

1

2

3

4

5 CHAIRPERSON JAMES:

6

And Commissioners I know we've heard a lot of information. And I appreciate your patience and holding your questions. But I don't want to rush this process at this point. And I would open it up for discussion and any questions that commissioners may have. And also for interaction between the panelists if you'd like to direct some things that way.

14

Commissioner Leone.

15

COMMISSIONER LEONE: I have a couple of questions I'd like to ask Professor Kalt. There's one part of your, one aspect of your testimony that confuses me a little bit. Which is, and I have, I certainly find, I'm receptive to the notion that self-government and economic activity self-managed is

20

1 obviously very good where ever it happens. On the
2 other hand, let me just seize on your Soviet example.

3 The Soviet, within the Soviet system all
4 the subway cars were built in Budapest. And people who
5 were involved in the subway, and they all were very
6 heavy subway takers, in that business and Budapest did
7 very, very well. They were in a system that didn't
8 work out very well for Hungary generally. When the
9 system broke down, and it was opened up to competition,
10 the company went belly up of course, and has only
11 recently survived in quite a different form.

12 If Indian country had been given the right
13 to sell Coke, Coca-Cola, I better be careful, or
14 actually both examples work, it would have, people
15 would have said, so what? In fact, if the State of
16 Connecticut had legalized gambling at the time the
17 State of Nevada did, and then, at some point said, oh
18 you can build a Foxwoods type casino people probably
19 would have said, so what.

1 Isn't it, in fact, the scarcity of this
2 right to gamble that is the critical factor that has
3 made this a valuable franchise in Indian country? I
4 have no doubt, by the way, that benefits flow in a more
5 equitable way because, with all due respect to at least
6 one of my colleagues, than they do in the private
7 sector in terms of ownership. But isn't it the
8 economics of scarcity that drive this, rather than the
9 democratization of tribal lands or anything like that?

10 DR. KALT: Well, I think that if you, I
11 would say it, probably, it's looks like we're starting
12 into a stage in which competition plays more and more
13 of a role. I think you're right. You look in the
14 early days, in the early '90s, in fact, we've done some
15 research on this, the way to succeed was to live in a
16 large metropolitan area and not face competition. But
17 increasingly, tribes are in competition with tribes,
18 Mohegan and Mashantucket being a classic case. If you
19 go to Phoenix you will find multiple tribes competing
20 against each other. And there you would have to say it

1 is not a monopoly of a single tribe that is the source
2 of success.

3 The underlying economics indicate that the
4 source of success is yes, there's a scarcity, an
5 untapped demand among the public. All the public
6 opinion polls consistently demonstrate public support
7 for Indian gaming. But it's not monopoly positions on
8 the part of the Budapest casino, I guess. Rather it
9 does appear to be the ability of tribes to enter into a
10 market and even where they compete that we're seeing
11 success.

12 CHAIRPERSON JAMES: Other questions?

13 Commissioner Wilhelm.

14 COMMISSIONER WILHELM: Mr. Johnson, you
15 partially addressed this in your comments, but as you
16 are very well aware it is commonly alleged that your
17 agency not only does not now have, but still won't have
18 with the additional appropriations, the manpower that's
19 necessary to appropriately regulate all of the Indian
20 casinos that fall under your jurisdiction.

1 Can you tell us how many casinos you're
2 charged with regulating? And how many staff you have
3 and will have and those kinds of things, so we can get
4 some viewpoints on those kinds of allegations?

5 MR. JOHNSON: Yes. We currently, let me
6 see, let me start, we are a very small agency and as I
7 was outlining we have just one component of the
8 regulation of Indian gaming, the states do the tribes
9 that have compacts. There are some, you know,
10 occasionally state gaming commissions negotiated there.
11 The tribes also do their part.

