MS. SCHWARTZ: Good afternoon. Donna Schwartz, Research Director for the U.S. Advisory Commission on Intergovernmental Relations. And I am here today with my colleague, Dr. Amy Pool from American University.

This is an overview or preliminary report, actually, at this stage since it’s not in our research. I would like to thank the Commission and its members for inviting me. I am going to try and summarize because I am afraid we got told we have a half an hour. And so I am going --

CHAIRPERSON JAMES: Can I ask you --

MS. SCHWARTZ: Yes. I will.

CHAIRPERSON JAMES: Can I ask you to pull that microphone very close to you?

MS. SCHWARTZ: Is this better? All right.

CHAIRPERSON JAMES: Try to tilt it up just a little bit.

MS. SCHWARTZ: ACIR signed for that revised research proposal with the National Gambling Study Commission. It was approved in June of last year. And it has or it included three parts: compilation of data, basically a database of federal, state, local, and tribal gaming laws and regulations, which will be ready in a couple of months; a compilation, then preparation of a report that outlines gaming regulation in the United States; and a comparative report detailing differences and similarities between those regulations, tribal and industry gaming.

Following this approval, we solicited proposals searching for an outside consultant and selected a group headed
by Dr. Amy Pool of the Department of Justice at the American University.

We have concluded based on the research budget and the time frame that information about regulatory practices in the gaming industry would have to be obtained through the administration of a telephone survey to sample universal gaming establishments.

And in July, our methodologist, Dr. Ludley of George Mason University, who is sitting right behind me, thought about the selection of a sample based upon the prevalence of form of gaming, dollar volume, and geographical parameters. At the same time, we started working on survey instruments.

In October of last year, ACIR was informed by the National Gambling Impact Study Commission that the commissioners wished to redirect this research and focus primarily on tribal gaming.

COMMISSIONER LOESCHER: Point of order, Madam Chair.

CHAIRPERSON JAMES: Certainly.

COMMISSIONER LOESCHER: I have a problem. I’ve read this report, and I was not around. I must have missed something. The Commission didn’t ask that you redirect your efforts on tribal gaming. How does this happen?

MS. SCHWARTZ: We were formally asked, and we had negotiations --

COMMISSIONER LOESCHER: I’d like to have clarification from the Chair and for management as to what is occurring here.

COMMISSIONER WILHELM: Madam Chair?
CHAIRPERSON JAMES: Certainly, Commissioner Wilhelm.

COMMISSIONER WILHELM: If I may comment on Commissioner Loescher's point? The second page of the written testimony from Ms. Schwartz, as Commissioner Loescher was just indicating, says in mid October 1998, ACIR was informed by NGISC that the commissioners wish to redirect the research and focus the survey primarily on tribal gaming.

As a member of the Research Subcommittee, I wish to say that from my perspective, that's not true. What is true is that the enabling statute says that we were directed as a Commission to -- "shall contract" is the term -- with the ACIR for, quote, a thorough review and cataloguing of all applicable federal, state, local, and Native American tribal laws, regulations, and ordinances that pertain to gambling in the United States as well as some other functions.

At some point in the late Summer or early Fall of 1998, the Research Subcommittee became aware that the ACIR proposed to do only a sampling of tribal gaming laws, ordinances, and regulations.

And after considerable discussion, we instructed the Executive Director of the Commission -- and my recollection is that the Research Subcommittee did this unanimously, I believe -- to significantly expand their examination of laws, ordinances, and regulations affecting the tribes. But never, to my recollection, did the subcommittee in any way, shape, or form suggest, as this statement says, that ACIR should, quote, "focus the survey primarily on tribal gaming," unquote.
Unfortunately, we’re handicapped by the absence of Dr. Kelly, whom I believe probably was involved in those conversations. But, at least with respect to the members of the subcommittee or speaking at least for myself, -- and I think my memory is clear on this point -- we never suggested to ACIR that it should not do the job that it is directed by the statute to do. I am, frankly, shocked to read that statement.

MS. SCHWARTZ: Mr. Wilhelm, let me comment, if I may.

The collection or the database of laws and regulation is comprehensive. And this statement does not refer to it. It refers to the survey, which deals in gaming practices, which was something we contracted to do and is not part of what you were instructed to do wholly by the statute as far as I recall the statute.

This is the survey of gaming practices. It does not refer to the collections of laws and regulations, which is on the database and which is separate and complete.

CHAIRPERSON JAMES: Well, I am very disturbed by the sentence at the top of Page 2 that says you were informed that commissioners wish to redirect the research and focus primarily on tribal gaming.

I am not aware of any such redirection, and I would ask for some help from the Research Subcommittee on that; in particular, the chair. Can you shed any light on that?

COMMISSIONER McCARTHY: When we were discussing this -- I’m trying to remember the date.
MS. SCHWARTZ: November 9th or 10th or 11th, one of those, you were at a meeting.

CHAIRPERSON JAMES: This was in October, not November.

MS. SCHWARTZ: No. October was the first. Dr. McCarthy and I did not talk about this until November, when the Commission was meeting. So I’m just referring to a conversation we had.

COMMISSIONER McCARTHY: To try to clarify this a little bit, I don’t think we were changing anything in regard to federal or state governments that we had agreed to do up until those discussions.

I think the third we were looking at in those discussions was that part which then had been described as tribal and local governments in what I have received from you.

You may recall I was asking local governments: Are we looking at cities and counties and what ordinances they’re involved in because you may recall my saying I think there were only a handful of instances where a state delegated a lot of authority down to local governments, cities, or counties to really be beyond the building codes and the enforcement of those things?

So I think what we did was de-emphasize whatever role there might be for cities and counties because it was eligible in any event. And I think the thing we discussed was of 305 tribes -- I hope I recall the number correctly -- that the total list of tribes that you were going to try to compile tribal government
laws and so on, we were discussing back and forth how many of those could be more deeply analyzed and looked at.

And we as I recall arrived at the number 140. And that was going to be broadly representative, but it was going to be weighted. And I think your suggestion was a good one. It was going to be weighted to make sure we included the larger revenue-generating tribal government casino operations. Now, that’s what I recall.

So the question before us here I think --

MS. SCHWARTZ: Perhaps, but we changed the rest of the sample, if you’ll recall, at the same time. Where the sample was originally going to be a sample that represented as far as surveying, making calls, et cetera, it was originally going to be around 250, which may have been slightly less because Dr. Peter Reuter suggested that was too many, that were divided among all forms of gaming basically on the base of their relative contribution. We have changed this to where we were going to survey.

And that’s in the letter that I had sent to you at your request. And I sent it to you.

COMMISSIONER McCARTHY: Right.

MS. SCHWARTZ: Dr. Kelly then authorized to survey 140 tribal communities and only 25 industries casinos in that number. So that the survey, by necessity -- and that letter says, which I got -- I was told then by Dr. Kelly was okay, that that changes the focus because, even though we were collecting laws and
regulations from everywhere, we were only calling and surveying
25 industry gaming institutions in the entire country.

COMMISSIONER McCARTHY: I’ll have to look at that. Our
conversations dealt only with how we were going to approach an
assessment of tribal government analysis.

And we recognized that to do a good analysis and not
just simply a compilation of all of the laws of tribal
governments, we would have to reduce the number. And that’s how
we came up to 140.

I don’t remember in any of our conversations unless it
was something separate with Tim Kelly --

MS. SCHWARTZ: No. Well, it was part of --

COMMISSIONER McCARTHY: -- that we were changing the --

MS. SCHWARTZ: -- the same conversation because we had

--

COMMISSIONER McCARTHY: Pardon?

MS. SCHWARTZ: It was part of the same conversation
because we had to get down from the total of 250.

COMMISSIONER McCARTHY: Right.

MS. SCHWARTZ: And we agreed on a number. And you
wanted 140. We agreed on a number. And so we ended up with --

COMMISSIONER McCARTHY: What happened to the other 110?

MS. SCHWARTZ: Well, by then we were in November.

COMMISSIONER McCARTHY: You mean that’s the total of
federal, state, and tribal governments being more deeply
analyzed? Is that what you’re --
MS. SCHWARTZ: One thing is just a report on laws. The other is the practices.

COMMISSIONER McCARTHY: Got you.

MS. SCHWARTZ: And you were totally aware that --

COMMISSIONER McCARTHY: We’re getting the first one. We understand that. That covers everybody.

MS. SCHWARTZ: Right. Then when we went to the survey, we were originally going to do 250. Then we had a meeting, which --

COMMISSIONER LEONE: Two hundred, fifty what? I mean, I don’t know that that --

MS. SCHWARTZ: We were going to survey 250 gaming institutions and their respective --

COMMISSIONER LEONE: Of all types?

