including the Indian
3 Regulatory Gaming Commission officials and others from the Bureau
4 of Indian Affairs, over 130 tribal leaders and representatives of
5 the United States.

6 And I thought there was overwhelming testimony that
7 IGRA does work and that it's been in place just -- I know not
8 more than a decade. And a lot of improvements have been made
9 towards contributions by tribes in terms of funding IGRA from
10 their side.

11 And they've been making improvements to the minimum
12 regulatory controls, and that's been promulgated by regulation by
13 the secretary and being implemented voluntarily. And all of the
14 other compliance with the U.S. Treasury Department and other
15 places has been certified to and represented, the banking
16 policies and the money handling polices and all that.

17 And I believe, quite frankly, that I can't remember too
18 many people who said that it wasn't in compliance or up to grade.
19 So I'd like to have a recitation in the record of who testified
20 that it wasn't, because I have at least 130 people that testified
21 that it was.

22 So I think the record lacks foundation for this
23 amendment.

24 CHAIR JAMES: Commissioner Dobson.

25 COMMISSIONER DOBSON: I think there was testimony that
26 supports this recommendation, specifically several attorneys
27 general in California who came and testified that the Federal
28 Government had not implemented the law in the case of the
29 decisions that were facing California.

30 COMMISSIONER LOESCHER: Madame Chair.

1 CHAIR JAMES: Commissioner Loescher.

2 COMMISSIONER LOESCHER: I think there is a dichotomy of
3 the issues that are being presented. I think there are two sets
4 of issues. One is the regulatory construction and oversight and
5 the funding is one question.

6 The second question is the issue of uncompact tribes.
7 And certainly that there is dispute between the tribes and the
8 states and it has been reviewed by the Federal Government. And I
9 believe Dr. Dobson is probably correct with regard to the
10 citation with regard to the uncompact tribes being out of
11 compliance.

12 At least that's the allegation being alleged. But I
13 don't believe that the whole issue -- I don't think Native
14 Americans should be tainted on the whole issue of the regulatory
15 versus the uncompact.

16 CHAIR JAMES: Jim, did you -- I'm sorry that we don't
17 have it in front of us, but did your motion deal with uncompact
18 tribes?

19 COMMISSIONER DOBSON: It did mention that. Let me read
20 it again. "The Commission has heard substantial testimony," and
21 I think that's an accurate statement which we could document,
22 "that the Federal Government has, until lately, largely failed to
23 enforce the provision of IGRA.

24 "We recommend that the Federal Government fully and
25 consistently enforce all provisions of that law."

26 CHAIR JAMES: Seems benign enough to say that they
27 ought to do what they are told to do.

28 COMMISSIONER LOESCHER: Yeah, Madame Chairman, I just
29 have a hard time because the facts don't hold out. And all of
30 which Dr. Dobson argues is before -- has been before courts in

1 this land and is before at least three jurisdictions, circuit
2 courts in the United States, have been ruled on, and now is
3 subject to the Secretary of Interior's promulgation of
4 regulations, which have been enjoined by the State of Florida in
5 a lawsuit.

6 And now the Secretary of Interior has said to the
7 committee of Congress that the courts should decide the issue.
8 And I think that's a fair position since Congress United States
9 senators have accepted that this is the right place for this
10 discussion.

11 I think Dr. Dobson should accept that idea as well. I
12 don't believe that his statement is true because it is being
13 enforced, it has the attention of the Department of Interior. It
14 has the attention of the U.S. Justice Department.

15 It has the attention of Congress. There's at least
16 three bills before Congress right now on this very subject.

17 CHAIR JAMES: Bob, let me --

18 COMMISSIONER LOESCHER: And what I'm saying is that his
19 proposal is without merit. The government has had the oversight
20 and has not under enforced this idea.

21 CHAIR JAMES: Bob, let me, for point of clarity, try to
22 understand which portion of this that you take objection to. And
23 I think I heard you say that you take objection to the first part
24 about whether or not we've heard the substantial testimony.

25 I understand that. Do you object to this statement:
26 "We recommend that the Federal Government fully and consistently
27 enforce all provisions of IGRA?"

28 COMMISSIONER LOESCHER: Madame Chair, I don't oppose
29 that phrase at all.

1 CHAIR JAMES: Okay, so is it the first part of that
2 that's the problem?

3 COMMISSIONER DOBSON: Madame Chairman, I want to
4 clarify that this recommendation is not aimed at the tribes, --

5 CHAIR JAMES: It's aimed at --

6 COMMISSIONER DOBSON: It is designed to ask the Federal
7 Government to do its job, and we have had testimony saying that
8 it isn't.

9 COMMISSIONER BIBLE: And I second the motion. You are
10 right. We have had testimony. We heard it from the National
11 Governors Association. We had it from a number of state
12 attorneys general. And their concern was that, by lack of
13 enforcement, the fundamental nature of IGRA had been altered and
14 that gambling had been permitted to grow through the lack of an
15 enforcement mechanism to require compacts.

16 COMMISSIONER LOESCHER: Madame Chair, and then on the
17 flip side, we have had tribal leaders come before the Commission
18 to say that the states have not been negotiating in good faith
19 and that they have not been doing their part as well, and hence
20 the source of disagreement.

21 That's where we are.

22 COMMISSIONER WILHELM: Madame Chair.

23 CHAIR JAMES: Commissioner Wilhelm.

24 COMMISSIONER WILHELM: I would respectfully suggest to
25 Jim I think this is a real thicket. Bob is absolutely right. We
26 have had considerable testimony from various points of view about
27 whether or not IGRA is being enforced and who -- in whose view
28 certain actions or inactions by the Federal Government constitute
29 an inability or a lack of will to enforce.

1 I would respectfully suggest that this is not a road
2 worth going down.

3 COMMISSIONER MOORE: Madame Chair.

4 CHAIR JAMES: Commissioner Moore.

5 COMMISSIONER MOORE: I believe if we go through the
6 recommendations, all of these recommendations -- practically all
7 of them have been tightened, the regulatory control of the
8 government over the tribal gamings, such as the very first one,
9 more money.

10 We know that there are more regulators now. And I'm
11 going to agree with Mr. Wilhelm and Mr. Loescher that I believe
12 that we should be satisfied if we could get the ones that we are
13 recommending passed unanimously and that we should be happy.

14 CHAIR JAMES: May I suggest that we table this one, get
15 to the end of this particular section and see if that is, in
16 fact, the case? And if it is not, then we should reconsider it
17 at that time.

