CHAIR JAMES: We have a quorum. We’re going to get started. I’m going to start with recommendation 6.1. For the benefit of those who are trying to follow these proceedings, again, I will read the recommendation.

I am aware that there are amendments. I will listen to see if someone will offer the recommendation. If not, we move on.

COMMISSIONER LOESCHER: Madame Chair, I was going to yield to my esteemed chairman if he wanted to move these each one; but if not, I’ll move them one by one.

CHAIR JAMES: Okay that’s up to you, how you want to do that. Maybe you all can alternate. One will move and one will second.

COMMISSIONER LOESCHER: Okay.

CHAIR JAMES: 6.1, the Commission recommends to the President, Congress and NIGC that federal laws concerning Native American tribal gambling should be strengthened to ensure adequate regulatory oversight fiscal accountability.

COMMISSIONER LOESCHER: I so move.

CHAIR JAMES: Wait a minute. One vehicle for this would be increased funding and authority for the NIGC.

So moved?

COMMISSIONER LOESCHER: So moved.

COMMISSIONER WILHELM: Second.

CHAIR JAMES: It has been moved and seconded.

Discussion?

COMMISSIONER LOESCHER: Madame Chair, I wanted to raise the point with my dear friend, Mr. Bible, from the great State of Nevada, --

COMMISSIONER BIBLE: You’re off to a good start.
(Laughter.)

COMMISSIONER LOESCHER: In IGRA, Madame Chair, the second line it says Class III gambling activities should not include any activities that are not available to other -- it says citizens. And I would propose to delete the "citizens of" and insert the words "persons."

Or are we on the wrong one?

CHAIR JAMES: Yeah, we’re on 6.1.

COMMISSIONER LOESCHER: How did I get off the beam here?

COMMISSIONER BIBLE: Your enthusiasm to get things solved.

COMMISSIONER LOESCHER: Okay.

CHAIR JAMES: We’re on 6.1 right now and that has been moved and seconded, and we’re open for discussion on 6.1.

COMMISSIONER LANNI: Question.

CHAIR JAMES: All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

COMMISSIONER LEONE: I’ll abstain.

COMMISSIONER WILHELM: You’re for it.

Bob, these numbers are just one behind, that’s all.

COMMISSIONER LOESCHER: Oh, I see. Okay, I’m sorry.

CHAIR JAMES: And we’re going to be going by the document that we have in front of us, and we’ll try to --

COMMISSIONER LOESCHER: Madame Chairman, I move 6.2.

COMMISSIONER LANNI: Second.

CHAIR JAMES: Well, for the benefit of those who are following, let me read that so that they’ll know what it is.
Imagine if you were sitting at home with your cup of coffee and following these proceedings, --

COMMISSIONER LANNI: You have nothing else to do.

CHAIR JAMES: -- 6.2 --

COMMISSIONER WILHELM: Your brain waves should be examined.

(Laughter.)

COMMISSIONER MOORE: Bob’s trying to get these things approved.

CHAIR JAMES: Yes, I am trying to convince people that the public policy process is interesting and exciting, and that all American citizens should be involved.

COMMISSIONER LANNI: Good luck.

CHAIR JAMES: Good luck.

The Commission recommends that IGRA’s three classes of gambling should -- must be clearly defined so that there is no confusion as to what gambling activities constitute Class II and Class III gambling activities.

Further, the Commission recommends that Class III gambling activities should not include any activities that are not available to other citizens of the state regardless of technological similarities.

Indian gambling should not be inconsistent with the state’s overall gambling policy.

Is there a motion?

COMMISSIONER LANNI: So moved.

CHAIR JAMES: Is there a second

COMMISSIONER MOORE: Second.

CHAIR JAMES: It has been moved and seconded.

Discussion?
COMMISSIONER LOESCHER: Madame Chair, I have two concerns. Do you want me to do one first or do them both?

CHAIR JAMES: That’s -- do them both.

COMMISSIONER LOESCHER: Madame Chair, the language on about the fourth line down, it says "other citizens of." I would like to change the words so that it’s more consistent with IGRA, change citizens to persons or entities.

And actually, the language in IGRA is persons, institutions or entities.

CHAIR JAMES: Would you prefer it say persons, institutions or entities --

COMMISSIONER LOESCHER: I would.

CHAIR JAMES: -- to make it consistent?

COMMISSIONER LOESCHER: -- Madame Chair. And that would be one motion I would like to make.

CHAIR JAMES: Well, that would be an amendment to your motion --

COMMISSIONER LOESCHER: Right.

CHAIR JAMES: -- that is already there. Is there any objection from the seconder of that --

Dr. Moore, would you have any objection?

COMMISSIONER MOORE: No objection.

CHAIR JAMES: Persons, institutions or entities?

COMMISSIONER LOESCHER: Yes, and the word citizens.

COMMISSIONER BIBLE: That would mean that if a state, for instance, being an entity, operated a lottery, the tribe could operate a lottery? First word in the fifth line of 6.2.

CHAIR JAMES: That’s a question?

COMMISSIONER BIBLE: That’s a question.

CHAIR JAMES: Yes.
COMMISSIONER LOESCHER: Yeah, Madame Chair, and under this --

CHAIR JAMES: Yeah, that’s question that we should discuss is what I’m saying here.

COMMISSIONER LOESCHER: Madame Chairman, under this, yes, the language here is broader and that’s what the law says, and it is broader. The way the language is here, it says "citizens of," and that’s pretty narrow. And I was broadening it to have persons, which would be comparable to citizens, institutions or entities, and that would cover all.

CHAIR JAMES: But I think Commissioner Bible is asking a very important question: Is this Commission prepared to say that, if a state has a lottery, that a tribal government, thereby, automatically has the right to have a lottery based on this?

COMMISSIONER BIBLE: Or, conversely, I guess you have institution, so if -- say the state law permits charitable gambling and VFW has Las Vegas nights once every six months or every year and they have 21, can then a tribe operate a 21 game 24 hours a day, seven days a week?

CHAIR JAMES: My view is that that fundamentally changes what the consensus was, and that we would probably be well served just to change citizens to persons.

COMMISSIONER BIBLE: Well, persons legally normally means individuals, corporations and other entities if you look up the person section of the standard state code.

CHAIR JAMES: What’s your pleasure? Is that what you mean to say?

COMMISSIONER MCCARTHY: I think what Mr. Bible is trying to get at is, if there is a very infrequent kind of
COMMISSIONER BIBLE: That’s what I was trying to get at.

COMMISSIONER McCARTHY: And I agree with his point.

COMMISSIONER MOORE: And the sad thing about that though -- and I agree with that point also. But the sad thing about that, I believe that the courts have already ruled that that’s not necessarily means that we have to recommend it.

That any type of gambling in any place by any person -- and I believe the District Court has ruled that --

COMMISSIONER BIBLE: Well, depends, to some extent, upon which circuit you’re in.

COMMISSIONER MOORE: Well, that’s true.

COMMISSIONER BIBLE: But in this particular instance, the way I had interpreted this regulation was that the federal statute be amended so you would not have the kind of litigation in the future and the scope of gaming be clearly defined so the tribes would not be allowed to operate gambling that’s not available to other citizens of the state.

So that’s probably on the same terms.

COMMISSIONER MOORE: I believe that’s what we -- I mean, I know that’s what we meant. And I was just wondering if the last Indian gaming should not be inconsistent with the state’s overall gaming policy? Does that have any strength?

CHAIR JAMES: That language is currently there.

COMMISSIONER MOORE: Yeah.

COMMISSIONER WILHELM: And Bob’s not proposing to delete that.
COMMISSIONER MOORE: I'm not, that's right.

COMMISSIONER BIBLE: I believe he's proposing to delete the term regardless of technological similarities.

COMMISSIONER LOESCHER: Yes, Madame Chair, I wanted to deal with one first. Maybe I could advance my discussion on the second phrase.

COMMISSIONER BIBLE: But they're kind of linked.

COMMISSIONER LOESCHER: They are sort of linked. Madame Chair?

CHAIR JAMES: Certainly.

COMMISSIONER LOESCHER: And I, Madame Chair, am proposing in my amendment to delete the words "regardless of technological similarities." And this matter is subject to extensive litigation already between and among states and tribes.

The other thing, the thing about this business is that the tribes have a right of self determination, and they are sovereign in their own right. And they have a process of compacting, and the issue of scope of gaming in the technical definitions of whether there's a permutation of one kind of game or another is subject to negotiation.

And if we basically don't recognize that the tribes have a right of self determination, have a right to be creative as they proceed to develop their business, we're basically saying that the states are regulating the tribes, and that's not the -- that's not the intent, you know, of the compact approach to life.

And basically, so what we're suggesting to you is that that language should be deleted as well, and we'd appreciate your support on that point.

I might also say, Madame Chair, that the Secretary of Interior has stated that the United States' position on scope of
gaming is the Solicitor General’s brief in Rumsey. The tribes
don’t like that position necessarily, but they have to live with
it.

And the proposal that Commissioner Bible has advanced
in this language here, the words regardless of technological
similarities, is even narrower than what the court has defined
and what the Solicitor General has interpreted.

So I believe that we’re on firm ground if we ask for
this.

CHAIR JAMES: Commissioner Leone.

COMMISSIONER LEONE: I would like someone, if they can,
to explain -- I don’t understand the significance of "regardless
of technological similarities" in this context. I don’t know
what the real issue is.

COMMISSIONER BIBLE: Well, my interpretation of that is
that if you have a device, for instance, that has a random number
generator within it like a lottery terminal, that that,
therefore, does not enable a tribe to operate a device which may
not be a lottery terminal, but instead a slot machine.

So a lottery terminal does not earn you a slot machine.
And that’s the case of the argument down in California now. The
court, in Rumsey, articulated this sort of standard. This may be
somewhat narrower than they articulated.

The Solicitor’s brief was considered by the court when
they developed the standard in the Rumsey decision, but it’s a
fairly narrow interpretation. And the issues on scope are really
a couple. One is the nature of the device itself: Is it a card
game? Is it a house bank game? Does it have a random number
generator?
And the other is in terms of the operation. If you operate an on occasional basis, like in Connecticut, and you had -- Las Vegas nights were for charitable purposes, certain organizations offered some forms of gaming on very occasional basis and that was used to justify a full time, 24 hour a day casino gambling.

The way I interpret this to be narrow is that tribes can offer the same sort of gambling within the state jurisdiction as any other citizen in the state could also offer. That’s the way I read this recommendation.

And I believe Bob’s amendment -- and I don’t want to put words in your mouth -- is intended to broaden that out to some degree.

COMMISSIONER LOESCHER: Madame Chair, I rest my case.

(Laughter.)

CHAIR JAMES: Having said that, there is a motion before us with two -- or did you lump them in one?

COMMISSIONER LOESCHER: We’ll lump them.

CHAIR JAMES: One amendment. I think we need to vote on the amendment first and then on the motion.

