



# **National Indian Gaming Association**

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**TESTIMONY OF ERNEST L. STEVENS, JR.  
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NATIONAL INDIAN GAMING ASSOCIATION**

**MAY 14, 2003**

**BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON THE ROLE AND FUNDING OF THE  
NATIONAL INDIAN GAMING COMMISSION**

## I. INTRODUCTION

Chairman Campbell, Vice Chairman Inouye, and Members of the Committee, my name is Ernest L. Stevens, Jr. I am a member of the Oneida Tribe of Wisconsin and serve as Chairman of the National Indian Gaming Association (“NIGA”). Thank you for inviting me to testify this morning on behalf of NIGA about the National Indian Gaming Commission’s (“NIGC”) regulatory role and funding.

NIGA is a non-profit association of 184 Indian Tribes. NIGA’s mission is to protect and preserve tribal sovereignty and the ability of tribal governments to attain economic self-sufficiency through gaming and other methods of economic development. NIGA continuously strives to provide necessary factual information about Indian gaming to the public, Congress, and the Executive Branch.

This morning, I will briefly touch on the results of Indian gaming and the Indian Gaming Regulatory Act or IGRA. I’ll discuss the background and framework of the IGRA. I’ll then examine the regulatory roles of Tribal, State, and Federal governments in Indian gaming. And finally I’ll provide NIGA’s views on funding for the National Indian Gaming Commission.

## II. INDIAN GAMING IS WORKING

The Indian Gaming Regulatory Act (IGRA) is based on the fundamental constitutional principle that Indian Tribes are governments.<sup>1</sup> Just as 37 of the 50 State governments use lotteries to generate revenue, Congress and the U.S. Supreme Court recognized that Indian Tribes retain the sovereign authority to use gaming to generate governmental revenue to build infrastructure, and fund programs to provide services to their citizens.

When Congress enacted IGRA, it stated that the purposes of the Act were to provide a statutory basis for Indian gaming to promote “tribal economic development, self-sufficiency, and strong tribal governments” and to establish a regulatory system for Indian gaming, including an independent Federal regulatory authority. See 25 U.S.C. § 2702. For the most part, IGRA is serving those purposes well.<sup>2</sup>

Indian gaming has not solved all of the problems created by over 200 years of genocide and dispossession. It has, however, empowered Tribes to make big strides in

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<sup>1</sup> The U.S. Constitution, hundreds of treaties and Congressional Acts, and U.S. Supreme Court decisions all acknowledge that Indian Tribes are governments. The Commerce Clause specifically states that “Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with *the Indian tribes*.” U.S. Const., Art. I, §8, cl. 3.

<sup>2</sup> However, the Supreme Court in Seminole Tribe v. Florida disrupted the delicate balance in the tribal-state compacting process that Congress sought to implement through IGRA. For added discussion on this issue, see page 15 below.

rebuilding Indian communities. Over the past thirty years, the progress achieved by Tribes with the help of gaming has been truly remarkable.<sup>3</sup>

## **B. Indian Gaming Benefits Indian Country**

Indian gaming benefits tribal communities by helping tribal governments provide the most basic needs for their citizens. Indian gaming helps provide jobs, health care, education, and basic infrastructure for Indian country.

Indian Tribes engaged in Indian gaming have created 300,000 American jobs nationwide.<sup>4</sup> Many of these jobs go to Indian people who have never had an opportunity to work. For example, in North and South Dakota, 70 to 75% of the jobs created by Indian gaming are held by Indians.

Indian gaming generated \$12.7 billion in gross tribal government revenue nationwide in 2001. After paying for financing, employee salaries, infrastructure and other expenses, industry standards indicate that on average a net revenue stream of 25 to 35% is realized from gross revenue. Using this analysis, Indian gaming generates \$4.5 billion for tribal governments. With these funds Tribes have built schools, hospitals, police and fire stations, roads, water and sewer systems, and have funded education (K-12 and college scholarships), health care, and many other general tribal welfare programs. Today, tribal schools, health clinics, police and fire stations, housing, and cultural centers built with Indian gaming revenue stand as monuments of tribal initiative.

