

Economic Issues and Native American Gaming

Testimony

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Hearing

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1. The Critical Need for Information

It is my pleasure to be able to offer some comments today along with attached written remarks, many of which come from earlier papers I have written. I am especially appreciative of the fact that I am sharing this panel with my friend Gary Anders of Arizona State University--West. Earlier this year Professor Anders and I signed a contract with the University of Nevada Press to write a book on Native American gaming. Our intention in our manuscript is to assess the ten year impacts of the passage of the Indian Gaming Regulatory Act of 1988. We have started our study by examining the dynamics involved in the passage of that Act, and then highlighting the ostensible purposes of the Act. Those purposes are expressed in the preamble (Section 1) of the Act. The Act was passed in order to (1) promote "tribal economic development, (2) self-sufficiency, and (3) strong tribal governments." Furthermore, the Act was intended to (4) "shield" the gaming activities from organized crime, and to assure that the tribes were the primary beneficiaries of the activity.

It is no easy task to assess whether or not any public policy decision has accomplished its goals. We are finding, however, that the task of assessing impacts is particularly an arduous one regarding this particular piece of legislation.

How do we determine if economic development has taken place to some degree of adequacy as a result of an Act? How do we determine when self-sufficiency has occurred or is occurring? What indicators exist to measure the strength of tribal governments? And were there measures of organized crime activity when the Act was passed which can be used as benchmarks for determining the effectiveness of the Act regarding that identified purpose?

Certainly measures could exist. There are health statistics, unemployment, income, housing adequacy, and education statistics. But can they be used, and how can they be used? Thus far we have not come up with a positive answer. It appears that information such as exists is not ordered in any way which allows effective analysis of the impacts of the 1988 legislation.

The best indicators of the condition of the life of Native America appeared in the 1990 U.S. Census. In a sense these data can be used as benchmarks for the time at which gaming was introduced under the provisions of the 1988 Act, however, we should certainly recognize that some major gaming operations were already in place by the time the Act was passed, albeit even these underwent major

expansions after the Act.

Before we can have a good sense of the impacts of gaming we would have to have comparable data for the years at the end of this decade as well.

We truly need accurately collected data on each reservation population for each year on quality of life variables. Such data is not collected across all Native populations. Scattered data on specific populations is uneven in quality and has sufficient gaps as to render it almost meaningless for purposes of general analysis.

But much more than that data on quality of life indicators is needed as well. We need to know just how much gaming has been generated as a result of the provisions of the 1988 Act before we can really assess the impact of that gaming. Here the problem is much greater than that presented by the fact that the census data is decennial and not annual. The problem is that the information is purposely hidden from the public in a major breach of the philosophy of Freedom of Information, a philosophy that has been thoroughly endorsed by almost every polity in the American public over the past four decades. And while information is hidden, public officials continue to make policy on Native American gaming, and public officials propose major changes in public policy toward Native Americans. It is a travesty of our democracy that any public officials should be asked to make policy without good public information.

I am not faulting tribes for hiding information as they seek the best fiscal results (the greatest revenues) for their gaming operations in a policy arena that is forced to accept their interpretation of matters absent any good contrary information. I do fault Congress for specifically exempting Native American gaming from critical provisions of the landmark Freedom of Information Act of 1966 (Title 5, United States Code, Section 552). See Section 17 of I.G.R.A., Public Law 100-497. It is especially disturbing that the exemption was granted during the post-termination era when Congress has sought to protect rights of Native America with more complete applications of the U.S. Bill of Rights to tribal activities. The protections of not only Native Americans but of all Americans are in jeopardy when we purposely put information that is needed for good public policy decisions beyond the grasp of Americans. It is not only the democracy of non-Natives that is endangered by this foolish policy, but it is also the democracy of tribal members across all of Native America.

I have encountered examples of the application of this policy of imposing purposeful ignorance on America. When Ricardo Gazel and I were asked to do an economic study of Native Gaming in Wisconsin, we wished to have a sense of how big the gambling establishment was in the state. Of course, the easiest mark of size would be the gaming revenues of the casinos, but we figured these would be

beyond our reach. Instead we sought surrogate measures of gaming volume. We approached state officials who had the information on square footage, numbers of tables, machines, and bingo seats. However we were told by these state of Wisconsin officials--and this is the state that includes one of the greatest reform legacies in America--that we could not be given this information (which they had) because they had entered a Class III gaming compact with the tribes of their thoroughly open meetings and open records state which precluded any release to the public of such information. We had to find information independently through private sources, and from that information make reasoned estimates of gaming revenues.

