MR. ROGERS: I think what, ladies and gentlemen, with all due respect, what Chairman Hill has enumerated is kind of a concern to us, is that on one hand we are told that you respect the Commission, and the general public, and we have heard from the general public time and time, historically again, that the general public respects our sovereignty.

And if you define sovereignty to be the notion that you can secure your own future, and determine your own future --.

CHAIR JAMES: Excuse me, let me interrupt just a minute. For the record, and we need it verbally, would you please go ahead and state your name, and organization so that we can have it?.

MR. ROGERS: My name is Tom Rogers, I’m a consultant to the National Indian Gaming Association. As I was -- I’m also an attorney.

COMMISSIONER LANNI: Excuse me, sir, are you also an attorney?.

MR. ROGERS: Tax attorney.

The reason I’m highlighting, as I was saying, with regard to sovereignty, just in like in any, in our civil society, sovereignty being defined to secure and attain your own future, we are told that.

But then we are told that we will impose these obligations upon you, and we will determine your own future. As Mr. Hill has said, time, and time, and time again, what happened with the Communication Workers of America, 600,000 members, they do not consider themselves isolated, they do not consider themselves somehow numerically significant.
They entered into a voluntary arrangement, a voluntary arrangement. Dr. Moore, you would understand that, because you are a businessman. It was a voluntary arrangement. And we feel comfortable.

You don’t hear a litany of -- I don’t see too many disgruntled employees behind us who are upset with the current worker’s state of affairs. And you look down, and I know that there seems to be, I can tell by the remarks, that there seems to be an absence of a knowledge base to work on as involves what are the employee rights on reservation tribal casinos.

I draw the --.

CHAIR JAMES: Excuse me just a minute. How do you answer the empowerment question, how do you answer the question, and I’m really trying to have a thoughtful discussion on this subject.

How do you handle the empowerment question for the woman who is changing bed linen at the Foxwoods casino, is she empowered to come together with other workers there to form a union?.

And I understand that you are protecting the interest of the tribes, but I’m asking a different question.

MR. ROGERS: Let me try and respond. Every casino is just like every other commercial casino, would have HR, human resources policies in place, grievances procedures in place to address concerns such as that.

Also I think a lot of people, like I said, I draw to your attention, and if you would care to, I would provide it to the lawyers here, here is an excellent Law Review article, and it
is titled: Application of Federal and State Labor Unemployment Laws to Tribal Employers.

Specifically with regard to your question. When you look at the, just like the Civil Rights Act, 1964, the Indian Civil Rights Act, 1992 Supplement, provides that no Indian tribe in exercising powers of self-government shall deny to any person -- it doesn’t say any Indian, any person within its jurisdiction, the equal protection of its laws, or deprive any person of liberty or property, without due process of law.

Now, you go down, Mr. Wilhelm made the remark that none of these labor laws apply to tribal organizations, tribal governments. That is not factually correct.

If you wanted a copy of this Law Review article, just recently written, it walks you through, the summer of 1995, put together by two very known attorneys on Indian law, it walks you through the American Disabilities Act, Fair Labor Standards Act, Family Medical Leave Act, the Title 7, and methodically -- with cases, citing the case law, the difference in the circuits.

There is a discrepancy in the circuits between the 9th circuit, the 8th circuit and the 10\textsuperscript{th} circuit as to what should apply on Native American reservations.

So like I said, I think what we are talking about here is very anecdotal.

CHAIR JAMES: Let me ask you this, and I’m sorry to belabor this point, but I like you Richard, am going through a process of trying to sort all of this out.

If I were that woman who is changing sheets, I have equal protection under tribal law. Do I have -- but U.S. law does not apply?.
MR. ROGERS: No, that is not true. Once again --.

CHAIR JAMES: No, I’m asking.

MR. ROGERS: That is right, okay. Like I said, I think there is a myriad of labor laws that have been crafted over our nation’s history. Here is but a sample of 8 to 10, and each one is different, and each circuit is a little bit different.

So the application of those laws, in most circumstances, in most, and this is a generalization as you had referenced, Mr. Wilhelm, but most of those laws are enforceable on Native American reservations. Title 7 is not one. It has been held.

And one other thing, ladies and gentlemen. When you look at the legislative history in most of these laws, it was the intent, or not the intent of Congress to exempt the tribes, or not exempt the tribes. Sometimes it is silent. You are absolutely right, Mr. Wilhelm. Sometimes the law is silent as to whether this should be applied.

Sometimes the contract should be interpreted against individuals who drafted the contract. But in other instances it specifically -- it was Congressional intent to carve out an exemption for native americans and their governments.

And you don’t have to take me, because I’m biased, I represent the Indian Nation. I’m a Black Foot tribal member, so I have a bias, just like everybody around this table.