In just 30 years – Indian gaming has helped Tribes begin to rebuild communities that were all but forgotten. Where once there was poverty and unemployment – Indian gaming provides more than 300,000 American jobs. Where once Tribes suffered disease and the lack of health care, Indian gaming helps build clinics and provides health care to the sick and elderly. Where once Tribes faced epidemic suicide and drop out rates, Indian gaming builds schools, funds scholarship programs and provides hope for an entire generation of Indian youth. Indian gaming is this and a lot more. Our tribal governments are stronger and our people are stronger.

Tribal governments are also using government revenue generated by gaming to diversify tribal economies. The Mohegan Tribe has invested in aquaculture, a traditional activity. The Cabazon Band has built a tire recycling facility that processes 2 million tires per year and a “green” electric utility plant that runs on methane gas created from landfill waste. These are only a few examples of the benefits of Indian gaming to tribal communities. There are many more – and I could go on – but I encourage each Member

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<sup>3</sup> To illustrate, in 1990 the median income for American Indians was \$19,900 and the median income nationwide was \$37,300. In 2000, the median income for American Indians was \$31,800 compared and the median income nationwide was \$42,100. At the same time, the poverty rate for American Indians fell from 33% in 1990 to 29% in 2000. Nationally, the poverty rate in 2000 was 12%.

<sup>4</sup> California Nations Indian Gaming Association Report, Tribal Sovereignty Works, at 11 (February 2003) (“The [Indian gaming] industry contributed more than 490,000 gaming and non-gaming jobs and a payroll of \$12.4 billion.”).

of Congress to visit Indian country in their State or nearby State to witness first hand how Indian gaming is rebuilding these once forgotten communities.

Indian country still has a long way to go – too many of our people continue to live with disease and poverty – but Indian gaming offers hope for a better future for tribal communities.

### **C. Indian Gaming Benefits Other Non-Gaming Tribes and Non-Indian Communities**

Tribal governments are also building relationships with non-gaming Tribes, State governments, and local government and community neighbors. For example, the Forest County Potawatomi Tribe funds the Milwaukee Indian School for all Indian students and provides assistance to the remote Red Cliff and Mole Lake Bands of Chippewa. The San Manuel Band outside San Diego financed a new wing for the local hospital. Agua Caliente purchased fire trucks for the City of Palm Springs. The Mohegan Tribe in Connecticut is developing a new water delivery system that will benefit several surrounding communities as well as the Tribe.

The great irony now is that Indian Tribes are helping non-Indian communities. A 2001 Harvard University study indicates that Indian gaming has a destination effect on surrounding business that boosts economic activity for others in the vicinity.<sup>5</sup> I've often seen visual evidence of this effect when I drive to rural locations like the Tunica-Biloxi Tribe's casino, which is several hours drive from New Orleans. For miles before you get to the casino, there is little development but as you approach, you see an oasis of business and economic activity flourishing in the area. This economic development is generated by Indian gaming in rural areas where other forms of economic development have failed to take hold as well as suburban areas that were in the throes of lay-offs.

Indian gaming operations provide jobs for non-Indians nationwide. Of the 300,000 jobs created by Indian gaming, about three-fourths are held by non-Indians. Indian gaming helps State and local communities recover lost jobs where companies are forced to leave. For example, when Electric Boat Manufacturing closed down in Groton, Connecticut, the area lost 12,000 jobs. Fortunately, around this same time, the Mashantucket Pequot Tribe created 14,000 new jobs through its Foxwoods Resort. Another example is the air force based that closed outside of Rome, New York. The area lost 2,500 jobs, but thankfully, the Oneida Nation created 3,000 new jobs in the area with its Turning Stone Casino.

Indian gaming also creates substantial revenue streams for Federal, State and local units of government. In 2003 alone, Indian gaming will generate approximately \$6 billion in added revenue to Federal, State, and local governments. Contrary to a popular misconception, Indians pay taxes. People who work at casinos, those who do business with casinos, and those who get paid by casinos pay taxes, just like the folks who work at

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<sup>5</sup> Harvard Project on American Indian Economic Development, Public Policy Analysis of Indian Gaming in Massachusetts, 10 (May 13, 2002).

state lotteries. As employers, Tribes also pay employment taxes to fund social security and also participate as governments in the federal unemployment system. Indian gaming generates revenue for the United States federal government in the form of income taxes – this includes taxes paid by tribal citizens for per capita payments received from tribal governments. At the State level, Indian gaming generates revenue through payroll and income taxes, reduced welfare and unemployment payments, and revenue sharing and other agreements.