Also our study floundered in early stages as many tribes refused to allow us to interview players at or near facilities. We encountered the same problem in an Illinois economics study, but there we could go to edge of parking lots off property and conduct interviews. Such an approach would be somewhat harder with Native casinos as tribal facilities are often some distance within reservation boundaries. We finally won cooperation of two tribes which controlled three casinos, and we conducted interviews allowing us to assess economic impacts of the casinos for the local communities and the state as a whole--impacts which were, by the way found to be positive ones.

I recall asking one Native employee of an Arizona casino how his casino was doing now that it had been open for a year---I might add, my personal inquisitiveness was somewhat prompted by the fact that I worked with the Arizona tribes in their effort to win compacts for Class III gaming. Indeed the federal judge had quoted my research in his order mandating that the state make compacts. The tribal official, begged me not to take it wrong, but that "it was none of my damn business." OK. I smiled and changed the topic quickly.

I do however, have a real difficulty in comprehending the reason for secrecy regarding casino performances. The policy was a United States of America policy adopted by the Congress of the United States. Every year there have been attempts to amend I.G.R.A. But the public is locked in ignorance. In state after state governors are asked to negotiate compacts on behalf of the full public. However, the full public is precluded from giving good advice to the governors, because they have inadequate information. In California, the voters are actually being asked to vote on a Class III compact for all the tribes of the state. However, all the information they will have on Native American gaming will come from the tribes. There will be no opportunity to have independently gathered information on which they may base their decisions.

One Senator, Slade Gorton of Washington, is proposing that B.I.A. budgets for tribes with gaming be cut. Tribes are asking for public support to head off these efforts. But the public is locked in ignorance. This is simply not the way public policy should be

made in the United States.

Is Gorton's bill a good one or not? That can be debated. If the purpose of I.G.R.A. is really economic development and self sufficiency maybe Gorton's bill is a good one, if we delve into treaty rights and obligations made in the past, perhaps it is not. The concept is very debatable. But then the bill is really not debatable because information does not exist in a public realm whereby the citizenry can make inputs to Congress in a meaningful way.

Part of our lexicon of policy debates in America heard over and over again is that Native America is the poorest sector of Americas economy. Yet we are denied information about gaming revenues of tribes. In 1928 Lewis Meriam instituted a national study. He found the condition of life on American reservations to be a national disgrace. He gave a report to the government. The government then published the report. What if that report would have been kept secret? Could the Roosevelt administration have reversed the policies of allotment and termination without the force of that report? John Collier had both supporters and detractors among the Native community, but he instituted a philosophy of concern and reform that has become a foundation for many positive laws regarding Native America that have been passed over the past four decades. A serious question can be asked: could Collier have changed the direction of national thinking from ignorance to sympathy for the condition of Native peoples had the Meriam report been kept secret? Imagine national government leaders saying all we have to fear is fear itself, therefore, any evidence that any of our people are hurting shall be suppressed. Think about leaders who might reason that we are now in a world arena telling the Chinese that they are "wrong" and they are mistreating their people, therefore any evidence that we are mistreating any of our people should be suppressed--that it is in our international interests to do this. I think we as a citizenry would be outraged--we should be outraged anyway. So too, evidence that will allow us to assess changes in the quality of Native life related to gaming cannot be suppressed if we are to make democratic decisions regarding gaming. Not only must we have a free flow of information, we must have independent information on gaming.

We are academics, without the free flow of information, we have no role to play in our society.

2-3. In previous research, I have worked with others to apply an economic flow model to gaming enterprise. The goal of the research activity is to determine if the presence of the gaming activity presents positive results for a community (a local area, a state, or multi-state region) or negative results for a community. The accompanying Table I (Gambling Economics in a Bath Tub) presents the concept. To apply the model, we have interviewed players and asked them about their spending behavior. We have then sought to determine how the gaming organizations spend their revenues. By

comparing flows of money into the community and out of the community we can assess economic benefits and costs.

In two studies (attached) we looked at economic impacts of Native American casinos in Wisconsin and commercial riverboat casinos in Illinois. The results suggested that Native American gaming offers a much stronger model of economic development and positive economic results for communities (especially local communities) than do the commercial casinos. In these two jurisdictions the portion of gamers who lived outside the local areas, and outside the state, were similar. Yet for Wisconsin we found that each dollar of revenue generated as a result of the presence of the casinos resulted in a positive gain of 51 cents for the local economy. In Illinois, for each dollar of revenue generated, the local community lost 18 cents--make sure that is clear: one dollar in results in one dollar and eighteen cents out. (See attached article, "The Economics of Casino Gambling.")

The critical factors that differentiate the Native gaming and the commercial gaming are taxes and profits. Native casinos retain profits in the community because casino ownership is tribal. Moreover they retain income because they pay no state taxes on gaming activities, nor do they pay federal income taxes on the net profits of the enterprise.

