CHAIRPERSON JAMES: That brings us to Chapter 6.

Looking at how to approach this so that we can get through it in some form, some reasonable way, can I suggest that -- who’s edit is this on page six, page No. 16, second paragraph, last line?

COMMISSIONER WILHELM: That’s mine.

CHAIRPERSON JAMES: And I’m going to ask that we hold all of those until after we go through Commissioner Loescher’s because we don’t know what we’ll end up with. Commissioner Loescher? I’m sorry.

COMMISSIONER WILHELM: Just for clarity here, and at least in the packet the way it was assembled that I have, the very first change which was in my packet Chapter 6, page No. 9, line No. 14, and the cover sheet is handwritten. It has a one-page typed attachment on page nine. That was Commissioner Loescher’s, and then free standing from the big document.

CHAIRPERSON JAMES: Right.

COMMISSIONER WILHELM: And then the next three were Commissioner Dobson’s, and then comes Commissioner Loescher’s big document.

CHAIRPERSON JAMES: Right, that’s correct. We’re going to go straight to the big document. Just for the record, no one gets lunch until this is done. Commissioner Moore?

COMMISSIONER MOORE: The subcommittee has worked hard on this. We thought we had an acceptable document. To find out at 5:00 yesterday afternoon that we didn’t was a little bit disturbing. Certainly everyone has the prerogative to go through each line, I suppose, as we practically did just on the previous. I’m hoping that we do not find too many things that will be necessary to change or rewrite. This has been pretty much of an
agreement among all of us, we thought.

In reading the document that was handed out yesterday, it would appear to me that at least 95 percent of it is already in the previous document, the one that came from the staff. I bet it’s not three footnotes different in all of the footnotes or references that are given.

The way an attorney might interpret some things might be different from the way a semi-retired radiologist would interpret it, but I don’t believe that the American people in particular reading this, and this is who I am interested in reading this report, the American people. I don’t care whether a politician reads it or not, because a politician is not going to do any changes until the American people and our society forces him to do it.

So I want this to be to read so that someone like myself can sit down and read it, half way understand it, and then be able to take actions pro or con. We get into a lot of these case and we start reading all this lawyer stuff, it’s hard for me to understand. I understand that the more words they write, they more they charge.

So as we go through this, I’m asking the Commission to listen, and I know who will, and they’ll ask questions. Goodness, they ask questions. But I believe that we can go through this and do the necessary changes. I certainly want to give -- all of us want to give Mr. Loescher, as I said previously, you know we’ve been together two years, as our Chairlady says, and Mr. Loescher and I, he might make me a member of his tribe. I’m working on it.

COMMISSIONER LOESCHER: That depends on today, doesn’t it.
CHAIRPERSON JAMES: Commissioner Loescher, why don’t we do this. If you have any opening comments or overall comments, and then we need to go page-by-page, I would appreciate it if you would offer each thing as a motion, see if there is a second, and hopefully we can get through this document. Mr. Loescher.

COMMISSIONER LOESCHER: Thank you, Madam Chair. I really appreciate the opportunity to advance these changes. I would like to say a number of things. One is that I do appreciate being the only Native American Plinket Indian from Alaska on this distinguished panel, and I think it’s important that this panel, unlike what the race commission did in its report, it didn’t have an American Indican on its panel, and it lacked sensitivity as to its report.

I think my goal here is to try to provide that sensitivity and understanding in the work product that we’re trying to accomplish here. I really would like to see that we get a quality product. One of the most important things to me after serving two years with you folks on this Commission is to have the representation of the report on Native Indian tribal governmental gaming to be representative of what actually is at this moment in time.

Over the last couple of months Dr. Moore, and John Wilhelm and I have reviewed and edited, and we’ve sort of broke our work down to two parts. One was the recommendations which we have gone through as a full Commission, and also the narrative. Both were advanced to the Commission and to the Commission staff. It may be that only maybe two of us out of our three were in full concert with the narrative, and maybe that’s where we have fallen down in our work.
The other thing is I did receive by e-mail the draft of this text that came from the Commission staff on May 19th, which is about two weeks ago. Some members of my committee indicated I had a lot more time to do this work, and if you reflect on time, May 19th is not very far away in terms of our recent history. So I have tried to be timely in this regard, and I’m sorry that at this last moment we’re looking at so many things.

My work in this revision sort of focuses on two sets of things. One is deleted topics, and the other are factual errors. I just -- under the deleted topics, as an overview, there are four areas of concern. Number one is a complete review of the Cabazon (phonetic) decision, the foundation of Indian gaming, and that’s on pages one through three.

Number two, a full and complete review of the legal basis for Indian gaming. That on pages four. Then number three, information provided by the tribes concerning economic development initiatives in Indian country. As you know, the statute asked the Commission to look at alternative revenues, and this is an important item to Indian country what we say about that. And number four, the findings for several of the recommendations adopted by the Commission, including that -- those that address National Indian Gaming Commission’s minimum internal control standards and the Class II bingos. That’s on pages seven, eight, and 22.

Under the factual errors there are five items. There’s the language in here using the word decertified. The language in Indian country is terminated. That’s on page six. Number two, it misstates -- the paper misstates the effect of the Seminole decision. That’s on pages nine and 10. And number three, we’re
trying to clarify the Fort Apache Timber case, which is on page 18 through 20. Number four, we need to correct a misstatement of the federal tax code relative to tax obligations of individual tribal members. That’s on page 20 and 21. Fifthly, the inclusion of sections relating to off-reservation gaming that were rejected by the Commission during the formulation of our recommendations. That on page 22 and 23.

Then this morning’s meeting, John Wilhelm acknowledged that we took that out of the recommendations, but indicated that the language for the report might stay. I have no objection, Madam Chair, when we come to that, to leave that narrative in there, so we might have some consensus on at least one.

So as an overview, Madam Chair, I’d like to just focus the work on these areas, deleted topics and factual errors, and I think we can get through this rather quickly.

CHAIRPERSON JAMES: All right. Let’s go page-by-page. We’ll start with the first page. I’ll ask you to introduce it as a motion, and we’ll go from there.

COMMISSIONER LOESCHER: Madam Chair, I’d like to -- there’s three -- there’s three words or three things that need to be changed on page one. In the middle is changing 100 tribal, and you used the word "members." I’d like to use the word leaders. There’s a factual problem with regard to the Hila (phonetic) River Indian. They have two casinos, not three. Then we omitted the Bureau of Indian Affairs as who we’ve heard from officials.

CHAIRPERSON JAMES: Commissioner Loescher, can I suggest you offer those three as a bundle in a motion?

COMMISSIONER LOESCHER: I so move.

CHAIRPERSON JAMES: Moved and seconded. Question. All
in favor? Any opposed?

COMMISSIONER DOBSON: Madam Chair?

CHAIRPERSON JAMES: Commissioner Dobson.

COMMISSIONER DOBSON: May I ask for a response from the Chair in regard to what we’re doing here? Maybe I’m the only person that approaches things like this, but we have two documents in front of us. We almost have to decide which one we’re going to edit from to the other one. There are things here that ought to be over here, and things here that ought to be over there, but you’ve got to start with a document. We’ll work our way totally through the new document, which assumes we disregard the old one, or are we going to work our way through the new one and then try to assimilate it into the old one? I don’t understand exactly how this is going to work.

CHAIRPERSON JAMES: There is only one document, and Commissioner Loescher used the original document as his point of departure for this edit. I’m sorry, can someone else --

COMMISSIONER WILHELM: Jim, Kay’s quite right. If you look at what Bob has done here, as Kay says, he’s using a Chapter 6 that we have been presented, and although it doesn’t have that cover sheet that we were asked to use, he’s got for example, this first page here is page one from the draft, and he’s shown us on here the three changes he’s made.

COMMISSIONER DOBSON: Okay, I see.

COMMISSIONER WILHELM: Secondly, pages one and -- one to three, he’s got some more changes here he wants to make and so forth. So it is based on the same document.

COMMISSIONER DOBSON: Thank you.

COMMISSIONER MOORE: Just as a point of clarification,
and maybe someone in the audience -- the chief at the Hila River
reservation approached me and introduced himself again last couple
of weeks when we were in Washington, and was telling me about a
new resort that they were building. Is this a resort at one of
the existing casinos, or was this a resort that’s added to make it
three?

AUDIENCE MEMBER: It’s a stand alone resort that would
be next to an existing, not a third one. It’s a stand alone.

CHAIRPERSON JAMES: That takes us to page two.

COMMISSIONER McCARTHY: Page two in Bob’s packet.

CHAIRPERSON JAMES: Page two in Bob’s package, which is
actually pages one through three in the document.

COMMISSIONER LOESCHER: Madam Chair, on page two the
words, "Large scale Indian casino gambling is barely a decade
old," and then it’s footnoted with a No. 2, and the footnote says
there is extensive anthropological evidence of Aboriginal gaming
among virtually all Indian tribes. It doesn’t connect.