18 COMMISSIONER DOBSON: With all respect, Madame Chair,
19 I'd like it to be considered.

20 CHAIR JAMES: Right now?

21 COMMISSIONER DOBSON: Yes.

22 CHAIR JAMES: Okay, that's not a problem.

23 COMMISSIONER MOORE: We're considering 6.9(a). We've
24 already voted on 6.9.

25 COMMISSIONER DOBSON: Yes.

26 CHAIR JAMES: Yeah, this is 6.9(b).

27 COMMISSIONER McCARTHY: I assume you're counting votes,
28 Dr. Dobson. And I want to tell you --

29 COMMISSIONER DOBSON: Do what's right, Leo.

1 COMMISSIONER McCARTHY: I want to tell you, I agree
2 with what the Chair just suggested.

3 COMMISSIONER MOORE: That's fine.

4 CHAIR JAMES: Because I think if you -- we could work
5 on it a little while longer, Jim, you may not have to see it die.
6 We may be able to come up with a way to work the language --

7 COMMISSIONER DOBSON: All right, I yield on that.

8 CHAIR JAMES: -- to get that.

9 And so why don't I take that one and see if we can do
10 anything with it, and we will table it for right now.

11 6.10. "The Commission recommends that tribes, states
12 and local governments should continue to work together to resolve
13 issues of mutual concern rather than relying on federal law to
14 solve problems for them."

15 COMMISSIONER LOESCHER: Madame Chair, I move
16 recommendation 6.10.

17 CHAIR JAMES: Do I hear a second?

18 COMMISSIONER BIBLE: I'll second that.

19 CHAIR JAMES: Any discussion?

20 COMMISSIONER LANNI: Call the question.

21 CHAIR JAMES: Question. All in favor?

22 (Chorus of ayes.)

23 Any opposed? Any abstentions? The ayes have it.

24 6.11. "The Commission recommends that tribes, states
25 and local governments should recognize and memorialize the mutual
26 benefits that flow to all communities from Indian gambling.
27 Further, the Commission recommends that tribes should enter into
28 reciprocal agreements with state and local governments to
29 mitigate the negative effects of the activities that may occur on

1 neighboring lands and to balance the rights of tribal, state and
2 local governments, tribal members and other citizens.

3 COMMISSIONER LOESCHER: Madame Chairman, I move the
4 proposal of 6.11.

5 COMMISSIONER WILHELM: Second.

6 CHAIR JAMES: Discussion?

7 COMMISSIONER DOBSON: Madame Chair, I'd like someone to
8 explain that one to me.

9 CHAIR JAMES: Boy, I'll bet other segments of the
10 gambling industry would like to get a recommendation like this.

11 COMMISSIONER WILHELM: I would undertake to explain
12 that, perhaps.

13 CHAIR JAMES: Commissioner Wilhelm.

14 COMMISSIONER WILHELM: There was ample testimony to the
15 Indian Gambling Subcommittee that -- and no disagreement, that I
16 can recall, with the concept that there are benefits that flow to
17 surrounding -- to communities that surround tribal gambling
18 sites and to the citizens of those communities.

19 On the other hand, there was also some testimony about
20 negative impacts on communities that surround the tribal gambling
21 sites or the citizens of those communities. And some of that
22 testimony had to do with the kinds of negativity that the
23 Commission has discussed at length about problem gambling and so
24 forth.

25 Some had to do with very difficult legal issues related
26 to zoning and infrastructure and things like that. As a
27 practical matter, under the law, as the subcommittee understands
28 it, states and localities cannot mandate that tribal governments
29 be taxed or have to participate in, you know, road building or
30 anything else.

1 The legally correct way to approach those issues is by
2 reciprocal agreements between state and local governments and the
3 tribes. And the purpose of the second sentence of 6.11 is to
4 acknowledge that negative effects like that do flow from these
5 tribal gaming activities and that there needs to be agreements
6 between the tribes on the one hand and the state and local
7 governments on the other hand to mitigate those effects.

8 That's the purpose. Because communities, for example,
9 cannot, under the law, apply their zoning standards to the
10 development of a tribal casino even though the development of a
11 tribal casino may have a huge impact on the surrounding
12 community.

13 COMMISSIONER DOBSON: The second sentence is not a
14 problem for me. It's the first that I have difficulty with.
15 "The Commission recommends that tribes, states and local
16 governments should recognize and memorialize the mutual benefits
17 that flow to all communities from Indian gambling."

18 I think it was Richard that made the case earlier that
19 there are Indian tribes that have not chosen to be involved in
20 gambling. This is a blanket statement involving all tribes,
21 recognizing that there are mutual benefits flowing to everybody.

22 That's a sweeping statement that I'm not willing to
23 endorse.

24 COMMISSIONER LEONE: You know, I think obviously this
25 -- reading this, this looks like language that is meant to be a
26 fair in making the point, and I think that probably the -- I
27 don't object to the notion of -- in this context considering the
28 --

29 COMMISSIONER DOBSON: Excuse me, Richard. I'm having
30 trouble hearing you.

1 COMMISSIONER LEONE: Oh, I don't object to the notion
2 that, in this context, one ought to recognize the positive
3 effects or -- that flow, but I do think Jim has put his finger on
4 something. I'm not sure what it means to all communities.

5 I think you mean in the vicinity or all the benefits
6 aren't localized.

7 COMMISSIONER WILHELM: Bob, I don't see a problem with
8 --

9 COMMISSIONER LEONE: Or people get hired and they get
10 jobs.

11 COMMISSIONER WILHELM: I don't see a problem with
12 dumping the word "all," do you, Bob?

13 COMMISSIONER LOESCHER: No, that's fine with me.

14 COMMISSIONER MOORE: Or communities adjacent.

15 COMMISSIONER WILHELM: Or just communities.

16 COMMISSIONER LEONE: Yes, because then it can be the
17 communities where people have -- who work there, have their homes
18 and things. So I think that's --

19 COMMISSIONER LEONE: Well, that addresses have of it,
20 but the first few words, "The Commission recommends that tribes,"
21 that's everybody, all tribes not just those who have chosen
22 gambling. You make it a recommendation to those who have not
23 seen benefits --

24 COMMISSIONER MOORE: The gaming tribes.

25 COMMISSIONER DOBSON: -- as well.

26 COMMISSIONER LOESCHER: Madame Chair, involved tribes,
27 or participating tribes, or --

28 COMMISSIONER MOORE: Gaming tribes.

29 COMMISSIONER LANNI: Gaming tribes.

30 COMMISSIONER LOESCHER: Gaming tribes.

1 CHAIR JAMES: The Commission recommends that tribes --

2 COMMISSIONER LOESCHER: Gaming tribes.

3 CHAIR JAMES: -- that participate in or which
4 participate in?

5 COMMISSIONER DOBSON: Have embraced gambling
6 enterprises or something of that nature.

7 COMMISSIONER LANNI: Why not just gaming tribes?

8 COMMISSIONER DOBSON: Gaming tribes should be all
9 right.

10 CHAIR JAMES: Gaming tribes.

11 "The Commission recommends that gaming tribes, states
12 and local governments should recognize.

