CHAIRPERSON JAMES: At this point I'd like to open it up to commissioners. Commissioner Wilhelm.

COMMISSIONER WILHELM: Chairman Tucker, as you know in yesterday's Indian Gaming Subcommittee of this Commission there was a tremendous amount of very useful information that you and others presented and if I may I'd like to, for purposes of putting a few -- just a few of those facts into the record of this Commission meeting today, I'd like to ask if you could confirm a couple of pieces of data that were testified to yesterday.

First, there was testimony presented by the economic study that some of the tribes had commissioned about the very positive impact on the unemployment rate on many of the reservations that your development of gaming has had. The statistic said that on the non-gaming reservations the unemployment rate for Native Americans on those reservations was in excess of 60 percent. That amongst the gaming tribes prior to gaming, the unemployment rate was in excess of 50 percent but since the development of gaming on those reservations that at least by last year the unemployment rate had been reduced at least to 27 percent, in other words, cut nearly in half.

Can you confirm those figures?

MR. TUCKER: According to our economic study, yes, that is correct.

COMMISSIONER WILHELM: Which I think you and others obviously expressed the determination to further improve that but that is obviously tremendous progress and I think it speaks
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extremely well of what the gaming tribes have done in terms of addressing the unemployment issue amongst Native Americans.

There was also testimony that -- a great deal of other testimony which I won't try to repeat, some of which also occurred today about other positive uses that gaming revenue has been used for by the tribes but I'm speaking now about specifically jobs. There was also testimony that presently there are about 15,000 jobs involved in the tribal casinos in the state of California. Is that correct?

MR. TUCKER: That is correct.

COMMISSION WILHELM: And there was also some testimony, in particular from the Pechejna tribe that indicated that the tribes have made tremendous progress in terms of making management jobs available to members of the tribe and in the Pajunga case I believe the statistic was that about 65 percent of the management jobs were held by members of the tribe.

And then finally there was testimony if you recall from at least two tribal chairs to the effect that many of the members of their particular tribes were less interested in the, if I might use the term, the rank and file service jobs, I think the phrase that one of the tribal chairs used was, were less interested in putting an apron on and doing that kind of kitchen work, for example, and more interested in other kinds of employment; management, construction, and so forth.

And, in connection with that, the testimony -- and this is the last thing that I would ask you to confirm if you can, the testimony was that for non-management jobs in the casinos, the tribal casinos in the state of California, that 95
percent or more of those non-management jobs are held by people
who are not members of the tribes, people who in other words are
Latinos and Anglos and Asians and all of the other people who
work in the gaming and hospitality industry throughout the state.

Is that accurate?

MR. TUCKER: That's accurate to the point that anyone
who works in this type of business they're going to do the best
they can and they hire the best people they can for any
particular job.

COMMISSIONER WILHELM: Sure.

MR. TUCKER: And whether it's a non-Indian, Native
American, or Hispanic or Asian; whoever is best for that job,
they're the ones who are going to be hired.

COMMISSIONER WILHELM: And in fact 95 percent of non-
management jobs are held by people who are not members of the
tribes.

Thank you very much.

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: All right, yes.

(Applause.)

COMMISSIONER LOESCHER: Madam Chairman, I have
several questions I'd like to ask Mr. Kolkey if I could.

You know the state of California is involved in the
lottery, involved in horse racing, involved in all kinds of forms
of gambling that not only the people of California are involved
with but they have relationship with the Nevada people and other
people are involved with your gaming and plus Indian tribes.

Also it seems like the State of California is a competitor in
addition to all these other organizations that are running gaming in California.

You're not the Attorney General and I've asked attorneys general in other states this question. What would be the State of California's position or your governor's position with regard the possibility that the Federal Government under the interstate commerce clause would move aggressively to regular gaming in the state of California?

MR. KOLKEY: Well I think that Governor Wilson's own view is that he has concerns over the expansion of gaming in the state. And he believes it's a matter that ought to be addressed at the state level. The state ought to be able to assess what type of gaming is available in the state and an ancillary of that would be that the state then ought to be the one that is regulating that gaming.