COMMISSIONER McCARTHY: We knocked it out of some other
thing. Madam Chair, may I make a suggestion? Rather than go
through the process of voting, if there are no objections, then --

CHAIRPERSON JAMES: We just go on.

COMMISSIONER McCARTHY: Is that acceptable to everyone?

COMMISSIONER LOESCHER: Madam Chair, the next one three
lines down is the spin problem with words. I say it one way and
staff says it another. Staff says it, with regard to the Cabazon
band of Mission Indians decision, this decision in effect
eliminated the ability of states to regulate commercial gambling
on Indian reservations. I would prefer to say this decision, and
I add the word held that the State of California had no authority to apply its regulatory statutes to gambling activities conducted on Indian reservations. And that’s cited, the statute.

CHAIRPERSON JAMES: Would you offer that as a motion?

COMMISSIONER LOESCHER: I offer that as a motion.

CHAIRPERSON JAMES: Is there a second? Commissioner Dobson?

COMMISSIONER DOBSON: My attorney, Mr. Reed, who is here with me, behind me, informs me that this represents a legal opinion which he said he can’t say at this point one way or another about what the court held in that case. May I ask him to speak to that? Would that be appropriate?

CHAIRPERSON JAMES: Certainly.

MR. REED: My only question is whether or not that is the representation of the holding. The words, "The court held," is a term of art. It means something. It means that’s exactly what the case stands for, and it may be, I don’t know. I got this as you did last night.

COMMISSIONER WILHELM: Madam Chair, I’m not an attorney, but I am somewhat familiar with this subject. In my layman’s opinion, that’s a fair -- the proposed substitution is a fair depiction of the Cabazon case.

CHAIRPERSON JAMES: Call for question.

COMMISSIONER MOORE: The only question I have about this, and this is one I brought up before. I mean, this states the State of California, but most every time that I’ve ever heard, unlike the other statement, because it’s more general -- and I believe that if any state decided to try to interfere with Indian gaming, the judge at that particular case would state the case in
California and would decide the case on that. So I believe that this lawsuit, even though I’m not an attorney, is more broad and applies more than just the State of California, even though that might be the state that it happened. I like the original language because I think it speaks to the subject of what we’re here about.

COMMISSIONER LOESCHER: Madam Chair, just to clarify the record, the case, the Cabazon case, is a United States Supreme Court case. It’s the law of the land of all jurisdictions in America. Not to get into the fine points of the discussion, but the words in effect eliminated the ability of states to regulate commercial gambling on Indian reservations. The court basically said that the states did not have that — did not have that right in the first place, and the language connotates that idea. We want to just basically say what the court finally held as a result of the US Supreme Court decision. I think it’s better reflective of what is.

CHAIRPERSON JAMES: The question has been called. It has already been seconded. All in favor? Any opposed? Motion fails.

COMMISSIONER LOESCHER: Come again?

CHAIRPERSON JAMES: The motion failed.

COMMISSIONER DOBSON: Madam Chair, I would like a roll call.

CHAIRPERSON JAMES: Sure. Were there any abstentions?

COMMISSIONER LEONE: I abstained. I don’t understand what the issue is between these two versions.

CHAIRPERSON JAMES: Commissioner Bible?

COMMISSIONER BIBLE: No.

CHAIRPERSON JAMES: Commissioner Dobson?
COMMISSIONER DOBSON: No.

CHAIRPERSON JAMES: Commissioner Lanni?

COMMISSIONER LANNI: Aye.

CHAIRPERSON JAMES: Commissioner Leone?

COMMISSIONER LEONE: Abstain.

CHAIRPERSON JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: Yes.

CHAIRPERSON JAMES: Commissioner McCarthy?

COMMISSIONER MCCARTHY: Abstain.

CHAIRPERSON JAMES: Commissioner Moore?

COMMISSIONER MOORE: No.

CHAIRPERSON JAMES: Commissioner Wilhelm?

COMMISSIONER WILHELM: Yes.

CHAIRPERSON JAMES: Commissioner James abstains.

That’s three to three to three. The reason I abstained is because it just, as a point of clarification, is because of the two words held that, and that’s what I want to know. That’s what I want to know. What is the legal -- what exactly did the court hold? And because I don’t know the answer to that. John, you said your best understanding of this issue --

COMMISSIONER WILHELM: As I said, I think the new version is a perfectly adequately statement of the case, but the motion failed.

CHAIRPERSON JAMES: Bob?

COMMISSIONER LOESCHER: It’s going to be a long day, Madam Chair, with regard to the spin management around here, but we’re --

CHAIRPERSON JAMES: Well, we’re going to stay here until it’s done.
COMMISSIONER LOESCHER: I just can’t understand why the Commission can’t — can’t deal with the facts. You have lawyers. This Commission has a lawyer. Why don’t you ask him before you misstate something. I just have a hard time with it. There’s more to this that is going to come up that you’re going to have trouble with, I’m sure, but let’s go on.

On page three in the second line here we’re talking about tribal gambling revenues consistently have grown at a faster rate than commercial gambling revenues in large part because, and we delete the word many and we add the words, "A relatively small number of Indian gambling facilities opened in a," and I add the words, "Densely populated markets that have previously had little." That’s --

COMMISSIONER WILHELM: I have a question about that, Bob. Do you have the actual numbers so we could define what relatively small number would be?

COMMISSIONER LOESCHER: Yes.

COMMISSIONER WILHELM: Six out of what? Two fifty-eight or sixty. If it’s six and that’s factual, I don’t have a problem with that.

CHAIRPERSON JAMES: Hearing no objection, keep going.

COMMISSIONER LOESCHER: Madam Chair, in the same paragraph, we add a sentence at the end, "There is a degree of economic concentration in a relatively small number of --"

CHAIRPERSON JAMES: Wait a minute. We didn’t do densely populated.

COMMISSIONER LOESCHER: I’m sorry, densely populated.

COMMISSIONER WILHELM: Those go together.

CHAIRPERSON JAMES: Okay. There is a degree.
COMMISSIONER LOESCHER: Madam Chair, "There is a degree of economic concentration in a relatively small number of gaming tribes. The 20 largest revenue generators in Indian gaming account for 50.5 percent of the total revenue. The next 85 account for 41.2 percent." We footnote that.

COMMISSIONER BIBLE: Does that also come out of the GAO data?

COMMISSIONER LOESCHER: Madam Chair, we cite a letter from Penny Coleman, Deputy General Counsel, NIGC, in a letter to the Commission dated December 4th, 1998.

COMMISSIONER WILHELM: It's already in here someplace?

COMMISSIONER LOESCHER: Yes.

CHAIRPERSON JAMES: Do you want to stop there or do you want to consider the --

COMMISSIONER WILHELM: These are two separate subjects.

COMMISSIONER LANNI: If it’s redundant, why don’t we wait until we get to that section where it is and either strike it there or strike it here? If it’s redundant it’s nothing different.

COMMISSIONER LEONE: If it’s factual. I don’t think we can deal with a redundancy the way Terry said.

CHAIRPERSON JAMES: If it’s factual --

COMMISSIONER LEONE: I recollect it’s the same numbers we’ve been using all along.

COMMISSIONER LANNI: The GAO breakdown was the largest eight as 40-some odd percent, but it’s the same thrust.

CHAIRPERSON JAMES: It’s been moved, is there a second.

COMMISSIONER LANNI: I think we’re moving on the basis if we don’t object.
CHAIRPERSON JAMES: Okay, great.

COMMISSIONER LOESCHER: Madam Chair, the next paragraph we add,

"There’s a natural limit to the growth of gaming on existing Indian reservation lands. The growth in Indian gambling revenues is a function of the proximity of the Indian reservations to highly populated urban areas, whether or not full casino style gambling is permitted under a compact between the state and the federally recognized Indian tribe, and competition from charitable, state and commercial gaming. The vast majority of tribes are neither located near highly populated urban areas, nor currently fully authorized to conduct full casino style gambling."

COMMISSIONER BIBLE: What was that black mark there?

COMMISSIONER LOESCHER: Madam Chair, that was existing language, and we’re recommending to strike the existing language.

COMMISSIONER MOORE: Whatever it might be. It says --

I looked at it. I put it on the hot light. We use hot lights at radiology. It says that there are places that are located close to urban areas that do not have compacts.

COMMISSIONER BIBLE: Were operating gambling without having compacts.

COMMISSIONER MOORE: Well, they didn’t say they was operating. Indians that are located next to highly populated areas but they do not have compacts with the states.

COMMISSIONER LANNI: Bob, that’s not existing language.
That’s language that --

COMMISSIONER LOESCHER: No, I don’t think it’s existing language. It’s language that I had proposed that I had deleted.