13 COMMISSIONER MOORE: And we can leave out memorialize.

14 COMMISSIONER WILHELM: We just want you all to write it
15 down so you didn't forget them.

16 COMMISSIONER MOORE: Should recognize the mutual
17 benefits.

18 COMMISSIONER DOBSON: Memorialize should go.

19 COMMISSIONER WILHELM: Bob, I'm okay with leaving
20 memorialized out. Are you?

21 COMMISSIONER LOESCHER: I have no problem.

22 CHAIR JAMES: "The Commission recommends that gaming
23 tribes, states and local governments should recognize the mutual
24 benefits that flow to communities from Indian gambling" is how it
25 reads right now.

26 COMMISSIONER DOBSON: How about adding the word may in
27 front of flow?

28 (Laughter.)

29 COMMISSIONER LOESCHER: I have no objection to may,
30 Madame Chair.

1 COMMISSIONER WILHELM: Bob, you're in a generous mood
2 this afternoon.

3 CHAIR JAMES: "The Commission recommends that gaming
4 tribes, states and" --

5 (Laughter.)

6 COMMISSIONER DOBSON: How about may possibly?

7 (Laughter.)

8 CHAIR JAMES: Okay, right now we have "the Commission
9 recommends that gaming tribes, state and local governments should
10 recognize the mutual benefits that may flow to communities from
11 Indian gambling.

12 "Further, the Commission recommends the tribes should
13 enter into reciprocal agreements with state and local governments
14 to mitigate the negative effects" is how it reads right now.

15 Does the --

16 COMMISSIONER McCARTHY: May I ask a question, please?
17 Is the language still in this that says "may occur on neighboring
18 lands" or has that been deleted?

19 CHAIR JAMES: That's still there.

20 COMMISSIONER McCARTHY: Could someone from the Indian
21 subcommittee tell me what is meant by neighboring lands?

22 COMMISSIONER MOORE: Adjacent.

23 COMMISSIONER WILHELM: It means the nearby communities.
24 That's what it's meant to mean, anyway.

25 COMMISSIONER McCARTHY: I don't have any specific
26 knowledge in whether many of the patrons of Native American
27 tribal casinos come from some distance away. They may not. So
28 I've been in the research area and other areas.

1 I'm trying to describe the host communities versus the
2 feeder communities so we get a better description of what it is
3 we're talking about.

4 CHAIR JAMES: How about this, if we say --

5 COMMISSIONER McCARTHY: Bob, do you understand what I'm
6 getting at?

7 COMMISSIONER LOESCHER: Yes, I do.

8 CHAIR JAMES: How about other communities? So that it
9 would then read, "Further, the Commission recommends that tribes
10 should enter into reciprocal agreements with state and local
11 governments to mitigate the negative effects of the activities
12 that may occur" --

13 COMMISSIONER McCARTHY: In.

14 CHAIR JAMES: -- "in other communities, and to balance
15 the rights of tribal, state and local governmental tribal members
16 and other citizens."

17 COMMISSIONER LANNI: Move the question.

18 CHAIR JAMES: All in favor?

19 (Chorus of ayes.)

20 Any opposed? Oh, this is getting good. Any
21 abstentions?

22 COMMISSIONER McCARTHY: You now have 16 unconnected
23 clauses.

24 (Laughter.)

25 CHAIR JAMES: 6.12. "IGRA allows tribes and states to
26 negotiate any issues related to gambling. Nothing precludes
27 voluntary agreements to deal with issues unrelated to gambling
28 either within or without compacts.

29 "Many tribes and states have agreements for any number
30 of issues, e.g. taxes, zoning, environmental issues, natural

1 resource management, hunting and fishing. The Commission
2 recommends that the Federal Government should leave these issues
3 to the states and tribes for resolution."

4 If it has nothing -- I'm sorry.

5 COMMISSIONER LOESCHER: Madame Chairman, I move
6 proposal 6.12.

7 COMMISSIONER LANNI: Second.

8 CHAIR JAMES: Is there a second? Discussion. If it
9 has nothing to do with gambling, why are we talking about it?

10 COMMISSIONER McCARTHY: You mention often tribes and
11 state governments. Do you want to say tribal and state
12 governments? We do that in a number of places here.

13 COMMISSIONER MOORE: That would be all right.

14 COMMISSIONER LOESCHER: We're talking about tribal
15 governments here.

16 COMMISSIONER McCARTHY: Right, that's what I said.
17 Isn't that what you want us to say, tribal? We mention tribes
18 and state governments. Don't you want to say tribal governments
19 and state governments, or tribal and state governments, either
20 one?

21 COMMISSIONER LOESCHER: I'll be happy with anything.

22 (Laughter.)

23 COMMISSIONER DOBSON: Do we want tribal without
24 governments? It's an adjective, so you wouldn't want --

25 COMMISSIONER McCARTHY: Is that what a USC education
26 does for you?

27 COMMISSIONER DOBSON: That's part of it, Leo. Come
28 around and I'll tell you the rest.

29 (Laughter.)

30 CHAIR JAMES: Can anyone answer my basic question?

1 COMMISSIONER WILHELM: Yes.

2 CHAIR JAMES: There must be something there on this.

3 COMMISSIONER WILHELM: Yes, this is actually a fairly
4 important point, I believe. There is a good deal of -- I don't
5 know of contention is the right word, but at least lack of
6 clarity perhaps, about what kinds of issues may --

7 CHAIR JAMES: I think they're cutting a deal over
8 there.

9 COMMISSIONER LOESCHER: Madame Chair.

10 CHAIR JAMES: Yes, Commissioner?

11 COMMISSIONER LOESCHER: I didn't hear a thing that John
12 said, but it was awesome, I know it was.

13 COMMISSIONER WILHELM: I stopped.

14 CHAIR JAMES: He stopped so that you could hear every
15 word.

16 COMMISSIONER WILHELM: There's a lack of clarity about
17 whether some very legitimate issues between states and
18 communities and tribes that flow from gambling should or should
19 not be included in compacts negotiated pursuant to IGRA.

20 Just as an example, there are substantial zoning issues
21 that are directly related to the establishment or the expansion
22 of the gambling enterprises on reservations. And yet, there's a
23 lack of clarity about whether it is appropriate -- some say yes,
24 some say no -- to include zoning issues in a gaming compact.

25 So the purpose of this section is to say that it's very
26 important, whether it be within or without compacts, for the
27 tribes and the states to agree with these kinds of issues that
28 arise between communities and tribes.

29 And sometimes whether they're directly caused by
30 gambling or not is not all together clear. And moreover, the

1 subcommittee concluded that it's best if the states and the
2 tribes work those things out rather than have them legislated by
3 the Federal Government.

4 CHAIR JAMES: Can we work on the language unrelated to
5 gambling a little bit?

6 COMMISSIONER LOESCHER: Madame Chair.

7 CHAIR JAMES: Because the implication is that, in some
8 cases, they are related even though it may not seem so at first
9 blush. Is that -- I don't want to unfairly characterize it.