12 Under IGRA our primary responsibility is to
13 monitor the bingo and the pull tab operations. And we
14 do that for 276 gaming operations. Our budget up until
15 recently was, we were able to assess \$1.5 million from
16 just the class II tribes which are the bingo, pull tab
17 operations. The Congress amended IGRA last fall to
18 allow us to assess fees from the class III operations,
19 which are the larger gaming operations, and lifted the
20 cap so we can go up to \$8 million with fees that we

1 will be assessing. That will allow us to significantly
2 increase the size of the National Indian Gaming
3 Commission, but yeah, the question remains, is that
4 enough regulation?

5 The tribes will contend that they are more
6 regulated then other types of gaming. And that they've
7 got this federal, state and tribal regulation over
8 them, and they would cite to the different departments
9 that oversee Indian gaming, the federal government, our
10 agency, the NIGC, the Interior Department, and the
11 Justice Department, and the Treasury Department has
12 some responsibilities as well, so their assertion
13 frequently is they are more regulated then other types
14 of gaming operations.

15 And sometimes our funding level gets
16 compared to Nevada or New Jersey and we play a somewhat
17 of a different role than those state regulations do.
18 We're in 28 different states, so we're spread out. We
19 have a limited number of field people that cover the
20 gaming operations. In New Jersey for example, most of

1 the casinos are in one particular location, they're
2 kind of contained in one particular spot, we're all
3 over the United States. So we have a limited number of
4 field representatives visiting a rather large number of
5 casinos. But our role is somewhat different than the
6 Atlantic City or the Nevada regulators in that we
7 oversee and monitor things, and we can't be at every
8 casino at all times. But we do the best we can with
9 limited resources.

10 COMMISSIONER WILHELM: How many field
11 people do you have?

12 MR. JOHNSON: Six.

13 COMMISSIONER WILHELM: And then I had one
14 other question. I had wanted to ask this of Attorney
15 General Blumenthal or Mr. Wilkins, if you'd be
16 comfortable taking a stab at this question, if not just
17 say so.

18 I thought between Mr. Blumenthal and
19 Senator Prague that the workers' right issue was
20 discussed fairly thoroughly, but in the interest of

1 time, Mr. Blumenthal went by the annexation issue
2 rather quickly. If you're comfortable doing so, could
3 you just briefly enlighten us on the practical issues
4 that have arisen in terms of annexation for the towns?
5 And what is the issue at stake in the law suit to which
6 he referred?

7 MR. WILKINS: Well I am far from an expert
8 on what's happening in Connecticut. I think the
9 general issue, and of course I've been involved a
10 little bit in the Rhode Island situation, is that often
11 a tribe will want to acquire land which is currently
12 under the jurisdiction of the state and place that
13 jurisdiction, that land under the jurisdiction of the
14 tribe.

15 That does a number of things, it may remove
16 that land from the tax rolls for instance, which, on
17 hearsay, I understand is a problem in Connecticut. It
18 also means that state law no longer applies in that
19 enclave.

1 In Massachusetts the proposals that we've
2 had for gambling have been on the mainland, not on the
3 island of Martha's Vineyard where the tribe's
4 recognized reservation is. So, I'm not an expert on
5 all of the ramifications, because so far in
6 Massachusetts we don't in fact have an enclave other
7 than on Martha's Vineyard.

8 COMMISSIONER WILHELM: Okay. Thank you.

9 CHAIRPERSON JAMES: Thank you.

10 SENATOR PRAGUE: I'd like to just briefly-

11 -

12 CHAIRPERSON JAMES: Certainly.

13 SENATOR PRAGUE: --just address that issue
14 of annexation in Connecticut.

15 I am sure that Attorney General Blumenthal
16 addressed that in depth in the testimony that you have.
17 Because it has really become a major problem and has
18 created a great deal of animosity between the town's
19 people and the tribal members. So I would urge you to
20 carefully read his testimony.

1 COMMISSIONER WILHELM: Thank you.

2 CHAIRPERSON JAMES: Thank you.

3 Commissioner Loescher.

4 COMMISSIONER LOESCHER: Yes, Madam
5 Chairman, thank you very much.

6 Tadd good to see you and welcome. One of
7 the things that the Commission is trying to do is get a
8 lot of factual information about Native American
9 gaming. And the Bureau of Indian Affairs and those
10 other agencies you listed including Indian Gaming
11 Commission have a tremendous amount of current data.
12 If the Commission and its staff were to come to you
13 with a confidentiality agreement or other agreement for
14 accessing information would your agency cooperate in
15 that regard?