But here is a law --.

CHAIR JAMES: We have never seen that.

MR. ROGERS: But here is a Law Review article, and you can choose to do with it what you want.
COMMISSIONER MCCARTHY: To help our understanding here, your response to the Chairperson’s question was what? I didn’t get it. The question is, does the woman cleaning the hotel room at Foxwoods have the right to organize a union in that facility?

MR. ROGERS: That, in all honesty Mr. McCarthy, I can’t respond to that specific issue, I don’t work at Foxwoods, I do not have a knowledge base with regard to what specifically Foxwoods casino has with regard to their policy.

Sir, if you want --.

COMMISSIONER MCCARTHY: Let me modify the question.

MR. ROGERS: Okay.

COMMISSIONER MCCARTHY: Do you have a list of tribes that have gambling casinos that in their self-governance rules expressly allow union organization to occur?

MR. ROGERS: Not at this point in time, sir, we do not.

COMMISSIONER MCCARTHY: There are no tribes that permit that in their tribal laws?

MR. ROGERS: That is not what I said, and that wasn’t your question.

COMMISSIONER MCCARTHY: What is it you said?

MR. ROGERS: Your question was, do I have a list at this point in time.

COMMISSIONER MCCARTHY: Do you have knowledge of any tribes that in their tribal laws permit union organization?

MR. ROGERS: In their tribal law, that I can’t speak to, sir, not at this point in time.

COMMISSIONER MCCARTHY: Is that information you could --.
MR. ROGERS: Obtain, yes. I think we will continue to
go around this table here, you know, because our knowledge base,
once again -- .

COMMISSIONER MCCARTHY: Well, that would be helpful to
our understanding, because we are in a process here that is
evolving, of really trying to appreciate these relationships.

MR. HILL: Can I just -- it doesn’t seem that the
rotation, we are going around in circles here. But if you could
put in writing what your specific questions are we will be happy
to respond to them.

I mean, it seems like we are not getting anywhere.

CHAIR JAMES: I really don’t think we are going around
in circles. We are really struggling with these issues, and we
have you here as experts, and it is very helpful to us to have
the opportunity. And sometimes when you ask these questions in
writing, and you get back a very legal answer it doesn’t get at
the nuance.

And so that is one of the reasons the face to face
conversation is so vital, and so important. And that is why we
ask witnesses to be in the well, and to testify publicly.

MR. HILL: With all due respect, I’m not an attorney,
and I think you are getting into a lot of legal issues here, in
terms of what the responsibilities are, and it goes back to the
specific Acts where there is exemptions, where there is not
exemptions, and those types of things.

So I think to give you a comprehensive answer it would
be most appropriate if we could respond in writing. I just don’t
see us getting anywhere.
CHAIR JAMES: Well, it has been very helpful to the Commission, and I know that it seems time consuming, and like we are not getting anywhere, but our knowledge base is increasing.

MR. HILL: I would talk with you all day on this, but I don’t think we are getting to the merits of the specific issues that Mr. Wilhelm is raising.

COMMISSIONER MCCARTHY: I have one other question as part of what I was trying to gather, understanding here.

And I really think there are a lot of unsettled issues, and it may be that members of the Commission differ on whether some of these federal laws should be applicable or not.

We are searching here to try to gain an understanding at this point. In those circuit court decisions that you mentioned, I take it a tribe, or maybe more than one tribe, are parties to that litigation?

MR. ROGERS: Yes, I mean, you have --expanding upon what Chairman Hill, and also responding to yourself, Mr. McCarthy, we all want you to make an informed decision.

But what I can tell from the table here is we are dealing in a lot of anecdotal observation, either observations that you have historically, but once again I draw attention, in responding to your question, Mr. McCarthy, you will see that when these cases are referenced, you will see that some of the tribes have been parties to the suits, you will see that a decision has come down.

And, like I said, there is a disagreement between the circuits. But what you are referencing, and what this Commission is experiencing now is building off a knowledge base, limited knowledge base, of what Indian society and culture is all about,
and how it interacts with the general populace, and interacts with the federal government.

COMMISSIONER MCCARTHY: Let me see if I can complete my questioning here. So I take it there would be specific Indian tribes in the litigation that you have cited, the three circuits disagreeing on certain kinds of --.

MR. ROGERS: Applicability and --.

COMMISSIONER MCCARTHY: -- labor, social insurance type laws, as to whether they are applicable or not.

MR. ROGERS: To tribes.

COMMISSIONER MCCARTHY: There are tribes denying that those federal laws are applicable?.

MR. ROGERS: Yes.

COMMISSIONER MCCARTHY: Is that the posture in those court decisions?.