So, if it became a matter of federal jurisdiction, it would seem to me, soon to be a case where the Federal Government would take out of the state's hands the ability to shape the type of gaming that was available in the state including the manner in which that gaming was offered.

COMMISSIONER LOESCHER: Madame Chairman.

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: In looking at your description of the Pala model compact it appears that the state likes this limited licensing concept as you've described it. However, it appears to limit only Indian gaming.

Are all of the other gaming enterprises in the state also limited as to the number of games at specific locations?
And also as a follow-up, what is the public policy rationale for discriminating against the Indian nations in this regard?

MR. KOLKEY: Well, first let me note that card clubs in the state are subject to a vote of the people before they can be established in a locality. And under a law that was passed last year, a card club in the state cannot even expand by 25 percent or more without a vote of the local jurisdiction.

There is no limit that I know of as to the number of tables that a card room can have other than it's going to have to expand the facility to hold the tables. If it expands the facility to a great extent, it now must get a vote of the people of the locality in order to do it.

With respect to the lottery gaming and the licensing program, as I mentioned in my testimony the balance that the governor was trying to achieve here was the fact that the people of the state had in 1984 said as a matter of the California Constitution there were not to be casinos of the type operating in Nevada and New Jersey in the state. And there were no gaming facilities established legally in the state that had rows and rows of gaming devices. This didn't exist anywhere in the state.

By virtue of IGRA the state had an obligation to negotiate over the establishment of such gaming facilities that had never existed before. But because the federal law required the governor to do something that the people of the state had not approved, they had not approved the nature of this gaming operation with facilities full of machines, he felt an obligation within the constraints of federal law to provide some restraint on the proliferation of the number of gaming facilities that grew...
up in the state without the people of the state having approved
of this new gaming facility.

Now, in some states where you might have three
tribes, perhaps establishing a gaming facility doesn't puncture a
huge hole in the state's public policy vis-a-vis gaming. But in
a state that has some 100 tribes, one can see the potential of
having gaming facilities established between 40 to 60 to 70
tribes in 70 different locations could quite change the face of
gaming operations in the state.

And, thus, the balance that was achieved through the
Pala compact was to say we will give tribes that can earn from
the gaming who are situated in locations to earn from the gaming
the right to have these gaming facilities as federal law appears
to require but we're going to discourage the proliferation by
providing this licensing system which is, as I said, also has the
advantage of allowing all tribes in the state even those who by
accidental location couldn't possibly open a gaming facility to
benefit from the gaming.

Because after all the purpose of IGRA is not to try
and make expert gaming operations on tribal reservations so much
as to provide for tribal economic development and tribal self-
sufficiency.

And the governor's compact is the first one in the
nation, that I'm aware of, that tries to honor IGRA's purposes of
benefiting tribal economic development by allowing all tribes in
the state to share in it, not the few that happen to be in
locations that enable them to benefit from the gaming.

So --
COMMISSIONER LOESCHER: Madam Chairman?

CHAIRPERSON JAMES: Mr. Loescher.

COMMISSIONER LOESCHER: The question is will the state limit its own activities: lottery and video gaming, you have the same rights as the Indian tribes under the terms of agreement as I've seen it to add additional machines and equipment into the open market managed by the state.

Is the state going to limit itself similarly?

MR. KOLKEY: The state lottery has limited itself. The State Lottery Commission does not have any interest that I'm aware of in establishing any type of gaming facility and indeed we worked hard with Pala Band to come up with a machine that was not only legal but one that was not being used by the State Lottery which in essence gives the tribes a quasi monopoly on that form of gaming without which quasi monopoly the tribes presumably would not be able to benefit.

COMMISSIONER LOESCHER: Madam Chairman, it's sort of a paradox yesterday we, in the hearing with our committee that we held yesterday that we heard Indian tribes come forth and say that the Governor Wilson does not negotiate in good faith, doesn't answer his mail, asking -- when the Indian tribes ask to negotiate with the governor as IGRA outlines, and that the reasoning is, is that, that the governor won't negotiate with Indian tribes because he feels that they are running criminal activities in running their casinos as they are now.