COMMISSIONER LANNI: Madame Chair, I have a language issue in the beginning. It says, "The Commission recommends IGRA’s three classes of gambling must be clearly defined so there’s no confusion as to what gambling activities constitute Class II and Class II gambling activities," without any reference to Class I.

COMMISSIONER WILHELM: Class I doesn’t need clarification, but the relationship between and among the three do.
COMMISSIONER LANNI: I know they do. But, I mean, by mentioning three and then only talking about the two, I just think that that may be confusing to the casual reader of this document. I would suggest we drop the word three and say, "The Commission recommends that IGRA’s classes of gambling must be clearly defined so that there’s no confusion as to what" -- and I wouldn’t put gambling activities again because it gets very confusing.

What I’m proposing, --

CHAIR JAMES: What constitutes --

COMMISSIONER LANNI: -- if we drop the word three and drop the word activities, the first activities, and make constitute "constitutes," I think it read more clearly.

And if I may, it would read, "The Commission recommends that IGRA’s classes of gambling must be clearly defined so that there’s no confusion as to what gambling constitutes Class II and Class III gambling activities."

CHAIR JAMES: Would you accept that as a friendly amendment?

COMMISSIONER LOESCHER: Yeah, we have no objection to that.

CHAIR JAMES: Okay.

COMMISSIONER LANNI: I don’t think that’s changing the substance.

CHAIR JAMES: Commissioner McCarthy.

COMMISSIONER McCARTHY: Not on this. On the amendments in front of us -- and I’m with Dick Leone. I’m not sure I yet comprehend what the fine points are between regardless of technological similarities, although I understand Mr. Bible’s explanation of that.
I don’t know if it goes beyond that, or if that covers exactly what it means.

CHAIR JAMES: Well, if that’s the case, then do you want to table this until you have an opportunity to -- because I don’t want you to have to take --

COMMISSIONER McCARTHY: No, I’m not going to support it, and I want to explain why.

CHAIR JAMES: Okay.

COMMISSIONER McCARTHY: We’re in a very complicated -- a very complicated area here where we want to show the utmost respect for Native American tribal government. And yet, we also have a strong pull towards the fact that -- and everybody keeps saying that it’s not at the federal level, it’s at the state level where gambling is going to be regulated.

Certainly Class III gambling. And Congress seemed to say, in the legislation that passed, although there was sure some tap dancing that kept this from being absolutely clear, but it seemed to say that the people of each state could regulate the kind of gambling that it wanted.

And if it did not permit gambling -- and common sense says to me full time operational gambling, not two nights a year at the VFW Chapter 17 in Taleri County -- if the people of the state, through its elected officials, did not allow a roulette or blackjack or whatever it might be, then that ought not to be permitted to anyone else.

And I still believe that is a proper approach to public policy. So while I have enormous respect for Bob, I think the amendments that are being proposed go in the opposite direction of trying to clarify just what authority the states really do have over controlling certain forms of gambling.
So I’m going to vote no on these amendments unless further discussion somehow shows me that I’m misunderstanding the amendments.

COMMISSIONER LOESCHER: Madame Chair, call for the question.

COMMISSIONER LEONE: I have --

CHAIR JAMES: Well, do you mind Commissioner Leone getting his discussion point in?

COMMISSIONER LEONE: I have a question really, which is relevant to the state lottery. As I understand it, although lotteries are legal in the state, and I know there’s been litigation about this, it has not been legal for the tribes to start a statewide lottery.

Is that right?

COMMISSIONER BIBLE: A statewide lottery? Yes. No, I think tribes could do statewide lotteries.

COMMISSIONER LEONE: They could do statewide lotteries?

COMMISSIONER BIBLE: If they wanted to, sure.

COMMISSIONER LEONE: Have they done so?

COMMISSIONER BIBLE: I assume they have to compact for it under Class III.

COMMISSIONER LEONE: Have they done so?

COMMISSIONER BIBLE: Well, the only lottery I can remember is the Coeur D’Alene tribe where they tried to expose it via the Internet.

COMMISSIONER LEONE: Right.

COMMISSIONER BIBLE: I can’t believe economically that a tribe could market a lottery because you need very wide population dispersion and a number of people to make the thing go because you have to have sufficient prices.
COMMISSIONER LEONE: But could you -- I guess my question was, they can’t market it off Indian country, right?

COMMISSIONER BIBLE: No, should not be able to.

COMMISSIONER LEONE: So they couldn’t franchise it within a state boundaries?

COMMISSIONER BIBLE: No.

COMMISSIONER LEONE: Okay.

COMMISSIONER MOORE: This technological similarities, aren’t we -- I thought what we were discussing here and why this was in there and why I thought we agreed upon this, I thought the big problem -- and you can -- I think personally I can put -- share the responsibility with the State of California as well as the tribal governments there, is that the State of California, through its lottery, had all of this technology and all of these dispensing machines and different games, that they were almost having casino gaming, is what the tribal -- Indian tribal Native Americans were contending, isn’t it?

And so if they had all of these machines that put out all of these different type tickets and games, then that should entitle them to have slot machines. Isn’t that basically --

COMMISSIONER BIBLE: That was the argument. That was the argument.

COMMISSIONER MOORE: And so that’s why this was sort of the --

CHAIR JAMES: Put in. Let me -- I heard a call for the question. If there isn’t further discussion, I’d like to -- there is?

COMMISSIONER LANNI: No, is that a question on the amendments?

CHAIR JAMES: This is on the amendments only.
COMMISSIONER LANNI: Are you taking them separately? I think they should be taken separately.

CHAIR JAMES: That’s up to the controller of the amendment.

COMMISSIONER LOESCHER: Madame Chair, we’ll split the amendments.

CHAIR JAMES: We will split the amendments. The first vote then will be on citizens and changing that language to persons, entities or institutions.

COMMISSIONER LANNI: It doesn’t say institutions in there. I’m looking at their language they gave us. It says persons or entities.

CHAIR JAMES: That came up in the discussion.

COMMISSIONER LANNI: Oh, it was added?

CHAIR JAMES: Yeah, and was added in order to reflect the language as it exists in IGRA.

So the vote right now is on the first amendment, which is person, entities or institutions.

All in favor?

(Chorus of ayes.)

Any opposed?

(Chorus of no’s.)

I think the motion fails. I don’t think we need a roll call on that.

COMMISSIONER WILHELM: Please record me as abstaining.

CHAIR JAMES: And one abstention, Commissioner Wilhelm.

COMMISSIONER LOESCHER: Madame Chair, I move the second amendment.

CHAIR JAMES: The second amendment.
All in favor of the second amendment, which would be to strike the language "regardless of technological similarities," please signify by saying aye.

COMMISSIONER LOESCHER: Aye.

COMMISSIONER LEONE: I misunderstood that. I'm not voting for it.

CHAIR JAMES: Okay.

All opposed?

(Chorus of no's.)

CHAIR JAMES: The no's carry. And one abstain.

COMMISSIONER LOESCHER: Madame Chair, I move the motion as amended.

CHAIR JAMES: With that --

COMMISSIONER LOESCHER: Or as not amended.

(Laughter.)

COMMISSIONER LANNI: Second.

COMMISSIONER WILHELM: Well, it was slightly amended in the first sentence.

CHAIR JAMES: It was because now it reads "IGRA's classes of gambling" -- we took out three -- "must be clearly defined so that there is no confusion as to what gambling constitutes Class II and III" is how it reads right now.

COMMISSIONER LANNI: Second.

CHAIR JAMES: Any discussion? I think we've had quite a bit.

All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

The ayes have it.

6.3.
COMMISSIONER LOESCHER: Madame Chair, I move and ask
the unanimous consent that 6.3 be adopted.

COMMISSIONER LANNI: Second.

CHAIR JAMES: It has been moved and seconded. For the
benefit of those following, let me -- Commissioner Wilhelm?

COMMISSIONER WILHELM: May I ask, with the concurrence
of Commissioner Loescher and Commissioner Moore, that 6.3 and
6.4, in their introductory phrases, be returned to where the
committee had them? This is a minor point.

But the form in which the committee made these
recommendations with respect to 6.3, it said, "The Commission
recommends that labor organizations, tribal governments and
states should voluntarily," etc.

"The Commission recommends that labor organizations,
tribal governments and states should voluntarily work together,"
etc. And similarly, 6.4, as long as we’re at it, the
subcommittee’s recommendation was, "The Commission recommends
that tribal governments, states and, where appropriate, labor
organizations."

So the principal change is to eliminate the phrase
"organizations such as." And it’s not a change. Somehow this
draft got moved around.

CHAIR JAMES: Turned around. That does reflect the
language coming out of the subcommittee, and we apologize for the
problem. With that, let me read the --

COMMISSIONER DOBSON: Madame Chair.

CHAIR JAMES: Commissioner Dobson.

COMMISSIONER DOBSON: Excuse me. I’m really not
amending this. I think there’s a typo, if you don’t mind. 6.3,
three lines up, right in the middle, isn’t that – shouldn’t "Congress" be changed to "Commission?"

COMMISSIONER WILHELM: Yes.

CHAIR JAMES: All right, let me read that as it is now. "The Commission recommends that labor organizations, tribal governments" -- no, how does that read?

COMMISSIONER WILHELM: And states.

CHAIR JAMES: "And states should voluntarily work together to ensure the enforceable right of free association, including the right to organize and bargain collectively for employees of tribal casinos. The voluntary agreement between the Menomene" -- did I not do that correctly -- "Nation."

COMMISSIONER LANNI: It’s the Menomene.

CHAIR JAMES: "Menomene Nation and a group of unions covering a proposed tribal casino in Kinoshia, Wisconsin is a useful prototype. Further, the Commission recommends that Congress should enact legislation enabling such worker rights only if there is not substantial voluntary progress toward this goal over a reasonable period of time."

It has been moved. It has been seconded. And the question has been called.

All in favor?

(Chorus of ayes.)


COMMISSIONER LOESCHER: Madame Chair, I move 6.4.

COMMISSIONER BIBLE: And I’ll second that.

CHAIR JAMES: Great, we have a motion and second.

"The Commission recommends that labor organizations, tribal governments and states, where appropriate, should work voluntarily together to extend two employees of tribal casinos
the same or equivalent or superior protections that are applicable to a comparable state or private sector employee through federal and state employment laws.

"If state employee protections are adopted as the standard for a particular tribal casino, then they should be those of the state in which the tribal casino is located. Further, the Commission recommends that Congress should enact legislation providing such protections only if there is not substantial, voluntary progress toward this goal over a reasonable period of time."

It has been moved, it has been seconded. Any discussion?

All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

6.5.

COMMISSIONER LOESCHER: Madame Chair, I move 6.5.

COMMISSIONER LANNI: Second.

CHAIR JAMES: It has been moved and seconded.