MS. SCHWARTZ: Of all types.

COMMISSIONER LEONE: Okay.

MS. SCHWARTZ: And the original intent --

DR. POOL: These numbers refer to actual outlets, --

MS. SCHWARTZ: Right.

DR. POOL: -- for clarification.

MS. SCHWARTZ: Gaming outlets, right.

COMMISSIONER LEONE: So you mean an individual outlet could be --

DR. POOL: Right. That is correct.

COMMISSIONER LEONE: Several of them could be --

MS. SCHWARTZ: It could be a racetrack.

COMMISSIONER LEONE: Okay.

MS. SCHWARTZ: It could be one --
COMMISSIONER LOESCHER: Madam Chairman?

CHAIRPERSON JAMES: Commissioner Loescher?

COMMISSIONER LOESCHER: Madam Chairman, you know, I’m trying to be calm about this.

CHAIRPERSON JAMES: And we really do appreciate that.

COMMISSIONER LOESCHER: You know, the statute that covers this Commission is very explicit about the information database requests on state, federal, tribal, local laws dealing with gaming, all forms of gaming.

On that point, my expectation was much before this date, we would have a compilation, a listing, if you will, accessibility to all the laws and regulations in America dealing with every kind of gaming in America produced.

The law specifically said that we had to use your agency, to work through your agency to get this done. The statute is absolutely clear. I don’t know where in the process this all went awry, but here we are in March, almost April.

We started this process in July of last year with your organization. My understanding from Native Americans is that maybe in December, you sent out an inquiry to Native Americans. We never saw that, but the tribal governments, the whatnot. We haven’t confirmed that.

We understand your contract was renegotiated by the Commission. I don’t understand what was renegotiated and what the outputs are and what the money considerations were, but I think those are of concern.
But then I’m reading this report, which you’re about to give, and I’m so upset and concerned about what you all are doing. Then we get this survey of laws and regulations, which is a total imbalance, 141 tribal operations versus 25.

Is it casinos that you’re looking at or what is it, when we know that 37 states are involved in lotteries, when we know how many states are involved in the horse racing, how many, you know, on and on?

There are laws for all of this stuff. Why are you focusing on this kind of thing? It’s a total imbalance in terms --

MS. SCHWARTZ: It was not my call, sir.

COMMISSIONER LOESCHER: Well, I don’t know if it’s your charge, but I’m sort of laying out to the Commission that this thing started wrong. It was amended, and it’s wrong. This report they’re about to give is wrong in terms of its balance.

And the products that at least this commissioner was expecting to come out of this effort are nonexistent. And I’m outraged by what’s gone on here. Madam Chair, I respectfully submit that something more than the committee on studies here needs to deal with this matter.

MS. SCHWARTZ: Let me just say one thing. The collection of citations of all the laws and regulations exists. It’s --

CHAIRPERSON JAMES: When will that be released to this Commission?
MS. SCHWARTZ: Well, it was supposed to be on the
database in May. And you will get it on the database in May. I
had the collection of both state regulations and all the laws in
numerical. I had it in my office and believe I offered it to
your staff members when they came up a few weeks ago.

CHAIRPERSON JAMES: On database?

MS. SCHWARTZ: It is right now not a CD-ROM. That was
not promised until May. It is right. But I do have hard copies
of the collection of laws and regulation. And those I offered
them then.

CHAIRPERSON JAMES: And they said they didn’t want it
or --

MS. SCHWARTZ: Well, they said at that point, I believe
--

DR. POOL: We are waiting for the database.

MS. SCHWARTZ: Did you all not make a copy of that? So
you took it and made copies? Yes.

COMMISSIONER BIBLE: What have you done? I can’t
figure out what you’ve done. You’ve done a compilation of all
the laws and regulations --

MS. SCHWARTZ: We’ve done a compilation of all the laws
and --

COMMISSIONER BIBLE: -- of states, local governments,
and tribes.

MS. SCHWARTZ: Now, the tribal stuff is not yet
complete. We have collected as much as we could get from the
National Indian Gaming Commission. And then, as we agreed, we
sent a letter that, actually, the Commission or Dr. Kelly saw it, I believe, or Doug Seay signed off.

COMMISSIONER BIBLE: Slow down for just a minute. Just be responsive. So you’ve collected I assume all the compacts between state and tribal governments.

DR. POOL: There are 24 compacts. We have a sampling of ten compacts at this time.

COMMISSIONER BIBLE: Okay. So you’ve sampled the compacts. You’ve gotten tribal gaming ordinances.

DR. POOL: To the extent that it is legally possible to do so, tribal governments, that varies as to whether they will release that. I believe that the Study Commission itself sent out a letter requesting the tribes provide the ordinances. That is the reason that it is not currently on CD-ROM, Commissioner James, because we are waiting to see how much participation we will receive from tribal governments with respect to the ordinances and the compacts, whether they will be voluntary --

COMMISSIONER BIBLE: Okay. Now, you also collected state law?

DR. POOL: That is correct.

COMMISSIONER BIBLE: And you’ve collected state regulation?

DR. POOL: That’s correct.

COMMISSIONER BIBLE: And you’ve collected federal law probably as it relates to tribal gaming primarily because that’s the primary federal involvement.

DR. POOL: Right.
COMMISSIONER BIBLE: Now, then, you’ve also done a survey to measure efficiency of the regulatory apparatus?

MS. SCHWARTZ: The survey was basically of regulatory practices. And that’s why I said that is not mandated.

COMMISSIONER BIBLE: I wasn’t aware of the survey.

MS. SCHWARTZ: Yes.

COMMISSIONER BIBLE: So why don’t you explain the survey?

DR. POOL: If I may respond as the researcher?

COMMISSIONER BIBLE: Because I don’t understand what -- the survey must have been intended to develop a major regulatory efficiency, regulatory practices, something of that nature?

DR. POOL: What the survey -- the purpose or the utility of the survey, irrespective or separate from the compilation of the laws --

COMMISSIONER BIBLE: The compilation of the laws doesn’t tell you anything other than --

DR. POOL: Right, right. It’s to determine the degree to which the actual practices at gaming enterprises and/or local state or tribal governments vary from the actual law. How are the practices governing the daily operation of the institution varying from what is written in law? What are the actual policies? What are the tribal policies? What are the industry policies that deal with the everyday workings of these facilities?

COMMISSIONER BIBLE: Okay. Now, according to that effort, then, will you have solicited information from, say, how
many employees you have involved in the regulatory process? What are their --

DR. POOL: That is correct.

COMMISSIONER BIBLE: -- knowledge, skills, and abilities in --

DR. POOL: That is what our survey has measured. And that’s what I was intending to present today.

COMMISSIONER BIBLE: I was aware of --

CHAIRPERSON JAMES: Let me ask a point of -- and I’ll turn it back over to you, Bill, after that. This is what --

COMMISSIONER BIBLE: Not a bad idea, though.

CHAIRPERSON JAMES: This is what the staff said they got from you ten days ago, which is the state summaries.

MS. SCHWARTZ: They got I hope -- the state summaries were just one part of the things they got from us. I offered them a whole --

CHAIRPERSON JAMES: Who is "they"? Who from the staff was over there?

MS. SCHWARTZ: Doug Seay, Kate Spilde, and Valerie were up in my office --

CHAIRPERSON JAMES: Okay.

MS. SCHWARTZ: And I apologize for not remembering Valerie’s last name.

-- were up in my office. And I said I don’t have a finished report, but I have some of these materials. And they included these state summaries, which should be put into one format, rather than different, in which they are now.
They included this list of statutes that we have compiled. That’s a big folder that they took down with them and a few sample compacts that I had and a couple of sample ordinances.

DR. POOL: There is a model ordinance on which 90 percent of the ordinances are based. There is a recommended, quote, unquote --

COMMISSIONER McCARTHY: Tribal ordinances.

DR. POOL: That is correct. That is correct.

MS. SCHWARTZ: And so I’ve given them that entire thing. They took two days to copy it. It was more than just this. And they got a --

CHAIRPERSON JAMES: John, please feel free.

MR. SHOSKY: I’m the deputy director. And I think at the moment, maybe it’s time for me to butt in here. We did actually get a couple of notices as well. The only thing we Xeroxed was this page.

COMMISSIONER LEONE: I just wanted to say that I hope Belletire is being paid by the hour.

CHAIRPERSON JAMES: I do know that he has a flight this afternoon, and I am sensitive to that.

MR. SHOSKY: I’ll share this with you.

MS. SCHWARTZ: Certainly.