It's sort of a paradox and kind of a difficulty that Indian tribes have, they can't get to first base to the table to negotiate. And I'm wondering that you have made the claim that
IGRA needs to be amended because tribes are not obligated to negotiate in good faith, yet the governor creates his own paradox so he doesn't appear to be negotiating in good faith.

All of this seems to be somewhat disingenuous given that, one, by your own word states have had an absolute veto over Class III gaming compacts, without state consent there is no Class III compact. And, two, up to this time tribes have no remedy against states who refuse to negotiate Class III compacts in good faith because of the Seminole case, tribes cannot sue states.

Isn't it the case that the tribes' only current remedy is this Spokane case where a federal court did not permit a federal injunction where a state may have acted in bad faith?

MR. KOLKEY: Well, I don't consider the Spokane case to be a remedy. Spokane simply said as a matter of equities it wasn't going to allow the U.S. to enjoin an illegal gaming operation where the state had raised the Eleventh Amendment to bar suit.

I ought to make a couple of points that I tried to make, perhaps unsuccessfully, my testimony. Number one, is the governor had been negotiating with a variety of tribes including a joint session with 16 tribes in '91 and '92. And as I mentioned there was a dispute over whether or not the governor had to negotiate and permit games that were prohibited under state law. While that matter was being litigated by agreement, tribes began to engage in un-compacted gaming in violation of IGRA.
And, thus, the first shot to the extent that's worth anything was by tribes that decided not to comply with IGRA. Now this was at a time when IGRA gave them the right to sue for bad faith suits, the Seminole decision had not come out, and if they thought the state was negotiating in bad faith they could have brought a bad faith suit. They didn't. They simply started to game. Not only did they start to game without a compact, without regulation, without state law protections to workers and patrons and neighborhoods; but they began to operate the very devices that were under dispute in the litigation.

Once a number of tribes had begun those unlawful operations, and I should note that the majority of tribes in the state are law abiding, but once a minority of tribes had begun to violate federal law and operate unlawful gaming, there was much less incentive for those tribes to negotiate restrictions that would restrict their activities to legal ones subject to regulation by the state.

In other words as long as you can engage in illegal gaming until you conclude a compact, there is little incentive to conclude a compact that limits you to legal gaming unless, of course, the U.S. says, "Enough is enough, you've got to shut down your unlawful operations". But those operations did create a huge hole in the state's public policy with respect gaming and it was a hole that's not authorized by IGRA. IGRA doesn't authorize Class III gaming without a compact or with respect to games that are not permissible under state law.

We, therefore, submit that the governor negotiated, he acted in good faith, certain number of tribes began to operate
outside of the law and after that, negotiations were terminated but the governor then continued to negotiate with tribes that were law abiding. I put in 500 hours of my own time in negotiating the Pala compact and spent endless hours negotiating with other tribes such that we now have eight compacts that have been concluded with tribes that want to operate legal gaming operations.

And, finally, to the -- to the point that the tribes don't have a remedy; the state has said any tribe that wants to enter a Pala like compact, based on that compact, even though it's engaged in illegal gaming can do so and we'll provide a transition period wherein they can transition their current operations to legal ones without any disruption at all in their operations.

Alternately, if they want to negotiate a different compact, if they -- and their unlawful gaming and comply with IGRA; the state will not only negotiate with them but the state will waive its 11th Amendment immunity to a bad faith suit if the tribes believe that it has negotiated in bad faith. So we've given the tribes the remedy under IGRA before the Seminole case.

COMMISSIONER LOESCHER: Madam Chairman, just one last thing.

CHAIRPERSON JAMES: One last thing, Mr. Loescher.