"The Commission recognizes that, under IGRA, Indian tribes must annually report certain proprietary and non-proprietary tribal governmental financial information to the National Indian Gaming Commission through certified, independently audited financial statements.

"The Commission recommends that certain aggregated financial Indian gambling data from reporting tribal governments, comparable by class to the aggregated financial data mandatorily collected from commercial casinos and published by such states as Nevada and New Jersey, should be published by the National Indian Gaming Commission annually.
"Further, the Commission recommends that the independent auditor should also review and comment on each tribal gambling operation’s compliance with the minimal internal control standards promulgated by the NIGC."

Any discussion?

COMMISSIONER LANNI: Question.

CHAIR JAMES: All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

6.6.

COMMISSIONER LOESCHER: Madame Chair, I move 6.6.

CHAIR JAMES: Do I hear a second?

COMMISSIONER LANNI: Second.

CHAIR JAMES: It has been moved and seconded that "the Commission recommends that, upon written request, a reporting Indian tribe should make immediately available to any enrolled tribal member the annual, certified, independently audited financial statements and compliance review of the MICSs to inspect such financial statements and compliance reviews at the tribal headquarters or request that they be mailed."

Any discussion?

COMMISSIONER LANNI: Question.

CHAIR JAMES: All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

"The Mississippi band of Choctaw should be examined as a role model for Indian gaming." I wonder where this came from?

COMMISSIONER BIBLE: Where did this come from?

(Laughter.)
COMMISSIONER MOORE: I would be not opposed to withdrawing that statement.

CHAIR JAMES: Well, it’s on the record.

COMMISSIONER MOORE: Well, I think that it is.

CHAIR JAMES: It’s on the record and you’ve now said it on national television. So with that, if you’d like to withdraw, we can move on.

COMMISSIONER LOESCHER: Madame Chair, I second Dr. Moore’s affirmative motion to adopt 6.7.

(Laughter.)

COMMISSIONER BIBLE: Question.

CHAIR JAMES: Well, the motion is there.

COMMISSIONER WILHELM: I guess he wants to leave it in.

CHAIR JAMES: He wants to leave it in.

All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

COMMISSIONER LEONE: I have to abstain. I don’t know --

COMMISSIONER LANNI: I’m abstaining also.

CHAIR JAMES: I would have to abstain because I don’t know --

COMMISSIONER WILHELM: This may pass two to one.

(Laughter.)

COMMISSIONER MOORE: The point of putting this in, I realize that there’s only one tribe that has a casino in Mississippi, and that does make it quite easy for them to operate. They have a governor that is very agreeable with them on most things.
But the thing that impresses me most about them, and I would like to see it happen to other tribes whether this passes or not, is that before gaming came to Mississippi, the reservation -- the tribal members under their chief had economic development on that such as electrical -- making electrical harness for Ford Motor Companies, making speakers for the Ford Motor Company, a nursing home, a stationer printing plant and things of that nature.

So they did not wait until gaming came to Mississippi to try to find something for their tribe members. And I think that that’s very, very important that all of them have something besides the gaming to make their livelihood.

CHAIR JAMES: Commissioner Lanni.

COMMISSIONER LANNI: I’m sure it’s quite meritorious, but I think we’re not being very consistent because we had talked before about not offering praises to organizations or entities, and that’s the reason I don’t think this is appropriate.

COMMISSIONER MOORE: That’s why I’ll withdraw it.

COMMISSIONER LANNI: Which I concur.

CHAIR JAMES: Good.

COMMISSIONER BIBLE: They also hired a Nevada licensee to manage their casino.

CHAIR JAMES: "The Commission recommends that tribal and state sovereignty should be recognized, protected and preserved."

COMMISSIONER LOESCHER: Madame Chair, I so move 6.8.

CHAIR JAMES: Is there a second?

COMMISSIONER LANNI: Second.

COMMISSIONER DOBSON: Madame Chair.

CHAIR JAMES: Commissioner Dobson.
COMMISSIONER DOBSON: I understand the concept of state's rights. I do not understand state sovereignty.

COMMISSIONER WILHELM: States have sovereign immunity under the Constitution.

COMMISSIONER DOBSON: Sovereignty means independence. It means it can't be challenged.

COMMISSIONER WILHELM: Well, sovereignty is not necessarily without limits. But both states and tribes, under our law, have sovereignty.

COMMISSIONER DOBSON: Well, I still think this item goes beyond the scope of this Commission and I will oppose it.

CHAIR JAMES: Any further discussion?

COMMISSIONER LOESCHER: Madame Chair, just for the record, I believe that the concept of sovereignty is very fundamental. You know, states have sovereignty. And the fact that we have a Congress is recognition that there are many states, that we have an electoral system that supports it.

States are protected from suits, certain kinds of suits under the U.S. Constitution. And they have rights and all part of sovereignty. And also, tribes do the same -- have the same thing. And this business of recognizing this statement is very fundamental in terms of looking at gaming and it rises in a whole number of aspects of gaming.

And so I believe that this Commission would be doing the right thing by recognizing state sovereignty and tribal sovereignty as a fundamental concept that should be preserved.

COMMISSIONER DOBSON: Madame Chair, the way Commissioner Loescher just described that is what I would call state rights.

CHAIR JAMES: Well, let me --
COMMISSIONER DOBSON: And I’m really bothered by the term sovereignty here.

COMMISSIONER WILHELM: If I may, --

COMMISSIONER DOBSON: You had tribal sovereignty and states’ rights should be recognized. To lump those together as though they are the same bothers me.

COMMISSIONER WILHELM: If I may, I think that the objective of this one sentence recommendation was to point out to those who get entangled in this extremely complex area that essentially neither the tribes, nor the states, should get run over.

That is to say that tribes have sovereignty and that some people don’t want to recognize that fact, and that they need to recognize that fact. But likewise, so do states. So I don’t think it’s a legally improper thing to say, first of all.

But secondly, the objective here, which I think is relatively straightforward, was to say that, in order for these issues to be balanced, those two sets of rights have got to be balanced.

COMMISSIONER BIBLE: And my presumption is that the recommendation does not go beyond current practice.

COMMISSIONER WILHELM: Doesn’t go beyond what the subcommittee understands to be the current law.

COMMISSIONER BIBLE: Yeah.

COMMISSIONER WILHELM: I move the question.

CHAIR JAMES: Well, you’ve called for the question.

"The Commission recommends that tribal and state sovereignty should be recognized, protected and preserved."

All in favor?

(Chorus of ayes.)
Opposed?

COMMISSIONER DOBSON: Aye.

CHAIR JAMES: No?

COMMISSIONER DOBSON: No.

CHAIR JAMES: The motion carries.

Any abstentions?

"The Commission recommends that federal, state, local and tribal governments should take the rapid growth of commercial gambling, state lotteries, charitable gambling and Indian gambling into account as they formulate policies, laws and regulations pertaining to legalized gambling in their jurisdictions.

"Further, the Commission recommends that federal, state, local and tribal governments should recognize the positive economic impacts of Indian gambling, including the long overdue economic development it can generate."

COMMISSIONER LOESCHER: Madame Chair, I so move 6.9.

CHAIR JAMES: It has been moved.

Is there a second?

COMMISSIONER WILHELM: Second.

CHAIR JAMES: Hearing a second, is there a discussion?

COMMISSIONER McCARTHY: May I just make this comment?

In other places of this report, we are examining the need to try to understand the economic benefits and costs of all forms of gambling. And we have tried to stay away from making that judgement unless there was some really compelling circumstance.

And mentioning that there are clearly net economic benefits in a severely economically depressed area is one of those that occurs to me that it’s clear there is. In a desperate situation, quality jobs uplift the lives of a number of people.
Now, I mean, if that’s what we’re -- if we’re saying here that in areas -- and indeed, there are a number where people have been so severely economically depressed that it’s a benefit and we want to stay with that line of thinking, that rationale, I have no objection to that.

This seemed to go beyond that. You know, recognize the positive economic impacts -- if we’re trying to say that we should analyze and balance the costs and benefits of all the impacts, including the severely economically depressed conditions on many Native American lands, that makes sense to me. That’s consistent with what we have been saying up to this point.

Is that what we’re trying to get at here, Bob?

COMMISSIONER LOESCHER: Madame Chair, that’s correct.

CHAIR JAMES: Commissioner Wilhelm.

COMMISSIONER WILHELM: Well, I would add to that a little bit. I don’t know if either of the other members of the Indian Gambling Subcommittee would agree with me or not.

But while I think that basically Leo’s restatement of what we’re trying to say here is correct, and in that regard I agree with Bob’s support of Leo’s statement, I also think it’s worth pointing out that the Indian Gambling Subcommittee, under Dr. Moore’s direction, held very extensive hearings in many parts of the country, some attached to Commission site visits and some not.

And one of the very striking things about those hearings was that you never heard anybody, unlike the Commission’s record with respect to other forms of gambling -- you never heard anybody, that I can recall, who had anything
negative to say about the issue of tribal gambling as an economic
development tool.

Quite the opposite. You heard unanimity not only from
tribal representatives, but from a variety of other commentators
such as state and local governmental officials in areas that have
tribal gambling.

You heard unanimity that the economic developments are
substantial not just in terms of jobs, but in terms of the
ability of the tribes to take advantage of the revenues that have
flowed to the tribes from the gambling enterprises to do a whole
range of things in their -- or for their enrolled members, and in
particular on their reservations -- health care, educational
initiatives, housing and a whole variety of other things.

The record, I think, is unanimous. Now, elsewhere in
these recommendations there is reference to some of the other
problems that the record also shows, such as need to mitigate
effects sometimes on surrounding communities or the need that
we’ve already addressed to deal with the question of the rights
of workers who don’t happen to be tribal members.

But on the issue -- on the specific issue of economic
development, the rather lengthy record of the subcommittee is
really quite unanimous, and I think that that’s what we’re trying
to say here. And I think it’s a record that is very different
from the sort of pros and cons that exist in the record with
respect to other kinds of gambling and other kinds of
communities.

And I would finally just add that I don’t believe
there’s anything in the construction of 6.9 that negates the
concept that obviously is going to be replete in this report,
that there are downsides to gambling.
There’s nothing in 6.9 that says that there aren’t negatives in terms of social cost and individual problems. So I don’t think 6.9 is intended to negate that. But the subcommittee was operating on the, I think, sound assumption that there’s going to be plenty about that throughout the report.

CHAIR JAMES: Commissioner Leone.

COMMISSIONER LEONE: There are two things that make me uncomfortable with this recommendation as it’s written. One is some tribes have chosen not to get into the gambling business. And the way it’s written, we’re calling on them to recognize the positive economic effects that are in there along with the federal, state and local.

And I think it’s presumptuous for us to do that when I suspect that the tribes that have decided not to do this have had a very good reason because it must be, in many cases, obvious that other tribes have done well financially.