COMMISSIONER LANNI: That’s right, language once proposed that you deleted from here.

COMMISSIONER MOORE: Basically what he’s saying here I think also is in the report elsewhere.

COMMISSIONER WILHELM: Are you moving this language, Bob?

COMMISSIONER LOESCHER: Yes.

COMMISSIONER WILHELM: From where?

COMMISSIONER LANNI: In the sense of a motion he’s moving.

COMMISSIONER WILHELM: Well, he claims he’s moving it from some place in the report.

COMMISSIONER LOESCHER: No.

COMMISSIONER MOORE: I said --

COMMISSIONER WILHELM: I think the Chair had indicated we would operate on the basis if there’s no objection that --

COMMISSIONER LOESCHER: I’d like to move the language.

CHAIRPERSON JAMES: Is there a second?

COMMISSIONER WILHELM: I’ll second it. Madam Chair, I’d like to take the opportunity if I might. The other two members of the Indian gambling subcommittee have addressed the overall situation with respect to this report, and I’d like to add my perspective as well, and I’ll try not to be any more long-winded than I unfortunately sometimes am.

I am, to be perfectly frank, and I don’t think it’s too strong a word, heartbroken about this development that we were
presented with late yesterday afternoon. I want to be clear I do not believe that Bob Loescher has proceeded in any way, shape, or form in bad faith or with any ill will or anything of the kind. Quite the opposite. Bob has the extraordinarily difficult assignment of representing an extremely diverse constituency here, and that’s not easy. I believe that Bob, along with Dr. Moore and myself, I believe that Bob has worked extremely hard to try to arrive at something that the majority of the commissioners could adopt.

Having said that, I was crestfallen when this packet arrived because I had taken some degree of pride, along with Bob in particular, and Dr. Moore and myself as well, in the fact that this Indian gambling subcommittee I thought had been able to arrive at a consensus document which we felt comfortable in recommending to our fellow commissioners.

While I don’t believe there’s any useful purpose served in trying to unravel the question of who saw which document when and who he mailed whom when and all of that, and again, there’s no bad faith here in my view in any way, shape, or form.

Nevertheless, I took some pains along with Eric Altman to work very hard with Bob and with Chris McNeal, at the time representing the Piquat Tribe, to arrive at a consensus document, and I asked on a number of occasions whether all three of us were content with what I understood to be the draft. I thought until yesterday that we were.

There are some things that Bob and I agreed upon at one point that didn’t make its way into the draft, but I thought we agreed on the overall draft. There are some things that have reappeared here in terms of Bob’s proposals as of yesterday
afternoon that I feel compelled to support because I originally agreed with them. There are others that were removed after rather torturous and difficult negotiations and compromise by everyone.

This is an example. This particular paragraph I don’t agree with, I never agreed with it, and it was missing from the subcommittee draft for a reason. I just simply don’t think it’s accurate. So I wanted to make those overall comments. I’m trying, as I know Dr. Moore is, to be supportive of everything that I feel able to support at the risk of prolonging the process, which no one wants to do.

On the other hand, obviously we would all agree that Bob has the same right to propose changes that anybody else has, so I’ll try not to be extended in my remarks hereafter in this chapter, but I do oppose this particular paragraph simply because I don’t think it’s accurate.

COMMISSIONER LOESCHER: Madam Chair, I appreciate John Wilhelm’s observations, but I’d like to draw his attention to the previous page, page two. The reasons that I added this language was to give some balance to the perspective. On page two, the bottom paragraph, it says, "The result of these two developments was rapid expansion of Indian gambling. From 1998 IGRA passed, 1997 tribal gambling revenues grew more than 30 fold from $212 million to $6.6 billion." And then it goes on, "By comparison, the revenues from other non-Indian casino gambling have roughly doubled over the same period from $9.6 to $20.5."

So what it’s doing is in one paragraph it’s -- it’s giving the characterization of dramatic growth and what-not, and when I looked at that I said to myself, "Well, there are limits to this growth." So I offered this language here to balance off that
COMMISSIONER BIBLE: There are limits, but IGRA does have a provision in it that allows states to take land into trust purposes, and with the consent of the governor, would allow tribal gambling to expand on land not currently in ownership.

COMMISSIONER WILHELM: But this particular proposal is limited to existing Indian reservation lands by its terms in the first sentence. Bob, I understand what you’re saying. I don’t agree that there is a natural limit to the growth of gaming either on existing Indian reservation lands or any place else. I think it’s one of the points that Richard’s been making. I think that any time you’ve got an interstate highway and a piece of land, you can grow in the gambling industry.

CHAIRPERSON JAMES: What I want to do in order to help us get through this huge document and have lunch is if we could confine our comments to points of clarification or questions, rather than to try to debate all of these issues, I think we could get through a lot sooner. Unless there’s another point of clarification for informational purposes that a Commissioner needs, the question has been called. All in favor of the language starting with, "There is a natural limit," down to, "Casino style gambling," please say aye. All opposed? Motion fails.

COMMISSIONER LOESCHER: Madam Chair, I would like to draw your attention to page seven first before we look at pages four through six. Page seven in my draft.

COMMISSIONER LEONE: I take it this is the language that the committee --

COMMISSIONER LOESCHER: This is the language the staff put forward. Madam Chair, I looked at this, these paragraphs
June 3, 1999 N.G.I.S.C. San Francisco, CA Meeting

1 here, and I said to myself, "I have a hard time with the spin."
2 Let me just cite some of this to you. In the first paragraph
3 there it says, "In the view of some observers, tribal sovereignty
4 is extensive and at least on par with that of states. Proponents
5 of this view commonly cite the Constitution’s commerce clause
6 which characterizes Native American tribes as nations, albeit on
7 US territory."
8  
9 I have a hard time with the spin, the words, "In the
10 view of some observers, proponents cite, that albeit on US
11 territory." It connotates something that we don’t need to say
12 this way. That’s just an example of spin. Down the page in the
13 bottom lines of the same paragraph, "Other federal court decisions
14 have expanded on the principle, noting that sovereignty." It’s
15 not just other court opinions, it’s the US Supreme Court. That’s
16 the highest court and it’s the law of the land. So again, it’s
17 the spin, the characterization.
18  
19 Then the bottom of the paragraph, "Others contend,
20 however, that tribal sovereignty is far more restricted in scope.
21 Congress may in fact limit tribal sovereignty as frequently done
22 so in the pass. The Congressional power over Indian affairs is
23 plenary subject to federal court’s interpretation of applicable
24 national constraints which have changed over time." Again, it’s
25 spin. It’s a half truth.
26  
27 Congress has authority over Indian affairs, but in most
28 recent history, in the last 10, 20, 30 years, the US Supreme Court
29 has restrained and defined the parameters of Congress’s authority
30 over Indian affairs. What I’m trying to say, Madam Chair, when I
31 looked at this I said to myself, "We need a more neutral writing
32 of this." A lot of what’s in my writing on pages four through six
contain the content of what’s in this language but without the spin.

So on pages four through six I offer this language which is more neutral, more factual, and defines what is without the characterizations that the writer had put into it. So I offer that as a motion.

CHAIRPERSON JAMES: Point of clarification. We’re talking about in the current document page three.

COMMISSIONER LEONE: Four, five, six, and the very top two lines on page seven being substituted for what is on page seven and eight, right Bob?

COMMISSIONER LOESCHER: Yes.

CHAIRPERSON JAMES: In the new document.

COMMISSIONER DOBSON: Madam Chair?

CHAIRPERSON JAMES: Commissioner Dobson.

COMMISSIONER DOBSON: I plan to oppose the motion because of the number of legal references here and decisions that we have not had a chance to verify, and because the language in the original document is more clear.

COMMISSIONER LEONE: May I ask a question?

CHAIRPERSON JAMES: Certainly.

COMMISSIONER LEONE: Let me put it in the context.

Obviously it’s not unreasonable for a commissioner who was a member of the subcommittee and is unhappy with the results to come back and appeal to the full committee, which is what’s going on here, but I think -- and that situation is also reasonable for us to ask the other committee members who have gone through this and done the kind of -- and lived with the language. As Commissioner Moore said, a lot of this language was sorted out.
So I’m asking -- John Wilhelm seconded this. I assume that means that you believe this version does not raise any red flags as far as factually or otherwise?

COMMISSIONER WILHELM: In order to respond to your question --

COMMISSIONER LEONE: Reading it, to me it seems reasonable, but I don’t know. I’m a little bit with Jim. I don’t know if I’m missing something because I didn’t fight through this particular chapter.

COMMISSIONER WILHELM: That’s a very fair question and that’s an example of why all three of us fervently hoped that we wouldn’t put the rest of you in this position, because we did spend a lot of time on it and I thought productively. But specifically on this language, I seconded Bob’s motion because I had originally agreed on the language Bob is now proposing personally.