COMMISSIONER LOESCHER: Madam Chairman, the inherent rights of one government, you know, and the rights of other governments, inherent rights, very complex piece of business, very, very complex. And I was reading this Pala agreement that the governor has and one of the things that I wondered about
based upon my own personal experience, business experience, is that arbitration is probably the worst form of dispute resolution anybody could have ever dreamed. It splits the baby approach and avoids interpretation of law, especially complex issues such as you are facing between government to government and then the issues within gaming.

I'm wondering -- and additionally arbitration kind of moves towards settling damage, financial damage questions rather than dealing with interpretations of law and issues. But I'm wondering in this process of negotiation whether or not the state of California might be taking advantage of Indian tribes and their tribal members by offering this form of dispute resolution rather than utilizing the mechanism of the Federal Court as a venue for disputes between governments and governments.

MR. KOLKEY: All right, well that's a very good question. The fact of the matter is, is that the state would have preferred the Federal Courts or the State Courts. The problem was the Federal Courts had limited jurisdiction. We weren't sure as to what jurisdiction it could take over what was in essence a breech of compact dispute, in essence a contract dispute.

And also the tribes preferred a more neutral remedy. For instance in international law, parties often resort in commercial matters to arbitration as a way of not subjecting either party to the other party's court system. And so we agreed, frankly in respect to the tribes' sovereignty rather than seeking the state court system and because of uncertainty as to the federal jurisdiction, and the Federal Court system to resolve
many of the disputes through arbitration which would be resolved through a neutral.

My experience with arbitration has been more with commercial matters than others, but my experience is that commercial arbitrators often do not split the baby. They are diligent, they attempt to apply the facts to the legal standards that the parties have presented to them and it can be a much more expeditious way of resolving a dispute, particularly a fact intensive dispute where it's going to be the facts more than the law that determine the outcome than litigation. And here what we will have here are in essence contract claims being arbitrated by a neutral in neither party's courts and they will often be fact laden disputes with respect to whether or not a particular provision in the agreement has been breached, which provision by the way will have had no case authority for the courts to rely on in interpreting it and thus it's an appropriate matter to be arbitrated and as I say it respects the tribe's sovereignty and it was a way that avoided the problems with federal jurisdiction. So it was no way done to impair the tribes' remedies. Indeed it was done out of respect for the tribe's sovereignty.

CHAIRPERSON JAMES: Thank you.

MR. DICKSTEIN: Let me just add to this, if I may. I think Pala insisted on the arbitration. Federal courts are courts of limited jurisdiction as you know. Virtually every dispute that's being submitted to arbitration, the Federal Courts wouldn't have jurisdiction over. The state wouldn't go into tribal court and the tribe wouldn't go into state court, so arbitration seemed a reasonable alternative. In addition the
tribe has more control that way over who the decision maker is because we adopted rules that allow the tribe to eliminate decision makers or judges that the tribe might feel have some kind of bias and that would be much more difficult in a state court forum. It's less formal. It's quicker. It only can be enforced in courts of competent jurisdiction. And it seemed the best alternative among those that are available considering the federal courts don't have jurisdiction.

Moreover, in areas where federal courts do have jurisdiction, for example, disputes over whether the tribe was engaged in unlawful Class III gaming beyond the scope of the compact, those do go to federal court if you read the compact closely. So we carefully looked to take disputes to federal court where the federal court had jurisdiction and when it didn't have jurisdiction we chose arbitration over state courts.

COMMISSIONER LOESCHER: Madam Chairman, may just have a moment to speak.

CHAIRPERSON JAMES: Excuse me just a minute.

COMMISSIONER LOESCHER: Sure.

CHAIRPERSON JAMES: I need to recognize Commissioner Bible and then we'll come right back to you.

COMMISSIONER LOESCHER: Thank you.

CHAIRPERSON JAMES: Commissioner Bible.

COMMISSIONER BIBLE: Question for Mr. Kolkey is, it's apparently your day today to get all the questions.

As I've listened to the testimony today and we're now apparently hearing a great deal about the dispute down here in the state of California, it seems to me that the culprit really
is the Federal Government and the Federal Government's failure to enforce IGRA, to step in and enforce the law as it was written.

