

**OUTLINE OF TESTIMONY OF HOWARD L. DICKSTEIN
FOR THE NATIONAL GAMBLING IMPACT STUDY COMMISSION
JULY 29, 1998**

**THE UNDERLYING CAUSES OF THE CURRENT DISPUTE OVER
CLASS III GAMING IN CALIFORNIA**

- I. **Mistaken assumptions and lack of clarity in the Indian Gaming Regulatory Act of 1988**
 - A. The assumption that there would be compacts before Class III Gaming commenced.
 - B. The vague and contradictory definitions of Class II and Class III Gaming and the interplay between state and federal law.
 - C. The 1982 Litigation Agreement between California and gaming tribes to clarify the scope of gaming: *Rumsey, et al. v. Wilson, et al.*
 - D. Exclusive jurisdiction of the United States to enforce state gambling laws and violations of IGRA.

- II. **History of Tribal-State Compact Negotiations in California**
 - A. 1991 -1994
 1. Consolidated compact negotiations commence and breakdown over scope of gaming and interpretation of *Rumsey v. Wilson* litigation agreement and uncompact Class III Gaming.
 2. Deferral of enforcement actions by United States Attorneys pending clarification of the law and progress in negotiations.
 3. Operation of disputed Class II/Class III electronic gaming machines.
 - B. 1994 - 1996
 1. The Ninth Circuit Court of Appeals' decision in *Rumsey v. Wilson* limits compactable Class III Gaming in California to games permitted to the California State Lottery.
 2. The California Supreme Court in *Western Telecon v. The California State Lottery* rules that the State Lottery cannot bank games and is limited to lotteries.
 3. United States Attorneys continue to defer enforcement while litigation is pending.
 4. State legislative proposals to legalize slot machines on Indian lands fail.

5. The Governor refuses to negotiate with gaming tribes engaged in allegedly illegal Class III Gaming.
- C. 1996 - March, 1998: Tribal State Compact Negotiations between the Pala Band of Mission Indians and the State of California
1. The exclusion of gaming tribes from the Pala compacting process.
 2. The terms of the compact.
 - a. Scope of gaming - instant electronic lotteries with limited numbers.
 - b. Employee and patron protections with third party dispute resolution.
 - c. Mitigation of off-reservation environmental and related impacts of Class III Gaming through negotiated agreements with local governments.
 - d. Shared regulation of persons associated with Class III Gaming by the State and the Tribe.
 3. Divergent views among tribes on the meaning of tribal sovereignty: exclusive jurisdiction vs. agreements between governments in areas of disputed jurisdiction.
- D. March, 1998 to the Present
1. Agreement between United States Attorneys and Governor Wilson on enforcement against uncompact Class III Gaming and judicial decisions resulting from enforcement actions.
 2. Approval of compact by the Secretary of the Interior.
 3. Requirement of State legislative ratification of compact: pending legislation and judicial decisions.
 4. Execution of compacts with gaming tribes based on the Pala model, but incorporating a transition period.
 5. The qualification of a tribally sponsored Initiative which would legalize slot machines on Indian lands.
 1. The questions concerning the State constitutionality of the Initiative.
 2. The short term impact: If the Initiative passes and is held constitutional, it would compel the Governor to enter into compacts reserving more discretion to tribes than the Pala compact.
 3. The long term impact: If the Initiative passes and is held constitutional, it could result in expansion of Class III type gaming across the State.