MR. ROGERS: It is a point of contention whether, you know, the American Disabilities Act, and the Family Medical Leave Act would apply to the Native American --.

COMMISSIONER MCCARTHY: So the position of the tribes on a number of these is fairly universal, it is whether or not particular circuit courts may agree or not agree that federal law is applicable?.

MR. ROGERS: Well, I don’t know about particular circuit courts, that is -- no, I mean --.

COMMISSIONER MCCARTHY: Well, you cited three circuit courts that are differing in their opinions on a similar issue?.

MR. ROGERS: Right.

COMMISSIONER MCCARTHY: My only -- what I’m trying to understand here is are there examples of tribes that have said,
yes we wish to adopt unemployment insurance, the right to organize, whatever it may be in this body of laws, which has grown up in this country -- .

MR. ROGERS: Right.

COMMISSIONER MCCARTHY: -- now over the last century.

MR. ROGERS: Right.

COMMISSIONER MCCARTHY: Is there that kind of compiled knowledge that you could share with us, so that we could get a more accurate opinion as to what has been subscribed to?.

MR. ROGERS: Mr. McCarthy, no there is not a compendium at this time, but once again, NIGA would want you to make an informed decision, and we could compile that information so that you could make a more informed decision.

Expanding a little bit, Commissioner McCarthy, we heard time and time again, as we enter the ’80s, I mean, leave the ’80s and ’90s, and move into the new millennium, is that decisions should be made at a local level.

Even Chairwoman Kay James has referenced that in a recent news article, and that best decisions are made at the local level, and that you shouldn’t have dictates, you know, as being former Lieutenant Governor.

COMMISSIONER LEONE: There are some limits to that, and sometimes, in fact even anecdotal information is powerful. And I didn’t want to get back into this, but I will for two reasons.

One is, I like to make informed decisions, so I would like to know what the information is that if I had it, I would use it against you. That is an earlier point that Mr. Hill made that troubled me a lot.
Second is, we are talking about the rights of people here, and whether or not the laws of the United States apply. I will give away my age here, but the first time I visited the great state of Virginia, I was deeply affected by the fact that it was filled with segregated facilities.

And I asked my parents a lot of questions about that. I actually think that trip and subsequent trips to their best friends home had a great impact on the course of my life.

Now, people in Virginia argued at that time that these decisions are best left to the local government. And that there was a strong cultural bias, and history behind those things.

Those are emotional and inflammatory issues, but I think that the independence of states, or tribal governments, or cities, is subject to the laws of the United States. And we are talking about how these cases are brought before the Courts.

So I don’t think we ought to start with a premise that this Commission has no responsibility to talk about what sort of federal laws ought to be applicable. I think just the opposite is true. That is our most profound responsibility, is to recommend to the federal government what sort of laws ought to be in place, and administration ought to be in place to effect gambling in this country.

CHAIR JAMES: And, Richard, just for the record, because I have heard that quoted back about three or four times now, even as the strong federalist that I am, there are certain decisions, there is an appropriate role for the federal government, and there are things that the federal government should do.
Certainly Richard has cited one of those, and there are, indeed, others. I think we have to proceed with caution when we go in that direction, by the same token.

MR. ROGERS: Can I make one response to Mr. Leone? .

Mr. Leone, I agree with what you are saying, I think the question is a matter of degree. I think when it comes to discrimination and segregation, the Native American Population takes a back seat to no one.

You saw the President’s -- even your own President’s Race Commission Report, which was issued last fall said that we have the lowest, not some of the lowest, not near the lowest, the lowest. You walk through the demographics, suicide, homicide, diabetes, alcoholism, walk through them.

Read the President’s -- has anybody read the President’s Race Commission report?.

COMMISSIONER LEONE: Yes, I read it.

CHAIR JAMES: Yes.

MR. ROGERS: That is good. Then that is what -- and when you talk about -- we just want to know what the rules are.

We are told that there are federal laws.

There are 600,000 workers of CWA did not have a problem. They voluntarily entered into an agreement with the California Tribes -- .

COMMISSIONER WILHELM: What California Tribes?.

MR. ROGERS: Well, that is 600,000 -- Mr. Wilhelm, that is 600,000 workers, that is a significant -- .

COMMISSIONER WILHELM: No, that is not 600,000 workers, that is the membership, nationally, of the Communication Workers of America. It is not 600,000 tribal -- .
MR. ROGERS: Well, that is what is reported in the media, Mr. Wilhelm, that is all I can-- and I have the article for it.

CHAIR JAMES: Well, one thing this Commission won’t do is rely on the media, with all due respect, for its -- .

MR. ROGERS: Well, they are the four the state.

CHAIR JAMES: Absolutely. Commissioner Dobson?.