The second thing that bothers me about it I think can be cured with a little change in language. While it is true that at other places in the report we make clear that there are some issues raised by the spread of gambling, and that other places we use the language I’m about to highlight, I think it belongs wherever we talk about expanding gambling opportunities, and that is this:

This report should make clear that we view gambling as an exception to the rule, not as something we’ve come to accept as routine and that is only a matter of time before everybody has it. Now, when one makes the case for gambling as an exception to the rule on the basis of economic development, it’s my belief that, by and large, the case is strongest on Indian country and
stronger than it would be for Atlantic City or Detroit or the Delta.

Going back in time, I would argue probably even stronger than it was for Las Vegas 60, 70 years ago. So that if one accepts the notion that if we are going to have gambling, it ought to be an exception, and it ought to be limited, and it ought to have a good justification, and the best justification we can think of are the local, positive economic effects on the people directly in a position to gain something from its revenues, then the case for the exception in Indian country is strong.

Language like that I could support. I think that’s true. I think that’s different from recommending the positive economic effects. I think it may be just the way — I mean, I would recommend and would have recommended and have recommended, over the years, a lot of things government ought to do that would have positive economic effects I believe on places where there’s high unemployment and where people are in distress or there’s considerable inequality.

I view this one as a last resort. But if you’re going to go this way, then I think the case is strong for Indian country. And I think you — in other words, I think you could craft something like this that I could vote for, but I’m uncomfortable with it as written.

And you may not need my vote.

CHAIR JAMES: Commissioner Bible.

COMMISSIONER BIBLE: I see this really as a finding that the purpose of IGRA has been fulfilled. IGRA was created to allow gambling as a means of economic development and diversification for tribes.
I read this recommendation as saying that that has been positive and tribes have benefited positively in terms of their economic development and growth through the introduction of gambling.

CHAIR JAMES: I think it says a little more than that, and I think that’s what’s troubling me. It says that the Commission recommends that federal, state and local tribal governments should recognize the positive impact of Indian gambling, including economic development.

And I just don’t think that we have enough information before us to make the statement that it has been positive economic -- has a positive economic impact. I think there has been testimony on the economic development, and I sort of separate those two out.

COMMISSIONER BIBLE: Well, I think it’s had a positive economic development impact on the tribe. Maybe beyond that, if there’s some social costs, they’re probably exported to tribal land or something.

COMMISSIONER MOORE: Well, I think that basically that’s what we’re trying to say. And certainly we would accept any redistribution or new words here. I thought that we were pretty good in getting this together, especially the first part of this.

"The Commission recommends that federal, state, local and tribal governments should take the rapid growth" -- la, la, la -- "and regulations pertaining to legalized gambling in their jurisdiction."

I thought that we was getting the point over that all types -- maybe we won’t use that word -- that they should pause
and think a little bit. But then I would be willing to accept pertaining to the native tribes.

CHAIR JAMES: Are we suggesting there should be no pause there?

Commissioner Wilhelm?

COMMISSIONER WILHELM: Some of the train of logic here is strange to me. We have taken considerable care, I believe, in all of these recommendations to apply them to all forms of gambling enterprises including, among other things, tribal.

So when we say well, you know, there ought to be a pause, applies to tribal. When we say some places may want to have a moratorium, applies to tribal. When we say don’t forget about the negatives, as we say over and over and over again on page after page, applies to tribal.

If we’re going to follow the logic that anytime we say anything positive, we’ve got to make sure and balance it with the possible negative, then I think the reverse also ought to be true. I think if that’s the logic of this report, then every single time we say anything negative, we also ought to lob in some words balancing it with a possible positive.

This paragraph, taken in the entire context of this report, seems to me it is perfectly obvious that, to the extent that there may be some positives in some communities, and to the extent that there undoubtedly are positives in Indian reservations, there’s also negatives on Indian reservations as well as everywhere else.

So if we’re going to insist every time anybody has the -- I’m sorry, let me retract that. I’ll be more neutral.

If we’re going to insist every time there’s any positive statement about anything that has to do with gambling
here, that we’ve got to balance it with a negative, let’s do it the other way, too.

CHAIR JAMES: John, that’s not my suggestion. What I’m having a problem with is separating out the broader term of positive economic impact with economic development and wanting to say -- I’m not sure we have the data or have been able to see the data that would substantiate positive economic impact generally.

But I think we have seen it to say economic development. So my suggestion would be that it says, "Further, the Commission recommends that federal, state and local tribal governments should recognize the long overdue economic development that gambling has generated or something like that, and not make a statement about positive or negative economic impacts.

COMMISSIONER DOBSON: Madame Chair, I’d like to make a motion that we accept the language that you just suggested.

COMMISSIONER LOESCHER: I second the motion.

CHAIR JAMES: And I think we can get consensus on that.

COMMISSIONER WILHELM: If it’s okay with Bob, it’s okay with me.

COMMISSIONER LOESCHER: Okay.

COMMISSIONER MOORE: Sounds good to me.

CHAIR JAMES: Okay, further the Commission -- then it reads then -- the first sentence stands. "Further, the Commission recommends that federal, state and local tribal governments should recognize the long overdue economic development that gambling can generate for" -- well, I don’t know that we need a for.

COMMISSIONER MOORE: Can generate. That Indian gambling can generate, right?
CHAIR JAMES: That’s correct.
CHAIR JAMES: All in favor?
(Chorus of ayes.)
Any opposed? Any abstentions?
COMMISSIONER DOBSON: Madame Chair.
CHAIR JAMES: Commissioner Dobson.
COMMISSIONER DOBSON: Would it be appropriate to ask you and my fellow commissioners if an additional recommendation can be put forward at this point right here?
CHAIR JAMES: Anything is appropriate, if you’d like to suggest that.
COMMISSIONER DOBSON: I’m recommending a 6.9(a), if you will, or (b), that would state "the Commission has heard substantial testimony that the Federal Government has, until lately, largely failed to enforce the provisions of IGRA. We recommend that the Federal Government fully and consistently enforce all provision of that law."
COMMISSIONER BIBLE: I’d second that.
CHAIR JAMES: We have a motion. We have a second. Would you like to have some discussion?
COMMISSIONER LOESCHER: Madame Chair.
CHAIR JAMES: I’m sorry, I did not ask for abstentions and we do have one, and that’s Commissioner McCarthy on the last vote.
So we have a motion before us now. Discussion?
COMMISSIONER LOESCHER: Madame Chair.
CHAIR JAMES: Commissioner Loescher.
COMMISSIONER LOESCHER: I kind of wonder about the foundation for that recommendation. I happened to attend subcommittee hearings with Dr. Moore and Commissioner Wilhelm all
across America, and I think I heard at least nine hearings where Native Americans and others testified, including the Indian Regulatory Gaming Commission officials and others from the Bureau of Indian Affairs, over 130 tribal leaders and representatives of the United States.

And I thought there was overwhelming testimony that IGRA does work and that it’s been in place just -- I know not more than a decade. And a lot of improvements have been made towards contributions by tribes in terms of funding IGRA from their side.

And they’ve been making improvements to the minimum regulatory controls, and that’s been promulgated by regulation by the secretary and being implemented voluntarily. And all of the other compliance with the U.S. Treasury Department and other places has been certified to and represented, the banking policies and the money handling polices and all that.

And I believe, quite frankly, that I can’t remember too many people who said that it wasn’t in compliance or up to grade. So I’d like to have a recitation in the record of who testified that it wasn’t, because I have at least 130 people that testified that it was.

So I think the record lacks foundation for this amendment.

CHAIR JAMES: Commissioner Dobson.

COMMISSIONER DOBSON: I think there was testimony that supports this recommendation, specifically several attorneys general in California who came and testified that the Federal Government had not implemented the law in the case of the decisions that were facing California.

COMMISSIONER LOESCHER: Madame Chair.
CHAIR JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: I think there is a dichotomy of the issues that are being presented. I think there are two sets of issues. One is the regulatory construction and oversight and the funding is one question.

The second question is the issue of uncompacted tribes. And certainly that there is dispute between the tribes and the states and it has been reviewed by the Federal Government. And I believe Dr. Dobson is probably correct with regard to the citation with regard to the uncompacted tribes being out of compliance.

At least that's the allegation being alleged. But I don't believe that the whole issue -- I don't think Native Americans should be tainted on the whole issue of the regulatory versus the uncompacted.

CHAIR JAMES: Jim, did you -- I'm sorry that we don't have it in front of us, but did your motion deal with uncompacted tribes?

COMMISSIONER DOBSON: It did mention that. Let me read it again. "The Commission has heard substantial testimony," and I think that’s an accurate statement which we could document, "that the Federal Government has, until lately, largely failed to enforce the provision of IGRA."

"We recommend that the Federal Government fully and consistently enforce all provisions of that law."

CHAIR JAMES: Seems benign enough to say that they ought to do what they are told to do.

COMMISSIONER LOESCHER: Yeah, Madame Chairman, I just have a hard time because the facts don't hold out. And all of which Dr. Dobson argues is before -- has been before courts in
this land and is before at least three jurisdictions, circuit
courts in the United States, have been ruled on, and now is
subject to the Secretary of Interior’s promulgation of
regulations, which have been enjoined by the State of Florida in
a lawsuit.

And now the Secretary of Interior has said to the
committee of Congress that the courts should decide the issue.
And I think that’s a fair position since Congress United States
senators have accepted that this is the right place for this
discussion.

I think Dr. Dobson should accept that idea as well. I
don’t believe that his statement is true because it is being
enforced, it has the attention of the Department of Interior. It
has the attention of the U.S. Justice Department.

It has the attention of Congress. There’s at least
three bills before Congress right now on this very subject.

CHAIR JAMES: Bob, let me --

COMMISSIONER LOESCHER: And what I’m saying is that his
proposal is without merit. The government has had the oversight
and has not under enforced this idea.

CHAIR JAMES: Bob, let me, for point of clarity, try to
understand which portion of this that you take objection to. And
I think I heard you say that you take objection to the first part
about whether or not we’ve heard the substantial testimony.

I understand that. Do you object to this statement:
"We recommend that the Federal Government fully and consistently
enforce all provisions of IGRA?"

COMMISSIONER LOESCHER: Madame Chair, I don’t oppose
that phrase at all.
CHAIR JAMES: Okay, so is it the first part of that that’s the problem?

COMMISSIONER DOBSON: Madame Chairman, I want to clarify that this recommendation is not aimed at the tribes, --

CHAIR JAMES: It’s aimed at --

COMMISSIONER DOBSON: It is designed to ask the Federal Government to do its job, and we have had testimony saying that it isn’t.

COMMISSIONER BIBLE: And I second the motion. You are right. We have had testimony. We heard it from the National Governors Association. We had it from a number of state attorneys general. And their concern was that, by lack of enforcement, the fundamental nature of IGRA had been altered and that gambling had been permitted to grow through the lack of an enforcement mechanism to require compacts.