16 MR. JOHNSON: Yeah. That was one thing I
17 wanted to get across today, and we would be to the
18 extent that we can give information under the law, we
19 would be more than happy to share with you the various
20 statistics and reports that we have on Indian gaming.

1 We have some excellent reports that were done in the
2 Midwest and Wisconsin and Minnesota on the impact of
3 gaming on the economies of some of the communities
4 surrounding the reservations. We have a fax line that
5 you can acquire those on, but we'd be happy to share
6 what we do have. And we have made it our business to
7 try to gather as much information on Indian gaming as
8 we can. So anything that we can do to assist you in
9 your studies, we'd be more than happy to comply with.

10 COMMISSIONER LOESCHER: Thank you, Madam
11 Chairman.

12 CHAIRPERSON JAMES: Thank you. And I'm
13 sure the staff will be in touch with you to take you up
14 on that offer.

15 Commissioner Moore, and then, Commissioner
16 Dobson.

17 COMMISSIONER MOORE: Is Ms. Wright going to
18 get, I'd say I'm discriminating against a lady chief,
19 is she going to get the rights to open casinos?

20 MS. WRIGHT: What? I didn't understand.

1 COMMISSIONER MOORE: Are you going to get
2 the right to open those casinos? Aren't you, weren't
3 you sort of complaining?

4 MS. WRIGHT: Yes. Yes, we are in the
5 process of signing or negotiating a purchase and sale
6 agreement with the City of Fall River. And our
7 application is down at the Bureau of Indian Affairs,
8 and hopefully we will have a facility within the near
9 future.

10 COMMISSIONER LEONE: Excuse me a second.
11 Will the state have to approve that? Let me understand
12 that.

13 MS. WRIGHT: That's the disagreement. No,
14 the state does not have to approve that.

15 CHAIRPERSON JAMES: Let's hear both
16 perspectives on it.

17 MR. WILKINS: There is, in fact, a
18 disagreement on this, we believe that legislative
19 approval from the state legislature will be required.

1 MS. WRIGHT: And we believe under IGRA that
2 only the Governor of the State of Massachusetts has to
3 sign on our class II facility.

4 CHAIRPERSON JAMES: Thank you.

5 Dr. Dobson.

6 DR. DOBSON: Let me ask just a very quick
7 question of Mr. Johnson and Ms. Wright. And it may
8 sound impudent, I really don't mean it this way.

9 But it is my understanding from what I've
10 read that Indian casinos bring in somewhere between \$5
11 and \$6 billion per year, has that in any way reduced
12 federal support of those tribes that are bringing in
13 that kind of money? Has there been any change in the
14 support for schools, roads, and that sort of thing in
15 those tribes that are involved?

16 MS. WRIGHT: I think you would have to ask
17 the individual tribes that. Under federal law tribes
18 are allowed to have federal money. Some tribes and I
19 will say the Mohegan Tribe of Connecticut has declined
20 their funding for their housing because they are so

1 successful in their facility. But that's an individual
2 tribe's decision to make.

3 DR. DOBSON: In other words, it is not a
4 federal government decision?

5 MS. WRIGHT: Right.

6 MR. JOHNSON: This is a little outside the
7 scope of my regulatory role. But I think the answer
8 that a lot of tribes might give is that the federal
9 dollars that flow from the Bureau of Indian Affairs or
10 the Department of Housing and Urban Development or the
11 Indian Health Service, flow from the trust
12 responsibility that exists between the United States
13 and the tribes as a result of treaty statutes and the
14 course of dealings over the years with Indian tribes.