COMMISSIONER DOBSON: Changing the subject, and I’m not sure if we were through with it, but -- .

CHAIR JAMES: I don’t think John is ever going to -- .

COMMISSIONER DOBSON: Mr. Rogers, Mr. Hill, can you tell us if there has been any reduction in federal subsidies for the tribes that have been most successful with gaming operations, specially the Pequat tribe where I understand the revenues are something on the order of two billion dollars a year.

I don’t know whether that figure is right, but it is a lot of money. And there are other tribes that have been so rewarded.

Can you tell me if there has been any change in the way the federal government subsidizes tribal activities?.

MR. ROGERS: I think, Mr. Dobson, and I draw to your attention, and hopefully it has been part of the record, recently the Senate Indian Affairs Committee conducted a Hearing, and an informative seminar for members and staff, and it was about three weeks ago.

And they released a report, it was a Congressional Budget Committee document, drafted on March 1998 by Mr. Roger Watt, who was a member of the Congressional Research Service which shows trim lines of federal spending on indian matters for
the last, I would say, about a decade, specifically focusing on a snapshot from 1995 to the current.

Across the board, and these are not my words, it is a matter of the Congressional Record, across the board, spending on Native American programs, across the board, BIA, Indian Health Services, highways, child care, you name it, we have disproportionately suffered cuts, reductions in the rate of growth, and our spending programs, compared to the rest of the -- .

COMMISSIONER DOBSON: May I clarify what you just said? Reductions in the rate of growth?.

MR. ROGERS: Right.

COMMISSIONER DOBSON: No reductions in the absolute amount?.

MR. ROGERS: Well, no. In constant dollars, when you look at the constant dollars, because you have to factor in the inflation component, when you look at the constant dollars, we have experienced more cuts than any other segment of society, and that is a matter of Congressional Record, and it was filed here about three weeks ago.

You look at, even with the large -- we all know about what happened about the Transportation Surface Act, last bill, ICE-T, which was enacted last year, 200 to 300 billion nation wide was provided to the rest of society.

We barely kept pace with inflation. When you look at every spending program that affects Native Americans, we have had more cuts than any other segment of society. And that is a matter of record.
COMMISSIONER DOBSON: You are talking about across the board now. Would you focus specifically on those tribes that have been the most successful. Not reductions in the rate of growth, I’m talking about those situations where there is obviously been a very, very lucrative gambling operation.

Essentially are you telling me that the federal subsidies remain pretty much in place?.

MR. HILL: I have been to, when I was past Chairman of my tribe in Wisconsin I remember going to these budget hearings. And, you know, it is kind of a silly process, actually, because you have all the tribal leaders coming in to fight for a pie that is already too small, and make justifications for their particular allocation.

If you go back into time, and we -- that is how we think about our communities, there are over 800 treaties, but there is probably over 800 broken treaties, which refer back to land taken, minerals taken, rights taken, and the like, that have never been compensated for.

Now, when you go to the successful casinos, in terms of their success, I mean, you have to look at it over time, as well. Now, it didn’t take ten years to create all these problems in our community, it took just several generations to create a dysfunctional nations, which we are trying to recapture a lot of these things with those gaming dollars.

So to build the infrastructure for the communities, from the bottom up again, it takes a lot of revenue. One instance I can respond to you in terms of did a successful tribe turn down their allocation.
I think I read a story about the Oneidas in New York, where they chose not to accept their allocation, but what they chose to is to direct that money to a tribe that did not have gaming, and wanted their dollars to be used for that.

The other reason that the tribes don’t want to sever that tie with the federal government is because, you know, in the ‘50s there was a termination, and severing the responsibilities and the fiduciary and trust responsibilities the federal government had with those nations, and were subsequently somewhat terminated, and over in the ‘70s they were brought back to be recognized as a federal Indian nation, again.

So I think that the tribes’ concern is that if you sever that relationship then the responsibilities that the federal government have not been lived up to, may be severed. So, therefore, they do not want to sever that relationship.

But there is some discussion that maybe there is some modification in terms of those dollars being allocated for tribal purposes. But you get to realize, over time, that tribes have been -- they have never been really funded on their need, they have been grossly under funded on their need over time.

And so we have never been funded on a needs basis. We are funded -- .

COMMISSIONER DOBSON: I think the answer was no. And if that is the case, whether it is the case, I would like to request that this Commission seek, if we don’t already have the information, the records in terms of the support that is going to the various tribes, and look at a comparison, perhaps, over the last ten years.

Is that information in our records so far?.

COMMISSIONER DOBSON: I think the answer was no. And if that is the case, whether it is the case, I would like to request that this Commission seek, if we don’t already have the information, the records in terms of the support that is going to the various tribes, and look at a comparison, perhaps, over the last ten years.