MR. SHOSKY: Madam Chair, we did send some people up a few days ago. We’re all in the same building. So you guys were nice enough to meet with us. And we sent up a team of people.
Essentially, we just wanted to see how things were going, but as well there’s a regulation chapter draft that’s due in a few days. And so I asked if we could get some material so I could get started absorbing information and trying to put something together. And what we got was a state summary that you have, which I did Xerox. And there were two notebooks that were about this thick with a lot of material, which I looked through and I just sent back up.

So the only thing we actually kept is that. And we did have it for two days.

MS. SCHWARTZ: But you are more than welcome to the state citations at any time you want them at the format they’re in right now.

COMMISSIONER BIBLE: Now, when are we going to get this state survey or this survey? That must be Dr. Pool’s.

DR. POOL: That’s correct.

COMMISSIONER BIBLE: This survey now has been -- the questions have been developed. There has been --

DR. POOL: The survey was developed. A sample was drawn. We have surveyed -- part of my presentation would talk you through our sample population. We have completed on the order of 105 of them. We are sampling the bottom 36 in terms of revenue categories. That is still an ongoing process.

COMMISSIONER BIBLE: And when are we going to --

DR. POOL: The majority of the survey is finished.

COMMISSIONER BIBLE: And when are we going to see all of this data?
DR. POOL: They would like a report by March 29th, I understand. Is that correct?

COMMISSIONER BIBLE: Them liking it and us getting it, I mean --

DR. POOL: Excuse me, please?

COMMISSIONER BIBLE: When are we going to see it?

DR. POOL: I’m sorry?

COMMISSIONER BIBLE: I’m just curious as a procedure. I mean, you then are going to present the results of this survey at the end of this month, and you’re going to meet that time line?

DR. POOL: Well, I was going to explain to you today what some of the generalizable findings are, in fact, we can make at this time, having completed much of the survey.

COMMISSIONER McCARTHY: May we just ask, Madam Chair, just to get back to the key point raised earlier by Mr. Loescher and Mr. Wilhelm? I’m sorry. I don’t have my notes in front of me. So I’m having difficulty recalling the number 25 to pertain to the federal government, which is one entity, I take it.

MS. SCHWARTZ: No, not federal government. Industry --

DR. POOL: Twenty-five are the industry outlets.

MS. SCHWARTZ: Industry outlets, not federal government. There’s only one federal government --

COMMISSIONER McCARTHY: Twenty-five non-tribal --

MS. SCHWARTZ: Non-tribal.

COMMISSIONER McCARTHY: -- gambling facility outlets.

MS. SCHWARTZ: Right.
COMMISSIONER McCARTHY: Tell me: How many states does that represent?

MS. SCHWARTZ: It represents 12 in the sample we have drawn.

COMMISSIONER McCARTHY: Represents 12 states?

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: And tell me the mix of types of gambling.

MS. SCHWARTZ: The idea on the choice was to be as wide as we possibly can. So we have casinos, card rooms, racing operations.

COMMISSIONER BIBLE: Lottery outlets.

DR. POOL: Correct.

MS. SCHWARTZ: Yes, lottery outlets.

DR. POOL: These are all part of the prepared remarks that we have that I think would allay many, Commissioner Loescher, many of your --

COMMISSIONER LOESCHER: Madam Chair, it’s not going to allay my concerns.

DR. POOL: No. I mean, I can address some of the points that you have raised in it.

COMMISSIONER LOESCHER: I’m outraged as I sit here. I don’t know who commissioned this kind of work. And we need to understand from the outset before you give this report how this came about. What business is it of yours how --

DR. POOL: It was over my objection --

COMMISSIONER LOESCHER: -- this business of --
DR. POOL: -- that these modifications were made.

COMMISSIONER LOESCHER: -- trying to match the laws and the applicable effectiveness of the laws? What expertise do you folks have? What is the questionnaire? Who commissioned this questionnaire? All of those questions are germane to this discussion.

CHAIRPERSON JAMES: What I’m going to do at this point is to thank our deputy, ask him to have a seat over here. I’m going to ask you, Leo, if you would walk us through the process in October and November that was taken through the Research Subcommittee, voted on unanimously by the entire Research Subcommittee, just briefly and bring us up to speed as to how we got to this particular point.

COMMISSIONER McCARTHY: Well, as I recall the discussion with my steel trap mind, I think the feeling was at the time that since we were the most ignorant about tribal government laws and about their governance of gambling facilities, that we did through two or three discussions arrive at the conclusion that we looked at the first offering from ACIR. We thought it was going to be very light in the tribal area.

CHAIRPERSON JAMES: "We" being?

COMMISSIONER McCARTHY: The Research Subcommittee. We had the least knowledge in that area. And I think the discussions that we had, John, Jim, and I, led us to try to back off what was described as local governments because we didn’t see much fruit being borne examining cities and counties, and to redirect that interest to tribal governments.
Now, what I’m puzzled about at this moment with my steel trap mind is that I’m trying to recall the discussion we had -- I can only remember the discussion on that part of it which dealt with what were described in the original recommendation as local government and tribal government.

And I don’t remember changes in whatever it was we were originally going to do in this area with facilities administered largely by state government apparatus.

COMMISSIONER WILHELM: Madam Chair?

CHAIRPERSON JAMES: Certainly, Commissioner Wilhelm.

COMMISSIONER WILHELM: If I might try again from memory to supplement Commissioner McCarthy’s recollection? The statute directs us to use ACIR for two purposes. One is a thorough review and cataloguing of all applicable federal, state, local, and Native American tribal laws, regulations, and ordinances that pertain to gambling in the United States.

Second, to use ACIR for assistance in conducting a number of other studies, part of which is beyond the actual laws, regulations, and ordinances, policies, and practices with respect to regulation.

My recollection of the information that was given to the Research Subcommittee, I believe was through Dr. Kelly, although I’m not certain of that, in the fall, was that ACIR proposed to provide all of the laws, regulations, and ordinances pertaining to federal, state, and local gaming operations but not all of the laws, regulations, and ordinances pertaining to tribal gaming operations.
With respect to the so-called survey about the, to use a simplistic term, effectiveness of the regulatory process, again, it’s my recollection that ACIR proposed to provide us with information about some, though not all, of the tribal operations.

I have a distinct recollection of extensive discussion about the fact that since the compacts, the ordinances, the regulatory bodies in the tribal gaming field vary considerably one from another, which has as its underpinning the concept of sovereignty, that a sample would not be an accurate representation of the overall regulatory laws and practices and that what we ought to have is all of them; that is, all federal, all state, all local, and all tribal. And we were told that that was not practical within the reach of the contract or the dollars that were available or the time.

So I have the same recollection as Commissioner McCarthy that the subcommittee said: Well, you know, the question of local gaming regulation really is relatively minor. So we have a resource and time problem. Let’s not worry much about that.

I don’t know what correspondence may have gone back and forth between Dr. Kelly and the ACIR, but beyond that, I do not have any recollection that there was supposed to be a diminution in the examination of non-tribal facilities.

My recollection is that the discussion was only about the under-representation in the original ACIR proposal with respect to tribal gaming outlets. And I don’t recall anybody suggesting that in order to accommodate what is still not a
complete examination of tribal gaming but apparently is only a larger sample, that we were going to also reduce the examination of non-tribal. I have no recollection of that point.

Now, I do recollect that we were told by Dr. Kelly that, the subcommittee was told by Dr. Kelly that, we couldn’t within the resources and time available examine all of the tribal regulations and compacts. Apparently this is being confirmed by Dr. Pool.

That is, my understanding -- correct me if I’m wrong. My understanding of what you said a moment ago is that at some point in the future, which may not do us any good because the report may have been written.

But, at any rate, at some point in the future you’re going to give us if I heard you right all of the federal and state laws and regulations but only a sampling of the tribal laws and regulations, ordinances, and compacts. Did I understand you right?

DR. POOL: That is correct. And part of your justification for the modification or the request for modification was to be able to supplement for the fact that we would not have that information. So you are correct in that.

COMMISSIONER WILHELM: Well, the bottom line from my perspective as one member of the subcommittee is: one, I thought we were supposed to get all of the laws, regulations, ordinances, and compacts. I did not understand that we were only going to get a sampling of those, both tribal and non-tribal.
Otherwise Commissioner Loescher is absolutely right. There was a specific and very explicit directive in the statute that we’re supposed to have a catalogue of all of those, not some of them.

So I’m disappointed to hear apparently that not only are we going to get this too late to use it but also it’s not going to be complete with respect to federal, state, local, and tribal laws, ordinances, and regulations. The statute is quite directive on that point.