COMMISSIONER LEONE: And the two of you were outvoted by Paul? He’s a tough man.

COMMISSIONER WILHELM: If I might, in response to your question, Richard, attempt to shed a little bit of light on the process without being too long, because of the complexity of this, Bob Loescher, and myself, and Eric Altman, and Chris McNeal undertook, at Dr. Moore’s suggestion, to try to work out something for the subcommittee to consider as a whole, and we did that with considerable effort and considerable compromise on everyone’s part.

But then we had to consider it as a whole subcommittee and arrive at something. Our goal was to get a unanimous recommendation, so a number of things got compromised and changed
around. I think all three of us thought that we had arrived at a unanimous recommendation. How that unravelled I don’t think it’s worth trying to belabor here.

The reason I seconded this particular motion is because I had originally agreed to this particular language. I don’t see a problem with it. On the other hand, I don’t see much of a problem with the language for which it substitutes, either.

CHAIRPERSON JAMES: The question has been called. All in favor of substituting the language presented by Commissioner Loescher for the language that’s in the document on his page seven, please signify by saying aye. All opposed? I think the ayes have it. I counted four nos. The ayes have it. Did you abstain?

COMMISSIONER MOORE: I abstained. I’ll vote for the substituted -- I’ll say aye.

CHAIRPERSON JAMES: Then the motion carries.

COMMISSIONER LOESCHER: Thank you, Madam Chair. I appreciate the support here. Madam Chair, on page nine we’re dealing with the federal policy, the failure of the trust responsibility and alternative revenue to Indian gambling. As you remember, the statute requires that we take a look at this issue, and we have a couple of spin problems right on the first page, three lines down. Change the words, "in the same." Just put in the Cherokee decision that proponents of sovereignty often quote. Delete the words, "The proponents of sovereignty often quote." That’s the first spin problem. I’d like to offer, I hope there’s no objection.

The second one is, "This trust relationship," and there was a word left out, "Is a term," and just change the tense
derived from treaties between the United States and Indian tribes involving massive land successions and -- and that just clarifies what that business was.

Then the next line down, add the word, "It, hyphen," add the word, "also," and those are the changes on that page, Madam Chair.

CHAIRPERSON JAMES: Hearing no objections.

COMMISSIONER LOESCHER: Madam Chair, I’m on page 10 of my mark up. Madam Chair, this section was added, and there’s like two or three pages which discuss the economic alternative issue. It starts on page 10 and it indicates what we were charged to do, that we were to make a -- conduct an assessment of the extent which gambling provided revenues to Native American tribal government and the extent to which possible alternative revenue sources may exist for such governments, and traces the history of what Congress has done towards that end of creating economic opportunity.

Then on page 11 we describe in the first paragraph, starting with about five lines up with the words, "However, discussing federal spending has declined to Native American country," and that’s cited to GAO reports and what-not, but basically it just outlines that it’s very tenuous as to whether there are any economic alternatives at this time for tribal government gaming business. That’s concluded on page 12.

So Madam Chair, it’s important, I think, that the Commission has spoken in its recommendations of encouraging -- recognizing and encouraging economic -- that the monies from gambling received by Indian tribes from their casinos and what-not be used for economic development. We’ve acknowledged that, but in
the narrative it was totally left out that we speak to economic
development alternatives. So we offer this language, and I would
like to move the language.

CHAIRPERSON JAMES: Is there a second?

COMMISSIONER WILHELM: I would second for purposes of
offering an amendment. Well, I would second. And I would like to
move an amendment.

COMMISSIONER MOORE: I don’t believe the second
paragraph there is true. There exists no viable alternate sources
of revenue for tribes that authorizes gaming. I’d hate to think
that this country has to depend that the Native Americans that
never knew more than a baby that comes into this world that’s
going to have to think that his livelihood comes from gambling. I
just can’t -- I just can’t swallow that. I can take you to
Mississippi, which is regularly the poorest state in the nation,
and I can take you to an Indian reservation that they have viable
sources of income before gaming hit Mississippi. We can do
sometimes what we want to do.

CHAIRPERSON JAMES: Commissioner Leone?

COMMISSIONER LEONE: I think that there are two
thoughts represented or two lines of thinking represented in this
section. I think that the line of argument that’s in the first
paragraph, the second, third, fourth, and fifth paragraph, which
is basically in my view a largely factual recitation of the
economic circumstances on reservations over time, is something
that should be in our report and should in some fashion should be
adopted.

I think that the second paragraph and the section that
begins, "Revenues from gaming operations," is a set of assertions
about casino gambling and conclusions that fall into a different
category, and in some respects out to be dealt with separately.

CHAIRPERSON JAMES: Where is that second paragraph that
you’re talking about?

COMMISSIONER LEONE: The second paragraph is the one
that Commissioner Moore just referred to. That paragraph, if you
-- I think belongs in the category with the section that begins,
"But the revenues from gaming," on page 11. Those paragraphs
together, there are four of them, in my judgement are a set of
assertions which may or may not be true, which may or may not be
supported by the Commission about legalized gambling.

The other paragraphs I’m referring to, the one that
begins, "Congress directed the commission since the early 19th
century. Today Congress continues," those seem -- and the poor
economic conditions in Indian country, those seem to me
observations that quite properly we’re being reminded of -- and
their relevance is quite direct to our task.

I think that if Indian country included Silicon Valley
there would be less incentive to adopt legalized gambling, and
frankly that’s just the reality. The history is a particularly a
sad history of public policy. So I don’t know. John said he had
an amendment. I was going to --

COMMISSIONER WILHELM: Go ahead.

COMMISSIONER LEONE: -- propose an amendment to take --
to first substitute a vote on those historical paragraphs which I
could support and advocate, and then go on to a discussion of
these other assertions.

CHAIRPERSON JAMES: Would you number those paragraphs
that you would support?
COMMISSIONER LEONE: Well, it’s the paragraph starting on page 10 which begins, "Congress directed the commission."

CHAIRPERSON JAMES: That’s one. The next one?

COMMISSIONER LEONE: The second one is, "Since the early 19th century," also on page 10. The next one begins on page 10, "Today Congress continues," and goes over, and the last one, the fourth paragraph in this group is, "The poor economic conditions in Indian country have fostered extensive social," etcetera. Those four paragraph, it seems to me, whatever one thinks about gambling or gambling on Indian country or the rest of it, belong in this report. So I would like to -- and it seems to me, to my knowledge, they’re all accurate, including the decline in inflation adjusted dollars and support for Indian reservations, as well as almost all social programs.

COMMISSIONER LANNI: And what would you do with the one --

COMMISSIONER LEONE: I think that that thought, whether there’s a viable alternative, belongs with -- at least the argument for whomever wants to advocate it, belongs with the arguments about casino gambling, which I consider a separate debate, a separate argument, this language that’s later on.

COMMISSIONER WILHELM: Richard, I don’t know if you would consider it a separate subject or not, but continuing on where you left off, the paragraph beginning, "But with revenues from gaming operations," and the next one, "Tribes also use gaming revenues," those are both descriptive paragraphs that I think are amply supported by our record. I don’t know if you’d feel comfortable five and six to your group or if you consider it a separate matter?
COMMISSIONER McCARTHY: I believe them to be true.

COMMISSIONER LEONE: I would consider it. Those are also part of the story.

CHAIRPERSON JAMES: Which one is that? Beginning what?

COMMISSIONER WILHELM: The two beginning, "But with revenues from gaming operations," which would be five in Richard’s grouping, and then the next one, "Tribes also using gaming revenues to support tribal governmental services," would be six. I think again our record of the subcommittee amply supports those to and is descriptive.

CHAIRPERSON JAMES: This is in purely philosophical and I’m sure will cut along philosophical lines, but I would -- I’m with you, Dick, on all accept I’m not prepared to say the evidence exists in any community that economic conditions generate social ills like crime, abuse, illiteracy, poor nutrition, and poor health care access. I think that there’s enough out there that demonstrate that those conditions could be caused by a number of things and not just economic conditions. Some would say family breakdowns, some would say --

COMMISSIONER LOESCHER: Right, but --

COMMISSIONER WILHELM: She’s on the second paragraph on page 11.

CHAIRPERSON JAMES: That’s paragraph No. 4. That this commission is going to issue a statement saying that poor economic conditions generate high crime rates, child abuse, illiteracy, poor nutrition, and poor health.

COMMISSIONER WILHELM: Why don’t we just strike that?

COMMISSIONER LEONE: What if we said have contributed
Correct me if I’m wrong, but most people would concede that poverty contributes to those things.

Chairperson James: I would feel much better with, "Is one of the contributing factors," or, "Contributes to."

Commissioner Leone: Obviously we disagree profoundly on that, but this is not the place to have that argument, and for example, discuss the merits of a capital gains tax. I think economic conditions -- I think poor economic conditions are causative, but --

Chairperson James: Can we say contribute to, which would be one of the causes? Would you do that?

