

**TESTIMONY OF DAVID KWAIL, CHAIRMAN  
YAVAPAI-APACHE NATION  
BEFORE NATIONAL GAMBLING IMPACT STUDY COMMISSION  
HEARING DATE: JULY 24, 1998  
TEMPE, ARIZONA**

My name is David Kwail, and I am the Chairman of the Yavapai-Apache Nation ("Nation"). Our Reservation is located at Camp Verde, Arizona, approximately 100 miles north of Phoenix. I am grateful that you have invited me to appear today. I would like to share with you some of the remarkable ways that our tribal gaming operation has benefitted our entire community -- not only tribal members, but our non-Indians neighbors as well.

In this testimony, I would like to address two specific issues. First, I discuss the extraordinary, positive impacts of our gaming operation, and the benefits flowing from it throughout our Verde Valley. Second, I wish to address what we are doing to avoid, as much as humanly possible, the inevitable negative impacts inherent in the gaming industry.

I. The Positive Economic and Psychological Impacts of Tribal Gaming On the Yavapai-Apache Reservation.

As you know, tribal gaming is different from privately owned, commercial gaming. Unlike Donald Trump, whose gaming profits benefit him and his stockholders personally, Indian tribes engaged in gaming under the Indian Gaming Regulatory Act ("IGRA") are required to use their gaming revenues to provide governmental services for their people and for other specifically identified purposes that benefit the tribal community, such as economic development and investment. The Yavapai-Apache Nation is a textbook case of IGRA working the way it was

intended, by lifting our people out of poverty and into a life where they can feed, clothe, educate, and employ themselves in a way consistent with the American dream.

The Nation has operated a Class III gaming facility, the Cliff Castle Casino ("Casino"), since May of 1995. Until that time, our tribal economic development was limited to a modest hotel, an RV park, and a gas station. Since 1995, our Casino has been very successful, generating revenues that have permitted us to initiate projects and fund governmental services on our Reservation that had long been grossly underfunded or, in many cases, simply did not exist.

I wish you could come to our Reservation and see with your own eyes the ways in which gaming has improved our lives, and I invite you to do so. For now, let me just give you some of the more dramatic examples of how our gaming revenues have helped us and our neighbors.

-- Before gaming, we could not afford a tribal police force. We now have a tribal force whose budget exceeds half a million dollars a year. Our police force, consisting of a Chief and four officers, enjoys cross-deputization and an excellent and cooperative relationship with local law enforcement agencies.

-- Before gaming, our housing improvement program operated on a woefully inadequate budget of \$20,000 per year, every penny of which came from the BIA. Today, that same program has an annual budget of \$1.2 million dollars, every penny of which is derived from gaming revenues. This program has been instrumental in eradicating substandard housing on the Reservation. In addition, we now have a completely new and separate program dedicated to maintaining our improved housing stock, with a budget of \$150,000.

-- We now have a recreational and preschool program; a social services program to help members plagued by substance abuse and related problems; a food bank; and an "elders program"

that pays the utility bills of older tribal members who are otherwise unable to do so. Before gaming, we had none of these programs

-- Education is one of the greatest beneficiaries of our gaming revenues. Before gaming, fewer than five tribal members received scholarships. Today, in 1998, the Nation is funding directly, and entirely with gaming revenues, scholarships for approximately 80 tribal members. These scholarships enable our tribal members to attend local community colleges, private colleges and universities, and vocational training centers. These scholarships also are comprehensive, covering the cost of tuition, books, and room and board.

-- Gaming revenues have allowed us to make long needed improvements to our infrastructure. Using a combination of gaming revenues and federal funds, we have in the past three years built a gymnasium, a community center, and a new tribal administration building (including a courtroom and chambers for our five tribal judges). We also have recently transformed our old, prefab administration building into a school, which includes a Head Start program and is about to launch a Montessori program.

The economic impact of our gaming operation is felt in other ways as well. We have created over 285 jobs for tribal members, both at the Casino and as support staff for the various tribal programs and services I have already discussed. The Casino now employs 303 people: 58 of these are tribal members; 48 are members of other Indian tribes; and 197 are non-Indians from the surrounding community. Increasingly, our tribal members hold management positions. When the Casino opened, approximately 10% of the management positions were held by tribal members. Today, 54% of the management positions are held by tribal members.