COMMISSIONER LOESCHER: Madame Chair, and then on the flip side, we have had tribal leaders come before the Commission to say that the states have not been negotiating in good faith and that they have not been doing their part as well, and hence the source of disagreement.

That’s where we are.

COMMISSIONER WILHELM: Madame Chair.

CHAIR JAMES: Commissioner Wilhelm.

COMMISSIONER WILHELM: I would respectfully suggest to Jim I think this is a real thicket. Bob is absolutely right. We have had considerable testimony from various points of view about whether or not IGRA is being enforced and who -- in whose view certain actions or inactions by the Federal Government constitute an inability or a lack of will to enforce.
I would respectfully suggest that this is not a road worth going down.

COMMISSIONER MOORE: Madame Chair.

CHAIR JAMES: Commissioner Moore.

COMMISSIONER MOORE: I believe if we go through the recommendations, all of these recommendations -- practically all of them have been tightened, the regulatory control of the government over the tribal gamings, such as the very first one, more money.

We know that there are more regulators now. And I'm going to agree with Mr. Wilhelm and Mr. Loescher that I believe that we should be satisfied if we could get the ones that we are recommending passed unanimously and that we should be happy.

CHAIR JAMES: May I suggest that we table this one, get to the end of this particular section and see if that is, in fact, the case? And if it is not, then we should reconsider it at that time.

COMMISSIONER DOBSON: With all respect, Madame Chair, I'd like it to be considered.

CHAIR JAMES: Right now?

COMMISSIONER DOBSON: Yes.

CHAIR JAMES: Okay, that's not a problem.

COMMISSIONER MOORE: We're considering 6.9(a). We've already voted on 6.9.

COMMISSIONER DOBSON: Yes.

CHAIR JAMES: Yeah, this is 6.9(b).

COMMISSIONER McCARTHY: I assume you're counting votes, Dr. Dobson. And I want to tell you --

COMMISSIONER DOBSON: Do what's right, Leo.
COMMISSIONER McCARTHY: I want to tell you, I agree with what the Chair just suggested.

COMMISSIONER MOORE: That’s fine.

CHAIR JAMES: Because I think if you -- we could work on it a little while longer, Jim, you may not have to see it die. We may be able to come up with a way to work the language --

COMMISSIONER DOBSON: All right, I yield on that.

CHAIR JAMES: -- to get that.

And so why don’t I take that one and see if we can do anything with it, and we will table it for right now.

6.10. "The Commission recommends that tribes, states and local governments should continue to work together to resolve issues of mutual concern rather than relying on federal law to solve problems for them."

COMMISSIONER LOESCHER: Madame Chair, I move recommendation 6.10.

CHAIR JAMES: Do I hear a second?

COMMISSIONER BIBLE: I’ll second that.

CHAIR JAMES: Any discussion?

COMMISSIONER LANNI: Call the question.

CHAIR JAMES: Question. All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions? The ayes have it.

6.11. "The Commission recommends that tribes, states and local governments should recognize and memorialize the mutual benefits that flow to all communities from Indian gambling. Further, the Commission recommends that tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects of the activities that may occur on
neighboring lands and to balance the rights of tribal, state and local governments, tribal members and other citizens.

COMMISSIONER LOESCHER: Madame Chairman, I move the proposal of 6.11.

COMMISSIONER WILHELM: Second.

CHAIR JAMES: Discussion?

COMMISSIONER DOBSON: Madame Chair, I’d like someone to explain that one to me.

CHAIR JAMES: Boy, I’ll bet other segments of the gambling industry would like to get a recommendation like this.

COMMISSIONER WILHELM: I would undertake to explain that, perhaps.

CHAIR JAMES: Commissioner Wilhelm.

COMMISSIONER WILHELM: There was ample testimony to the Indian Gambling Subcommittee that -- and no disagreement, that I can recall, with the concept that there are benefits that flow to surrounding -- to communities that surround tribal gambling sites and to the citizens of those communities.

On the other hand, there was also some testimony about negative impacts on communities that surround the tribal gambling sites or the citizens of those communities. And some of that testimony had to do with the kinds of negativity that the Commission has discussed at length about problem gambling and so forth.

Some had to do with very difficult legal issues related to zoning and infrastructure and things like that. As a practical matter, under the law, as the subcommittee understands it, states and localities cannot mandate that tribal governments be taxed or have to participate in, you know, road building or anything else.
The legally correct way to approach those issues is by reciprocal agreements between state and local governments and the tribes. And the purpose of the second sentence of 6.11 is to acknowledge that negative effects like that do flow from these tribal gaming activities and that there needs to be agreements between the tribes on the one hand and the state and local governments on the other hand to mitigate those effects.

That’s the purpose. Because communities, for example, cannot, under the law, apply their zoning standards to the development of a tribal casino even though the development of a tribal casino may have a huge impact on the surrounding community.

COMMISSIONER DOBSON: The second sentence is not a problem for me. It’s the first that I have difficulty with. "The Commission recommends that tribes, states and local governments should recognize and memorialize the mutual benefits that flow to all communities from Indian gambling."

I think it was Richard that made the case earlier that there are Indian tribes that have not chosen to be involved in gambling. This is a blanket statement involving all tribes, recognizing that there are mutual benefits flowing to everybody.

That’s a sweeping statement that I’m not willing to endorse.

COMMISSIONER LEONE: You know, I think obviously this -- reading this, this looks like language that is meant to be a fair in making the point, and I think that probably the -- I don’t object to the notion of -- in this context considering the --

COMMISSIONER DOBSON: Excuse me, Richard. I’m having trouble hearing you.
COMMISSIONER LEONE: Oh, I don’t object to the notion that, in this context, one ought to recognize the positive effects or -- that flow, but I do think Jim has put his finger on something. I’m not sure what it means to all communities.

I think you mean in the vicinity or all the benefits aren’t localized.

COMMISSIONER WILHELM: Bob, I don’t see a problem with --

COMMISSIONER LEONE: Or people get hired and they get jobs.

COMMISSIONER WILHELM: I don’t see a problem with dumping the word "all," do you, Bob?

COMMISSIONER LOESCHER: No, that’s fine with me.

COMMISSIONER MOORE: Or communities adjacent.

COMMISSIONER WILHELM: Or just communities.

COMMISSIONER LEONE: Yes, because then it can be the communities where people have -- who work there, have their homes and things. So I think that’s --

COMMISSIONER LEONE: Well, that addresses have of it, but the first few words, "The Commission recommends that tribes," that’s everybody, all tribes not just those who have chosen gambling. You make it a recommendation to those who have not seen benefits --

COMMISSIONER MOORE: The gaming tribes.

COMMISSIONER DOBSON: -- as well.

COMMISSIONER LOESCHER: Madame Chair, involved tribes, or participating tribes, or --

COMMISSIONER MOORE: Gaming tribes.

COMMISSIONER LANNI: Gaming tribes.

COMMISSIONER LOESCHER: Gaming tribes.
CHAIR JAMES: The Commission recommends that tribes --

COMMISSIONER LOESCHER: Gaming tribes.

CHAIR JAMES: -- that participate in or which participate in?

COMMISSIONER DOBSON: Have embraced gambling enterprises or something of that nature.

COMMISSIONER LANNNI: Why not just gaming tribes?

COMMISSIONER DOBSON: Gaming tribes should be all right.

CHAIR JAMES: Gaming tribes.

"The Commission recommends that gaming tribes, states and local governments should recognize.

COMMISSIONER MOORE: And we can leave out memorialize.

COMMISSIONER WILHELM: We just want you all to write it down so you didn't forget them.

COMMISSIONER MOORE: Should recognize the mutual benefits.

COMMISSIONER DOBSON: Memorialize should go.

COMMISSIONER WILHELM: Bob, I'm okay with leaving memorialized out. Are you?

COMMISSIONER LOESCHER: I have no problem.

CHAIR JAMES: "The Commission recommends that gaming tribes, states and local governments should recognize the mutual benefits that flow to communities from Indian gambling" is how it reads right now.

COMMISSIONER DOBSON: How about adding the word may in front of flow?

(Laughter.)

COMMISSIONER LOESCHER: I have no objection to may, Madame Chair.
COMMISSIONER WILHELM: Bob, you’re in a generous mood this afternoon.

CHAIR JAMES: "The Commission recommends that gaming tribes, states and" --

(Laughter.)

COMMISSIONER DOBSON: How about may possibly?

(Laughter.)

CHAIR JAMES: Okay, right now we have "the Commission recommends that gaming tribes, state and local governments should recognize the mutual benefits that may flow to communities from Indian gambling.

"Further, the Commission recommends the tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects" is how it reads right now.

Does the --

COMMISSIONER McCARTHY: May I ask a question, please? Is the language still in this that says "may occur on neighboring lands" or has that been deleted?

CHAIR JAMES: That’s still there.

COMMISSIONER McCARTHY: Could someone from the Indian subcommittee tell me what is meant by neighboring lands?

COMMISSIONER MOORE: Adjacent.

COMMISSIONER WILHELM: It means the nearby communities. That’s what it’s meant to mean, anyway.

COMMISSIONER McCARTHY: I don’t have any specific knowledge in whether many of the patrons of Native American tribal casinos come from some distance away. They may not. So I’ve been in the research area and other areas.
I’m trying to describe the host communities versus the feeder communities so we get a better description of what it is we’re talking about.

CHAIR JAMES: How about this, if we say --

COMMISSIONER McCARTHY: Bob, do you understand what I’m getting at?

COMMISSIONER LOESCHER: Yes, I do.

CHAIR JAMES: How about other communities? So that it would then read, "Further, the Commission recommends that tribes should enter into reciprocal agreements with state and local governments to mitigate the negative effects of the activities that may occur" --

COMMISSIONER McCARTHY: In.

CHAIR JAMES: -- "in other communities, and to balance the rights of tribal, state and local governmental tribal members and other citizens."

COMMISSIONER LANNI: Move the question.

CHAIR JAMES: All in favor?

(Chorus of ayes.)

Any opposed? Oh, this is getting good. Any abstentions?

COMMISSIONER McCARTHY: You now have 16 unconnected clauses.

(Laughter.)

CHAIR JAMES: 6.12. "IGRA allows tribes and states to negotiate any issues related to gambling. Nothing precludes voluntary agreements to deal with issues unrelated to gambling either within or without compacts.

"Many tribes and states have agreements for any number of issues, e.g. taxes, zoning, environmental issues, natural
resource management, hunting and fishing. The Commission recommends that the Federal Government should leave these issues to the states and tribes for resolution."

If it has nothing -- I’m sorry.

COMMISSIONER LOESCHER: Madame Chairman, I move proposal 6.12.

COMMISSIONER LANNI: Second.

CHAIR JAMES: Is there a second? Discussion. If it has nothing to do with gambling, why are we talking about it?