Commissioner Wilhelm: I agree with your statement, and I also agree that for this purpose we not try to solve this. Bob, are you okay with contributes to?

Commissioner Loescher: Yes, Sir.

Commissioner Dobson: I’m still concerned about that second paragraph there --

Commissioner Wilhelm: That’s not in this.

Commissioner Dobson: But you have noted it, though.

Commissioner Wilhelm: He skipped it.

Commissioner Leone: I’m not moving it -- I’m not moving it in order to support it. I’m saying that there are -- that paragraph and the last paragraph are different. They’re not part of my amendment. My amendment is to take the other paragraphs and vote on them and leave these two paragraphs which I view as representing an assertion about gambling for a separate discussion. I don’t want to lose all these other paragraphs.

I don’t agree -- I agree with Dr. Moore about the viable alternatives, although I’m more cynical about the country’s
June 3, 1999 N.G.I.S.C. San Francisco, CA Meeting 97

history of providing viable alternatives perhaps than some of the
members. I certainly don’t want to sign on to the last paragraph,
but I wouldn’t want to lose all the rest of this because we vote
it up or down on those two paragraphs that I find troubling.

COMMISSIONER WILHELM: In order to try and save the
Chair’s voice, Bob, would you be agreeable to voting on these
things in two different motions?

COMMISSIONER LOESCHER: Yes, I would.

COMMISSIONER WILHELM: So Dick, your motion was the
paragraph we numbered one beginning, "Congress directed the
Commission," paragraph we numbered two beginning, "Since the early
19th century," the paragraph we numbered three beginning, "Today
Congress continues," the paragraph we numbered four beginning,
"The poor economic conditions," but we changed it to, "The poor
economic conditions in Indian country contribute to the same
extensive social ills," etcetera.

COMMISSIONER LOESCHER: Have contributed to.

COMMISSIONER WILHELM: Have contributed to.

COMMISSIONER McCARTHY: I wasn’t going to weigh in on
this one, but I think I agree with what I heard Dick Leone saying.
When you’re talking about poverty, it should at least be listed
as a major contributor. It’s more significant than anything else
that’s been identified.

COMMISSIONER WILHELM: The paragraph we numbered five
which is, "But with revenues from gaming operations," and the
paragraph we number six which is, "Tribes also use gaming
revenues." That would leave, as Dick said, the second paragraph
and the last one for a separate discussion.

COMMISSIONER LANNI: I second that.
CHAIRPERSON JAMES: Call for the question. All in favor? Any opposed? Motion carries. That leaves the remaining paragraphs to be discussed.

COMMISSIONER WILHELM: That’s the paragraph beginning, "There exists no viable alternative," and the last paragraph beginning, "If tribal gaming were eliminated or restricted."

COMMISSIONER LANNI: It’s been moved?

CHAIRPERSON JAMES: Is there a second for that?

COMMISSIONER DOBSON: For what?

COMMISSIONER WILHELM: Those two paragraphs.

COMMISSIONER LEONE: Then the way this would read is then you would pick up the second paragraph and go to the last paragraph? It flows that way, and I’m assuming Bob is making that motion and you’re asking if there’s a second to that motion?

COMMISSIONER WILHELM: I second.

COMMISSIONER LEONE: So there’s a second.

COMMISSIONER LANNI: I call the question.

CHAIRPERSON JAMES: All in favor? Opposed? Roll call?

Commissioner Bible?

COMMISSIONER BIBLE: No.

CHAIRPERSON JAMES: Commissioner Dobson?

COMMISSIONER BIBLE: No.

CHAIRPERSON JAMES: Commissioner Lanni?

COMMISSIONER LANNI: No.

CHAIRPERSON JAMES: Commissioner Leone?

COMMISSIONER LEONE: No.

CHAIRPERSON JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: Yes.

CHAIRPERSON JAMES: Commissioner McCarthy?
COMMISSIONER McCARTHY: No.

CHAIRPERSON JAMES: Commissioner Moore?

COMMISSIONER MOORE: No.

CHAIRPERSON JAMES: Commissioner Wilhelm?

COMMISSIONER WILHELM: Yes.

CHAIRPERSON JAMES: Commissioner James votes no. The motion fails.

COMMISSIONER LOESCHER: Madam Chair, if I might prevail on the Chair, if there was a way to rescue the last sentence of the last paragraph and add it to the paragraph five before ending with the words, "Begin addressing them," then the words, "There was no evidence presented to the Commission suggesting any viable approach to economic development across the broad spectrum of Indian country in the absence of gaming."

COMMISSIONER WILHELM: I would second that.

CHAIRPERSON JAMES: All in favor? Any opposed? Ayes have it. Commissioner Loescher?

COMMISSIONER LOESCHER: Thank you, Madam Chair. Moving on, on page 13, we only have one little change, and it's again a term of art in Indian country on about eight or 10 lines down starting with the words, "Some tribes were decertified." We would prefer to use the word, "Terminated."

COMMISSIONER WILHELM: Decertified is what happens when employers terminate you.

COMMISSIONER LOESCHER: In my company we call it disengaged.

CHAIRPERSON JAMES: Hearing no objection, we're down to making sure both Republicans and Democrats are represented here.

COMMISSIONER LOESCHER: Madam Chair, we're on
CHAIRPERSON JAMES: Hearing no objection.

COMMISSIONER DOBSON: Where did we get the blueprint of this change was made by President Johnson? I assume that’s correct.

CHAIRPERSON JAMES: I have to assume it is.

COMMISSIONER DOBSON: Then we get at the bottom of the page that says, "These have meant (inaudible) President Clinton."

CHAIRPERSON JAMES: Right now we’re on President Johnson, and we didn’t hear any objection there, but now we’re going down to Clinton. "These principles have been substantially expanded by President Clinton through five Presidential executive orders on various tribal issues.

COMMISSIONER WILHELM: Not to mention by his appointment of Commissioner Loescher.

CHAIRPERSON JAMES: Absolutely. I’m going to reserve the temptation to make any partisan jokes here.

COMMISSIONER LOESCHER: Madam Chair, where are we?

CHAIRPERSON JAMES: We are on President Clinton.

COMMISSIONER LOESCHER: Madam Chair, I would like to go to page 15 of my mark up.

CHAIRPERSON JAMES: Commissioner Loescher, can you just give us a cite for the Johnson and we’ll include it?

COMMISSIONER LOESCHER: The Johnson? Okay, we have it, Madam Chair and we will provide it. We can provide Mr. Clinton’s cites as well. Madam Chair, I’m moving right along. I’m on page 15. Madam Chair, on page 15 through whatever it is, 19, 20, what we have here, Madam Chair, is something that was dropped from the -- from the original draft that we had submitted from the
committee. What appears in my opinion as a straightforward
description of IGRA and its implementation and the minimum control
standards that have been recently promulgated as regulations to
which the tribes are now trying to implement.

We think that the review of regulations is very
important to have as a part of the narrative in the report. It
shows much progress by the tribes, it shows a state -- the state
of the regulations and the conduct -- the conduct of those
regulations. In the middle of this, Madam Chair, one of the
things that the committee heard out of the over 100-some odd
people that testified before the committee, we were benefited by
having tribal gaming commissioners testify before our
subcommittee. Those are the front line day-to-day people who are
responsible for the gaming operations.

There was no reference to them in the report, and there
is an amendment, which is a separate one which is in the middle of
our -- of this draft which is a separate attachment, and we would
like to include that reference as well. There’s a place for it on
page 19.

Anyway, Madam Chair, we think it’s very important to
have this straightforward description of IGRA and its
implementation and the minimum internal control standards. I
would like to move the addition of these pages.

COMMISSIONER McCARTHY: Madam Chair, just from a point
of understanding. I’m trying to make sure we’re on the same page
here. Is this the page you’re referring to, Bob?

COMMISSIONER LOESCHER: It’s 15, 16, 17, 18 and 19.

COMMISSIONER McCARTHY: The underlined language is
language you want to add to the report?
CHAIRPERSON JAMES: Correct.

COMMISSIONER WILHELM: Yes, it is.

COMMISSIONER LOESCHER: Pages 15 through 19.

COMMISSIONER McCARTHY: So is the import -- is the import that if a state has granted to the American Legion the ability to twice a year or once a year operate a casino night, that that would then allow any other -- any other citizen or entity of that state to operate on a full time basis a similar kind of casino? Is that what we’re getting at here?

COMMISSIONER LOESCHER: Madam Chair, the answer is no. The Rumsey decision does not allow that.

COMMISSIONER McCARTHY: Then I’m not sure I understand exactly what we’re trying to achieve with this language. If a state has a public policy of complete prohibition against Class III gambling, then tribes within the borders of the state may not initiate such gambling. However, if the state has no completely prohibitive policy against Class III gambling, then the federal courts have held that the state may not prohibit gambling on reservations.