Now, this other question of how you assess the efficiency or the effectiveness of the regulation and all of that, the only discussion that I recall in that area is that no segment of the gaming business should be under-represented.

I do not recall suggesting we should under-represent one kind in order to partially deal with the under-representation of another kind. I do not remember that at all.

But on the first point, since I don’t have very much hope about this assessment of the efficiency and effectiveness any more, at a minimum, I do not see how we can not have a complete set of all of the laws, regulations, ordinances, and compacts, as we are directed to by the statute.

You said there are 24 tribal compacts in the country. That sounds low to me. But, even if 24 is right, which doesn’t seem possible -- did I misunderstand you? DR. POOL: If I may, I have told Dr. Kelly about the availability of the ordinances and compacts. He’s very well-aware of it. This may
be a legal issue that we are simply not qualified to resolve as
to whether --

CHAIRPERSON JAMES: What is the legal issue?

DR. POOL: Whether tribes need to provide their ordinances.

COMMISSIONER BIBLE: Oh, you’re talking about it’s a production issue that they have --

MS. SCHWARTZ: Right. NIGC --

DR. POOL: That’s correct.

MS. SCHWARTZ: -- was only willing to provide a sample, I believe.

DR. POOL: That’s correct. I negotiated the release of ten -- they have a model ordinance. I then negotiated the release of ten ordinances that they believe to be representative of the balance. However, it remains a legal question as to whether this Commission would be entitled to that information.

COMMISSIONER BIBLE: But you have all of the compacts. The compacts are executed by the states and I assume are public documents from the state side of the equation.

CHAIRPERSON JAMES: Is that correct?

MS. SCHWARTZ: We do not have all of the compacts. However --

COMMISSIONER BIBLE: Why?

CHAIRPERSON JAMES: Why?

MS. SCHWARTZ: Because at this stage, we haven’t received all the compacts. We have asked the tribes. The letter that came from the Commission --
COMMISSIONER BIBLE: Why don’t we ask the state?

DR. POOL: The request was made on behalf of the Commission, --

MS. SCHWARTZ: Right. The request was made on behalf --

DR. POOL: -- not us.

MS. SCHWARTZ: -- of the Commission. When I have tried asking the states, a couple of them, I would say, -- I have not asked all of them -- I got referred to the Federal Register.

COMMISSIONER BIBLE: They have to publish in the Federal Register --

DR. POOL: That’s correct.

COMMISSIONER BIBLE: -- in order for a compact to be effective.

CHAIRPERSON JAMES: How hard is it to get the compacts?

COMMISSIONER BIBLE: Not very hard.

MS. SCHWARTZ: Well, if the tribes provide it, it’s very easy. If we get them, if I can get them from the states, I will. I have absolutely no problem --

COMMISSIONER BIBLE: Well, the states are party --

MS. SCHWARTZ: -- calling every single state.

COMMISSIONER BIBLE: The states are party to all of these compacts.

MS. SCHWARTZ: Yes.

COMMISSIONER BIBLE: And I’ve got to believe in all 48 states or however many states have them, there are probably records that are public documents.
MS. SCHWARTZ: If I can get them, I will.

CHAIRPERSON JAMES: What’s wrong with sending some interns to the Federal Register and getting them all?

COMMISSIONER DOBSON: Madam Chairman?

CHAIRPERSON JAMES: I mean, I really want to know if I’m missing something here.

MS. SCHWARTZ: We were having problems with NIGC not willing to provide them and with tribes not sending them. So we figured if we were going to -- the tribes got a letter. And if they will send them, then every single piece of legislation, law, regulation, policy document will be included in this database.

If I can get it anywhere else, I will also get a database.

COMMISSIONER BIBLE: Well, NIGC may not even have them because they’re filed with the Secretary of Interior. He’s a signatory to all of these compacts.

MS. SCHWARTZ: NIGC filed with what?

COMMISSIONER DOBSON: Madam Chairman, as the --

DR. POOL: They denied us access to it.

COMMISSIONER DOBSON: -- third member of the Research --

MS. SCHWARTZ: Right. Who was it?

CHAIRPERSON JAMES: Excuse me. Just a minute, ladies.

Commissioner?

COMMISSIONER DOBSON: As a third member of the Research Committee, it’s obvious that each of us has a little piece of the memory of what took place. Let me tell you what --
DR. POOL: I do have it all in writing.

COMMISSIONER DOBSON: -- my view is so --

DR. POOL: So I can provide it to you.

COMMISSIONER DOBSON: As a matter of fact, Mr. Reed just went out to get his minutes. It was in the Chicago meeting that we discovered that your understanding was not the same as ours. And you remember our disappointment at that time over what you were going to provide regarding non-Indian gaming facilities.

At that time, you indicated to us that Dr. Kelly had told you that what you had originally agreed upon was not going to be possible with the amount of resources that you had been provided.

There was some disagreement in the beginning about how much money the Commission was going to give ACIR and that this entire area was going to be explored. At least that was our understanding. We got to the Chicago meeting and discovered that you were not going to do that.

And Dr. Kelly then later confirmed that he had had some conversations with you all that modified the --

DR. POOL: August 4th he modified our original contract.

COMMISSIONER DOBSON: That’s right. He’s not here to give us his side of that, but I think the confusion we’re having was over that issue in that Chicago meeting. And we came to terms on it.

Leo, do you remember the interaction?
COMMISSIONER McCARTHY: Well, I remember what happened was that the number of dollars that were being provided to ACIR to do the study were cut in half. And that’s when we started discussing how we would reduce the scope of the contract.

The bit that’s missing in my memory is how many gambling facility outlets in different states we were going to examine, different types of gambling facilities, that are essentially governed by state law and the state regulatory bodies.

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: Madam Chair, if I could just sum up because may I respectfully suggest to everybody we get to the report? And then we can ask a lot more questions.

As I understand it, in your 25 sample non-tribal outlets, you have examined 25, a mix. They represent 12 states.

DR. POOL: Yes.

COMMISSIONER McCARTHY: All right. As to the tribal casino operations, the Commission sent a letter to quite a number -- I’m trying to remember the exact number -- 305. Three hundred, five I think was the length of your list.

MS. SCHWARTZ: Two hundred, eighty-one because they were based on a --

COMMISSIONER McCARTHY: That’s right.

MS. SCHWARTZ: -- year prior report.

COMMISSIONER McCARTHY: That’s right. And of those 305 or whatever the number is in that range, how many have you heard
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back from? How many sent you voluntarily a copy of their ordinances, their regulations, if any?

MS. SCHWARTZ: One.

COMMISSIONER McCARTHY: One? One?

MS. SCHWARTZ: Now, I will say the letter did not go until --

COMMISSIONER McCARTHY: Let me ask a couple of more questions.

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: If the letter didn’t go to everybody, we should have corrected that immediately and made sure it did go to everybody. But if we sent out to a few hundred, we got one willing to share with us, all right.

Then what I hear Dr. Pool saying is that subsequently you entered into negotiations with I’m not sure who and got them to send you some basic ordinances copied by many tribes but ten other samples of ordinances adopted by various tribes. Did I get that correctly?

DR. POOL: Yes. NIGC voluntarily provided these materials to us.

COMMISSIONER McCARTHY: Okay. So, in essence, the reason you don’t have the compilation of tribal government laws is you have been refused?

MS. SCHWARTZ: We have not yet because we have not yet made follow-up phone calls, which were on my agenda for next week.
COMMISSIONER McCARTHY: Wait a minute. What date did the Commission letter go out?

MS. SCHWARTZ: The letter was going to go out after the survey was almost finished so we don’t put too much on this thing. And the letter I believe went out -- I don’t know. Somebody in -- Doug just walked in. Maybe Doug knows which date the letter went out.

MR. SEAY: Which letter?

MS. SCHWARTZ: The letter to the tribes requesting that they submit all of this information.

COMMISSIONER McCARTHY: Laws and regulations.

MS. SCHWARTZ: Last month, right.

COMMISSIONER McCARTHY: Rough date.

MR. SEAY: Mid February, early February.

COMMISSIONER McCARTHY: Okay. And --

MS. SCHWARTZ: We had given them, I believe, or the idea was to provide about three working weeks before we started making follow-up phone calls.

COMMISSIONER McCARTHY: So that would have been roughly the end of the first week in March?

MS. SCHWARTZ: Right.

COMMISSIONER McCARTHY: And I take it you have not heard back from anybody --

MS. SCHWARTZ: As I said, I have actually correct this information --

COMMISSIONER McCARTHY: -- or the Commission hasn’t?
MS. SCHWARTZ: I was supposed to hear. I heard from one person, who has said they have provided the information to the Commission while testifying --

DR. POOL: In Seattle.