The Nation itself employs approximately 200 tribal members in the various tribal programs and services. This is a dramatic change: before gaming, only 20 or so tribal members were so

employed. Thus, as a direct result of gaming revenues, tribal employment has increased more than ten fold, not including the jobs created at the Casino itself.

Our employees -- Indians and non-Indians alike -- derive great benefits from their employment besides their paychecks. All tribal and Casino employees participate in a comprehensive health plan and a generous 401(k) retirement plan. While these benefits may be routine and unexceptional for most Americans, they are new and enormously appreciated benefits for us and many of our neighbors in the Verde Valley. Indeed, we have heard anecdotal evidence that local doctors and dentists have had a stream of new patients who, until their employment with us, could not afford preventive medical care. For our own tribal people, most of us previously were limited to the care of the Indian Health Service, whose nearest facility is in Phoenix -- 100 miles and an hour and a half away.

While we are, obviously, grateful for the benefits wrought by our gaming operation, we believe our long-term future lies in other endeavors. Gaming revenues have therefore been used to diversify our economic development base. For example, we have purchased over 1800 acres of land, some of which will be used for tribal residences, others for business enterprises, primarily light industry and commercial ventures. Gaming revenues have also enabled us to purchase a 110 acre cattle ranch, which provides both food and employment to tribal members.

Many tribes in the southwest are located in isolated areas, far from major cities or communities, with limited prospects for long-term economic development. For a variety of reasons, most of which are beyond the control of tribes, it is extremely difficult to attract investors onto Indian lands. Consequently, many reservations have not been able to sustain business ventures on their lands. For many tribes, gaming has provided the only successful economic venture they have ever experienced. On our Reservation, for example, as I noted at the outset,

our only pre-gaming sources of commercial income were our then modest hotel, an RV park, and a gas station. Although these businesses operated in the black, their revenues were never remotely sufficient to fund even minimal governmental services, much less to provide the capital necessary to fund new businesses. For tribes like ours, then, it is vital that gaming on Indian lands continue. For many tribes, gaming represents the only realistic hope of ever breaking out of generations of poverty.

The intangible impact of tribal gaming, while less obvious, is no less important. Our Casino has broken the fatalistic spirit that is, unfortunately, all too common on many Indian reservations throughout the country. It has demonstrated to our children that tribal people do not have to live in dire poverty and dependence. The success of our Casino has brought a new sense of optimism and self-esteem to tribal members.

Most of my testimony so far has focused on how tribal gaming has benefitted our tribal people. In our particular community, however, the impact of our success is felt far beyond our Reservation boundaries. The Cliff Castle Casino employs approximately 197 non-Indians, drawn from the surrounding towns and rural areas. These employees represent about 65 percent of the Casino's total payroll, which exceeds \$8 million. All non-Indian employees at the Casino pay state taxes on their wages (and, of course, all employees, Indian and non-Indian alike, pay federal income taxes). Extrapolating from figures for the first half of the year, the Casino expects for 1998 to withhold from employees' paychecks approximately \$670,000 for federal taxes, \$137,000 for state taxes, \$411,000 for social security, and \$96,000 for medicare. Thus, the state and federal governments receive significant tax benefits from our Casino operation. In fact, the tax benefits to the state include not only income taxes from wages earned by non-Indians, but also gross

receipts taxes generated when Casino employees spend their wages to purchase goods and services off the Reservation.

The Casino contributes to the local economy in other ways. Both the Casino and the Nation have contracted with numerous vendors, suppliers, and service technicians over the years, both for gaming and non-gaming related equipment, food and beverage services, maintenance of various facilities, and other matters. These contracts with off-Reservation entities generate significant income for such vendors, the impact of which is felt largely off-Reservation.

## II. Regulation of Gaming Activity on the Yavapai-Apache Reservation

Crucial to the avoidance of gaming's negative impacts is comprehensive and conscientious regulation of the gaming operation. We understand that this Commission is concerned broadly with the regulation of gaming in this country, not just Indian gaming. However, we urge you to recognize the important ways in which tribal gaming is different from other gaming, and to spare tribal gaming from any additional regulatory burdens.