What I need to know is what do you mean by the states having no completely prohibitive policy? What kinds of activities do they allow that you feel provide an opening for others to have casinos on a full time operational basis? I’m just not familiar with what it is that you’re citing there as the justification for this?

COMMISSIONER LOESCHER: Madam Chair, what the sentence is -- the purpose of adding the sentence here is to clearly state what the Cabazon case finally stated, and that’s all that that sentence does is clarifies what the court said, no more, no less.
COMMISSIONER McCARTHY: But hasn’t it been substantially ratified by the Rumsey decision? That’s what concerns me, Madam Chair. We have legal interpretations and representations. The Supreme Court decision referred to in essence, and I’m not qualified to assess this, whether we’re on target or not.

CHAIRPERSON JAMES: Commissioner Loescher, you’re offering 15, 16, 17, and 18, and 19 as a motion?

COMMISSIONER LOESCHER: Yes, that’s correct.

CHAIRPERSON JAMES: Before we go any further I just need to know if there’s a second for that motion?

COMMISSIONER LOESCHER: Madam Chair, then I offer page 15 --

CHAIRPERSON JAMES: The motion dies. Yes?

COMMISSIONER LOESCHER: Then Madam Chair, I then offer the changes on page 15.

CHAIRPERSON JAMES: Didn’t we just vote on that? We did 15, 16, 17, 18, and 19.

COMMISSIONER LOESCHER: Madam Chair, then would it be your process then that all those pages would not have any consideration? You would not go page by page? Is that your procedure?

CHAIRPERSON JAMES: That’s correct.

COMMISSIONER LOESCHER: Well, Madam Chair, I -- you know, I --

CHAIRPERSON JAMES: That’s why I asked the question, "Are you offering those pages as a motion?"

COMMISSIONER LOESCHER: I’d like to.

CHAIRPERSON JAMES: And you did, and we voted. We
didn’t vote, there was no second.

COMMISSIONER LOESCHER: Madam Chair, if that’s the case, I just say to the Commission that I’m disappointed because you have a statutory mandate in the law that created this Commission to address the issue of the state of the law and the regulations which govern Indian tribal government gaming, and in your report you will not have any observation as to the state of that law and its conduct. This language that we have here is straight forward, factual, there’s no amplification at all. I just don’t understand why the Commission fails to do its obligations as required by the statute.

COMMISSIONER DOBSON: Most of this is in your report elsewhere.

COMMISSIONER LOESCHER: No, it’s not.

COMMISSIONER DOBSON: Oversight of gaming like on page 16, the ruling in California was that if any person -- as to Leo’s question, any person, club, anything in the State of California, then the Indians were entitled, the Native Americans were entitled to do that. They said it appeared that California was regulating gaming and not prohibiting, was a direct statement in that suit.

COMMISSIONER LOESCHER: Madam Chair, that may be so, but also I’d like to point out to the Commission that there’s no discussion at all anywhere in the report of the minimum control standards at all, which are very important to be recognized and provide for the accountability of gaming in Indian country, but if that be the wish of the commission, I certainly understand and I just register my objection to the lack of response to the statute that we were created under.

CHAIRPERSON JAMES: We’re up to page 21.
COMMISSIONER McCARTHY: Was there a vote on some language yesterday, Madam Chair, or previously on minimum internal control standards?

COMMISSIONER WILHELM: Yes.

CHAIRPERSON JAMES: Yes, there was.

COMMISSIONER McCARTHY: And what was the action taken by the commission? I don’t remember.

COMMISSIONER LOESCHER: Madam Chair, the Commission supported it in the recommendations but does not support providing any language in the text. Madam Chair, I’d like to move to page 21, and as a factual problem on page 21 in the second paragraph, it says, "This decision which covers a plethora of legal issues has been widely interpreted. It did not, however -- I add the -- anyway, I add the words to clarify and correct a misstatement, whoever wrote this. It says, "It did," and I add the word, "Not, however," and I add the word, "Declare, invalid," as opposed to invalidate, add the words, "Nor set aside any part of the Act." And then the word not should be changed to nor, "Nor did it set aside any Class III gambling pacts already negotiated." Madam Chair, this is a misstatement of the facts and I’d like the writers to acknowledge that.

COMMISSIONER LANNI: I think they have it correct at the beginning. It’s contained, not contains. IGRA originally contained. You don’t originally contains. The substance of what Bob was reading was accurate.

CHAIRPERSON JAMES: Drop the s and keep the ed.

COMMISSIONER LOESCHER: Contained.

CHAIRPERSON JAMES: Hearing no objections, we’re on page 22.
COMMISSIONER LOESCHER: Madam Chair, I offer that and hopefully the writers --

CHAIRPERSON JAMES: We’re done.

COMMISSIONER LOESCHER: Thank you very much. I’m on page 22. This is -- this basically just clarifies the record. I guess I’m the second paragraph about the middle. It says, "For example, the secretary," I add the words, "The secretary would intervene only after a state had invoked sovereign immunity to block a suit regarding its failure to negotiate a compact in good faith. And that suit," and I add the words, "And that suit had been dismissed under the Seminole case." I think it’s a better clarification of the process and I offer that to the writers just to conclude that thought properly.

CHAIRPERSON JAMES: Hearing no objections.

COMMISSIONER LOESCHER: Madam Chair, I’m on page --

COMMISSIONER MCCARTHY: I don’t know how to object. I don’t know enough about this one way or the other.

COMMISSIONER DOBSON: Seminole -- actually the Eleventh Amendment --

COMMISSIONER MCCARTHY: So this would meet the approval of the subcommittee?

CHAIRPERSON JAMES: Yes. Hearing no -- yes, I looked straight to them.

COMMISSIONER LOESCHER: Madam Chair, I’m on page 23, and I offer a couple of changes here, starting with about the fourth line down, "Approval of the effected states, the department published its final rule," and I add the word, "that in effect," and I add the word, "would implement the proposed procedures after 30 days," I add the words, "After 30 days." Then, "This measure
was," and I add the word, "Immediately challenge and delete almost immediately in federal court by the States of Florida and Alabama which sought to block the new rules from taking effect."

Then Madam Chair, I conclude the latest information on Congressional action, which I think is important to the reader, and add the sentence, "Senator Enzi offered an amendment to an appropriations bill that would have prohibited the secretary from issuing the procedures. Senator Slade Gordon withdrew the amendment based upon a promise from the Secretary, Bruce Babbitt, that we would not implement the procedures until a federal court decided the issue of his authority to issue such procedures under IGRA," and then delete the words, "Absent Congressional action."

Madam Chair, I offer that to --

CHAIRPERSON JAMES: Can I make a suggestion that we split that and take the edits on the after 30 days, the would, almost immediately and take that? Do I hear any objection to that?

COMMISSIONER McCarthy: Could I just hear from Commissioner Loescher whether that statement is supported by evidence presented to this Commission? Senator Enzi?

CHAIRPERSON JAMES: We’re not talking about that just yet. And hearing no objection on those, then I’d like to look at starting with Senator Enzi and go down through your changes there with absent Congressional acts.

COMMISSIONER McCarthy: My question stands.

COMMISSIONER Loescher: Madam Chair, I think that’s a fair question. This action happened within the last two weeks, and as you know, the Commission has extreme interest in what was occurring and has --
CHAIRPERSON JAMES: I’m hearing some potential objection. I want to ask if you’re willing to offer that as a motion?

COMMISSIONER LOESCHER: I do. I offer it as a motion.

CHAIRPERSON JAMES: Is there a second?

COMMISSIONER WILHELM: I’ll second so they can read this document.

COMMISSIONER LOESCHER: Madam Chair, I just have the letter from the Secretary of Interior to the Honorable Slade Gordon. I’m willing to offer that to Commissioner Dobson if he would like to look at it supporting this statement.

COMMISSIONER WILHELM: That supports a statement that he made -- based upon a promise from Secretary Bruce Babbitt?

COMMISSIONER LOESCHER: Yes, and here’s the promise in my hand.

COMMISSIONER DOBSON: Just numerous occasions yesterday where the things we were suggesting were not supposedly in the record, and that was the source of the criticism that all of a sudden the rules change.

CHAIRPERSON JAMES: The rules haven’t changed. There are other places in the document where we made a conscious decision not to do legislative history. We talked about that for a variety of reasons. That would be my concern.

COMMISSIONER LANNI: In fairness, Jim, you introduce a proposal today about an article that appeared in the Las Vegas Review Journal which hadn’t been there, and I even supported that to be included, so we did include something that you proposed also that hadn’t been part of the record.

CHAIRPERSON JAMES: It has been moved and seconded.
COMMISSIONER DOBSON:  May I clarify? That was about a subject that we’d had testimony about, however.

CHAIRPERSON JAMES:  It has been moved and seconded.  Ready for the question?