Is that information in our records so far?.
CHAIR JAMES: Not in that form, and we are going to get that kind of information.

COMMISSIONER BIBLE: And I think what you are suggesting is to take that information and do an overlay with gaming revenues that are available to the tribes to see if the --

CHAIR JAMES: Do you understand that for the average American, and this is what we are trying to struggle with here, sovereign nation, yes. Certain laws do not apply, should not apply because of that sovereign nation status.

However, financial assistance, yes. And so don’t want to break that relationship with the federal government. However, so I’m trying to put it in those terms so that -- because we are speaking to not just this Commission, but to a far larger audience who is struggling with, and trying to understand these very difficult issues.

Did you want to clarify --.

COMMISSIONER DOBSON: Every agency in this country that receives federal government immediately finds out that there is strings attached to, I mean, receives subsidies from the federal government, finds out that there is strings attached.

It involves regulations, it involves laws, it involves auditing and accountability. And they go together, and I just think we need to look at that relationship.

MR. HOGAN: Madam Chair, I wonder if I could respond?.

CHAIR JAMES: Let Rick do that, then we are going to turn to your presentation.

MR. ROGERS: One thing that is disturbing, Mr. Dobson, and once again we are told we are sovereign, and then we are told
what to do. I mean, there is the word, and then there is the
action.

I don’t remember, and as Rick referenced, the Oneidas
in New York recently just signed an agreement with the Bureau of
Indian Affairs to redirect their 2.7 million dollars in
assistance, 2.7 million dollars in assistance to other tribes.

Now, Mr. Dobson, you are from Colorado. I went to
school in Colorado. Colorado is doing phenomenally well. Up and
down the front range, they have done so well since the ’80s..

But I don’t see the sovereign state of Colorado sending
their revenue surplus to the State of Louisiana. I don’t see the
sovereign state of Colorado sending their revenue surplus to the
sovereign state of Mississippi.

I don’t see the sovereign state of Colorado sending
their revenue surplus to the almost increasing shortfall in the
state of Nevada. That is what disturbs us.

Let me finish, Mr. Dobson. The reason, and this kind
of gets into the trust discussion. Trust is so important in
negotiations and discussions. I do some work in Northern Ireland
where trust has always been a hard component to evolve to..

But the reason why there is this level of mistrust with
society at large, and governmental organizations at large, is the
items such as this. We have an incredible, incredible backlog.
I mean, over two-thirds of our schools on reservations are over
30 years old. Our unmet needs are phenomenal, phenomenal.

And yet when we finally achieve the American dream,
sir, that we all want, we want a nice house, a car, somewhere
that we can send our kids to college, only 50 percent of us
graduated from high school, high school.
And yet when some tribes do well, and some tribes, that is what needs to be emphasized, according to a GAO study in 1996, only six facilities, not six tribes, but six facilities are responsible for almost 40 percent of the gaming revenue.

Pine Ridge Indian Reservation in South Dakota is a double-wide trailer. A double-wide trailer. And so when certain tribes do phenomenally well it is, you know, you are just doing too well. All we are trying to do is achieve the American dream and make a better life for our citizens and our tribal members.

And yet when we do well, you know what? Well, you are just doing too well, sir. So we are going to take that money and we are going to redirect it.

There has been an examination I draw to your attention about the tribal priority allocation. It has been an ongoing debate with Senator Gorton from Washington. And I draw to your attention to that Congressional Record as to how the tribes are spending their money, and how they are trying to redirect it to certain other needs.

But expanding upon the question, historically, that Mr. Leone was talking about, we have an incredible problem being Native Americans. I’m a Black Foot tribal member, with trust, trust. And what concerns us is every time that we have -- you name it, the Black Hills, you name any resource that we have ever latched onto, and the only thing that has worked for us in a small measure to date has been gaming..

Well, guess what, somebody wants it now. Somebody either wants to impact, you know, enter into our decision making with regard to workers, or they want to say, you know you are doing too well, so we want to shift some of this money over here.
If the state lottery in Colorado is doing well, or wherever it might be, are they cutting any checks to the different states? Even some of the tribes have done revenue sharing amongst the tribes.

There was recently a case where one of the tribes sent a 50,000 dollar check, a 50,000 dollar check to another tribe.

COMMISSIONER MCCARTHY: Madam Chair?.

CHAIR JAMES: Please.

COMMISSIONER DOBSON: I need to answer what you just said, sir. First of all, obviously, if the sovereign state of Colorado receives money from the federal government it has to account for it, and there are laws that apply to it, so I don’t think that illustration is relevant.