10 COMMISSIONER LOESCHER: Madame Chair, there's a
11 principle involved, and maybe we're too subtle.

12 CHAIR JAMES: Yeah, let's put it right out on the
13 table.

14 COMMISSIONER LOESCHER: And this tension, this
15 relationship between states and tribal governments negotiating
16 compacts, IGRA says one thing, the tribes are after one thing,
17 the states are after another thing, but they use different
18 language like the word taxes and other consideration.

19 Well, what has come to pass is that tribes recognize
20 this and want to preserve the integrity of their sovereignty and
21 also IGRA, so they negotiate for a road to build a road to
22 connect to a state highway.

23 They negotiate to contribute to the state treasury as
24 long as they get some other consideration like a franchise or
25 something like that. And that's what we're talking about. We're
26 trying to encourage that this process should continue that has
27 been set by example, for instance, in Connecticut and other
28 places.

29 And that's why it's a little bit subtle.

1 CHAIR JAMES: Well, I have no issue with the final
2 statement, which is the Federal Government should leave these
3 issues to states and tribes. I certainly agree with that. I was
4 just trying to understand, if it's completely unrelated to
5 gambling, why it was an issue that came before this Commission.

6 I trust your explanation of that.

7 COMMISSIONER WILHELM: Bob, people have accused me of a
8 lot of things in my life, but being subtle is not one of them.

9 (Laughter.)

10 CHAIR JAMES: Did you want to call for the question?

11 COMMISSIONER MOORE: Call for the question. But we
12 would have no problem with restating, but we'll call for it.
13 Let's call for it.

14 CHAIR JAMES: All in favor?

15 (Chorus of ayes.)

16 All opposed? Any abstentions?

17 COMMISSIONER LEONE: I abstain.

18 CHAIR JAMES: One abstention.

19 6.13.

20 COMMISSIONER LOESCHER: Madame Chairman, I move 6.13.

21 CHAIR JAMES: Okay, for the benefit of those viewers,
22 let me read that.

23 "The Commission recommends that Congress should specify
24 a constitutionally sound means of resolving disputes between
25 states and tribes regarding Class III gambling.

26 "Further, the Commission recommends that all parties to
27 Class III negotiation should be subject to an independent,
28 impartial decision maker who is empowered to approve compacts in
29 the event a state refuses to enter a Class II compact, but only
30 if the decision maker does not permit any Class III games that

1 are not available to other citizens of the state and only if an
2 effective regulatory structure is created."

3 Is there a second for that?

4 COMMISSIONER MOORE: Second.

5 CHAIR JAMES: There is a second. It has been moved and
6 seconded. Any discussion?

7 COMMISSIONER LOESCHER: Madame Chairman, I have an
8 amendment which I've circulated to the Commission members. I'd
9 like to move my amendment. Number 12 on my list. The language
10 is, Madame Chair, that the IGRA should be amended with the tribal
11 and state "opt in" that mutually waives their restrictive
12 sovereign immunity sufficient -- their respective sovereign
13 immunity sufficient to subject them to enforcement in the courts.

14 I so move.

15 COMMISSIONER LEONE: What number is this on your
16 amendment?

17 COMMISSIONER LOESCHER: Number 12.

18 COMMISSIONER MOORE: The big issue here is for the
19 states as well as the tribes to waive their sovereign immunities.
20 And this was discussed a lot. We had an agreement earlier that
21 we might -- we could leave that out, but it doesn't surprise us
22 to see it resurface and that's something that we need to discuss.

23 The states, in other words, gives up their right not to
24 be sued, isn't that correct?

25 CHAIR JAMES: We have an amendment before us. The
26 amendment to the motion needs a second. Is there a second for
27 the amendment? Hearing none, the amendment dies and now we will
28 consider the full motion as it reads at 6.13.

29 COMMISSIONER LOESCHER: Question.

30 CHAIR JAMES: All in favor?

1 (Chorus of ayes.)

2 Any opposed? Any abstentions?

3 Hearing none, 6.14.

4 COMMISSIONER LOESCHER: Madame Chairman, I move
5 proposal 6.14.

6 COMMISSIONER MOORE: Second.

7 CHAIR JAMES: It has been moved and properly seconded.
8 Is there any discussion? Let me read it for the benefit of those
9 who are following these proceedings.

10 "The Commission recommends that IGRA should be amended
11 so that states can collect funds from Class III gambling
12 operations for the purpose of responsible gambling education and
13 for the identification and treatment of people who suffer from
14 compulsive gambling.

15 "Further, the Commission recommends that the collection
16 rate of these funds should be the same as the collection rate of
17 funds from all other forms of legalized gambling in the state."

18 Any discussion?

19 COMMISSIONER LANNI: I just have a problem with the
20 word collection rate. I mean, you could argue that someone else
21 is not paying their -- you know, it's the rate of collection. I
22 think the verbiage is not appropriate.

23 CHAIR JAMES: Is misleading. Can you suggest a change,
24 Terry? How about just same as the rate?

25 COMMISSIONER LANNI: Well, the rate would be better, I
26 think. It should be the same rate.

27 COMMISSIONER MOORE: That's fine with me.

28 COMMISSIONER LANNI: I think that would work if it's
29 acceptable to whoever made the motion.

30 COMMISSIONER MOORE: No objection.

1 COMMISSIONER LOESCHER: Yes, that's fine.

2 COMMISSIONER LANNI: I'd second it.

3 CHAIR JAMES: All right, question?

4 All in favor?

5 (Chorus of ayes.)

6 Any opposed? Any abstentions?

7 6.15. "The Commission recommends that Congress should
8 adopt no law altering the right of tribes to use existing
9 telephone technology to link bingo games between Indian
10 reservations when such forms of technology are used in
11 conjunction with the playing of Class II bingo games as defined
12 under the Indian Gaming Regulatory Act."

13 COMMISSIONER DOBSON: That's covered by an earlier
14 item?

15 CHAIR JAMES: I don't think it was. I think we said
16 that it would be coming up later.

17 COMMISSIONER LOESCHER: Madame Chairman, I would like
18 to move 6.15.

19 COMMISSIONER BIBLE: I'll second that.

20 EXECUTIVE DIRECTOR KELLY: It has been moved and
21 seconded. Discussion, 6.15.

22 COMMISSIONER LANNI: Call the question.

23 CHAIR JAMES: All in favor of 6.15, please signify by
24 saying aye.

25 (Chorus of ayes.)

26 Any opposed? Any abstentions?

27 COMMISSIONER DOBSON: I abstain.

28 CHAIR JAMES: I abstain on this one as well.

29 COMMISSIONER McCARTHY: Madame Chair.

30 CHAIR JAMES: Yes, Commissioner McCarthy.

1 COMMISSIONER McCARTHY: Are you finished announcing the
2 vote on this?

3 CHAIR JAMES: Are you abstaining or are you -- did you
4 vote aye?

5 COMMISSIONER McCARTHY: No, I voted aye.

6 CHAIR JAMES: Oh, okay; then we're finished on that
7 one.

8 COMMISSIONER McCARTHY: I have a question on the one we
9 did passed, 6.14. I'm sorry I missed it. Let me just raise it.
10 I don't think Mr. Loescher will have any -- I hope, or the
11 Chairman of the Subcommittee or the other member, Mr. Wilhelm --
12 in 6.13, we say that IGRA should be amended so the states can
13 collect funds from Class III gambling.