COMMISSIONER McCARTHY: You mention often tribes and state governments. Do you want to say tribal and state governments? We do that in a number of places here.

COMMISSIONER MOORE: That would be all right.

COMMISSIONER LOESCHER: We’re talking about tribal governments here.

COMMISSIONER McCARTHY: Right, that’s what I said. Isn’t that want you want us to say, tribal? We mention tribes and state governments. Don’t you want to say tribal governments and state governments, or tribal and state governments, either one?

COMMISSIONER LOESCHER: I’ll be happy with anything.

(Laughter.)

COMMISSIONER DOBSON: Do we want tribal without governments? It’s an adjective, so you wouldn’t want --

COMMISSIONER McCARTHY: Is that what a USC education does for you?

COMMISSIONER DOBSON: That’s part of it, Leo. Come around and I’ll tell you the rest.

(Laughter.)

CHAIR JAMES: Can anyone answer my basic question?
COMMISSIONER WILHELM: Yes.

CHAIR JAMES: There must be something there on this.

COMMISSIONER WILHELM: Yes, this is actually a fairly important point, I believe. There is a good deal of -- I don’t know of contention is the right word, but at least lack of clarity perhaps, about what kinds of issues may --

CHAIR JAMES: I think they’re cutting a deal over there.

COMMISSIONER LOESCHER: Madame Chair.

CHAIR JAMES: Yes, Commissioner?

COMMISSIONER LOESCHER: I didn’t hear a thing that John said, but it was awesome, I know it was.

COMMISSIONER WILHELM: I stopped.

CHAIR JAMES: He stopped so that you could hear every word.

COMMISSIONER WILHELM: There’s a lack of clarity about whether some very legitimate issues between states and communities and tribes that flow from gambling should or should not be included in compacts negotiated pursuant to IGRA.

Just as an example, there are substantial zoning issues that are directly related to the establishment or the expansion of the gambling enterprises on reservations. And yet, there’s a lack of clarity about whether it is appropriate -- some say yes, some say no -- to include zoning issues in a gaming compact.

So the purpose of this section is to say that it’s very important, whether it be within or without compacts, for the tribes and the states to agree with these kinds of issues that arise between communities and tribes.

And sometimes whether they’re directly caused by gambling or not is not all together clear. And moreover, the
subcommittee concluded that it’s best if the states and the tribes work those things out rather than have them legislated by the Federal Government.

CHAIR JAMES: Can we work on the language unrelated to gambling a little bit?

COMMISSIONER LOESCHER: Madame Chair.

CHAIR JAMES: Because the implication is that, in some cases, they are related even though it may not seem so at first blush. Is that -- I don’t want to unfairly characterize it.

COMMISSIONER LOESCHER: Madame Chair, there’s a principle involved, and maybe we’re too subtle.

CHAIR JAMES: Yeah, let’s put it right out on the table.

COMMISSIONER LOESCHER: And this tension, this relationship between states and tribal governments negotiating compacts, IGRA says one thing, the tribes are after one thing, the states are after another thing, but they use different language like the word taxes and other consideration.

Well, what has come to pass is that tribes recognize this and want to preserve the integrity of their sovereignty and also IGRA, so they negotiate for a road to build a road to connect to a state highway.

They negotiate to contribute to the state treasury as long as they get some other consideration like a franchise or something like that. And that’s what we’re talking about. We’re trying to encourage that this process should continue that has been set by example, for instance, in Connecticut and other places.

And that’s why it’s a little bit subtle.
CHAIR JAMES: Well, I have no issue with the final statement, which is the Federal Government should leave these issues to states and tribes. I certainly agree with that. I was just trying to understand, if it’s completely unrelated to gambling, why it was an issue that came before this Commission. I trust your explanation of that.

COMMISSIONER WILHELM: Bob, people have accused me of a lot of things in my life, but being subtle is not one of them.

(Laughter.)

CHAIR JAMES: Did you want to call for the question?

COMMISSIONER MOORE: Call for the question. But we would have no problem with restating, but we’ll call for it. Let’s call for it.

CHAIR JAMES: All in favor?

(Chorus of ayes.)

All opposed? Any abstentions?

COMMISSIONER LEONE: I abstain.

CHAIR JAMES: One abstention.

6.13.

COMMISSIONER LOESCHER: Madame Chairman, I move 6.13.

CHAIR JAMES: Okay, for the benefit of those viewers, let me read that.

"The Commission recommends that Congress should specify a constitutionally sound means of resolving disputes between states and tribes regarding Class III gambling.

"Further, the Commission recommends that all parties to Class III negotiation should be subject to an independent, impartial decision maker who is empowered to approve compacts in the event a state refuses to enter a Class II compact, but only if the decision maker does not permit any Class III games that
are not available to other citizens of the state and only if an
effective regulatory structure is created."

Is there a second for that?

COMMISSIONER MOORE: Second.

CHAIR JAMES: There is a second. It has been moved and
seconded. Any discussion?

COMMISSIONER LOESCHER: Madame Chairman, I have an
amendment which I’ve circulated to the Commission members. I’d
like to move my amendment. Number 12 on my list. The language
is, Madame Chair, that the IGRA should be amended with the tribal
and state "opt in" that mutually waives their restrictive
sovereign immunity sufficient -- their respective sovereign
immunity sufficient to subject them to enforcement in the courts.
I so move.

COMMISSIONER LEONE: What number is this on your
amendment?

COMMISSIONER LOESCHER: Number 12.

COMMISSIONER MOORE: The big issue here is for the
states as well as the tribes to waive their sovereign immunities.
And this was discussed a lot. We had an agreement earlier that
we might -- we could leave that out, but it doesn’t surprise us
to see it resurface and that’s something that we need to discuss.
The states, in other words, gives up their right not to
be sued, isn’t that correct?

CHAIR JAMES: We have an amendment before us. The
amendment to the motion needs a second. Is there a second for
the amendment? Hearing none, the amendment dies and now we will
consider the full motion as it reads at 6.13.

COMMISSIONER LOESCHER: Question.

CHAIR JAMES: All in favor?
(Chorus of ayes.)

Any opposed? Any abstentions?


COMMISSIONER MOORE: Second.

CHAIR JAMES: It has been moved and properly seconded.

Is there any discussion? Let me read it for the benefit of those who are following these proceedings.

"The Commission recommends that IGRA should be amended so that states can collect funds from Class III gambling operations for the purpose of responsible gambling education and for the identification and treatment of people who suffer from compulsive gambling.

"Further, the Commission recommends that the collection rate of these funds should be the same as the collection rate of funds from all other forms of legalized gambling in the state."

Any discussion?

COMMISSIONER LANNI: I just have a problem with the word collection rate. I mean, you could argue that someone else is not paying their -- you know, it’s the rate of collection. I think the verbiage is not appropriate.

CHAIR JAMES: Is misleading. Can you suggest a change, Terry? How about just same as the rate?

COMMISSIONER LANNI: Well, the rate would be better, I think. It should be the same rate.

COMMISSIONER MOORE: That’s fine with me.

COMMISSIONER LANNI: I think that would work if it’s acceptable to whoever made the motion.

COMMISSIONER MOORE: No objection.
COMMISSIONER LOESCHER: Yes, that’s fine.

COMMISSIONER LANNI: I’d second it.

CHAIR JAMES: All right, question?

All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

6.15. "The Commission recommends that Congress should adopt no law altering the right of tribes to use existing telephone technology to link bingo games between Indian reservations when such forms of technology are used in conjunction with the playing of Class II bingo games as defined under the Indian Gaming Regulatory Act."

COMMISSIONER DOBSON: That’s covered by an earlier item?

CHAIR JAMES: I don’t think it was. I think we said that it would be coming up later.

COMMISSIONER LOESCHER: Madame Chairman, I would like to move 6.15.

COMMISSIONER BIBLE: I’ll second that.

EXECUTIVE DIRECTOR KELLY: It has been moved and seconded. Discussion, 6.15.

COMMISSIONER LANNI: Call the question.

CHAIR JAMES: All in favor of 6.15, please signify by saying aye.

(Chorus of ayes.)

Any opposed? Any abstentions?

COMMISSIONER DOBSON: I abstain.

CHAIR JAMES: I abstain on this one as well.

COMMISSIONER McCARTHY: Madame Chair.

CHAIR JAMES: Yes, Commissioner McCarthy.
COMMISSIONER McCARTHY: Are you finished announcing the vote on this?

CHAIR JAMES: Are you abstaining or are you -- did you vote aye?

COMMISSIONER McCARTHY: No, I voted aye.

CHAIR JAMES: Oh, okay; then we’re finished on that one.

COMMISSIONER McCARTHY: I have a question on the one we did passed, 6.14. I’m sorry I missed it. Let me just raise it. I don’t think Mr. Loescher will have any -- I hope, or the Chairman of the Subcommittee or the other member, Mr. Wilhelm -- in 6.13, we say that IGRA should be amended so the states can collect funds from Class III gambling.

Why would we limit any contribution from tribal governments that operate gambling facilities to Class III when Class II games may also contribute to problem and pathological gambling and also should appropriately -- funds there from should be used for education and prevention and for research?

Do you see the point I’m making, Bob?

COMMISSIONER LOESCHER: Yes, Madame Chair.

COMMISSIONER McCARTHY: Why would we limit that to Class III? It should be Class II and Class III.

COMMISSIONER MOORE: Bingo, I guess.

COMMISSIONER LOESCHER: Yes, Madame Chair, the only thoughts that I have would be regarding the bingo, which is merely close to nonprofit or charitable, and we’re not so sure that they could carry any kind of load.

CHAIR JAMES: Do you want to think about that one and see if you want to come back and revisit it?
COMMISSIONER McCarthy: Well, I mean, do we know that bingo’s the only type of Class II gambling that’s going to be allowed on tribal lands?

CHAIR James: Do you have the --

COMMISSIONER Bible: I can’t, off the top of my head, think of any other. Now, there’s movements from time to time to try and reclass a lot of Class III games to Class II games so they escape the compacting provisions.

COMMISSIONER Loescher: We wouldn’t do that.

(Laughter.)

COMMISSIONER McCarthy: Well, there are some suggestions to make bingo -- you know, make it available over the Internet to make it a significant source. And while it certainly seems harmless at this point as it usually exists, --

COMMISSIONER Bible: I think your suggestion is better because it incorporates all of the activity, which is the intent of replacing it.

COMMISSIONER Bible: Yes.

CHAIR James: So that would be to modify that, to go back and revisit that and have it Class II and Class III?

COMMISSIONER Bible: Probably ought to take out the from Class III. I don’t know if there’s any Class I that has any kind of revenue attached to it, but there may be.

CHAIR James: So what you’re suggesting now is that it say the Commission recommends that IGRA should be amended so that states can collect funds from gambling operations?

COMMISSIONER Wilhelm: Presumably to say tribal.

CHAIR James: From tribal gambling operations.