But in the case of the Pequat tribe, for example, it is my understanding that there are 900 some members of that tribe. If the revenue from gambling for that tribe is a billion dollars or more, or half that, or a third of that, I think we have an obligation, in this Commission, to look at that and to report the results of that examination to the government, which asked us to do this inquiry.

How much is enough? I don’t think that is the issue. I think the issue is the relationship here as a taxpayer, to the money that is going to the various tribes, I don’t believe that has been discussed in the public record. And I think it is time that we did so.

Excuse me, Mr. McCarthy.

COMMISSIONER MCCARTHY: That is all right. I just wanted to comment that I think we were confusing state budget surpluses, out of a growing economy with federal public

assistance programs here. Reallocation of federal public assistance programs to non-gaming tribes, so that at least in some small part all the deficiencies you quite appropriately and accurately outlined could be a little bit better addressed.

That is not the same as suggesting that budget surpluses from Colorado be shipped down to Mississippi. Those are two entirely different areas.

I just wanted to make this over-arching comment, if I could. There are many wounds from the past that have not been recognized by most Americans who are not Native Americans, and have never appropriately been addressed.

There is a great deal of unfairness that has occurred that most non-Native Americans will ever really grasp or appreciate.

We have some sense of that, even though we have not been the objects of that kind of terrible treatment. But it is difficult to use that history when we are trying to address a problem like whether federal laws on social insurance, or anything that tries to make more fair, and more appropriate the standard of living of the average American worker applicable across the board at all circumstances.

This conversation started out addressing what are well settled laws in this country. And we have this very odd situation here, where we are trying to recognize what we failed to do in the past, a non-Native Americans, and at the same time not give away what laws that are now applicable, at least in almost every corner of this nation, have been fought for and established through blood, sweat and tears of a lot of people.
So to have all of these, you know, the most basic laws dismissed on the basis of total sovereignty is something that is hard to digest, that is all. And somehow there has to be an accommodation here that respects sovereignty, and at the same time recognizes there are at least some areas that have to be applicable to everybody that lives within our borders.

MR. ROGERS: Mr. McCarthy, I think that there is a number of points, in response to your remark.

I think, once again, what we are arguing, or discussing here, choose my words carefully, is a matter of degree. If you look, you know, Senator Byrd always says on the Senate floor that to remain ignorant of history is to always remain a child.

And I do not use history to imprison us, because you will never get beyond that. But I should say it should serve to inform you. If you look at the President’s Race Commission Report, even Mr. Bob Thomas, a Commission, said he was embarrassed, embarrassed at his ignorance with regard to native american law and affairs.

He says there was a misunderstanding as to the uniqueness of Native American governments, and their evolving debate in society.

What is disturbing to us, Mr. McCarthy, and I will be very honest with you, is that no one really paid us much attention until we started earning revenue. In all honesty, we were out there, we were on the fringes of society, we were isolated, no one really gave us much thought.

But now that we are making a way for ourselves, and trying to achieve a future for ourselves, and more importantly for our children, we are much more of a focus of debate.
So I draw to your attention, sir, please, please read the President’s Race Commission Report, and you will be astounded.

And one other point, and I’m talking about state budget surpluses. Let’s leave it at the federal level, forget about your own, you know, institutional and state generated revenue.

Historically New York has always, Senator Moynihan always has a survey on the dollars that New Yorkers send to Washington, and the dollars they get back. They are always in deficiency.

But you don’t see Senator Moynihan introducing a bill, you know, requiring that once again, Colorado which does well, under this administration California has done phenomenally well. Phenomenal.

Look at the Base Commission Closure Report. You were supposed to have a base closed, it didn’t close. Are you going to trade that base in California for one in the south?.

So what I’m saying is, is that what we are suspicious about, and I use that as an illustrative, what we are suspicious about is that we are doing slightly better now, and some tribes are doing well. But now we are the center of attention.

CHAIR JAMES: Please, this is a free flowing conversation and the Chair is not going to recognize you.

COMMISSIONER WILHELM: Mr. Rogers, with regard to the point you just made, why is attention being paid now. I have heard that in a number of our hearings.

With respect to the issue of unionization, attention is being paid now because now, unlike historically, the tribes have a large number of employees who are not members of tribes. That
is the answer to that, that is a quite a straightforward answer. It is not a discriminatory answer, just a fact.

When this Indian gambling subcommittee of this Commission visited the Gila River Indian community, I think it is fair to say that those who went on the visit were extremely impressed with what that tribe has done with respect to developing itself, with respect to the use of resources that have been generated.

I know Dr. Moore, in particular was, along with all those that made the visit, extremely impressed. And yet on that visit the tribal representatives explained that the employees at its sand and gravel operation, currently run by a subcontractor, which is a private company, thus subject to american labor law, are presently unionized.