Am I incorrect in that assumption and if I am incorrect I'd appreciate if you'd let me know and if I am correct why would you -- why would you think that the Federal Government failed to enforce the law timely?

MR. KOLKEY: Well, I don't know if I can fully answer that question because I'm not privy to the Federal Government's thinking on this. Certainly had there been enforcement the moment that the tribal facilities were established for uncompacted gaming and the matter nipped in the bud, the tribes wouldn't have put the investment into the facilities that they have.

On the other hand, as I understand it and I'm going to try and simply present the Federal Government's position as best as I understand it; their view was that they wanted to be very careful with respect to immediately enjoining tribal operations if the matter could be resolved and as I understand it the tribes went to the Federal Government and said this Rumsey case, the case the Ninth Circuit ultimately reversed the District Court and held that the state had no obligation to negotiate over games unless they were permissible under state law, the tribes said while that case was pending that the Federal Government should wait until the law became more clear and then when the Ninth Circuit ruled the tribes asked if the Federal Government would wait until they applied for a re-hearing on bond, and the Federal Government said all right, we'll wait.
But it was done at the request of the tribes because the tribes felt that they might be able to get a better legal ruling than they ultimately did.

Finally when they didn't, the Federal Government said all right, you know, you've got stop the un-compacted gaming. The tribes asked for more time because of the Pala compact negotiations and the Federal Government simply was trying to give the tribes every benefit of the doubt to resolve this but finally when it wasn't resolved and the un-compacted gaming continued, they put their foot down which is the reason for the current enforcement actions.

CHAIRPERSON JAMES: Thank you. Mr. Tucker, did you want to --

MR. TUCKER: Yeah --

CHAIRPERSON JAMES: -- add something?

MR. TUCKER: -- just to add two comments here.

MR. FOREMAN: Mr. Kolkey --

CHAIRPERSON JAMES: Would you identify yourself for the benefit of the Commissioners?

MR. FOREMAN: My, my, is this on?

CHAIRPERSON JAMES: Yes it is.

MR. FOREMAN: My name is George Foreman. I'm with the firm of Foreman and Prohaska (ph), and we represent a number of gaming and non-gaming tribes and have been asked to be here by the California Nations Indian Gaming Association in connection with Mr. Tucker's testimony.

The Commission has heard a number of statements that I think are not complete and thus to some extent inaccurate.
What the Commission should know is that Governor Wilson vetoed three bills, 1993, 1994, and 1997 that would have given him the authority to sign compacts and bind the state to compacts with tribes. He is now supporting a bill because he has a compact that he likes.

Second, the people did not vote on the expansion of race tracks or the placement of race tracks. The California State Lottery is not under any statutory limitation as to the number of electronic terminals it can use. It has more than 19,000 statewide and is entirely market-driven. They have a ratio of machines to potential customers, that's how their numbers are determined.

The -- you have to be 18 to play the lottery in California. You have to 18 to go to a race track and bet at a race track in California. You have to be 21 under the Pala compact to play Indian lottery games.

The state between 1994 and 1997 was sued by three tribes that were not engaged in any form of gaming and with whom the governor refused to negotiate and in each of those cases the state asserted and obtained the dismissal of that action under the 11th Amendment, Sovereign Immunity.

The state has not executed any valid waivers of its sovereign immunity under the 11th Amendment, under the United States Supreme Court's decisions. It takes an act of legislature to authorize the governor to waive the state's sovereign immunity. Legislature has not done that, indeed the pending Pala compact ratification bills contains a provision that would give the governor the authority to waive the state sovereign immunity.
As it is now under current state sovereign immunity law the state could at any point in these proceedings assert its sovereign immunity, including for the first time on appeal.

As far as arbitration goes, in a couple of respects under the Pala compact, the arbitrator can write the agreement between the parties including in the collective bargaining provisions where there is mandatory binding interest arbitration as to any unresolved dispute at the end of 120 days during which time, of course, the tribe is under a complete gag rule. It cannot say anything in that organizing campaign even to, to inform its employees that a prospective labor organization is under federal trusteeship or has been identified as infiltrated by organized crime or anything like that.