MS. SCHWARTZ: -- in Seattle, I believe. And that person promised to send me a copy anyway.

COMMISSIONER McCARTHY: Okay.

MS. SCHWARTZ: Doug Seay heard from one person, the Oneidas, I believe, who said he has their information, and he is going to provide me that information. And I got one set of complete information so far.

COMMISSIONER McCARTHY: So what we have is a mandated congressional study to look at federal -- federal laws were included.

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: State and tribal laws.

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: We will have a reasonable sample that I think the members of the Research Committee had the impression would be larger than 25 sample outlets. But we can look through our notes and correspondence and try to verify where we are in that.

And with the presence of Dr. Kelly, I think that will help a great deal. And we cannot carry out the congressional mandate as to tribal governments.

MS. SCHWARTZ: I believe we will carry out a lot more of it than has been carried so far, but it will not, I believe,
ever be fully completed, as we can tell from the part that has --

COMMISSIONER McCARTHY: You have gotten one response to
over 300 letters from the Commission. So what is the reason for
your optimism?

MS. SCHWARTZ: Well, I say we have the samples that
have been provided by the National Indian Gaming Commission. We
have a few that were very easy to get that are not part of that
that I managed to download off the different state Web sites.
And every one of those that was available has been downloaded.

COMMISSIONER McCARTHY: All right.

MS. SCHWARTZ: So that makes it a larger --

COMMISSIONER McCARTHY: Okay. Now, that’s the first
part of what you were going to do here.

MS. SCHWARTZ: Yes.

COMMISSIONER McCARTHY: The second part was assessing
approximately 140 tribes which would require a back and forth
conversation, analysis.

MS. SCHWARTZ: I have that. That’s been done or that’s
being done. That is not part of the same stuff. The survey
where Amy is was complete with about --

COMMISSIONER McCARTHY: You’ve had conversations with
140 different tribal governments?

DR. POOL: We have currently had conversations with
over 100 of the 140 --

COMMISSIONER McCARTHY: Tribal governments? Well,
that’s fine.

DR. POOL: That is correct.
COMMISSIONER McCARTHY: Okay. All right.

DR. POOL: If I may correct one thing about the beginning part? There are 161 compacts with 145 tribes in 24 states. Once you have a state, that’s why the number 24, the state company. You have a very good idea of that relationship between the state and the tribal --

COMMISSIONER McCARTHY: So you have a good deal of information regarding the application of the ordinances?

DR. POOL: Yes, sir, that’s correct.

COMMISSIONER McCARTHY: What we’re not certain of is whether the model ordinance is adopted and a lot of the tribal governments you’ve talked to.

DR. POOL: As I indicated before, that’s over 90 percent, the degree to which the ordinance is --

COMMISSIONER McCARTHY: Do you have a list of tribal governments that have adopted that model ordinance?

DR. POOL: I believe that’s -- NIGC has that in their compliance reports, do they not?

COMMISSIONER McCARTHY: Did it identify those as ones who use the model ordinance?

DR. POOL: I cannot state for certain. I believe that they do.

COMMISSIONER McCARTHY: And the other key question is if you --

DR. POOL: Has a compact.

COMMISSIONER McCARTHY: If you took the top 20 or 30 biggest revenue generators, I assume they’re much more complex,
much more sophisticated. It’s likely they won’t be using the
model ordinance. Foxwoods undoubtedly has a far more extensive
law.

Do you have from any of those major generators of
revenue among the trial governments that do operate casinos?
Have you been able to get copies of any of those laws and analyze
them?

DR. POOL: I’m not certain. I do know the top 20
revenue generators. And if you’ll give us a minute, Meredith may
be able to check to see from whom we have the ordinances relative
to the revenue categorization. We may well.

MS. SCHWARTZ: We have surveyed them all, even if we
did not get the written ordinance.

DR. POOL: That is correct.

MS. SCHWARTZ: Not a sample because, as Dr. Pool will
tell you when she does her presentation, the decision was to
focus on high revenue generators. So she has actually created a
census of the entire top three revenue-generating categories and
sampled the base.

DR. POOL: The population that we have surveyed totals
approximately 91 percent of the revenue generated by tribal
gaming.

CHAIRPERSON JAMES: Okay. At this point, what I’m
going to ask you to do is to hold questions. Let them work
through the remainder of their presentation. And then we’ll have
questions.
COMMISSIONER BIBLE: Before you do that, I just want to clarify and understand now. Ordinances, if I remember the requirements under IGRA, whenever a tribe engages in Class 2 or Class 3 gaming, they’re required to adopt an ordinance and file that ordinance or have that ordinance approved by the NIGC; correct?

MS. SCHWARTZ: Yes.

COMMISSIONER BIBLE: And NIGC has taken the position that those ordinances are not public record?

DR. POOL: I don’t believe NIGC is taking that position, sir. I believe it is the actual tribes. There is pending litigation in state courts, I believe, over this issue at this time.

COMMISSIONER BIBLE: The ordinance is not like the secret to the atom bomb.

DR. POOL: This is correct.

COMMISSIONER BIBLE: They’re simply governing documents. They’re very, very boring. I’ve heard a number of them. I don’t envy you.

DR. POOL: There are only a couple of tribes I --

COMMISSIONER LEONE: They have them, in China, I think.

(Laughter.)

COMMISSIONER BIBLE: They probably do. But the NIGC probably couldn’t figure out how to give them to them.

CHAIRPERSON JAMES: With that, please continue.

MS. SCHWARTZ: Mr. Bible, just one comment. We have a letter on record and as does --
DR. POOL: Doug Seay.

MS. SCHWARTZ: -- Doug Seay that stated what they were and were not willing to give us from NIGC and --

COMMISSIONER BIBLE: There's incredible. There's no proprietary information in any of these ordinances. They're simply how you do business.

MS. SCHWARTZ: I realize that. But, unfortunately, I cannot get them from NIGC and the tribes will not respond to requests for information -- and, unlike state law, Westlaw does not have them online.

COMMISSIONER BIBLE: I understand.

CHAIRPERSON JAMES: Ms. Schwartz, please.

MS. SCHWARTZ: I'm going to try and shorten this as much as I possibly can, but before I do, I really do want to thank Dr. Pool and everybody at American University as well as the Office of Justice Programs at AU and Dr. Dudley for agreeing to rework the sample at a late date and still work with us on that.

Anyway, I'd like to make a few short points on the regulatory structure in the states. They're very sketchy at this point. And then I will let Dr. Pool spend time on the survey, which I believe is -- you've mentioned outside of the Indian Gaming Regulatory Act and the regulation of Indian gaming, there is very little federal gaming regulation. And that, of course, may change. Internet gaming may force more federal regulation on us as a multitude of laws before Congress indicates.
Some form of gaming exists in 48 states and the District. A list is in the back. And the regulatory structure governing that varies greatly among the states. But, as was also mentioned, most non-tribal gaming regulation is being done on the state level.

Almost every single state in which there is gaming has a statewide gaming commission of some sort, meaning they either have a gaming commission, a racing commission, a gaming board, which includes all of those things, et cetera.

The exception is Alabama, which only has four racetracks, all told. And they are, even though authorized by statute, actually regulated by locally authorized commissions. And North Carolina has no regulatory agency, not much gaming either.

Most states regulate state lotteries separately than they regulate the rest of their gaming activities. State lottery commissions are usually appointed by the governor for specific periods. And those vary among states. Some are staggered. Some are not. And they need in some states to be confirmed by the Senate or the legislature.

Other state gaming commissions fall into two broad categories: one, states in which there is a consolidated gaming commission that oversees all forms except maybe the lottery; and other states which have different gaming commissions appointed for different periods of time and often reporting to different executive departments within the states. And those can be any
number of departments, from the Office of the Governor for some harness racing to the Department of Agriculture.

Some states are extremely specific about the nominating criteria for members of the Gaming Commission. For example, the Gaming Policy Board in Connecticut consists of five members, and they state that no more than three may be of the same political party and, additionally, that four members must be experienced in at least one of the following: law enforcement, computer styles, law, accounting, corporate finance, economic or pari-mutuel gaming. And two of these fields must be represented at any one time.

Similarly, the Indiana Gaming Commission has political affiliation requirements and also requirements on membership, professional proliferation. And so one member must be experienced in law enforcement, another a C.P.A., and there must be one attorney.

Indiana law is interesting because it also requires or assigns a geographical presentation so that the seven members, three must represent counties that are contiguous to Lake Michigan, three must represent counties contiguous to the Ohio River, and one must represent a county which is neither.