And the tribal representative explained that there had been a labor dispute between the employees of the subcontractor, and the subcontractor. And that the tribe exercised its sovereignty so as to prohibit any picketing activity by those employees, thus rendering a strike hopeless.

And, moreover, the tribal representative advised the visitors that the plan is, using the resources that the tribe is generating, to take over the sand and gravel business in a few years. That is the tribe would take it over and get rid of the subcontracting company, which of course it has a right to do.

And the tribal representatives advised the visitors that at that time they would no longer recognize the union of those employees.

Now, that is a snapshot of reality in Indian country, as you well know. And I would just say to you, you just made a
moving and I believe historically accurate appeal on behalf of Native Americans.

And, yes, I have read the President’s Report. In fact, the labor movement was represented, was part of that Commission.

MR. ROGERS: We were not.

COMMISSIONER WILHELM: I didn’t appoint it.

MR. ROGERS: I know. That is very telling, again.

COMMISSIONER WILHELM: My point is that the labor movement’s representative is vigorously in support of the issues that you are talking about.

And yet it ought not be, Mr. Rogers, that the eloquent and historically correct argument that you just made should then be used to say, and yet the people that work for us, many of the people that work for you in southern California fled oppression and death in Central American countries.

I’m talking about the people who work for you now. Many of them fled oppression and even death in Central America and in Latin American countries, to come to this country to try to find opportunity. Many of them, many of the people that work for you are immigrants, many of them are poor people.

It ought not be necessary for the tribes to achieve your goals, and to begin to overcome the historical wrongs that have been done to Native American people, for you in turn to take the wealth that you are generating, then to oppress other people and deny them the empowerment that you want, and need, and deserve, and should have.

That ought not happen, and it is not necessary.

MR. ROGERS: Mr. Wilhelm, with regard to the last statement, I cannot speak to the facts of the case that you laid
out, because I don’t know if that is totally representative. But what you just stated, I completely agree with, because that will go to our own credibility with regard to how, as I said, with regard to history. You should serve it to inform you, but not imprison you.

And I agree with you on that one.

COMMISSIONER WILHELM: I join with you on that one.

COMMISSIONER LANNI: Mr. Rogers, if I may? A couple of comments. I know you are the tax expert and I’m not, other than the fact that I do pay taxes.

On the issue of federal taxes, when we write a check to the federal government, whatever Washington does with that money, it may well go back to Louisiana, or even go to Mr. Dobson’s state in Colorado.

And I also pay taxes in the state of California, so in that regard, and I think Colorado has a state income tax. Do they, Jim? Jim, does Colorado have a state income tax?.

COMMISSIONER DOBSON: Yes.

COMMISSIONER LANNI: So Colorado is a state that has personal income tax, so he is paying a tax there, and you also pay a federal tax. So in effect that money may well go back to Louisiana. In fact, some of that money may well go back to the native american tribes, and some of the programs that come from the federal government.

So you are the tax expert, but I think on that one you are incorrect.

On the area of trust, and this is what is bothersome to me. I have an interesting background. My mother was actually
born on an Indian reservation in Sioux Falls, South Dakota. Not
Indian, Irish-American, but born on an Indian reservation.

I have always had a great affinity for the native
americans, and fully understand the plight that they have. Not
living it, I can relate to it, but I can’t relate to it from
having lived through it.

I honestly think that your association has done a
disservice to yourselves, and probably made amore negative view
from people that had a more positive view about the plight that
the native americans have.

I, for one, favor Indian American gaming, I have no
problem with it, I have said that publicly. I have some questions
about the regulatory process. I have some questions about
participation, as I raised earlier with Mr. Hill about the
problem of pathological gambling that needs to be dealt with from
all sectors of gambling, in my opinion, which I always like to
say I do respect.

That to attack John Wilhelm, and to attack this
Commission as not being a Commission you can trust. I mean, you
go around this table and there are a number of us who disagree on
a number of subjects, but I must tell you, I for one, and I think
I probably speak for my fellow Commissioners, I trust each of my
fellow Commissioners.

I think they are decent people, they may well have
divergent points of view from mine, I have no problem with that.
Just because someone differs from your opinion shouldn’t be a
reason to distrust them.

John has a very strong belief in the fact that someone
should have the right to organize a labor union. That is his
responsibility, he was appointed to this Commission for that purpose.

I raised a question that bothers me as an individual. That if I were working on the Agua Caliente band of the Kiowa Indians' facility in Palm Springs, and were terminated, sure you have a human resources department in that particular tribe, but I don't have the right to go to a California Court, or a federal court outside the Indian reservation to question why I was terminated.

I go back to the tribal council. I don't think that is fair. Now, if I'm a tribal member I think it is quite fair. But for those people who are outside I don't think that is fair. So I have some differences in that regard.