And that's one of the issues the tribes have with this agreement. It's not -- tribes don't have quarrels with the labor movement. Tribes and labor are natural allies. We have many things in common.

What tribes have a problem with is the state dictating to the tribe as a sovereign government what that tribe's labor policies or work policies should be. So, and in response to Mr. -- Commissioner Dobson's question on taxation, the California -- the state of California does not pay any federal income taxes on the proceeds of the California State Lottery because the state of California is a government. Tribes, as a matter of federal law, do not -- are not obligated to pay income taxes. Tribes as employers pay all federal employment taxes.
The state of California takes the position that tribes are obligated to pay, collect, and remit state use taxes on sales to non-Indians on their lands.

COMMISSIONER DOBSON: Sir, that's the first straight answer I got to that question and if that's the case -- (Applause.)

COMMISSIONER DOBSON: -- it really ought to be stated and people really ought to understand exactly what the taxation is and not call it the myth of non-taxation.

MR. FOREMAN: And one final point and that is that the Commission has received I think an overall very good background paper from its staff but I saw it for the first time this morning as did some other tribal attorneys and there are some significant, I think, errors and omissions and misunderstandings and misstatements in that document that we would appreciate the opportunity to correct.

For example, in California state criminal laws do apply on Indian lands. State gambling laws are applied as a matter of federal law, that's correct but if somebody commits a crime of theft or cheating or violence on an Indian reservation in California, federal law allows state law enforcement officers to enter those lands and enforce state criminal laws.

CHAIRPERSON JAMES: Let me interject here and just say that we would happy to receive any edits or comments that you'd like to make on that and we'll make sure that all the Commissioners receive those. I want to get to Commissioner McCarthy, we're running about 20 minutes over at this point but he's been very patient.
COMMISSIONER McCARTHY: No actually I've enjoyed this panel very much. I think it's been very informative.

Mr. Kolkey, you've articulated the ambiguities in the federal law and what it boils down to, I think, is that Congress has to make a decision either to allow sovereign tribes to have whatever form of gambling they want or to recognize that they will be limited to what is permitted in each individual state.

It's one way or the other, and the law was written with contradictions and so that a lot of problems, I think, have been produced. That's a judgment Congress has to make, hopefully soon instead of waiting for the courts to drag this out in many different forums over the next decade.

I have some specific questions I want to put to you and fairly simple ones, very quickly regarding the Pala compact because if it survives, if it's not reversed by Proposition 5 and it survives any court challenges, it's obviously going to be copied in some different places. So there's some questions I need to ask about it in that potential eventuality.

One, how many outlets might tribally run lottery have? Are they limited any way? The state has 19,000 merchants, outlets that -- somebody answer the phone.

(Laughter.)

COMMISSIONER McCARTHY: That they have. What would, to make tribal managed lotteries viable, what could they look to for outlets to try to sell tickets? Does the compact speak to that in any form?
MR. KOLKEY: Well, what the compact does is it simply provides that the tribe can operate legal Class III gaming on its reservation in a location or locations --

COMMISSIONER McCARTHY: Right.

MR. KOLKEY: -- but it would be on the reservation because that's what IGRA provides is the operation of gaming on the reservation. No one is limiting the location of the Class III gaming to a single place. It could be in more than one --

COMMISSIONER McCARTHY: You said Class III gaming?

MR. KOLKEY: Right. Right.

COMMISSIONER McCARTHY: Yeah.

MR. KOLKEY: In other words the casino style gaming.

COMMISSIONER McCARTHY: Right.

MR. KOLKEY: Because Class II, the state has no role in and Class I, clearly is simply up to the tribe. So the state's only involved in Class III, the non-bank card games are Class II and a tribe can conduct those without any state involvement.