The nature of the gaming commissions, of course, varies, again, among states and depends on the prevalence of gaming in the states and statutory legal requirements so that some states -- and the full report will have this boring thing saying how many paid people or not -- have fully paid commissioners, some states have non-paid part-timers.
The role of the commissions, of the state gaming commissions, varies, but in general they’re authorized to issue and renew gaming licenses, advise the governor on gaming policy, and regulate, authorize gaming activities.

Some states also seek to ensure the integrity of gaming legislation by explicitly regulating lobbying activities and campaign contributions for gaming sources.

For instance, in Michigan, the Gaming Control and Revenue Act has been amended to prohibit casino operators and their employees from making political contributions to state public officials.

And, additionally, in Michigan, the City of Detroit has adopted a no-contact policy that forbids the communications related to the outcome of merit of a proposal or development agreement regarding a gaming operation with the mayor, mayoral appointees, members of the city council, any city council employee, et cetera. This no-contact period applies to all times beginning with the RFP. The request for proposal period ends through the final selection and licensing. Additionally, of course, many states have lobbying registration laws which apply to gambling as well.

All states with gambling activities establish licensing and regulatory procedures, including fingerprinting and background checks. Licensing periods vary among states. They must be run from one to five years.

And within any single state, this licensing may differ or the licensing period may differ between different forums so
that there may be a different license period for a river boat, rather than a land-based casino.

The role of actual enforcement of gaming regulations, site inspection activities, such as these, fall to different bodies. But in many states, they do fall to the state police.

The example I use here is Louisiana, where while the final responsibility for gambling falls to the Gaming Control Board, it is the Office of State Police which performs all of the activities, issuing permits to non-key gaming employees, renewal of permits for video operators, et cetera. The police also conduct the investigations that are required for those employees that do need to be licensed by the Gaming Commission itself.

Funding arrangements also vary. Again if I return to Louisiana, state police activities that are required for inspection and supervision are funded by fees paid by the gaming industry, which is pretty common.

However, the activities of the Louisiana Gaming Control Board and of the State Attorney General, who acts as the Gaming Control Board’s lawyer, are actually funded by appropriations. Those last year between them totalled all of 4.1 million.

On the high end of regulatory expenditure -- and these numbers come directly from the GAO report -- last year or in 1997, New Jersey spent $54 million. And Nevada spent about $22 million. These are all funded by gaming operations.

As we mentioned, few states -- and I’m going to run through them very fast -- do have some local rule. I mentioned
Alabama has regulation by a separate, independent local racing commission.

Maryland lets a couple of its counties regulate something so that Anne Arundel can regulate commercial bingo. Michigan lets the City of Detroit play a role in the selection of casino license recipients and also play a role in the percentage of city residents that are employed at the casino and the percentage of the revenue that casino operators will owe.

And Nevada, of course, has concurrent jurisdiction from the state and local authorities. And there are active and expensive gaming controls in cities and counties with major effect.

Wyoming, a state with not much gaming, has its charitable purpose gaming allowed but only approved by the county. And when those activities are authorized, they’re locally regulated.

In other states are other forms of very minor local regulation. In Texas, local elections are necessary for the legalization and establishment of charitable bingo in the local jurisdiction. And only after an election was successful can you apply for a permit from the state.

New York allows basically every municipality to authorize charitable gaming. California does basically the same thing. Virginia, on the other hand, the only one I ever found, went the other way. It took charitable gaming out of the hands of local authorities in 1995 and organized a Virginia Charitable Gaming Commission.
There is very little control of commercial gaming. One notable exception is in the State of California. Once the moratorium on new card rooms ends at the end of the year 2000 or in January 1, 2001, you would need a majority vote of residents in a city or county in order to allow the expansion of gaming. And that would be by 25 percent only.

Arkansas demands statewide vote for the establishment of horse racing, but that has to be followed within two years by a county referendum. So you cannot introduce new facilities without that.

Similarly, Tennessee, which has no horse racing right now, allows one for each major part of the state. But that, too, needs approval.

I am going to I think skip on just the short introduction of IGRA in the interest of time and the belief that everybody is aware of its requirement and let Amy, or Dr. Pool, introduce the survey.

COMMISSIONER McCarthy: Madam Chair?

CHAIRPERSON James: Yes?

COMMISSIONER McCarthy: Madam Chair, at Mr. Bible’s request, Mr. Belletire, who is going to make a presentation to us soon, met with five or six other key state regulators and tried to poll their thoughts on what the most essential parts are of state regulation.

In his presentation to the Internet Subcommittee, he was very honest that obviously it’s not just the laws. It’s the
emphasis. It’s the spirit of the regulators. Some states may emphasize some areas and others -- excuse me.

I’m not trying to give your entire presentation. But it occurred to me as I was listening to you -- and we’ll share the blame for this. What we should have asked you to do -- and the reason I’m raising this, I hope it’s not too late to do -- is: Do the states you’re looking at have the following things as you examine the gambling facility or facilities in the 12 states you’re talking about? Do they have legislative clarity of purpose? Do they have real independence of the regulatory bodies?

No, you don’t have to write them down. I’m going to give you a copy of Mr. Belletire’s statement.

MS. SCHWARTZ: Right.

COMMISSIONER McCarthy: Do they have independence in the licensure decision-making? Do they really have the power to examine suitability for licensure? Do they have competitive proposals that are serious competitive proposals, no under-the-table stuff, really on-board competitive proposals?

Do they have full disclosure of financial and political relationships with those seeking a license? Do they have the explicit power to investigate and approve contracts, the regulatory bodies? Do they have real audit oversight powers?

Do they really control under-age gambling? Do they have the power? And do they enforce it? Do they have a code of conduct to cover ethical issues, which has real meaning?
Now, forgive me. The stuff you’re giving, it’s almost like the compilation of laws. It’s the mechanics. It’s not the heart, not so far anyway. I don’t know what you’re going to give us out of the tribal gambling review, but it’s not the heart of it. It’s the heart of it that we need.

I’m going to give you a copy of this and ask you to try to apply these basic principles, which Mr. Belletire didn’t say it may not be all there is, but he and his colleagues said this is most of it.

MS. SCHWARTZ: What I gave you right now, just for clarity’s sake, was basically a sort of a review of regulations as they are. Dr. Pool will present this sample. And she will present tribal information right now because we have done a much larger percentage of --

COMMISSIONER McCARTHY: I can appreciate that, but just as important to us --

MS. SCHWARTZ: Right.

COMMISSIONER McCARTHY: -- is getting it at the state level.

MS. SCHWARTZ: I’m trying to answer. When we get to the state level -- we have not done enough for me to be comfortable presenting those 12 states and 25 institutions, which were just the easier part. So we left it to the end of this. So we were going to do all of those surveys. And I believe the survey in itself will answer a lot of this.
So when you get that report, which will be as soon as possible, there will be a lot more meat to these assertions than there is currently.

COMMISSIONER McCARTHY: Good.

COMMISSIONER LANNI: Ms. Schwartz, I would suggest that you be very careful. In some of the things you were just saying, there is a number of inaccuracies.

Specifically, you stated that in the area of Michigan, that Michigan has ceded some of the licensing responsibility to the city. That’s not correct. They ceded selection to the city, --

MS. SCHWARTZ: Selection, yes.

COMMISSIONER LANNI: -- the licensing. But you’ve got to be very careful because you’re going to give us a report that may also have inaccuracies. You also mentioned that Nevada the gaming industry pays directly for the cost of regulations. It’s paid out of the general fund, not paid.

So you’d better check your information because if this goes into a report, it will put some of the others into question. You’ve got to be much more specific than you’ve been.

CHAIRPERSON JAMES: Dr. Pool?

DR. POOL: Thank you.

I want to state on the record that there were no methodological reasons for the modification of our contract. And it was at the objection of American University and my methodologist that we altered our original chart.

COMMISSIONER BIBLE: Does that require a formal --
DR. POOL: Yes, sir, it did. And I have all of those documents in writing. I objected very strenuously to the change in scope of the work that I was to do.

My methodologist, Dr. Robert Dudley, had already drawn our sample and written the survey at the time that these modifications were requested. So, from there, let me tell you what I was charged in writing with doing and how my results correlate to that.

I was asked to do a survey looking at regulations and enforcement of gaming activities across jurisdictions and to determine the degree to which policies and practices deviate from regulations.

Accordingly, I have two sets of respondents in my survey population. One would be the tribal outlets. And the other would be industry gaming. We conducted a phone survey of the 25 non-tribal gaming outlets.