14 Why would we limit any contribution from tribal
15 governments that operate gambling facilities to Class III when
16 Class II games may also contribute to problem and pathological
17 gambling and also should appropriately -- funds there from should
18 be used for education and prevention and for research?

19 Do you see the point I'm making, Bob?

20 COMMISSIONER LOESCHER: Yes, Madame Chair.

21 COMMISSIONER McCARTHY: Why would we limit that to
22 Class III? It should be Class II and Class III.

23 COMMISSIONER MOORE: Bingo, I guess.

24 COMMISSIONER LOESCHER: Yes, Madame Chair, the only
25 thoughts that I have would be regarding the bingo, which is
26 merely close to nonprofit or charitable, and we're not so sure
27 that they could carry any kind of load.

28 CHAIR JAMES: Do you want to think about that one and
29 see if you want to come back and revisit it?

1 COMMISSIONER McCARTHY: Well, I mean, do we know that
2 bingo's the only type of Class II gambling that's going to be
3 allowed on tribal lands?

4 CHAIR JAMES: Do you have the --

5 COMMISSIONER BIBLE: I can't, off the top of my head,
6 think of any other. Now, there's movements from time to time to
7 try and reclass a lot of Class III games to Class II games so
8 they escape the compacting provisions.

9 COMMISSIONER LOESCHER: We wouldn't do that.

10 (Laughter.)

11 COMMISSIONER McCARTHY: Well, there are some
12 suggestions to make bingo -- you know, make it available over the
13 Internet to make it a significant source. And while it certainly
14 seems harmless at this point as it usually exists, --

15 COMMISSIONER BIBLE: I think your suggestion is better
16 because it incorporates all of the activity, which is the intent
17 of replacing it.

18 COMMISSIONER BIBLE: Yes.

19 CHAIR JAMES: So that would be to modify that, to go
20 back and revisit that and have it Class II and Class III?

21 COMMISSIONER BIBLE: Probably ought to take out the
22 from Class III. I don't know if there's any Class I that has any
23 kind of revenue attached to it, but there may be.

24 CHAIR JAMES: So what you're suggesting now is that it
25 say the Commission recommends that IGRA should be amended so that
26 states can collect funds from gambling operations?

27 COMMISSIONER WILHELM: Presumably to say tribal.

28 CHAIR JAMES: From tribal gambling operations.

29 COMMISSIONER WILHELM: Bob, how do you feel about that?

1 COMMISSIONER LOESCHER: I have some tougher ones coming
2 up, I think.

3 (Laughter.)

4 CHAIR JAMES: From tribal gambling operations. Would
5 you all like to vote on that, or are you accepting that as a
6 friendly amendment?

7 COMMISSIONER LOESCHER: We accept it.

8 CHAIR JAMES: It's been accepted and there's general
9 consensus that that should be adopted.

10 All right.

11 COMMISSIONER WILHELM: 6.16.

12 CHAIR JAMES: Yes, we're on 16.

13 "The Commission recommends that tribal governments
14 should be encouraged to use some of the net revenues derived from
15 Indian gambling as seed money to further diversify tribal
16 economies and to reduce their dependency on gambling."

17 Do I hear a motion?

18 COMMISSIONER MOORE: Moved.

19 CHAIR JAMES: It is so moved. Seconded?

20 COMMISSIONER LOESCHER: Second.

21 CHAIR JAMES: It has been moved and seconded. Any
22 discussion?

23 COMMISSIONER LOESCHER: Question.

24 CHAIR JAMES: Call for the question.

25 All in favor?

26 (Chorus of ayes.)

27 Any opposed? Any abstentions?

28 Recommendation 6.17.

29 COMMISSIONER LOESCHER: Madame Chair, before we go on
30 to 6.17, on my list of amendments I had a new 6.17.

1 CHAIR JAMES: Okay.

2 COMMISSIONER LOESCHER: And it's numbered 16 on my
3 sheet. It reads, "The IGRA should be amended to repeal the good
4 faith standard for negotiating Class III compacts and substitute
5 a no fault impasse provision."

6 I so move.

7 CHAIR JAMES: Well, hold just a second. Let me clarify
8 this. We are right now looking at recommendation 6.17. And are
9 you suggesting that we substitute the language that you just read
10 for 6.17?

11 COMMISSIONER LOESCHER: No, it's a new 6.17.

12 CHAIR JAMES: You have a new 6.17?

13 COMMISSIONER LOESCHER: Right.

14 COMMISSIONER WILHELM: It's number 16 on the sheet Bob
15 submitted today.

16 CHAIR JAMES: Yeah, I got that; but he's not suggesting
17 that it replace it. He's just suggesting an addition.

18 COMMISSIONER LOESCHER: Make it a 16(a), Madame Chair.

19 CHAIR JAMES: Okay. Well, let's -- does it matter to
20 you, Bob, in what order we take these?

21 COMMISSIONER LOESCHER: No.

22 CHAIR JAMES: Now, is 17 an addition as well?

23 COMMISSIONER LOESCHER: Yes, the 17 is on my list of
24 proposed amendments as an amendment that I'd like to add -- a
25 proposal I'd like to add.

26 CHAIR JAMES: Okay, then my recommendation is going to
27 be that we work through the ones that we have here, give
28 commissioners the opportunity to read those and to assimilate
29 them. And then at the end we'll take them as 23 and 24.

30 Do you follow me? Sixteen is then 23 and 17 is 24.

1 COMMISSIONER LOESCHER: We accept that, Madame Chair.

2 CHAIR JAMES: Okay, the recommendation before the
3 Commission right now is 6.17.

4 "The Commission recommends that Native American tribal
5 gambling be limited to whatever form of gambling already exists
6 within the state in which their facility resides."

7 COMMISSIONER WILHELM: That's been addressed.

8 CHAIR JAMES: I think it has.

9 18, "The Commission recommends that Native American
10 tribal gambling facilities contribute to the cost of services
11 they either require or elicit from state or local governments."

12 COMMISSIONER MOORE: That's been addressed.

13 CHAIR JAMES: Where was that one addressed?

14 COMMISSIONER MOORE: It was --

15 COMMISSIONER WILHELM: The thing about tribes and
16 localities negotiating agreements with each other.

17 CHAIR JAMES: That's right.

18 19 regarding state tribal gambling compacts, "The
19 Commission recommends that there be a good faith requirement for
20 both the Native American and the state side during negotiations."

21 COMMISSIONER WILHELM: That relates to one that they're
22 proposing.

23 COMMISSIONER LANNI: That's relating to your 6.23.

24 CHAIR JAMES: So let's take that now then, 6.23. So
25 what Bob is suggesting is that on 6.19 that we substitute good
26 faith and put in instead a no fault impasse provision.