COMMISSIONER LOESCHER:  Madam Chair, I’d just like to appeal to the Commission to at least complete the history of what finally occurred with regard to this business of compacting and what-not, the secretarial procedures. As you know, this full Commission on a vote of eight to one asked that things slow down until the Commission offered its thoughts, and I think this is just an accurate reflection of what has totally occurred with regard to this whole matter, and would bring the American public current on where the state of the affairs are.

COMMISSIONER BIBLE:  Does the promise run to a federal court or until the matter is adjudicated?

COMMISSIONER LOESCHER:  I have it right here. I believe until it’s adjudicated. That’s a promise from the Secretary to the Senator.

COMMISSIONER BIBLE:  That’s federal court. The promise is only -- is contingent upon the matter being finally resolved and not a decision by the trial level court. I don’t have the letter, I’ve never seen the letter, so I don’t know.

CHAIRPERSON JAMES:  The motion before us right now, though, doesn’t include that particular sentence, so let’s do that motion and then we’ll correct that sentence. It stops with, "Absent Congressional action." The existing language is, "The resolution of this problem will almost certainly."

COMMISSIONER LOESCHER:  Madam Chair, the language says, "The federal court."
CHAIRPERSON JAMES: Right, but --

COMMISSIONER LOESCHER: "A federal court," is what the language is.

CHAIRPERSON JAMES: My point is that the motion that is before us, however, is to add the language stopping with, "Absent Congressional action." There is a problem in that, and I agree that it needs to be changed to adjudicated, but it’s not a part of the motion.

COMMISSIONER BIBLE: That may not be the promise, though.

CHAIRPERSON JAMES: What’s that? I’m sorry, Bill, I didn’t understand.

COMMISSIONER BIBLE: That may not be the Secretary’s promise. He may have only promised not to implement the proposed rule until it was resolved by the trial court versus adjudicated. I don’t know, I don’t have the letter.

COMMISSIONER LOESCHER: Madam Chair, the commissioner is correct on this statement. It’s the federal district court, the trial court.

COMMISSIONER BIBLE: So that’s the promise. So this is a fair representation of the promise.

CHAIRPERSON JAMES: Any further discussion? All in favor of including this language please say aye. Opposed? Motion --

COMMISSIONER LANNI: Minor point. You should change the word -- it’s become, not becomes.

CHAIRPERSON JAMES: Yes. Motion carries.

COMMISSIONER LOESCHER: Madam Chair, now I’m on page 24, and what we’re trying to do is insert language that reflects
the fact that even tribes that gain no net revenue can achieve
greater employment for its members, so we add the words, "For
some, Indian gaming provides substantial new revenue to tribal
government. For others, Indian gaming has provided little or no
net revenue to the tribal government, but has provided jobs for
tribal members." Then delete the words, "A key benefit from
Indian gambling is the employment opportunities it can provide."
Then underneath that put a figure of 100,000 jobs.

COMMISSIONER BIBLE: And the source footnote is
missing. Can you help?

COMMISSIONER LOESCHER: Madam Chair, we already adopted
100,000 jobs yesterday in other paper.

COMMISSIONER DOBSON: You’re just restating showing
that there is some benefit to a casino even though it doesn’t make
any money. It does give people jobs.

COMMISSIONER LANNI: Is this something that came before
the subcommittee and they found it to be factual?

COMMISSIONER BIBLE: I think that this came before,
didn’t it, John?

COMMISSIONER WILHELM: It’s just restated. I don’t
have a problem with it.

CHAIRPERSON JAMES: Do I hear any objections? Hearing

COMMISSIONER LOESCHER: Madam Chair, moving right
along, page 25, the first paragraph there on my mark up draft,
what we’re trying to do is clarify the Fort Apache Timber case,
and there the federal district court for the District of Oregon
expressly agreed that the Board’s position -- similarly ruled that
the confederated tribes of the Warm Springs Reservation was not an
employer for purposes of the NLRA. The court held, however, that a business operated by tribal corporation under a Section 477 charter and which existed independently and separately from the tribal government was covered by the NLRA. We offer that language as a clarification.

COMMISSIONER WILHELM: Madam Chair, both of the proposed changes on this page I object to. This language was -- both of these sections were negotiated with excruciating care by various of us within the subcommittee. This is compromised language that was arrived at, and I would ask the --

CHAIRPERSON JAMES: Hearing an objection, I’ll have to ask for a motion.

COMMISSIONER WILHELM: Thank you.

CHAIRPERSON JAMES: Is there a motion?

COMMISSIONER LOESCHER: Madam Chair, I was going to drop the second change on the page dealing with Foxwoods, but I was requesting consideration for clarification on the Fort Apache Timber case, so I move that that business on Fort Apache, the first paragraph.

CHAIRPERSON JAMES: Just the first paragraph? Is there a second for that? Hearing none, the motion dies. Page 26?

COMMISSIONER LOESCHER: Madam Chair --

COMMISSIONER WILHELM: Does that mean that we go from the bottom?

CHAIRPERSON JAMES: No, that was deleted.

COMMISSIONER WILHELM: Bob said he was leaving that in.

COMMISSIONER McCARTHY: That remains.

COMMISSIONER LOESCHER: Madam Chair, I’m on page 26.
What we’re trying to do is strike the language here which is a misstatement of the law that federal tax obligations of Indian individual tribal members pay is well settle law. Many taxes arise in situations where the state is attempting to tax a tribe, its resources or enterprises.

COMMISSIONER LANNI: So it should be many, not may.

COMMISSIONER LOESCHER: Yes. So the language in the first paragraph, I’d like to recommend that we drop the words, "The disputes generally center around which taxes tribal members are liable for and which they are not."

COMMISSIONER LEONE: Bob’s quite right. The dispute really is about whether the enterprise ought to be taxed by states or somebody else, so I think Bob’s point is well taken.

CHAIRPERSON JAMES: Hearing no objection. Page 27?

COMMISSIONER LOESCHER: Madam Chair -- that was no objection? Madam Chair, I had changes on page 27, but I have decided not to advance those. Then Chair --

COMMISSIONER BIBLE: Did you do that other change on page 26 where the income is taxed on ordinary income?

CHAIRPERSON JAMES: No. Thank you, Bill. I did skip that.

COMMISSIONER BIBLE: Is there some reason why it would not be ordinary income? Is somebody trying to tax that somewhat differently?

COMMISSIONER LOESCHER: I’m sorry, I missed one.

COMMISSIONER BIBLE: I think you guys would want to say taxed at the capital gains rate or something like that.

COMMISSIONER LOESCHER: Madam Chair, I’m sorry --

CHAIRPERSON JAMES: Page 27.
COMMISSIONER LOESCHER: Okay, you have no objection, Madam Chair? Thank you very much. And I passed on page 27 has been passed. We offer -- we’d like to reinsert what the Indian gambling subcommittee had language put in earlier drafts, a recommendation concerning tribal mega-bingos. As you remember in our recommendations of yesterday, we had made sure that in the telephone lines and what-not. This language here would clarify that and we would like -- I would like to offer that as an amendment to the narrative.

COMMISSIONER DOBSON: Commissioner Loescher, what are the numbers in the last four lines there? What do those represent? Are those section numbers, 1303, 1307?

COMMISSIONER LOESCHER: Those are USC section numbers.

COMMISSIONER LEONE: We’re only talking about the first paragraph, are we not? Are we talking about both paragraphs?

COMMISSIONER LOESCHER: I was offering both paragraphs.
COMMISSIONER LEONE: The first paragraph looks okay.

COMMISSIONER DOBSON: We need to clarify those numbers down there, I think.

COMMISSIONER LOESCHER: Madam Chair, we would recommend just putting USC in front of those 1303-1307, and then in front of 1852 through 1955.

CHAIRPERSON JAMES: That’s fine.

COMMISSIONER LOESCHER: And 1961.

COMMISSIONER LEONE: Is this somehow part of the committee record and not part of the law?

COMMISSIONER WILHELM: He’s making a reference to the Senate committee.

COMMISSIONER LOESCHER: Madam Chair, it’s part of the Senate committee record.

COMMISSIONER DOBSON: And we’re endorsing that record by putting this in here?

CHAIRPERSON JAMES: That what he’s suggesting.

COMMISSIONER LOESCHER: I’m assuming we’re not endorsing anything in these things. We’re simply saying this was --

COMMISSIONER DOBSON: It could be construed to say that the National Gambling Impact Study Commission made a finding that.

COMMISSIONER LEONE: It said the committee went on to list the number of statutes, and I’m assuming that that observation is just a report of what the committee did. I’m being quiet here because I’m assuming that that’s all we’re doing. That the way I read the language.

COMMISSIONER MOORE: Agreeing to the first paragraph and deleting the second.
CHAIRPERSON JAMES: Mr. Loescher, would that be acceptable?