We have surveyed both outlets and regulators. They represent various forms of gaming. They represent 12 states: California, Colorado, Delaware, Illinois, Indiana, Iowa, Louisiana, Mississippi, Michigan, Montana, Nevada, and New Jersey. And all of them have significant gaming revenue. They were all in the top quarter of gross wagering per capita for 1997.

My sample population for tribal gaming, NIGC very graciously has cooperated rather extensively with me, particularly Allen Fedman, the Director of Enforcement.
How we ascertained our sample population here, NIGC provided five aggregate categories of revenue generation: A, B, C, D, and E. Category A represents the top revenue producers, 20 top revenue producers, which represents 50.5 percent of total revenue generated by tribal gaming. Category B is 25 operations. That represents 21 percent of tribal gaming revenue; Category C, 60 operations, 20.1 percent of tribal gaming revenue.

If you look at Categories A, B, and C, that represents over 90 percent of tribal gaming revenue. Our survey is mostly complete pending some minor problems with getting a tribe to agree to respond to our survey. We’re trying to work that out with individual tribes at this time.

Categories D and E are the low revenue-generating categories. That represents Category D is 102 outlets, 8 percent of total revenue. Category E is 54 outlets, .3 percent of total revenue. We have sampled 36 outlets from this bottom category.

COMMISSIONER MOORE: From the bottom?

DR. POOL: I’m sorry. From the two bottom categories.

COMMISSIONER MOORE: Why did you want to do that?

DR. POOL: That is what the Commission requested from me. That is not a methodological judgment on my part. That is what I was asked to do. I don’t necessarily want to do that. That is what I was asked to do.

For tribal gaming surveys, our sample population, then, includes a complete census of Categories A, B, and C, meaning that the sample population is exhaustive and all-inclusive, the
top revenue establishments. And we sampled the 36 outlets in
Categories D and E.

Broadly speaking, the survey that we have conducted
seeks to measure the types of gaming at these establishments, the
gaming-specific regulation, gaming operation-specific regulation,
as opposed to, say, food and alcohol regulation, common types of
regulation that are in existence, the extent or degree of that
regulation, the perception of regulation versus the actual
regulation, and the cost of regulation.

Our survey instrument queried on the following topics:
largest source of gaming revenue, background checks,
fingerprinting, reporting of gaming receipts, maintenance of
records, licensing fee payments, on-site inspections, social
service expenditures, regulation, accuracy of equipment, training
for employees, ratio of employees to receipts, alternative
activities at gaming establishments, and other attractions
surrounding facilities.

This survey document went through 13 iterations between
ACIR. NGISC approved this survey document. We posed the phone
survey to our respondents. It takes us approximately six to ten
calls to get a tribe to respond.

To ensure the integrity of the ongoing research
process, I’ll have to limit the degree to which I can be specific
and precise about the numbers for you, but I can give you some
general findings.

I would make the following assertions. This study is
remarkable in the degree to which it is simply unremarkable.
There aren’t major complaints or suggestions for improvement by either those being regulated, meaning the tribes, or by the respondents, the actual regulators. Neither one has major complaints or suggestions according to our survey.

With respect to the degree to which policies and practices differ from the laws, generally speaking, tribal gaming is more extensive. Tribal regulators do appear to be more extensive than NIGC requirements. They’re going beyond the federal requirements.

The perceptions of overregulation are not borne out in the actual data of respondents, tribal gaming outlets, but neither is the perception of under-regulation borne out by the data in the responses by the regulators.

I have specific discussions and examples based on the questions. In the interest of time, I will leave it to you as to whether you’d like me to get into specifics.

For example, you could ask me what fingerprinting requirements are. I am able to tell you generally speaking what our responses are. It may be about regulation, the cost of regulation. I will, in the interest of time, make that your choice as to whether you would like me to continue with this specificity.

CHAIRPERSON JAMES: I think we will leave that to commissioners to ask that level of detail if they desire.

DR. POOL: Thank you.

CHAIRPERSON JAMES: Are you done?
DR. POOL: If I may simply tell you what types of categories so that you might be better informed to ask questions should you desire that information?

We have information about sources of gaming revenue, background checks, fingerprinting, reporting of gaming receipts, the maintenance of records, licensing, fee payments, inspections, social service expenditures, regulation, the accuracy of equipment, training for employees engaged in gaming activities, the ratio of employees to receipts, alternative activities of gaming establishments.

With respect to regulation, I can answer questions about the changes in reporting requirements, recordkeeping, desired regulation that may not be on the books, what regulators believe are the most important types of regulation in terms of their utility, what regulations may be unnecessary, regulations that are recommended to be added, areas to increase enforcement, changes in regulatory laws or practices, the state role in regulation, and the cost of regulation.

I will stop there and let you query me should you desire.

CHAIRPERSON JAMES: Thank you.

Commissioner Wilhelm? And I am not going to call on any others. So, Leo, just jump right in after that.

COMMISSIONER WILHELM: Since we’ve been all around here this afternoon, I want to see if I can in brief summary form understand where we are.
With respect to a cataloguing of federal laws pertaining to gaming, will we have that in complete form?

MS. SCHWARTZ: Yes.

CHAIRPERSON JAMES: And on time?

MS. SCHWARTZ: On the database, which is supposed to be May, yes.

CHAIRPERSON JAMES: Okay.

COMMISSIONER WILHELM: With respect to state laws and regulations, we’ll have all of those?

MS. SCHWARTZ: Yes.

COMMISSIONER WILHELM: And with respect to local laws and regulations and ordinances, we’ll have all of those, local non-tribal?

MS. SCHWARTZ: I believe so, again, for those places where is a local authority in gaming regulation.

COMMISSIONER WILHELM: Of course.

MS. SCHWARTZ: Right, right. We have not collected every zoning regulation in every --

DR. POOL: If it pertains to the gaming industry.

COMMISSIONER WILHELM: That was my understanding.

MS. SCHWARTZ: Yes, yes.

COMMISSIONER WILHELM: So we’ll have all of those?

MS. SCHWARTZ: Yes.

COMMISSIONER WILHELM: Okay. And then with respect to tribal material, will we have all of the compacts? I understand according to the Governors’ Association testimony here that was
given to us in writing, there are 171 compacts in 24 states covering 146 tribes. Will we have all of those?

MS. SCHWARTZ: You say 161, and they say 171.

DR. POOL: The numbers are different between NIGC and the National Governors’ Association.

COMMISSIONER WILHELM: A hundred, sixty-one. Will we have all of those?

DR. POOL: It would be surprising to me if you did.

NGISC, the Study Commission, is requesting that information at this time. We are in possession of ten compacts. Is that correct?

MS. SCHWARTZ: No. We have more compacts.

DR. POOL: Oh, we have more compacts?

MS. SCHWARTZ: Yes. We have more compacts because we have a whole bunch of them just --

COMMISSIONER WILHELM: Look, I don’t want to belabor this.

MS. SCHWARTZ: Yes. You have 24 --

COMMISSIONER WILHELM: Those are public documents state by state.

DR. POOL: Yes. I have the 24 state documents.

COMMISSIONER WILHELM: Madam Chair, one of the tribal representatives back there apparently has some light that he feels he can shed on this. Would that be appropriate?

CHAIRPERSON JAMES: Please?
MR. ROGERS: One of the problems with the compacts is with the Indian gaming establishments at the Bureau of Indian Affairs.

DR. POOL: BIA did deny our request for that.

MR. ROGERS: Compacts are public record.

DR. POOL: Well, what they said was that there needed to be --

COMMISSIONER MOORE: Yes, but also --

DR. POOL: Excuse me. If I may clarify? They said that it was too expensive.

CHAIRPERSON JAMES: No, no, no. You respond to the commissioners. You don’t tell commissioners "No. Be quiet."

DR. POOL: I’m sorry.

CHAIRPERSON JAMES: Thank you.

DR. POOL: I was trying to clarify the point.

CHAIRPERSON JAMES: Commissioner Moore, please go ahead.

COMMISSIONER MOORE: My sympathy goes with you.

DR. POOL: Thank you.

COMMISSIONER MOORE: I don’t know how you get anything out of the Indians. We have been trying to get just plain little old C.P.A. reports out of them, but it’s illegal for them to give them to us.

DR. POOL: That’s correct.

COMMISSIONER MOORE: It’s illegal for them to do anything. I’ve even had sources to tell me that the Indian
government doesn’t even have to give a report to the tribal members of the operation of a single casino.

Mr. Lanni would like to get by with not sending his stockholders a report probably, but he’s such a nice guy I know he wouldn’t. He would send it anyway. But these are things that are disturbing not only to you but disturbing to us.

And to follow up on Mr. Wilhelm’s remarks, as long as we get all the information the best that you can on what you have contracted to do, then I think that this Commission can operate. But he’s more organized than I am.