27 COMMISSIONER DOBSON: Madam Chair, I don't understand
28 that one. I don't know the language. I am not sure what a "no
29 fault impasse" is.

30 COMMISSIONER LANNI: I agree.

1 COMMISSIONER DOBSON: I think I know what good faith
2 means, but there has got to be a story behind this one. I don't
3 know what the story is.

4 CHAIR JAMES: I'm sure there is. Does anybody know?

5 COMMISSIONER LOESCHER: Yes, Madam Chair. I know.
6 Madam Chair, and maybe it's too much for a citizens panel like
7 ourselves, a commission appointed by the President and the
8 Congress to be able to do it, because there's 435 Members of
9 Congress who are focused on this issue, the courts, the Federal
10 Administration, how many state governments, are all focused on
11 the same thing.

12 What I was trying to do is sort of suggest that there
13 be a way to move this process between states and tribal
14 governments just a half a step forward. Hence, I advanced
15 earlier the notion of both sides putting down their guard on
16 sovereignty and allow themselves to negotiate the subject to suit
17 on sovereignty. That would move the ball forward one step.

18 Another step would be this good faith negotiation
19 business that we are suggesting here, that there be no fault
20 scenario if the states and tribes sit down and try to negotiate
21 and work with each other, that they be able to do this without
22 having to face issues regarding their sovereignty and defenses
23 that they may put up. That is the whole idea of this and that.
24 This would move the ball forward a half a step to encourage the
25 states and the tribes to get together.

26 CHAIR JAMES: Bob, what are the legal implications of
27 the term of art "no fault impasse" provision?

28 COMMISSIONER LOESCHER: I'm not a lawyer.

29 CHAIR JAMES: I don't know what --

1 COMMISSIONER LOESCHER: I do have lawyers here that
2 could help me, if you don't mind.

3 COMMISSIONER MOORE: May I?

4 CHAIR JAMES: Certainly.

5 COMMISSIONER MOORE: What would happen if you had this
6 in and the state and the tribe came to the table and they came to
7 no conclusion about the compact? Then where would we go, to an
8 arbitrator?

9 COMMISSIONER LOESCHER: Yes. Madam Chair, that's the
10 whole thing. Well, let me put it this way. The secretary's
11 regulations contemplate a process where he would adjudicate any
12 impasse. Senator Campbell has introduced the bill two weeks
13 which would acknowledge a neutral mediator or arbitrator between
14 the states. That is the idea.

15 I think our proposal, the Senator's proposal, and the
16 Administration's proposal head in the same direction in order to
17 try to get the impasse between the states off the dime so that
18 there can be a good faith progress in this area.

19 CHAIR JAMES: Commissioner Wilhelm?

20 COMMISSIONER WILHELM: In the Indian Gambling
21 Subcommittee, particularly in the very extensive discussions and
22 trading of ideas and things like that that went on, the three of
23 us attempted to get our arms around this question of what it is,
24 if anything, that this Commission knowledgeably say about the
25 very serious problem of how you resolve impasses between the
26 states and the tribes on these issues.

27 At least up until this afternoon, I think 6.13 that we
28 have adopted already goes about as far as the three of us
29 collectively. I don't want to say that individually we might not

1 have had different views, but 6.13 goes about as far as the three
2 of us collectively could see to go.

3 I don't mean by that to suggest that 6.13 is as
4 specific as in a perfect world it would be. Obviously it's not.
5 To some extent it sort of punts. It says if Congress should
6 specify a constitutionally sound means of resolving disputes, but
7 it doesn't recommend to Congress precisely what that ought be.

8 At least my take on the Indian Gambling Subcommittee's
9 wrestling with that issue was simply that if the states and the
10 tribes have been trying to negotiate about this for several
11 years, and if the Senator Inouye and Senator Campbell and Senator
12 McCain and others on the Senate Indian Affairs Committee and
13 their staffs have been trying to facilitate agreements on this
14 also for years, those of us on the subcommittee, at least
15 speaking for myself I guess, I shouldn't try to speak for all
16 three of us, just felt like, you know, in a limited amount of
17 time with a limited amount of information that we weren't going
18 to do any better in terms of being more specific about how to
19 break this logjam than all of those other parties have been doing
20 after years of discussion.

21 So I wasn't aware that these proposals numbered 16 and
22 17 were going to come up. I am not necessarily opposed to them
23 so much as I just don't feel like collectively we have enough
24 basis of knowledge to find a conclusion where those other parties
25 who have been wrestling with this for years, and who are quite
26 frankly, more knowledgeable than at least I am, have been able to
27 find a conclusion.

28 So that is why in the deliberations of the
29 subcommittee, we got as far as 6.13. Just speaking only for
30 myself, and I'm very respectful of Bob's efforts to move this

1 ball forward, but speaking only for myself, I don't see how I
2 could go beyond 6.13. I recognize that 6.13 is not a specific
3 enough recommendation to the Congress. I just don't know what
4 would be.

5 CHAIR JAMES: John, let me ask you this. The
6 recommendation that is before us right now is 6.19, which is the
7 good faith language. I think in what we should do is to take
8 them in order and see what we want to do with that one, and then
9 --

10 COMMISSIONER WILHELM: Okay. Speaking again only for
11 myself, I am not comfortable with that one either for the same
12 reason. I feel like, and it may be like others of you who are
13 not on the Indian Gambling Subcommittee have some insights here
14 that I don't, and I would certainly listen carefully. But I feel
15 like it isn't any more valid to pass 6.19 based on our present
16 knowledge than it would be in my view, speaking for myself, to
17 pass 16 or 17 in Bob's document.

18 CHAIR JAMES: Commissioner Lanni?

19 COMMISSIONER LANNI: Having proposed 6.19, it is my
20 point of view that 6.13 would negate the need for that.

21 CHAIR JAMES: Would you like to withdraw that?

22 COMMISSIONER LANNI: So I would withdraw that.

23 CHAIR JAMES: Who seconded that?

24 MR. KELLY: We never got to it.

25 CHAIR JAMES: We never got to it, so it was just
26 withdrawn.

27 COMMISSIONER LANNI: We didn't have a chance.

28 CHAIR JAMES: Okay. 6.20.

29 COMMISSIONER LOESCHER: So, Madam Chair, what happened
30 here?

1 COMMISSIONER LANNI: He still has a proposal still yet
2 to come.

3 CHAIR JAMES: We are still on 6.20 now, and 6.23 is yet
4 to come up.

5 COMMISSIONER LEONE: Madam Chair, I have a very limited
6 objection to the 6.20, which is I really don't feel I have an
7 adequate understanding of how changing the language under which
8 these negotiations take place would change the negotiations. I
9 don't understand the legal ramifications. I assume these words
10 are --

11 CHAIR JAMES: Which one are you referring to ?

12 COMMISSIONER LEONE: 6.20. As I understand it, good
13 faith is now --

14 CHAIR JAMES: We haven't read that one yet.

15 COMMISSIONER LEONE: Aren't we doing --

16 CHAIR JAMES: No.

17 COMMISSIONER LANNI: We are staying on the order.

18 COMMISSIONER LEONE: We're doing 6.23 now, right?

19 CHAIR JAMES: No. We were doing 6.20.

20 COMMISSIONER LEONE: Oh. I thought we had brought 6.23
21 up.

22 CHAIR JAMES: No.

23 COMMISSIONER LEONE: I'm sorry.

24 CHAIR JAMES: We are on 6.20.

25 COMMISSIONER BIBLE: This will be a new commission with
26 teeth?

27 CHAIR JAMES: As opposed to this toothless.

28 COMMISSIONER WILHELM: I'll support nearly anything if
29 I don't have to be a member.

30 (Laughter.)