### **III. INDIAN GAMING IS WELL REGULATED**

Tribes realize that the benefits of gaming wouldn't be possible without good regulation. Solid regulation is the cost of a successful operation. Tribal governments understand and abide by this principle. For many Tribes gaming has been the best opportunity in 200 years to attain economic self-sufficiency. Tribes are unwilling to sacrifice this opportunity because of something as necessary as sufficient regulation. Working in cooperation – Tribal, State, and Federal governments all play a role in the regulation of Indian gaming. While the system is costly – it is comprehensive, it's professional, and it's working to maintain the integrity of Indian gaming.

While no federal commission oversees the operations of State lotteries, horse or dog track wagering, jai alai, or the commercial and riverboat gaming industries, the federal oversight of Indian gaming is extensive. The NIGC is the central regulator on the federal level. In addition, Tribes work with the BIA within the Interior Department, the Financial Crimes Enforcement Network (Fin CEN) and the Internal Revenue Service (IRS) within the Department of the Treasury, and the Federal Bureau of Investigation (FBI) within the Department of Justice.

Unlike other forms of gaming, crimes committed in Indian country are subject to federal penalties. Under the United States Criminal Code, anyone who embezzles or steals money or property from an Indian gaming facility or any other Indian establishment is guilty of a federal felony, punishable by up to 5 years in prison. This law applies to management, employees, and patrons. See 18 U.S.C. § 1163 (5 year penalty for any theft from an Indian facility); 18 U.S.C. §§ 1166-1167 (Federal offense to violate laws applicable to Indian gaming facilities). Tribes also comply with the Money Laundering Suppression Act, which applies the Bank Secrecy Act's protective provisions to Indian gaming operations. Under the Act, tribal operations report currency transactions in excess of \$10,000 to Fin CEN. 31 U.S.C. §§ 5311 et seq.

Federal involvement in Indian gaming regulation continues to grow. Under the USA – Patriot Act, enacted in response to the terrorist attacks of September 11, 2001, Congress strengthened money-laundering prevention laws to curb the possible funding of terrorist activities. Under the Act, gaming establishments, including Indian gaming facilities, must develop systems to report suspected terrorists and suspicious activities involving cash or credit transactions. As a result, tribal gaming operations are developing internal controls to assure ongoing compliance with these new requirements.

In total, Indian tribes invest over \$212 million annually for the regulation of Indian gaming. That includes over \$164 million for tribal gaming regulation, over \$40 million to reimburse the state regulatory agencies for their support, and \$8 million to fund the Nation Indian Gaming Commission.

Under IGRA – Congress intended for the three sovereigns to work in cooperation on the regulation of Indian gaming. Each regulatory body has a distinct and supporting role for the three different classes of Indian gaming. The idea was to avoid duplication – but provide comprehensive oversight. Through IGRA – Congress made clear that tribal regulatory agencies are the primary regulators of Indian gaming. As the NIGC explains:

Tribes are the primary, day-to-day regulators of [Indian gaming] operations. . . . A vast majority of Tribes have implemented independent tribal gaming commissions, which in most cases the Commission believes to be the most effective way of ensuring the proper regulation of gaming operations....”

Tribes have exclusive authority over class I gaming, share class II regulatory responsibility with the NIGC, and share class III regulatory responsibility with the States.

#### **A. The Role of Tribal Regulatory Agencies**

As the primary regulators, tribal regulatory agencies have the largest budget for Indian gaming regulation. Tribes spend over \$164 million annually on self-regulation. Tribal regulatory systems include over 2800 tribal gaming commissioners and regulatory personnel. These regulators are well-qualified, and have backgrounds as federal, tribal, and state law enforcement officials, commercial gaming regulators from New Jersey and Nevada.<sup>6</sup> This is more regulators than Nevada, New Jersey, and Riverboat gaming combined. In addition to employing well-qualified personnel, Tribes use state-of-the-art regulatory, surveillance, and security equipment to support their regulatory operations. Our operations are the newest – and use the most up to date technology.