15 And that those are part of the quid pro quo
16 that the tribes got as a result of entering into
17 agreements with regard to the big real estate
18 transaction that happened primarily in the 19th
19 century, where the tribes got very small parcels of
20 land and the United States and the states got large

1 parcels of land. And there was an agreement after
2 that, that the tribes could control within their
3 boundaries, and that's called sovereignty, and that the
4 United States would provide them with certain things.
5 I think the tribal view would be that that's part of an
6 ongoing trust
7 responsibility from the United States to the tribes.

8 And there is a movement in Congress to do
9 means testing on certain tribes, but so far that hasn't
10 come to fruition.

11 CHAIRPERSON JAMES: Dr. Kalt, did you want
12 to respond?

13 DR. KALT: Just real quickly. As Mr.
14 Johnson says, means testing has not yet happened with
15 respect to those programs that are funded under this
16 general rubric of the trust responsibility. However,
17 many tribes report that success in their gaming or
18 other economic dimensions affects their success
19 indirectly to lobbying and efforts in the appropriations
20 process.

1 Secondly, it is important to recognize that
2 with, particularly with those tribes that are
3 relatively successful compared to the size of their
4 population base, they quite often are generating more
5 payments out rather than in to governments, through
6 state and local and federal income taxes of their
7 employees. So that I understand, for example, that
8 Mashantucket Pequot is by far, the net contributor in
9 the terms of the direction of the funds. In other
10 words, it is not as if every tribe is a net recipient
11 of federal or state and local dollars.

12 SENATOR PRAGUE: It's my understanding, and
13 I could be corrected if I'm wrong, that even though
14 individuals pay federal income tax, the corporation is
15 exempt from federal income tax. The corporation
16 itself. Now that's my understanding, and that might be
17 something you'll want to check on.

18 CHAIRPERSON JAMES: Commissioner Bible.

19 COMMISSIONER BIBLE: For Dr. Kalt and maybe
20 Chairman Johnson. Has the federal government provided

1 funding for any of the capital facilities for tribal
2 gaming, or guarantees to provide for the funding
3 mechanisms for these facilities?

4 MR. JOHNSON: I believe there's been a
5 preclusion on spending Bureau of Indian Affairs' loan
6 funds for that by the House and Senate Appropriations
7 Committees for several years. And so, I think the
8 departments have been requested not to spend money to
9 build gaming facilities. I think other types of
10 economic development are encouraged by the department,
11 but I believe there was an amendment several years ago
12 to an appropriations bill when gaming was just starting
13 to get going, there was prohibition of the expenditure
14 funds to build casinos. And I believe that's still in
15 effect.

16 COMMISSIONER BIBLE: Have they guaranteed
17 some of the financing?

18 MR. JOHNSON: I believe they, in some cases
19 they have. But that's a question for the Bureau of
20 Indian Affairs.

1 CHAIRPERSON JAMES: Did you want to
2 respond?

3 DR. KALT: Same point. As best I'm aware I
4 hear stories now and then, but I don't know of any
5 system, there's certainly no systematic program like
6 that.

7 CHAIRPERSON JAMES: I want to thank our
8 distinguished panel. And assure you yet again that
9 although many of you summarized your testimony that we
10 do, in fact, have your full testimony. And have had
11 the benefit of reviewing it and all of it will be
12 entered into the record, and will weigh heavily into
13 the decision making process.

14 I'd ask the room just to remain quiet for
15 just a minute, please, as we wrap up here.

16 And to assure you that all of that
17 information will be taken into account as we develop
18 our final report. I'd also like to ask that each of
19 you remain in contact with our research staff and with
20 our staff at the Gambling Commission office, so that we

1 can continue to have your expertise available to us as
2 we go through the rest of the year.

3 With that, I would say, the Commissioners
4 that we, those of us who will be going out to Foxwoods,
5 should meet downstairs at 5:15. That puts us about
6 thirty minutes behind schedule, and for that I do
7 apologize to our very gracious hosts out there. But I
8 do believe the important work we did here today
9 necessitated us being about that late.

10 Thank you very much. And the meeting
11 stands adjourned this afternoon.

12 (Whereupon, at 4:54 p.m. the
13 meeting was adjourned.)