So, Class III is what the Pala compact addresses and they can have more than one location but I think the economics of the matter are that the tribe probably needs to have a location with a number of machines rather than scattering the lottery terminals.

COMMISSIONER McCARTHY: Okay, let me see if I understand you correctly. If the particular tribe managing a lottery wants to have merchants off the reservation, they are not allowed to do that?
MR. KOLKEY: IGRA only provides for the gaming on the tribal reservation and, therefore, it's not something that we even discussed in the course of compact negotiations.

COMMISSION McCARTHY: Well the difference between having 100 outlets and having 19,000 outlets is quite a difference. It directly goes to the ultimate success of the lottery. So I think what I hear you saying is that to have more than 100 outlets for lottery ticket sales, they would have to amend IGRA in some fashion.

MR. KOLKEY: Well, they would have to amend IGRA if we were going to provide for sales off the reservation.

COMMISSIONER McCARTHY: Well, I'm saying --

MR. KOLKEY: Right.

COMMISSIONER McCARTHY: -- does your -- what I heard you answer was that the compact itself between the state of California and the Pala tribe does not prohibit sales off the reservation, it's the federal law that does, it's IGRA that does. Correct? The state is not taking a position that the tribe would under the compact allowed to run a lottery should be sell -- be allowed to sell tickets off the reservation. That's a federal prohibition.

MR. KOLKEY: Federal law limited the gaming to the tribal lands.

COMMISSIONER McCARTHY: I understand.

MR. KOLKEY: And, but I should note that the compact in line with that only authorizes Class III gaming on the reservation.

COMMISSION McCARTHY: I got it.
MR. KOLKEY: Okay.

COMMISSIONER McCARTHY: A separate state law prohibits, would prohibit the tribe from selling lottery tickets --

MR. KOLKEY: Yes, yes.

COMMISSIONER McCARTHY: -- off the reservation.

MR. KOLKEY: Well --

COMMISSIONER McCARTHY: Separate state law or enforcement of the federal law?

MR. KOLKEY: No, the state penal code prohibits anyone in the state from operating a lottery except for the state lottery. The state lottery is the exception to the general prohibition under state law to operating a lottery. So the only place that a tribe can operate a lottery legally is on the reservation but federal law only addresses the operation of Class III gaming on the reservation.

Federal law preempts state law. So if federal were change that would preempt any state law to the contrary.

COMMISSIONER McCARTHY: Okay. You're not saying that the governor or the state of California is posing an obstacle to any tribes under a compact which want to manage a lottery operation? There is a penal code section that right now is applicable.

MR. KOLKEY: Yes. Penal code prohibits anyone in California from operating a lottery except for the state lottery.

COMMISSIONER McCARTHY: Right. But is it the position of the governor that that should be changed in order to
allow any tribes permitted to run lottery operations to be more viable?

MR. KOLKEY: The governor hasn't made any proposals of that nature. We've taken federal law as it is, state law --

COMMISSIONER McCARTHY: Okay.

MR. KOLKEY: -- as it is and then negotiated --

COMMISSIONER McCARTHY: All right. I think I understand your answer.

Let me move to the second point. I don't understand the machines that are going to be invented to permit this lottery operation and that's not -- I just don't understand. First of all I'm technically deprived. I don't understand who is going to manufacture the machines that the tribes would use? It's been -- I've been told that they are akin to the state lottery terminals. Are they the same? Would they be different? Who is going to invent them and within what time period?

MR. KOLKEY: All right. What -- I'm going to give my answer and then I'm going to have Mr. Dickstein answer the rest because he can fill in some gaps.

From the state's perspective we were under the law allowing a tribe to operate any legal lottery game. Whether it has been invented or not, the tribe could operate any legally permissible game. What games the tribe offered were up to the tribe. The tribe would then find the game or have it developed and make the arrangements for the development of the game.

The state's concern was simply that it was legal and what we did in the compact is because the tribes understandably did not want to operate the same games the state lottery did
because of the competition and the state lottery games are in
more convenient locations; the tribes wanted lottery games that
were not available under the state lottery.