IGRA requires tribal governments to enact tribal gaming regulatory ordinances that meet Federal statutory requirements, including the following:

- Generally, Indian Tribes must have the sole proprietary interest and responsibility for the conduct of gaming;

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<sup>6</sup> Patrick Lambert, the Executive Director of the Eastern Band of Cherokee’s Tribal Gaming Commission, who is a tribal member, attorney, a Faculty Member of the National Judicial College, Reno, Nevada, and served on the NIGC’s Minimum Internal Standards Advisory Committee to comment on Indian gaming regulation. Director Lambert explains:

Indian gaming has presented an unprecedented opportunity in the history of our Tribe to really become self-sufficient. It is our job as the regulatory agency to protect this opportunity for the Tribe. A job that we take very seriously due to the implications it holds for our Tribe’s future.

- Net revenue must be used for tribal government purposes, economic development, general tribal welfare, charity, and payments to local governments;
- Annual independent audits must be conducted and provided to NIGC;
- Independent audits must be conducted for all contracts for supplies and services in excess of \$25,000 (except legal and accounting contracts);
- Provisions for protection of the environment, public health, and safety; and
- Systems for background checks and licensing of primary management and key tribal gaming employees, with background checks reported to NIGC.

The Chairman of the NIGC ensures that tribal gaming regulatory ordinances meet the statutory requisites through a Federal review and approval process.

Typically, tribal ordinances establish tribal gaming regulatory agencies to carry out these duties. Accordingly, as the primary regulators of Indian gaming, tribal gaming regulatory agencies carry out the following types of functions:

- Conduct background investigations on primary management officials and key tribal gaming employees in accordance with IGRA and NIGC regulations and forward them for NIGC or state review;
- Issue, deny, review, suspend, or revoke tribal gaming licenses for management officials and key tribal gaming employees, in cooperation with state regulatory agencies and the NIGC, 25 C.F.R. Parts 556 and 558;
- Conduct background investigations of vendors;
- Issue, deny, review, suspend, or revoke tribal gaming licenses for vendors, often in cooperation with state regulatory agencies;
- Issue, deny, suspend, or revoke licenses for each Indian gaming facility under the jurisdiction of the Indian Tribe and ensure that each Indian gaming facility is built, maintained, and operated in a manner that protects the environment, public health, and safety, 25 C.F.R. § 522.4;
- Promulgate tribal gaming regulations in accordance with tribal and Federal law and Tribal-State compact requirements for class III gaming;
- Establish minimum standards for the operation of the Indian gaming facility, including rules for cage and vault, credit, table games, gaming devices, and surveillance and security standards;
- Continuously monitor Indian gaming operations to ensure compliance with tribal and Federal law and Tribal-State compact requirements for class III gaming;
- Oversee audits of the Indian gaming facility, including audits of contract and supply contracts;
- Conduct investigations of any alleged misconduct, take appropriate enforcement action, and make appropriate referrals to tribal, state, and federal law enforcement agencies;
- Conduct hearings, take testimony, take disciplinary actions, levy fines, and issue closure orders and resolve patron disputes;
- Work cooperatively with state regulatory agencies, the NIGC, and tribal, state, and Federal law enforcement agencies; and

- Report to the governing body of the Indian Tribe.

Tribal gaming regulatory agencies are well staffed, with highly qualified employees who work in close cooperation with their Federal and state counterparts.

For example, the Mohegan Tribal Gaming Commission (“MTGC”) is a strong, effective regulatory agency directed by John Meskill, former Executive Director of the State of Connecticut Division of Special Revenue. MTGC, as the primary regulator of the Mohegan Sun Casino, is one of the largest regulatory agencies in the Nation. MTGC has a staff of 61, including 46 inspectors, 7 investigators, a staff auditor (CPA), and 2 administration staff. MTGC’s annual budget is \$3.3 million. Management officials, key tribal gaming employees, and all vendors, gaming and non-gaming, must be licensed to do business with Mohegan Sun. In accordance with Mohegan’s Tribal-State compact, the State Division of Special Revenue licenses vendors for MTGC. Gaming vendors, such as card, dice, table game, and slot machine manufacturers and bonus prize providers, are investigated by the State Police and licensed by the State’s Division of Special Revenue. For FY 2003, the Mohegan Tribe will reimburse the State \$1.228 million for costs incurred by State regulators and \$2.275 million for State police background investigations and law enforcement services on site.