COMMISSIONER LOESCHER: Madam Chair, I would accept that.

CHAIRPERSON JAMES: Hearing no objection, page 29?

COMMISSIONER LOESCHER: Madam Chair, we get to the end except for the little amendment that came in from -- regarding the -- Madam Chair, I have -- I have -- yesterday we dropped a provision dealing with off-reservation gaming, and I have no language -- I have no objection to the existing language to be in the narrative, so John Wilhelm indicated to me this morning he would like to see the narrative in there, so I would recede from my motion to strike.

CHAIRPERSON JAMES: That take us to page 21. We’re not done, yet.

COMMISSIONER LOESCHER: Madam Chair, going back to --

CHAIRPERSON JAMES: Let me just verify that we’re all on the same page here.

COMMISSIONER LOESCHER: It’s not handwritten, it’s typewritten, and it’s on the --

CHAIRPERSON JAMES: Let’s go back and see it again. It looks like what happened -- can you hold just a second? It looks like what happened is when they copied it they copied page 20 through 31 twice. So we’ve actually done that. Now we have to go back and do the smaller edits that were at the front of your packages when we got started. They may not still be relevant.

COMMISSIONER WILHELM: Three of those were from Jim and Bob had a handwritten one, but -- the cover sheet’s handwritten, I
CHAIRPERSON JAMES: The cover sheet from his was handwritten.

COMMISSIONER LOESCHER: Madam Chair, if I could, this is amendment which is to be inserted. On my handwritten -- I mean, on my mark-up draft it’s on page 19. It would be inserted as a second paragraph on page 19, but let me read the language.

CHAIRPERSON JAMES: Excuse me just a minute.

Commissioner Loescher, do other commissioners have that language in front of them?

COMMISSIONER WILHELM: I think they do. If you look at Chapter 6, page nine, line 14, I think is -- and then it’s typed. It says, "Insert on page nine." You said 19, it says nine here.

COMMISSIONER LOESCHER: It’s nine on that paper, but -- well, it doesn’t matter.

COMMISSIONER WILHELM: Bob, it is page nine in the committee draft.

COMMISSIONER LOESCHER: I would like to make an amendment to page nine and add this -- add this draft. Basically, Madam Chair, it reads -- it has to do with the tribal gaming commissions and we’re trying to highlight them in two paragraphs.

"The primary regulators of tribal government gaming are tribal gaming commissions with front line day-to-day responsibilities for monitoring the gaming operations. As noted by the NIGC’s deputy counsel, the tribes generally serve as the primary regulators for gaming. They’re the ones on the ground. They’re the ones that are
there 24 hours a day. On occasion states are there 24 hours a day, too, if the tribal state compact provides for it, but by and large it is the tribes who are doing the primary regulating of Indian gaming."

And then the second paragraph,

"According to the National Indian Gaming Association, tribal governments spend in excess of $100 million per year on regulation to oversee about 170 Class III or casino style facilities. For example, Oneida Indian Nation of New York spends in excess of $8 million per year to regulate its one casino."

Both of those things are footnoted here. All these cites are footnoted. I’d like to move this amendment, Madam Chair.

CHAIRPERSON JAMES: Is there a second?

COMMISSIONER WILHELM: I would second it. The only question I would have is that do we have cites that would indicate besides the cites that are here that based upon a person’s testimony this is the case? Normally when we have things of this nature we go to other bodies that maybe are more independent that would provide this information. That the concern I would have.

COMMISSIONER BIBLE: And I think the practice varies. In some states, for instance in Nevada where the state has almost sole and primary jurisdiction, I don’t even believe there are tribal gaming regulators. They may have adopted an ordinance, but I’m not familiar with those particular positions.

COMMISSIONER WILHELM: And I think we need to know
again if you're dealing with a state you know what the items are that are included in regulatory costs. I don't know what the regulatory costs in our area include. Is that available, Bob? Do you have that information available that's something more independent, shall we say, than just the comments --

COMMISSIONER BIBLE: And I think that's going to vary no matter what kind of regulatory cost number you kick out. For instance, in the tribal gaming regulatory costs, they probably have the cost of surveillance, which may not be a cost in Nevada where you don't have a regulatory cost associated with the agency to do -- but it's a cost to the licensee.

COMMISSIONER WILHELM: That's what I'm saying. I'm not so sure it would be concurring.

COMMISSIONER LOESCHER: Madam Chair, then I would propose to drop the second paragraph and just go with the first.

CHAIRPERSON JAMES: With that and hearing no objection, it passes. We have two remaining ones. Three, sorry.

COMMISSIONER DOBSON: Okay. Again going -- my references here to the first document which is no longer relevant, so the staff is going to have -- I understand that in terms of finding this, the pages are different. Page 16 of the original document, second paragraph, last line. First let me read it and then I'll explain something. The insert there is "In many cases the tribal casinos employ only a small percentage of Native Americans. In California, for instance, 90 percent of casino jobs are held by non-Indians. In Minnesota and New Mexico the percentage of casino jobs held by non-Indians is 75 percent and 60 percent
Now, you are, John, your organization is listed among the references here, and Commissioner Wilhelm tells me that this now appears in another place in the document?

COMMISSIONER WILHELM: It’s statistics that we all, I think, agreed on and accepted appear on page 19 of this chapter, and also on page 10 of People and Places. So I don’t believe it’s necessary to add them again. There’s some minor differences in the percentages, but I believe this issue has been fully addressed, in particular on page 19 of this chapter.

COMMISSIONER DOBSON: Madam Chair, may we table this while we look through the --

CHAIRPERSON JAMES: The other cites?

COMMISSIONER DOBSON: -- source he’s talking about.

COMMISSIONER LEONE: Just so I understand what somebody’s trying to say, a tribal casino could employ 100 percent of the tribal members and not have enough tribal members available to fill all of those jobs, so they have to hire another 90 percent of non-tribal members.

COMMISSIONER DOBSON: But we have testimony in other places that 50 percent of Native Americans are unemployed.

COMMISSIONER MOORE: I have concern also on Jim’s point. We went about -- I don’t understand why there’s, other than maybe they’d be like me and some of my kids, they just don’t like to work, why there would be any unemployed Native Americans on a lot of reservations. There’s large reservations and large number of people, of course I can understand that. You can’t put them to work if there’s not a job, but I think that’s what Jim is getting at. Why is that?
COMMISSIONER WILHELM: With all due respect, Dr. Moore, we’re not going to reopen and solve that subject today. Our report deals with the statistical issue that is raised in Jim’s thing. On page 19 it says, “Although tribal members make up a majority of tribal casino employees in a few smaller rural tribal casinos, the great majority of tribal casino employees are not Native American. For example, in California it --”

COMMISSIONER DOBSON: May I interrupt? Ron Reno tells me that we do have this point covered and we will delete this one. We also delete the next one, page 17, and we go to the third and final one. It’s also page 17, first paragraph, line two. This is a quote of the -- from the chairman of the Hopi tribe. He testified before this commission, testimony of Wayne Tayler, Tempe, Arizona, July 3rd, 1998. Why don’t I just let everybody read it instead of reading it to them? This is a motion.

COMMISSIONER WILHELM: I believe for the record that’s the Hopi tribe, H-o-p-i.

COMMISSIONER DOBSON: The last word in the paragraph is misspelled, too. It should be respective instead of effective.

COMMISSIONER WILHELM: Jim, you say this is a quote from an individual that you have?

COMMISSIONER DOBSON: It is a quote from testimony before the Commission.

COMMISSIONER LANNI: I think it would be helpful if you actually put the name of the person. You put down -- cite NRC, page four. One might assume that that was a determination of the NRC.

COMMISSIONER DOBSON: Doesn’t that say that at the bottom? Testimony of Wayne Taylor?
CHAIRPERSON JAMES: I was there with you, Terry.

COMMISSIONER DOBSON: It indicates the name --

COMMISSIONER LANNI: You dropped that one.

COMMISSIONER DOBSON: I’m sorry?

COMMISSIONER LANNI: You dropped the one that he was talking about?

COMMISSIONER DOBSON: Yes.

CHAIRPERSON JAMES: Jim, you’ve offered that as a motion. Is there a second?

COMMISSIONER LOESCHER: I thought we were doing these without objection. I don’t think there is an objection to this.

CHAIRPERSON JAMES: There is no objection. Hearing none.

COMMISSIONER DOBSON: Is there a motion that we have lunch?

CHAIRPERSON JAMES: That brings us to the end of that. We are finished with that.

COMMISSIONER LOESCHER: Madam Chair?

CHAIRPERSON JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: I’d like to express my appreciation to the Commission for the consideration that we’ve received here. Thank you.

CHAIRPERSON JAMES: You are more than welcome. Thank you, Commissioner Loescher, for all of your hard work and for the subcommittee members. We will reconvene in one hour.