So, to get them started we spent some months
negotiating a lottery game that the tribe wanted to play and the
state believed would be legal.

MR. McCARTHY: Could you please just send us the
description of those games. We don't need to drag this point
out.

MR. KOLKEY: Okay.

MR. McCARTHY: We need to understand --

CHAIRPERSON JAMES: Thank you.

MR. McCARTHY: -- what kind of games we're talking.

MR. KOLKEY: Okay. Well here's how the games
operate, generally speaking because they're described in the Pala
compact.

These games which are not the only ones they can
play, but the games described in the compact provide that there
will be a video machine ultimately where someone puts something
of value in the machine, it operates and it selects symbols or
numbers, but they get some sort of winning combination and there
is then a draw by another computer and the draw will be shown on
a score board and if their ticket matches what's on the score
board then they've won that particular lottery draw.

The game is going to be very fast moving. The state
lottery has a game that announces a winner every five minutes.
Technology allows you to have draws almost continuously. It's
legal as long as it's not a slot machine and it's not a slot
machine because a slot machine has to have the entire operation within the single machine.

COMMISSIONER McCARTHY: Let me just close this point by saying we are looking at state run lotteries around the country. We notice a trend in several states to start to induce more ticket purchases to start moving towards what are described casino like --

MR. KOLKEY: Uh-huh, uh-huh.

COMMISSION McCARTHY: -- slot machine operations.

I'm trying to find out in this line of questioning now --

MR. KOLKEY: Right.

COMMISSION McCARTHY: -- whether that's what we're heading towards, whether, you know, it's by the state of California or whether it's by any, any tribes under compact operating lotteries --

MR. KOLKEY: Right.

COMMISSIONER McCARTHY: -- because one of the things this Commission is looking at is the impact of state run lotteries --

MR. KOLKEY: Right.

COMMISSIONER McCARTHY: -- on the gambling culture of the nation as well

MR. KOLKEY: Okay.

COMMISSIONER McCARTHY: That's why I'm asking this question.

MR. KOLKEY: And I think it's a good question because I think the fact of the matter of is, is that the technology of
the lottery industry will take you away from the traditional
forms of lottery games --

COMMISSIONER McCarthy: Right.

MR. KOLKEY: -- where you get a ticket and a week
later you find out whether you've won, to games that have that
atmosphere of casino because they are fast moving and the player
is putting money into the machine at a fast rate. And, we
believed that given IGRA we could not negotiate in good faith
without allowing the tribe to engage in any legally permissible
lottery game. But the technology will allow a game that gets
closer and closer to what you see in a casino.

CHAIRPERSON JAMES: Well, this is a fascinating line
of questioning. Unfortunately I'm going to have to bring it to
an end. We are scheduled at this point to take out lunch break.
I want to thank our panelists. Thank you for your patience.
Thank you for your information.

MR. TUCKER: Madam Chairman --

CHAIRPERSON JAMES: I --

MR. TUCKER: Madam Chairman?

CHAIRPERSON JAMES: I hear someone. Yes.

MR. TUCKER: This is Dan Tucker. I would just like
to say to the union people who are here today that Indian tribes
are willing to sit to talk with you. If you're voting no on
Proposition 5 because you think we don't respect the unions or we
think we don't want the unions involved in our facilities, you
are totally wrong. We are willing to sit down and talk with the
union leaders on a tribe to tribe basis. So if you're voting no
because you don't like gaming that's one thing but if you're no
because -- if you're voting no because you don't understand that we won't -- that you feel we won't talk with you then you're misunderstanding the whole process.

CHAIRPERSON JAMES: Thank you so much. As we did at our last meeting, the agenda now calls for us to go into executive session for lunch. Do I have second?

(No audible response.)

CHAIRPERSON JAMES: Thank you, Commissioners. All those in favor, aye.

(Aye.)

CHAIRPERSON JAMES: The executive -- we will be in executive session until 2:40 when we will come back to this room at that time. Thank you.