Chairman Rudy Wambsgans, Tunica-Biloxi Tribe Gaming Commission, is a member of the Tribe and a 20-year veteran of the U.S. Military, with service in the Navy, National Guard, and Coast Guard and law enforcement training from the FBI Academy and the University of Nevada. Chairman Wambsgans explains:

It is our goal to provide the most qualified staff and service to Paragon Casino and Resort. We accomplish this by thoroughly investigating the background of these individuals and companies and monitoring and auditing the casino operation. We view our role as providing public service to the Tribe and our guests.

In addition to appointed qualified gaming commissioners, hiring experienced regulatory staff, and investing heavily in tribal regulatory budgets, Indian Tribes use state-of-the-art regulatory, surveillance, and security equipment to support their regulatory operations. We asked for a comment on this issue from Brad Roache, Corporate Director of Security and Surveillance, for the Mille Lacs Band of Ojibwe. Roache is a Minneapolis Police Force veteran, with 24 years service on the SWAT Team and emergency response, homicide, robbery, and repeat offender units. Director Roache explains:

Security and surveillance have a very important role in the Mille Lacs Band’s casinos. It’s not just a matter of constantly monitoring what goes on to protect the casinos’ assets, we also have to be in compliance with strict tribal, state and federal gaming regulations. The technology that we use is state-of-the-art and very impressive. Similarly, Indian Tribes have

invested millions of dollars in camera, surveillance and security equipment. Tribes are on the cutting edge of this new technology as well.

To give you another example, the Viejas Band of Kumeyaay recently installed new electronic finger-printing machines. With these new machines, tribal gaming regulatory agencies can electronically send fingerprint cards to NIGC, where they are then forwarded to the FBI for criminal history processing. This cuts the turnaround time, from several months to 24 hours. The benefit is obvious. Instead of issuing temporary licenses, with the possibility of revocation upon return of FBI's background check information, permanent licenses can be issued after a thorough review of FBI criminal history information. This new technology has the potential to almost completely eliminate the possibility of licensing unsuitable persons, even on a temporary basis.

Accordingly, Congress acknowledge the staffing, experience, high technology and major investment that goes into tribal gaming regulatory agencies as it reviews the tribal-state-federal partnership in Indian gaming regulation.

## **B. The Role of State Regulators**

The State governments' role in Indian gaming regulation differs on a state-by-state basis. State and Tribal governments work out specific regulatory frameworks for Class III gaming through the Tribal-State Compact process. Through this process, a number of states have negotiated for strong regulatory roles. State regulatory agencies assist tribal agencies with background checks, licensing, inspections, and review of Class III Indian gaming operations. Again, Tribes reimburse States over \$40 million annually for these regulatory services.

For example, North Dakota has 5 Indian casinos and these Tribes spend over \$6 million annually for Indian gaming regulation and employ 242 full-time regulators and staff. The North Dakota State Attorney General's Office regulates 900 organizations that conduct some form of charitable gaming. So, under the Tribal-State compacts, the Attorney General's Office was delegated authority to work with Indian Tribes to regulate Indian gaming. Through the State Bureau of Criminal Investigation (under the Attorney General), the State performs background checks for the Tribes for management officials, key tribal gaming employees, and vendors. The State provides reciprocity for the vendor licensing decisions of other states, such as New Jersey and Nevada. The State conducts compliance audits and inspections of the Indian gaming facilities to ensure compliance with compact, ensure that games are fair and honest and assists in investigations and prosecutes any violators found at Indian casinos. North Dakota Tribes reimburse the Attorney General's offices for these expenses.

In Arizona, the Tribes spend approximately \$20 million for tribal regulation and reimburse the Arizona Department of Gaming ("ADOG") about \$5 million annually for its regulatory services. ADOG assists tribal gaming regulatory agencies with background checks and licensing of management officials and key tribal gaming employees. ADOG also inspects Indian gaming facilities to review cash and credit transactions, the integrity

of games, and vendor payments. In preparation for this hearing, we requested Joseph Eve and Co., which audits numerous tribal gaming operations to prepare the attached cash flow and licensing charts to reflect the relationship between the tribal, state, and federal regulators. These flow charts show that state gaming regulatory agencies are involved in every step of the regulatory process for Class III gaming.