First and foremost, Indian gaming is already uniquely and heavily regulated by the federal government. IGRA imposes detailed, rigorous obligations on tribes, which include a second layer of rigorous regulation by *tribal* gaming regulators. No gaming employee may be employed by, and no person may provide gaming services to, the Casino without undergoing an extensive background check, including a criminal record history. All of the tribal regulation is overseen by the National Indian Gaming Commission ("NIGC"), which reviews all background check information, receives the mandatory annual, independent audit, and must prove all management contracts entered into by the gaming operation. The NIGC has the right to inspect the Nation's gaming operations for possible violations of IGRA and, ultimately, has the right to shut down gaming operations if they violate federal law.

In addition to this strong federal and tribal presence, the State of Arizona, pursuant to the terms of its Class III gaming compact with the Nation, is also significantly involved in the regulation of gaming at our Casino. All non-tribal member gaming employees at the Casino must receive both tribal and state certification. All manufacturers and suppliers of gaming devices must receive state certification as well. Even tribal members are subject to a separate background investigation by the State Gaming Agency, which may recommend to the Tribal Gaming Commission that an application for a tribal gaming license should be denied. Further, the State Gaming Agency has the right to monitor operations at the Casino and has free, unlimited access to all public areas of the Casino during operating hours, as well as access to non-public areas upon appropriate notice.

The federal and state involvement in the regulation of the gaming operations at Cliff Castle Casino overlay an extensive tribal regulatory scheme. The Nation operates under a tribal Constitution, which delineates the express and implied, inherent powers of the tribal government. The Yavapai-Apache Gaming Ordinance, adopted by the Tribal Council (the Nation's governing body), created the Yavapai-Apache Gaming Commission, an independent agency that monitors all aspects of the Nation's gaming operations and has broad enforcement powers. The Commission employs a staff of thirty (30) employees, has an operating budget of \$1.2 million, and is extremely diligent. The Commission's decisions, in turn, are reviewable by the Yavapai-Apache Tribal Court, which has both tribal and appellate level judges.

The Yavapai-Apache Nation also has established a detailed mechanism to deal with disputes or other issues raised by patrons at the Casino. Redress is assured, where appropriate, by the Nation's insurance policy, which provides coverage of up to \$1 million per occurrence for personal injuries and property damage. No doubt of particular interest to this Commission (as

it certainly is to Congress), the policy expressly prohibits the insurance company from invoking the Nation's sovereign immunity up to the limits of the policy.

The Nation also deals responsibly with criminal activities that occur from time to time at the Casino. The Nation has entered into a cooperative intergovernmental agreement with the Marshall's Office of the town of Camp Verde. That office dispatches officers within minutes of being summoned by the Casino's security force and assumes jurisdiction over non-Indian suspects. The Nation pays the Camp Verde Marshall's Office for this service.

Because my time is limited, I have described only the broad outlines of the federal, state, and tribal regulatory requirements imposed on our tribal gaming operation. Even that broad brush, however, should make it clear that our Casino is abundantly -- indeed, some might say excessively -- regulated, and that problems related to gaming are dealt with in a responsible manner. To my knowledge, no other gaming in America is subject to triple regulation, by three separate sovereigns. There is no need for further regulation.

I would be less than credible were I to deny that gambling can have serious adverse effects. Some people cannot control their gambling habits. The Nation has not ignored this problem, nor do we wish to minimize it. To the contrary, we have taken specific actions to help those in need. We make available at the Casino pamphlets prepared by Gamblers Anonymous. We have a voluntary list of compulsive gamblers who, at their own request, are refused admittance to the Casino. We make substantial contributions to the Arizona Council on Compulsive Gamblers, which provides information to problem gamblers regarding where they can seek help. And we have established an open dialogue with the Arizona Council on Compulsive Gamblers and continue to learn, through that dialogue, about specific actions the Nation can take to help reduce the number of compulsive gamblers.

Despite the problems, however, both potential and real, the benefits the Yavapai-Apache Nation has achieved from its tribal governmental gaming operations far outweigh the negative impacts, both for the tribal community and the community at large. I thank you for allowing me this opportunity to provide my comments to you on this extremely important matter. I would be happy to answer any questions you might have, or to provide you with any additional information.