Also, as distinguished from the Illinois casino example, the Native casinos of Wisconsin are encouraged to reinvest profits in their facilities. Illinois law specifically limits the size of facilities and restricts the number of facilities in the state.

4-5. Caveats must be offered regarding taxes and reservations. By saying there are economic benefits for communities because Native casinos do not pay state and federal taxes should not be interpreted to mean that Native Americans do not pay taxes. They pay many kinds of taxes. Casino employees whether or not they are Native Americans do pay income taxes. I have listed the many kinds of taxes tribes pay on the accompanying chart. I would like to add this notion for the consideration of persons who like to argue the taxation issue: Native American casinos pay the highest rate of taxation of any casinos in the world--the world. I am the co-editor of a book now going into its third edition. The book is entitled International Casinos Law. I have also visited over 500 casinos around the world. Again I offer this fact: Native American casinos pay the highest casinos taxes of any casinos in the world. The casinos pay a rate equal to 100% of the net casino profits. 100%. The taxes go to governments--tribal governments. The late Tip O'Neill wrote a book he called All Politics Should be Local. Regarding economic benefits of casinos, I would offer this paraphrased suggestion, "All casino taxes should be local." (See attached article, "The Tax Attack.")

6-9. There are many benefits for many people as a result of Native American casinos. There can be little doubt that tribes have

benefitted from casinos. Casinos have helped tribes in many ways. Casinos have enhanced opportunities for self government, self sufficiency, and economic development. Casinos help tribes in their quest for renewed sovereignty. Casinos can also detract from sovereignty in several ways. In my research with Diana Dever of Mohave College in Arizona we presented a qualitative list of the ways Native gaming opportunities have helped and hurt the sovereignty quest. One point must be offered here. It is not a matter of clear positives or clear negatives. To assess the value of Native gaming researchers must examine costs and benefits and determine the net results. (See attached article: "Gambling and the Restoration of Native American Sovereignty and Self Sufficiency.")

The legislation passed in 1988 was couched in terms of the interests of all Native America. There was a recognition that tribes needed economic help. Debates focused upon the deplorable economic situations in which most Native Americans on and off reservations found themselves in contemporary America. Help was needed, gaming was available.

There must therefor be concern for the question how has the gambling enterprise helped all of Native America. Have casinos helped reverse the degradation faced by tribes across the continent ever since permanent Europeans settlements were planted in America. We need not debate whether some tribes have turned around former conditions of impoverishment. That is obvious. But what about all Native America, what have casinos done for all of Native America? The 1990 Census reported that there were 1,959,234 Native Americans, and about 35% of these lived on reservation lands. There were approximately 325 reservations. The Native population on the reservations and trust lands was 437,079. Of these, 47.3% were living below the poverty line. Their median family incomes were \$12,459, with mean income at \$17,459. (1990 U.S. Census of Population, Social and Economic Characteristics: American Indian and Alaska Native Areas, Tables 12, and 13.) The median national family income was \$32,225, with less than 10% under the poverty line. In our research we will be asking the question: will gambling enterprise alter these national statistics?

We do not have an answer to this question? We do have some suggestive materials which lead us to doubt that gaming will produce a major impact upon the impoverished conditions faced by much of Native America. On Tables II and III we present information about reservations and gambling. First we list the tribes with the twenty largest casino operations in America. Second we list the twenty largest reservations in terms of population--on reservation Native Americans, 1990 census. The first fact that jumps out is the almost complete lack of an overlap between the two lists. Only one of the twenty largest tribes has one of the twenty largest Native American casinos. The twentieth largest tribe--the Mississippi Choctaws--has the fifteenth largest

casino.

Using data from Casino Executive Magazine (July 1997), I discerned that there was a confirmed gaming space of 6,037,223 square feet in all Native American casinos in the United States. Some smaller casinos did not report the size of their facilities. The casinos employed 96,584 persons. They collectively had 5044 tables for gaming, and 88,892 machines. The U.S. Census reported that 437,079 Native Americans lived on reservation lands. Others lived in tribal district statistical areas that did not have casinos, although I do present some statistics on the Mohegans who established reservation status and casinos since 1990.

The large tribes do not have large casinos. Indeed, all twenty have gaming floors averaging less than 20,000 feet each, with an average of only ten tables and 301 machines. The twenty tribes employ an average of 263 persons in gaming. Actually only eight of the twenty tribes have casinos at all. The employment for most of these tribes is not a major factor in reservation economic life. The average of 263 jobs has to be compared with 1990 on-reservation populations that averaged 13,570 (or 6758 excluding the large Navajo reservation). While the twenty large tribes had 62% of the Native American population living on reservations, they had only 6.3% of the gaming space, 5.9% of the casino employees, 3.9% of the gaming tables, and 6.8% of the gaming machines.