COMMISSIONER Wilhelm: Bob, how do you feel about that?
COMMISSIONER LOESCHER: I have some tougher ones coming up, I think.

(Laughter.)

CHAIR JAMES: From tribal gambling operations. Would you all like to vote on that, or are you accepting that as a friendly amendment?

COMMISSIONER LOESCHER: We accept it.

CHAIR JAMES: It’s been accepted and there’s general consensus that that should be adopted.

All right.

COMMISSIONER WILHELM: 6.16.

CHAIR JAMES: Yes, we’re on 16.

"The Commission recommends that tribal governments should be encouraged to use some of the net revenues derived from Indian gambling as seed money to further diversify tribal economies and to reduce their dependency on gambling."

Do I hear a motion?

COMMISSIONER MOORE: Moved.

CHAIR JAMES: It is so moved. Seconded?

COMMISSIONER LOESCHER: Second.

CHAIR JAMES: It has been moved and seconded. Any discussion?

COMMISSIONER LOESCHER: Question.

CHAIR JAMES: Call for the question.

All in favor?

(Chorus of ayes.)

Any opposed? Any abstentions?

Recommendation 6.17.

COMMISSIONER LOESCHER: Madame Chair, before we go on to 6.17, on my list of amendments I had a new 6.17.
CHAIR JAMES: Okay.

COMMISSIONER LOESCHER: And it’s numbered 16 on my sheet. It reads, "The IGRA should be amended to repeal the good faith standard for negotiating Class III compacts and substitute a no fault impasse provision."

I so move.

CHAIR JAMES: Well, hold just a second. Let me clarify this. We are right now looking at recommendation 6.17. And are you suggesting that we substitute the language that you just read for 6.17?

COMMISSIONER LOESCHER: No, it’s a new 6.17.

CHAIR JAMES: You have a new 6.17?

COMMISSIONER LOESCHER: Right.

COMMISSIONER WILHELM: It’s number 16 on the sheet Bob submitted today.

CHAIR JAMES: Yeah, I got that; but he’s not suggesting that it replace it. He’s just suggesting an addition.

COMMISSIONER LOESCHER: Make it a 16(a), Madame Chair.

CHAIR JAMES: Okay. Well, let’s -- does it matter to you, Bob, in what order we take these?

COMMISSIONER LOESCHER: No.

CHAIR JAMES: Now, is 17 an addition as well?

COMMISSIONER LOESCHER: Yes, the 17 is on my list of proposed amendments as an amendment that I’d like to add -- a proposal I’d like to add.

CHAIR JAMES: Okay, then my recommendation is going to be that we work through the ones that we have here, give commissioners the opportunity to read those and to assimilate them. And then at the end we’ll take them as 23 and 24.

Do you follow me? Sixteen is then 23 and 17 is 24.
COMMISSIONER LOESCHER: We accept that, Madame Chair.

CHAIR JAMES: Okay, the recommendation before the Commission right now is 6.17.

"The Commission recommends that Native American tribal gambling be limited to whatever form of gambling already exists within the state in which their facility resides."

COMMISSIONER WILHELM: That’s been addressed.

CHAIR JAMES: I think it has.

18, "The Commission recommends that Native American tribal gambling facilities contribute to the cost of services they either require or elicit from state or local governments."

COMMISSIONER MOORE: That’s been addressed.

CHAIR JAMES: Where was that one addressed?

COMMISSIONER MOORE: It was --

COMMISSIONER WILHELM: The thing about tribes and localities negotiating agreements with each other.

CHAIR JAMES: That’s right.

19 regarding state tribal gambling compacts, "The Commission recommends that there be a good faith requirement for both the Native American and the state side during negotiations."

COMMISSIONER WILHELM: That relates to one that they’re proposing.

COMMISSIONER LANNI: That’s relating to your 6.23.

CHAIR JAMES: So let’s take that now then, 6.23. So what Bob is suggesting is that on 6.19 that we substitute good faith and put in instead a no fault impasse provision.

COMMISSIONER DOBSON: Madam Chair, I don’t understand that one. I don’t know the language. I am not sure what a "no fault impasse" is.

COMMISSIONER LANNI: I agree.
COMMISSIONER DOBSON: I think I know what good faith means, but there has got to be a story behind this one. I don’t know what the story is.

CHAIR JAMES: I’m sure there is. Does anybody know?

COMMISSIONER LOESCHER: Yes, Madam Chair. I know. Madam Chair, and maybe it’s too much for a citizens panel like ourselves, a commission appointed by the President and the Congress to be able to do it, because there’s 435 Members of Congress who are focused on this issue, the courts, the Federal Administration, how many state governments, are all focused on the same thing.

What I was trying to do is sort of suggest that there be a way to move this process between states and tribal governments just a half a step forward. Hence, I advanced earlier the notion of both sides putting down their guard on sovereignty and allow themselves to negotiate the subject to suit on sovereignty. That would move the ball forward one step.

Another step would be this good faith negotiation business that we are suggesting here, that there be no fault scenario if the states and tribes sit down and try to negotiate and work with each other, that they be able to do this without having to face issues regarding their sovereignty and defenses that they may put up. That is the whole idea of this and that. This would move the ball forward a half a step to encourage the states and the tribes to get together.

CHAIR JAMES: Bob, what are the legal implications of the term of art "no fault impasse" provision?

COMMISSIONER LOESCHER: I’m not a lawyer.

CHAIR JAMES: I don’t know what --
COMMISSIONER LOESCHER: I do have lawyers here that could help me, if you don’t mind.

COMMISSIONER MOORE: May I?

CHAIR JAMES: Certainly.

COMMISSIONER MOORE: What would happen if you had this in and the state and the tribe came to the table and they came to no conclusion about the compact? Then where would we go, to an arbitrator?

COMMISSIONER LOESCHER: Yes. Madam Chair, that’s the whole thing. Well, let me put it this way. The secretary’s regulations contemplate a process where he would adjudicate any impasse. Senator Campbell has introduced the bill two weeks which would acknowledge a neutral mediator or arbitrator between the states. That is the idea.

I think our proposal, the Senator’s proposal, and the Administration’s proposal head in the same direction in order to try to get the impasse between the states off the dime so that there can be a good faith progress in this area.

CHAIR JAMES: Commissioner Wilhelm?

COMMISSIONER WILHELM: In the Indian Gambling Subcommittee, particularly in the very extensive discussions and trading of ideas and things like that that went on, the three of us attempted to get our arms around this question of what it is, if anything, that this Commission knowledgeably say about the very serious problem of how you resolve impasses between the states and the tribes on these issues.

At least up until this afternoon, I think 6.13 that we have adopted already goes about as far as the three of us collectively. I don’t want to say that individually we might not
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have had different views, but 6.13 goes about as far as the three of us collectively could see to go.

I don’t mean by that to suggest that 6.13 is as specific as in a perfect world it would be. Obviously it’s not. To some extent it sort of punts. It says if Congress should specify a constitutionally sound means of resolving disputes, but it doesn’t recommend to Congress precisely what that ought be.

At least my take on the Indian Gambling Subcommittee’s wrestling with that issue was simply that if the states and the tribes have been trying to negotiate about this for several years, and if the Senator Inouye and Senator Campbell and Senator McCain and others on the Senate Indian Affairs Committee and their staffs have been trying to facilitate agreements on this also for years, those of us on the subcommittee, at least speaking for myself I guess, I shouldn’t try to speak for all three of us, just felt like, you know, in a limited amount of time with a limited amount of information that we weren’t going to do any better in terms of being more specific about how to break this logjam than all of those other parties have been doing after years of discussion.

So I wasn’t aware that these proposals numbered 16 and 17 were going to come up. I am not necessarily opposed to them so much as I just don’t feel like collectively we have enough basis of knowledge to find a conclusion where those other parties who have been wrestling with this for years, and who are quite frankly, more knowledgeable than at least I am, have been able to find a conclusion.

So that is why in the deliberations of the subcommittee, we got as far as 6.13. Just speaking only for myself, and I’m very respectful of Bob’s efforts to move this
ball forward, but speaking only for myself, I don’t see how I
could go beyond 6.13. I recognize that 6.13 is not a specific
enough recommendation to the Congress. I just don’t know what
would be.

CHAIR JAMES: John, let me ask you this. The
recommendation that is before us right now is 6.19, which is the
good faith language. I think in what we should do is to take
them in order and see what we want to do with that one, and then
--

COMMISSIONER WILHELM: Okay. Speaking again only for
myself, I am not comfortable with that one either for the same
reason. I feel like, and it may be like others of you who are
not on the Indian Gambling Subcommittee have some insights here
that I don’t, and I would certainly listen carefully. But I feel
like it isn’t any more valid to pass 6.19 based on our present
knowledge than it would be in my view, speaking for myself, to
pass 16 or 17 in Bob’s document.

CHAIR JAMES: Commissioner Lanni?

COMMISSIONER LANNI: Having proposed 6.19, it is my
point of view that 6.13 would negate the need for that.

CHAIR JAMES: Would you like to withdraw that?

COMMISSIONER LANNI: So I would withdraw that.

CHAIR JAMES: Who seconded that?

MR. KELLY: We never got to it.

CHAIR JAMES: We never got to it, so it was just
withdrawn.

COMMISSIONER LANNI: We didn’t have a chance.

CHAIR JAMES: Okay. 6.20.

COMMISSIONER LOESCHER: So, Madam Chair, what happened
here?
COMMISSIONER LANNI: He still has a proposal still yet to come.

CHAIR JAMES: We are still on 6.20 now, and 6.23 is yet to come up.

COMMISSIONER LEONE: Madam Chair, I have a very limited objection to the 6.20, which is I really don’t feel I have an adequate understanding of how changing the language under which these negotiations take place would change the negotiations. I don’t understand the legal ramifications. I assume these words are --

CHAIR JAMES: Which one are you referring to?

COMMISSIONER LEONE: 6.20. As I understand it, good faith is now --

CHAIR JAMES: We haven’t read that one yet.

COMMISSIONER LEONE: Aren’t we doing --

CHAIR JAMES: No.

COMMISSIONER LANNI: We are staying on the order.

COMMISSIONER LEONE: We’re doing 6.23 now, right?

CHAIR JAMES: No. We were doing 6.20.

COMMISSIONER LEONE: Oh. I thought we had brought 6.23 up.

CHAIR JAMES: No.

COMMISSIONER LEONE: I’m sorry.

CHAIR JAMES: We are on 6.20.

COMMISSIONER BIBLE: This will be a new commission with teeth?

CHAIR JAMES: As opposed to this toothless.

COMMISSIONER WILHELM: I’ll support nearly anything if I don’t have to be a member.

(Laughter.)
COMMISSIONER LEONE: You mean you don’t like the way we’re sort of gumlessly gnawing this subject?

CHAIR JAMES: This came up. Let me read it for the benefit of those who are following this. This is 6.20. The Commission recommends that a Native American Tribal Gambling Commission be established with some teeth in it, to look into the full scope and impact of Native American tribal gambling.