1 COMMISSIONER LEONE: You mean you don't like the way
2 we're sort of gumlessly gnawing this subject?

3 CHAIR JAMES: This came up. Let me read it for the
4 benefit of those who are following this. This is 6.20. The
5 Commission recommends that a Native American Tribal Gambling
6 Commission be established with some teeth in it, to look into the
7 full scope and impact of Native American tribal gambling.

8 This came up, you may remember, as a result of the
9 frustration that we felt at our inability to get the information
10 that we needed to make a fair and balanced and accurate
11 assessment of the social and economic impacts. So that is what
12 that one was.

13 COMMISSIONER DOBSON: That's implied that it's Federal?

14 CHAIR JAMES: I think we should say that if that's the
15 case, yes.

16 COMMISSIONER BIBLE: Well, my thought on this
17 particular one is the one case where we attempted to exercise our
18 subpoena authority, it would have been a question of law that
19 would have had to be decided by the courts as to whether we were
20 legitimately entitled to those particular documents. The
21 National Indian Gaming Commissioners asserted that were not. Our
22 council asserted we were. We never resolved the issue.

23 So I guess the term "with some teeth in it," it doesn't
24 really mean anything, particularly because I think we would have
25 resolved that particular question had it taken its natural
26 course.

27 CHAIR JAMES: I think the implication here was that
28 Congress would look at that issue and be very clear about the
29 ability of such a commission to obtain such information.

30 If there is no second, it will --

1 COMMISSIONER LEONE: Well, I think we should say
2 something on this subject. In fact, what occurred, occurred, and
3 it impeded our work. I don't think any response to that is
4 perfect, but I guess I lean more towards calling upon Congress to
5 obtain the information that we sought and could not obtain and to
6 evaluate it in public.

7 COMMISSIONER BIBLE: There was a requirement at least
8 in our enabling legislation that Federal agencies cooperate. Of
9 course they assert that that is overridden by their specific
10 statutory obligation to protect that information. So I guess
11 what you need to recommend is that in the event another
12 commission like this is formed, that it be made crystal clear as
13 to whether or not other Federal agencies are required to produce
14 information, cooperate, produce data, things of that nature.

15 COMMISSIONER MOORE: If Congress follows any of our
16 recommendations, won't we be able to get any information that we
17 need when we are recommending that there be full disclosure?

18 CHAIR JAMES: I guess the fundamental question on this
19 particular one is how do we want to go at it, at this particular
20 issue? Do we want to recommend a Federal commission or do we
21 simply want to recommend that Congress take a look at this issue
22 and come up with some means of gathering and analyzing that
23 information?

24 COMMISSIONER BIBLE: I think at least in some part of
25 the report, you simply express this Commission's frustration with
26 its inability to obtain that information and make a
27 recommendation that if a future commission having a charge
28 somewhat similar to this is established, that they have the
29 ability or be specifically spelled out in the enabling

1 legislation that they have the ability to obtain that
2 information.

3 CHAIR JAMES: Why don't we table that. I will draft it
4 in that way and bring it back up for discussion.

5 6.21?

6 COMMISSIONER DOBSON: Remember that the word "Federal"
7 has been added.

8 CHAIR JAMES: Yes. 6.21. The Commission recommends
9 that Federal law should provide that when operating a gambling
10 facility, a tribe must comply with all of the laws and
11 regulations to which non-tribal facilities are subject.

12 COMMISSIONER WILHELM: That's been covered in essence.

13 CHAIR JAMES: Has that been covered? Do I hear a
14 motion in that regard?

15 COMMISSIONER MOORE: I believe that's been covered.

16 CHAIR JAMES: Hearing none --

17 COMMISSIONER DOBSON: I'm not sure that it has.

18 CHAIR JAMES: Well, you may want to move it then.

19 COMMISSIONER DOBSON: I would like information on
20 whether or not it has been covered. I don't want any redundancy
21 at this time of night. But if it hasn't, I would like that
22 considered.

23 CHAIR JAMES: Why don't we table it, ask the staff to
24 review it, and see where that is.

25 The Commission recommends that Indian tribes should not
26 be permitted to place casinos on newly acquired lands, only on
27 existing Indian-owned lands.

28 Do I hear a motion?

29 COMMISSIONER DOBSON: So moved.

30 CHAIR JAMES: Do I hear a second?

1 COMMISSIONER LEONE: I'll second it.

2 CHAIR JAMES: It has been moved and seconded.
3 Discussion?

4 COMMISSIONER LOESCHER: Madam Chairman?

5 CHAIR JAMES: Commissioner Loescher?

6 COMMISSIONER LOESCHER: I have a big problem with this
7 whole business. It's a sentence just dangling out there in the
8 mid-air. There's no support for this in our record that I know
9 of before this Commission.

10 My own personal investigation has -- I have gone to the
11 Department of Interior, Bureau of Indian Affairs to check on this
12 issue, whether tribes have been granted any properties off
13 reservation. I found in that last 10 years, there's only been
14 one little piece of property in 10 years that has been granted.
15 Quite frankly, the way the rules are set up now, a governor of a
16 state must concur before the Secretary of Interior can repatriate
17 property in this manner.

18 I think this is a non-issue. But on the other hand, I
19 wouldn't want the Commission making a statement like this that
20 doesn't have much of a foundation. So I would be against this
21 proposal.

22 CHAIR JAMES: Commissioner Bible?

23 COMMISSIONER BIBLE: I would concur with Bob's
24 comments. The existing provisions provide that before a tribe
25 can take land -- before it is approved to be put into trust
26 status and gambling authorized on that land, the governor has to
27 approve of that particular decision, as does the Secretary of the
28 Interior.

29 There was some controversy a number of years ago when a
30 Secretary of the Interior decided that he could do it

1 unilaterally, but I believe that controversy has since been
2 resolved.