On the other hand the tribes with the twenty largest casinos employed an average of 2319 in gaming, while their 1990 reservation populations were less than one third that number. Again it must be noted that the comparisons are based on available but inadequate data--1990 census data--and that the reservation populations are only a portion of full tribal enrollments. Of course, these tribes have increased rapidly in size as all eligible persons who could did apply for tribal membership which sometimes carried exorbitant personal benefits in terms of cash bonuses derived from gambling revenues. The large casinos had average floor spaces of 120,383 square feet, 84 tables, and 1863 machines. The tribes owning the casinos had 3.0% of the 1990 Native American reservation populations, but they had 39.9% of the gaming space, 48.0% of the casino employees, 33.3% of the gaming tables, and 41.9% of the casino machines. Actually, it could be suggested that these twenty tribes produced well over one half of the Native American gaming revenues, as a report in the July 1997 International Gaming and Wagering Business Magazine suggested that the largest eight Native casinos produced 40% of the gaming revenues.

The twenty largest tribes had household incomes considerably less than the national average as well as Native averages. The largest tribes had median family incomes of \$13,030, as 49% of the residents (of the median reservation) were living below the poverty line. The gaming tribes were not exactly in good financial straits in 1990, but they were doing better than the larger tribes. The

had median family incomes of \$16,702, while 40% lived below the poverty line.

There can be no doubt that the members of the gaming tribes were very poor before gaming was established. Some of them were indeed among the poorest populations in America. However, we cannot escape the conclusion that they were small populations.

I think all America must be prepared to address Native American gambling in the context of all Native America. The benefits from the gaming should be diffuse. The benefits should extend to all Native Americans. If all America has a responsibility to Native America, whether morally or legally by treaties (and there certainly is a responsibility), it should be expressed in policies that benefit all of Native America, not just a small percentage of the Native American population. In other studies I have expressed the notion that gaming might be the tool to help all of Native America. Indeed, in 1993 I even suggested that Native Americans be given a monopoly over all gaming in America--with the caveat that existing jurisdictions be grandfathered in to a degree. (See attached article, "Gambling and the Restoration of Native American Sovereignty and Self Sufficiency.") However, I further offered that with the national monopoly, the benefits should accrue to Native Americans nationally. I would offer that I would not support any mechanism that made the B.I.A. a super agency in charge of any distribution procedure. However, a planned distribution of funds by Native Americans that meets needs of the Native Americans collectively would be in order.

It is disturbing that up to this date there have not even been cooperative agreements among any number of small tribes, or a number of tribes within a state, or tribes within an historical nation for sharing revenues. I would like to see some sharing as a consequence of the legal monopoly that has been given tribes within states and regions of America. Thus far the only sharing is in terms of small grants, support for cultural programs and conferences, and of course political lobbying and campaign contributions. Collectively the moneys used altruistically to help other tribal peoples is a very small fraction of gaming revenues.

There was a plan in Michigan in 1995 for the Sault Ste. Marie tribe to run a casino in Detroit on new reservation land, and to share the revenues equally among the seven other Michigan tribes. The sharing concept was dropped as the tribe sought the support of the secretary of the interior and the governor for the plan. The plan did not receive the governor's support. The tribe, however, has won preliminary approval for a commercial casino license in Detroit in partnership with a non-Native group.

A recently advanced compact plan in California does embrace the concept of sharing. There is opposition to the compact proposal and I can understand that many details of the plan may not be in

the general interest. The devil is in the details, for instance, a requirement that all tribes be treated equally regardless of their population size and needs. Tribes are each allotted a right to use a number of machines in their casinos. However, gaming tribes are allowed to share revenues with non-gaming tribes by paying for the right to use the other tribe's gaming machines allotments. Such a concept applied nationally could be beneficial for the notion of having gaming become a tool for the economic benefit of all of Native America.

11. My conclusions and policy suggestions are simply incorporations of comments above. There should be an immediate removal of the Freedom of Information Act exemption in I.G.R.A. There should be annual public reports of the gaming activity of all tribes. Moreover this commission should work with the National Indian Gaming Regulatory Commission and other offices in the Department of Interior to produce an ongoing data collection system to monitor socio-economic facets of Native American life--on and off tribal lands. Policy makers and the public (including those doing research) should not have to wait for ten year census data in order to assess the impacts of programs--many of which are not designed to run their course in selected ten year periods of time. This commission should also conceptualize policy initiatives for shared gaming revenues among all Native America.