This came up, you may remember, as a result of the frustration that we felt at our inability to get the information that we needed to make a fair and balanced and accurate assessment of the social and economic impacts. So that is what that one was.

COMMISSIONER DOBSON: That’s implied that it’s Federal?

CHAIR JAMES: I think we should say that if that’s the case, yes.

COMMISSIONER BIBLE: Well, my thought on this particular one is the one case where we attempted to exercise our subpoena authority, it would have been a question of law that would have had to be decided by the courts as to whether we were legitimately entitled to those particular documents. The National Indian Gaming Commissioners asserted that were not. Our council asserted we were. We never resolved the issue.

So I guess the term "with some teeth in it," it doesn’t really mean anything, particularly because I think we would have resolved that particular question had it taken its natural course.

CHAIR JAMES: I think the implication here was that Congress would look at that issue and be very clear about the ability of such a commission to obtain such information.

If there is no second, it will --
COMMISSIONER LEONE: Well, I think we should say something on this subject. In fact, what occurred, occurred, and it impeded our work. I don’t think any response to that is perfect, but I guess I lean more towards calling upon Congress to obtain the information that we sought and could not obtain and to evaluate it in public.

COMMISSIONER BIBLE: There was a requirement at least in our enabling legislation that Federal agencies cooperate. Of course they assert that that is overridden by their specific statutory obligation to protect that information. So I guess what you need to recommend is that in the event another commission like this is formed, that it be made crystal clear as to whether or not other Federal agencies are required to produce information, cooperate, produce data, things of that nature.

COMMISSIONER MOORE: If Congress follows any of our recommendations, won’t we be able to get any information that we need when we are recommending that there be full disclosure?

CHAIR JAMES: I guess the fundamental question on this particular one is how do we want to go at it, at this particular issue? Do we want to recommend a Federal commission or do we simply want to recommend that Congress take a look at this issue and come up with some means of gathering and analyzing that information?

COMMISSIONER BIBLE: I think at least in some part of the report, you simply express this Commission’s frustration with its inability to obtain that information and make a recommendation that if a future commission having a charge somewhat similar to this is established, that they have the ability or be specifically spelled out in the enabling
legislation that they have the ability to obtain that information.

CHAIR JAMES: Why don’t we table that. I will draft it in that way and bring it back up for discussion.

6.21?

COMMISSIONER DOBSON: Remember that the word "Federal" has been added.

CHAIR JAMES: Yes. 6.21. The Commission recommends that Federal law should provide that when operating a gambling facility, a tribe must comply with all of the laws and regulations to which non-tribal facilities are subject.

COMMISSIONER WILHELM: That’s been covered in essence.

CHAIR JAMES: Has that been covered? Do I hear a motion in that regard?

COMMISSIONER MOORE: I believe that’s been covered.

CHAIR JAMES: Hearing none --

COMMISSIONER DOBSON: I’m not sure that it has.

CHAIR JAMES: Well, you may want to move it then.

COMMISSIONER DOBSON: I would like information on whether or not it has been covered. I don’t want any redundancy at this time of night. But if it hasn’t, I would like that considered.

CHAIR JAMES: Why don’t we table it, ask the staff to review it, and see where that is.

The Commission recommends that Indian tribes should not be permitted to place casinos on newly acquired lands, only on existing Indian-owned lands.

Do I hear a motion?

COMMISSIONER DOBSON: So moved.

CHAIR JAMES: Do I hear a second?
COMMISSIONER LEONE: I’ll second it.

CHAIR JAMES: It has been moved and seconded.

Discussion?

COMMISSIONER LOESCHER: Madam Chairman?

CHAIR JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: I have a big problem with this whole business. It’s a sentence just dangling out there in the mid-air. There’s no support for this in our record that I know of before this Commission.

My own personal investigation has -- I have gone to the Department of Interior, Bureau of Indian Affairs to check on this issue, whether tribes have been granted any properties off reservation. I found in that last 10 years, there’s only been one little piece of property in 10 years that has been granted. Quite frankly, the way the rules are set up now, a governor of a state must concur before the Secretary of Interior can repatriate property in this manner.

I think this is a non-issue. But on the other hand, I wouldn’t want the Commission making a statement like this that doesn’t have much of a foundation. So I would be against this proposal.

CHAIR JAMES: Commissioner Bible?

COMMISSIONER BIBLE: I would concur with Bob’s comments. The existing provisions provide that before a tribe can take land -- before it is approved to be put into trust status and gambling authorized on that land, the governor has to approve of that particular decision, as does the Secretary of the Interior.

There was some controversy a number of years ago when a Secretary of the Interior decided that he could do it
unilaterally, but I believe that controversy has since been
resolved.

COMMISSIONER LANNI: I would move the question.
CHAIR JAMES: Calling for the question. All in favor?
Any opposed?
I’ll have to go for a roll call vote. Did I not hear
that correctly?

Bible?

COMMISSIONER BIBLE: No.
CHAIR JAMES: Dobson?
COMMISSIONER DOBSON: Yes.
CHAIR JAMES: Lanni?
COMMISSIONER LANNI: No.
CHAIR JAMES: Leone?
COMMISSIONER LEONE: Yes.
CHAIR JAMES: Loescher?
COMMISSIONER LOESCHER: No.
CHAIR JAMES: McCarthy?
COMMISSIONER McCARTHY: No.
CHAIR JAMES: Moore?
COMMISSIONER MOORE: No.
CHAIR JAMES: Wilhelm?
COMMISSIONER WILHELM: No.
CHAIR JAMES: James would vote yes, but the noes have
it. Six to three.
Okay. Now we’re on 6.23.

COMMISSIONER WILHELM: Is 6.23 what is 16 on Bob’s
sheet?

CHAIR JAMES: Yes. Now we’re on 16 on Bob’s sheet.

COMMISSIONER LOESCHER: Madam Chairman, I move 6.23.
CHAIR JAMES: Is there a second? Hearing none, the motion dies.

Seventeen?

Let me read it again. I apologize for those who are following. Sixteen says that IGRA should be amended to repeal the good faith standard for negotiating class 3 compacts and substitute a no-fault impasse provision. That amendment died.

Number 17. If the parties do not agree to a voluntary partial waiver of sovereign immunity and there is impasse for any reason, then the secretarial procedures should be permitted. The proposed regulations published on January 22, 1998 at 63 Federal Register 3289. However the Secretary of the Interior should be confined to the scope of class III gaming standards stated in the Solicitor General’s brief to the United States Supreme Court in Rumsey Indian Rancheria of Wenton Indians v. Wilson.

Do I hear a motion?

COMMISSIONER LOESCHER: So moved.

CHAIR JAMES: Is there a second? Hearing none, the motion dies.

Commissioner Dobson, did you want to be recognized?

COMMISSIONER DOBSON: I do, Madam Chairman. I have compromise language for 6.9(a) that Commissioner Loescher and I have agreed upon and would like to submit to the Commission. This goes back to the discussion a few minutes ago.

CHAIR JAMES: Okay, that’s fine.

COMMISSIONER DOBSON: Okay. This is the language. The Commission has heard substantial testimony from tribal and state officials that uncompacted tribal gambling has resulted in substantial litigation. Federal enforcement has until lately
been mixed. We recommend that the Federal Government fully and consistently enforce all provisions of IGRA.

COMMISSIONER LOESCHER: I second the motion.

CHAIR JAMES: It has been moved and seconded. We have had a substantial amount of discussion on this. Would anybody like to call for the question?

COMMISSIONER LANNI: I’ll move the question.

COMMISSIONER BIBLE: And the implication is that enforcement is now moving along?

COMMISSIONER DOBSON: I said it’s mixed.

CHAIR JAMES: He said it’s mixed.

COMMISSIONER BIBLE: Until lately has been mixed.

COMMISSIONER DOBSON: This is compromise language, Bill.

CHAIR JAMES: Come on, Bill. Work with us, Bill.

All in favor?

All opposed?

Let’s take a 10 minute break and we’ll come back and wrap up with people and places.

(Whereupon, the foregoing matter went off the record at 5:21 p.m. and went back on the record at 5:40 p.m.)

CHAIR JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: Madam Chair, if I could have the attention of the Commission. I would like to make a humble proposal about section 6.14. I had voted for Mr. McCarthy’s proposals this morning, 6.16 to 6.20 I guess.

COMMISSIONER McCARTHY: 4.16 to 4.20.

CHAIR JAMES: 4.16 to 4.20.
COMMISSIONER LOESCHER: 4.16 to 4.20. 6.14 is a bit inconsistent with the content and substance of that group of amendments. I was hoping that I could persuade the Commission to move to delete 6.14 in lieu of 4.16 to 4.20.

COMMISSIONER WILHELM: I would agree with that.

COMMISSIONER LOESCHER: So I would like to make a motion to delete 6.14 in lieu of all of the aspects of 4.16 to 4.20, which includes tribal governments. It’s more comprehensive and better.

COMMISSIONER WILHELM: I second.

CHAIR JAMES: It has --

COMMISSIONER McCARTHY: May I ask a question?

CHAIR JAMES: You certainly may.

COMMISSIONER McCARTHY: I am amenable to that as long as we are absolutely assured that it is not necessary to amend IGRA to have -- let’s see, this would give states the ability to collect funds. You don’t like that language? You want to leave it so that it can only happen through a compact?

COMMISSIONER LOESCHER: Yes. Madam Chair, I believe that that package --

COMMISSIONER McCARTHY: We weren’t trying to mandate Federal collection of Native American tribal gambling funds. But as long as it can be done through a compact -- it can be voluntarily done. There is no limitation in the existing Federal law language.

COMMISSIONER LOESCHER: That’s correct, from my understanding that is correct. The spirit of your other amendments is a lot better and you’ll get better cooperation.

COMMISSIONER LANNI: I move the question.
CHAIR JAMES: All in favor of eliminating 6.14 please signify by saying aye.

Any opposed?

Any abstention?

Okay. 6.14 is gone.

Okay. Was there something else in terms of cleanup in this particular section?

COMMISSIONER WILHELM: Yes. 6.3. I discussed this matter with Mr. Loesch and Dr. Moore. We have several times today removed references to specific organizations, the Choktaw, the AGA, and so on. So the three of us are agreed that we ought to take out the middle sentence referring to the Menomene and perhaps include that reference in the text of this chapter but not in the recommendation, consistent with what we have done with other groups.

CHAIR JAMES: If I don’t hear any objection to that, I will just assume that we have consensus to do that.

Anything else in that section?

COMMISSIONER DOBSON: Madam Chair, it’s your call as to when I ask a question of my fellow commissioners. If you want to wait until the end, that’s fine. But just reserve me a moment to do that.

CHAIR JAMES: I will do that. Jim, if in the heat of things I forget, I count on you to remind me.