3 COMMISSIONER LANNI: I would move the question.

4 CHAIR JAMES: Calling for the question. All in favor?
5 Any opposed?

6 I'll have to go for a roll call vote. Did I not hear
7 that correctly?

8 Bible?

9 COMMISSIONER BIBLE: No.

10 CHAIR JAMES: Dobson?

11 COMMISSIONER DOBSON: Yes.

12 CHAIR JAMES: Lanni?

13 COMMISSIONER LANNI: No.

14 CHAIR JAMES: Leone?

15 COMMISSIONER LEONE: Yes.

16 CHAIR JAMES: Loescher?

17 COMMISSIONER LOESCHER: No.

18 CHAIR JAMES: McCarthy?

19 COMMISSIONER McCARTHY: No.

20 CHAIR JAMES: Moore?

21 COMMISSIONER MOORE: No.

22 CHAIR JAMES: Wilhelm?

23 COMMISSIONER WILHELM: No.

24 CHAIR JAMES: James would vote yes, but the noes have
25 it. Six to three.

26 Okay. Now we're on 6.23.

27 COMMISSIONER WILHELM: Is 6.23 what is 16 on Bob's
28 sheet?

29 CHAIR JAMES: Yes. Now we're on 16 on Bob's sheet.

30 COMMISSIONER LOESCHER: Madam Chairman, I move 6.23.

1 CHAIR JAMES: Is there a second? Hearing none, the
2 motion dies.

3 Seventeen?

4 Let me read it again. I apologize for those who are
5 following. Sixteen says that IGRA should be amended to repeal
6 the good faith standard for negotiating class 3 compacts and
7 substitute a no-fault impasse provision. That amendment died.

8 Number 17. If the parties do not agree to a voluntary
9 partial waiver of sovereign immunity and there is impasse for any
10 reason, then the secretarial procedures should be permitted. The
11 proposed regulations published on January 22, 1998 at 63 Federal
12 Register 3289. However the Secretary of the Interior should be
13 confined to the scope of class III gaming standards stated in the
14 Solicitor General's brief to the United States Supreme Court in
15 Rumsey Indian Rancheria of Wenton Indians v. Wilson.

16 Do I hear a motion?

17 COMMISSIONER LOESCHER: So moved.

18 CHAIR JAMES: Is there a second? Hearing none, the
19 motion dies.

20 Commissioner Dobson, did you want to be recognized?

21 COMMISSIONER DOBSON: I do, Madam Chairman. I have
22 compromise language for 6.9(a) that Commissioner Loescher and I
23 have agreed upon and would like to submit to the Commission.
24 This goes back to the discussion a few minutes ago.

25 CHAIR JAMES: Okay, that's fine.

26 COMMISSIONER DOBSON: Okay. This is the language. The
27 Commission has heard substantial testimony from tribal and state
28 officials that uncompacted tribal gambling has resulted in
29 substantial litigation. Federal enforcement has until lately

1 been mixed. We recommend that the Federal Government fully and
2 consistently enforce all provisions of IGRA.

3 COMMISSIONER LOESCHER: I second the motion.

4 CHAIR JAMES: It has been moved and seconded. We have
5 had a substantial amount of discussion on this. Would anybody
6 like to call for the question?

7 COMMISSIONER LANNI: I'll move the question.

8 COMMISSIONER BIBLE: And the implication is that
9 enforcement is now moving along?

10 COMMISSIONER DOBSON: I said it's mixed.

11 CHAIR JAMES: He said it's mixed.

12 COMMISSIONER BIBLE: Until lately has been mixed.

13 COMMISSIONER DOBSON: This is compromise language,
14 Bill.

15 CHAIR JAMES: Come on, Bill. Work with us, Bill.

16 All in favor?

17 All opposed?

18 Let's take a 10 minute break and we'll come back and
19 wrap up with people and places.

20 (Whereupon, the foregoing matter went off
21 the record at 5:21 p.m. and went back on
22 the record at 5:40 p.m.)

23 CHAIR JAMES: Commissioner Loescher?

24 COMMISSIONER LOESCHER: Madam Chair, if I could have
25 the attention of the Commission. I would like to make a humble
26 proposal about section 6.14. I had voted for Mr. McCarthy's
27 proposals this morning, 6.16 to 6.20 I guess.

28 COMMISSIONER McCARTHY: 4.16 to 4.20.

29 CHAIR JAMES: 4.16 to 4.20.

1 COMMISSIONER LOESCHER: 4.16 to 4.20. 6.14 is a bit
2 inconsistent with the content and substance of that group of
3 amendments. I was hoping that I could persuade the Commission to
4 move to delete 6.14 in lieu of 4.16 to 4.20.

5 COMMISSIONER WILHELM: I would agree with that.

6 COMMISSIONER LOESCHER: So I would like to make a
7 motion to delete 6.14 in lieu of all of the aspects of 4.16 to
8 4.20, which includes tribal governments. It's more comprehensive
9 and better.

10 COMMISSIONER WILHELM: I second.

11 CHAIR JAMES: It has --

12 COMMISSIONER McCARTHY: May I ask a question?

13 CHAIR JAMES: You certainly may.

14 COMMISSIONER McCARTHY: I am amenable to that as long
15 as we are absolutely assured that it is not necessary to amend
16 IGRA to have -- let's see, this would give states the ability to
17 collect funds. You don't like that language? You want to leave
18 it so that it can only happen through a compact?

19 COMMISSIONER LOESCHER: Yes. Madam Chair, I believe
20 that that package --

21 COMMISSIONER McCARTHY: We weren't trying to mandate
22 Federal collection of Native American tribal gambling funds. But
23 as long as it can be done through a compact -- it can be
24 voluntarily done. There is no limitation in the existing Federal
25 law language.

26 COMMISSIONER LOESCHER: That's correct, from my
27 understanding that is correct. The spirit of your other
28 amendments is a lot better and you'll get better cooperation.

29 COMMISSIONER LANNI: I move the question.

1 CHAIR JAMES: All in favor of eliminating 6.14 please
2 signify by saying aye.

3 Any opposed?

4 Any abstention?

5 Okay. 6.14 is gone.

6 Okay. Was there something else in terms of cleanup in
7 this particular section?

8 COMMISSIONER WILHELM: Yes. 6.3. I discussed this
9 matter with Mr. Loescher and Dr. Moore. We have several times
10 today removed references to specific organizations, the Choktaw,
11 the AGA, and so on. So the three of us are agreed that we ought
12 to take out the middle sentence referring to the Menomene and
13 perhaps include that reference in the text of this chapter but
14 not in the recommendation, consistent with what we have done with
15 other groups.

16 CHAIR JAMES: If I don't hear any objection to that, I
17 will just assume that we have consensus to do that.

18 Anything else in that section?

19 COMMISSIONER DOBSON: Madam Chair, it's your call as to
20 when I ask a question of my fellow commissioners. If you want to
21 wait until the end, that's fine. But just reserve me a moment to
22 do that.

23 CHAIR JAMES: I will do that. Jim, if in the heat of
24 things I forget, I count on you to remind me.