But I do not oppose tribal gambling, I think it has helped your people, and I think that is an advantage. What Mr. McCarthy has certainly pointed out that the disgusting aspects of what America did to the Native Americans, there is no doubt about that.

I feel responsible for the fact that it happened. I don't feel responsible, personally, for that fact, but I think we have every responsibility to help your people.

I think to come before this Commission and attack the Commission as a group that you can't trust, was ill conceived, ill conceived. And I honestly think you have done a tremendous disservice to your particular cause in doing that.

And to specifically attack Mr. Wilhelm, or as you did before, Mr. Bible, I just think was very, very poor planning on your part. That is really my only comment.
CHAIR JAMES: With that I’m going to ask that we --
certainly, absolutely, would you like to --.

MR. ROGERS: I think with regard, identifying with you,
Mr. Lanni, once again, I’m not only Indian, I’m Irish..
But with regard to taxes, you know, Oliver Wendell
Holmes said taxes is what we pay to live in a civil society.
Now, you referenced the fact that your money that you
pay in either California or Nevada goes into the general revenue
fund in the Treasury, and it is disbursed out accordingly. But
you can’t dedicate that revenue. Neither can tribe members.
We pay taxes too. I know that is alarming, and
surprising, but we do pay taxes. I pay taxes every year.
If you look at a recent report that was issued by
Governor Gary Locke of the state of Washington, and a number of
Indian Tribes, you would be surprised at the amount of taxes that
Native Americans pay in the state of Washington.
So I think I want to disabuse a number of-- because
that is some misinformation out there in the public debate that
Native Americans don’t pay taxes. We pay a lot of taxes.
The second point with regard to trust, sir. I don’t
think, to expand, and Chairman Hill will maybe clarify this, is
that we didn’t say we don’t trust you individually. I don’t
think I never said to Mr. Wilhelm, I don’t trust you, I don’t
think I have ever said that Mr. Wilhelm.
What causes us concern, and I have never said that
about you, Mr. Lanni, and neither has NIGA. But what causes us
-- nor have we said that Ms. James, Chairwoman James you had said
previously, during the discussion, you don’t trust us? You were
kind of raising that question.
That is not the issue. What we look at are actions. What we look at are actions. What disturbs us, Mr. Lanni, disturbs us, is that this Commission issued an opinion on secretarial procedures, secretarial procedures.

If I remember correctly, the charge of this Commission was to study, not insert themselves in the process, not involve themselves in the process.

Like any, when you are observing anything, whether you are an academician, you study that. To enter into the process is to change that environment.

But yet, on Internet, where we were at a severe disadvantage, no letter was forthcoming from this Commission on that issue. That disturbs us. That is an action, that is not a word, that is an action.

We look at the first Web site that this Commission put out calling us defeated nations. Defeated nations, or more importantly, merely private associations. When the NGA comes up here, ask them if they feel the state of Montana, or North Dakota, is considered, perhaps, a private association.

That is what -- I’m talking about actions, Mr. Lanni, and we are not impugning your credibility.

CHAIR JAMES: I’m going to let this discussion go on for about five more minutes, and then I’m going to exercise the prerogative of the Chair and we will hear from the National Indian Gaming Commission at that time.

COMMISSIONER LANNI: I think in response sir, you are obviously a well spoken person, but anything that we say may be considered an action, an action to reach for this microphone is an action.
I think that the request of the Commission was to ask the government to wait a determination on the internet until we had completed our particular study, which was required by Congress, by the President, by the House and the Senate.

And we were not suggesting which way they should go in that particular -- other than to wait, and that is an action, to ask someone to wait.

But someone has asked me before, you know, are we in a position, what are you going to do, are you going to allow this, or allow that? We know we are not in a position to allow or not allow anything.

We are merely here to study the social and economic aspects of all legalized forms of gambling, and make considered discussion, come up with considered recommendations to the appropriate bodies representing the Native Americans, representing the several states, representing the legislative branch, and the executive branch.

That is our responsibility, it is our duty, and that is not saying that we are taking action in that regard.

MR. ROGERS: In fact, that is what I would like to expand upon. What we are arguing for, and asking for, begging for, is consistency of treatment. You just referenced, and you can read back your remarks to me, that you asked Congress to wait on these secretarial procedures.

Then I would appreciate a letter from this Commission to ask Senator Kyle, Representative Stearns, Representative Goodlat, Mr. McCollum, to wait on their laws with regard to Internet.

CHAIR JAMES: Rick, did you have any final comments?.
MR. HILL: No.

CHAIR JAMES: Okay. With that I’m going to -- and I thank you for your patience, and your agreeability just to allow this dialogue to continue for the time that you did.

We are most interested in hearing from you. Thank you so much.