You know, I had an old hospital administrator one time who said that you always try to do anything with a minimum of confusement. And we’ve had a little bit more than a minimum of confusement this afternoon.

DR. POOL: I concur.

COMMISSIONER MOORE: Don’t you think?

DR. POOL: Yes, sir.

COMMISSIONER MOORE: But please go ahead and get all of this information you can because we need it.

CHAIRPERSON JAMES: Let me just ask a question for point of clarification. These are public documents. Is that correct? And are --

DR. POOL: It’s an issue of --

CHAIRPERSON JAMES: -- you informing this Commission that BIA refuses to give public documents?

DR. POOL: Not necessarily. What it is is an issue of cost. I believe the figure that we were quoted and we reported
to Dr. Kelly was something on the order of $6,000. I don’t believe, Commissioner James, that it is an issue of refusing. It’s a question of what you’re willing to pay for because of the duplication cost.

CHAIRPERSON JAMES: Yes. Please go ahead.

DR. POOL: That’s my understanding.

CHAIRPERSON JAMES: Wait a minute. I’m recognizing the gentleman in the back.

COMMISSIONER DOBSON: Madam Chairman, we have a contract with you that you’re supposed to pay for it; right? Isn’t that in the agreement? You’re going to get that information for us? Isn’t that what we’ve already paid for?

DR. POOL: Not in my contract.

COMMISSIONER DOBSON: If you know what I’m talking about.

COMMISSIONER BIBLE: Subcontracting raises its ugly head again.

CHAIRPERSON JAMES: I don’t believe this.

COMMISSIONER McCARTHY: Dr. Kelly when he gets back can look at the details of the contract.

CHAIRPERSON JAMES: All I can tell you is that as a commissioner, it’s a matter of public record, public information. We contracted with you to get that information. And I believe that it is inexcusable to be here and say that you can’t get for this Commission public information.

Thank you.
MS. SCHWARTZ: I will get every document that I can at all get. And I’ve said that repeatedly.

COMMISSIONER WILHELM: So we may or may not have all of the compacts, whether there are 161 or 171? With respect to tribal gaming ordinances and regulations, will we have those?

MS. SCHWARTZ: Amy?

COMMISSIONER WILHELM: I’m talking about the catalogue now.

MS. SCHWARTZ: Yes, the ordinances.

DR. POOL: As I stated before, we have 10 that represent 90 percent of the ordinances.

COMMISSIONER WILHELM: So we won’t have all the tribal gaming ordinances and regulations.

DR. POOL: I don’t believe so. The response that we were given was that this was a legal matter. And we do not have the funds to litigate over this issue.

COMMISSIONER BIBLE: You have 10 that represent 90 percent of the --

DR. POOL: That’s correct, sir.

CHAIRPERSON JAMES: I’ll recognize the gentleman.

COMMISSIONER BIBLE: Okay.

CHAIRPERSON JAMES: And I don’t mind calling you "the gentleman," but help me with your name again.

MR. ROGERS: In the interest of you making better use of your time and making an informed decision, I’ve instructed that Barry Brandon, the General Counsel for the NIGC, come over here and amplify his response or non-response.
DR. POOL: Barry is the person with whom we worked on this.

MR. ROGERS: He has said that it was his recollection or he was searching his files for any correspondence between the parties to my right with regard to what was requested, what was not requested.

But with regard to the ten, with regard to the ten -- and I'm speaking. This is just hearsay because I'm only relying. But what he told me was that they provided ten as a representative, you know: Take a look at these. And, please, if you need something more.

Now, I'm just speaking what he just told me over the phone, but he --

CHAIRPERSON JAMES: But you instructed him to come over here?

MR. ROGERS: I requested. I said: Barry, it would be in the interest of this commission and the interest of the --

CHAIRPERSON JAMES: I thought you said you instructed him.

MR. ROGERS: No, no, no. I made a simple request.

COMMISSIONER BIBLE: You represent one of the tribes, don't you?

MR. ROGERS: No, I don't, Mr. Bible. I represent the National Indian Gaming Association.

COMMISSIONER BIBLE: So you're with the association?

MR. ROGERS: That's right.
COMMISSIONER BIBLE: I noticed the word "instructed," too. That’s sometimes --

MR. ROGERS: No. I want to make it absolutely perfectly clear so --

CHAIRPERSON JAMES: That you misspoke when you said "instructed."

MR. ROGERS: I think I said "requested" because how --

CHAIRPERSON JAMES: No. You said "instructed."

COMMISSIONER MOORE: Didn’t you use to represent the tribes, not the NIGC but --

MR. ROGERS: Let’s not go down that road.

COMMISSIONER McCARTHY: I think we all heard it the same way. You said it right.

COMMISSIONER WILHELM: He just misspoke. That’s okay.

MR. ROGERS: That’s right. Thank you.

COMMISSIONER WILHELM: I’m sorry. I’m not the Chair.

If I could just finish? Thank you.

CHAIRPERSON JAMES: Thank you very much.

COMMISSIONER WILHELM: If I could just finish just so I understand where we are here? With respect to the non-tribal gaming outlets that you’re examining, did I understand you to say that amongst the 25 you have facilities in the 12 states that you listed?

DR. POOL: That’s correct.

COMMISSIONER WILHELM: Just going by memory, I think those are sort of the gaming states in terms of --
DR. POOL: That represents the top quartile of gross wagering for 1997.

COMMISSIONER WILHELM: Okay. Top quartile of gross wagering. Thank you.

DR. POOL: That’s correct.

COMMISSIONER WILHELM: And then with respect to the survey that you’re doing of the tribal outlets, would it be your belief that -- for the sake of discussion, if you are surveying two non-tribal facilities, let’s say, in Nevada, non-tribal, would it be your belief that the results of that survey would be more or less representative of the regulatory practices in that state?

DR. POOL: Yes, sir, I would as well --

COMMISSIONER WILHELM: Since they have one regulatory apparatus for that state?

DR. POOL: That’s correct. For example, in the State of California, where there are multiple state tribal outlets, there may be one state regulator or regulatory body. There are particular regulatory bodies that govern the various tribal outlets.

COMMISSIONER BIBLE: We’re not interested in California because --

DR. POOL: Well, no, no.

COMMISSIONER WILHELM: Wait, wait, wait, please.

DR. POOL: I’m giving an example not based on the actual survey, but speaking to your broader point that one
regulator may have control or jurisdiction over more than one tribe or industry outlet.

COMMISSIONER WILHELM: So, for example, just since Mr. Belletire is sitting next to you, if you were to survey two non-tribal outlets in Illinois, am I right that you would think that the results of that survey are probably representative of the practices in Illinois, non-tribal?

DR. POOL: That is correct.

COMMISSIONER WILHELM: Okay. So, to that extent at least, the 25 non-tribal outlets that you’re surveying should be representative of the practices and non-tribal regulatory practices in those 12 states?

DR. POOL: That is correct.

COMMISSIONER WILHELM: Now, with respect to your survey of the tribal outlets, the point has been made to us a number of times in the Indian Gambling Subcommittee by tribal representatives that while in the exercise of their sovereignty tribes may reach an agreement with a state that cedes some or all of the regulatory authority to the state, as in the Nevada example -- Bill, correct me if I’m wrong. I believe that the four tribal casinos in Nevada are regulated by the Nevada State Gaming Control Board.

COMMISSIONER BIBLE: To a large extent, yes. It varies from compact to compact.

COMMISSIONER WILHELM: In other cases, in other states, we have been told in the subcommittee the state’s role is less and that --
DR. POOL: That is correct.

COMMISSIONER WILHELM: -- the role of the tribal regulators is greater.

DR. POOL: That is correct.

COMMISSIONER WILHELM: So does it follow from that in your opinion that in order to have the best possible picture given the limitation on resources -- leaving aside the particular numbers and the particular strata, does it make sense to you that you would need to examine more tribal facilities than non-tribal because of the diversity of regulation?

DR. POOL: I think it would present a more accurate picture of the variance of regulatory structures in the United States. In other words, the whole universe of regulatory techniques that are out there would be more fully represented, yes.

COMMISSIONER WILHELM: By examining more tribal outlets because of the diversity of regulatory practice?

DR. POOL: In theory, the answer is yes. In practice, the variance is not as great, but in theory, that assumption is correct.

COMMISSIONER WILHELM: Okay. I just wanted to understand that. Thank you.

CHAIRPERSON JAMES: I'm going to interrupt at this point and thank you all very much for your presentation to this point. I'm sure there will be additional questions that the Commission has and additional opportunity for interaction.