### **C. The Role of the NIGC**

At the federal level, the NIGC shares the responsibility for regulation with other government agencies. The NIGC defers to state gaming agencies on background checks, licensing decisions, and compact enforcement for Class III gaming. The NIGC works in partnership with tribal gaming regulatory agencies on Class II gaming regulation and provides background oversight for Class III gaming regulation. In sum, the NIGC performs the following oversight functions:

- Reviews and approves tribal gaming regulatory ordinances;
- Reviews tribal background checks and licensing decisions;
- Reviews and approves tribal gaming management contracts;
- Reviews independent audits of Indian gaming operations, including audits of contracts for goods and services in excess of \$25,000;
- Ensures that tribal ordinances provisions to protect the environment, public health, and safety are fully implemented;
- Continuously monitors Class II gaming, in cooperation with tribal gaming regulatory agencies.

In 1999, the NIGC issued Minimum Internal Control Standard Regulations for Class II and Class III gaming (“MICS”) to guide cash and credit transactions, cage and vault operations, minimum rules for the conduct of games, operation of gaming devices, accounting standards, and security and surveillance. These regulations were derived from minimum standards developed by Nevada, New Jersey, and other jurisdictions.

Recently, the NIGC revised the MICS regulations to take into account new developments in the gaming industry. NIGC explained:

Internal controls are the primary procedures used to protect the integrity of casino funds and games, and are a vitally important part of properly regulating gaming. Inherent in gaming operations are problems of customer and employee access to cash. . . . Internal control standards are therefore commonplace in the industry and the Commission recognizes that many Tribes has sophisticated internal control standards in place prior to the Commission’s original promulgation of the MICS.

67 Fed. Reg. 43391 (June 27, 2002). While the MICS promulgated by the NIGC mirror some of the legislative proposals developed by this Committee, many Indian Tribes have questioned whether it is appropriate for NIGC to issues the MICS as mandatory rules, especially with regard to Class III gaming. IGRA contemplates that Tribal-State

compacts will provide the ground rules for regulation, as appropriate on a Tribe-by-Tribe and State-by-State basis. Nevertheless, as the Commission notes, Indian Tribes have enacted Minimum Internal Control Standards pursuant to tribal ordinances, because Tribes understand the importance of internal controls.

Joe Carlini, the Executive Director of the Agua Caliente Gaming Commission, served as the Assistant Chief Inspector with the State of New Jersey Casino Control Commission, was with the Philadelphia Police Department for 17 years and graduated from the Philadelphia Police Academy. In regard to minimum internal control standards, Director Carlini explains:

The biggest problem facing most casino operations is the protection of assets from both external and internal sources. In Indian gaming, the response to these threats is continually evolving and is proactive, not reactive. The protection of assets and the integrity of Indian gaming is accomplished through the implementation of the comprehensive and effective internal controls and policies and procedures that exceed most conventional industry standards to detect and neutralize fraud and theft.

In short, tribal gaming regulatory agencies have implemented Minimum Internal Control Standards, and across the country, are working to revise tribal regulations to incorporate the NIGC's revisions and policy recommendations appropriately into tribal law.

Finally, NIGA also acts as a facilitator to help build strong relationships between the three sovereigns to further strengthen Indian gaming regulation. In March of 2003, we hosted a seminar titled "Partnerships in Indian Gaming Regulation." Participants included the Chairman of Attorney General Ashcroft's on Native American Issues Subcommittee, officials from the FBI, Treasury's Financial Crimes Enforcement Network, North Dakota's Attorney General, the NIGC, and tribal gaming regulators from around the country. We met to discuss the formation of a National Indian Gaming Intelligence Network to share information and to provide technical assistance to tribal regulators nationwide.

#### **D. Proof that the System is Working**

As I stated above, this system of checks and balances in cooperative regulation has proven effective. A lot of the credit for the success in regulation should go to the Tribal governments and tribal leaders who recognized the need for solid regulation – and who took the initiative to provide the funding.

Against this backdrop of comprehensive regulation, the FBI and the United States Justice Department have testified repeatedly that there has been no substantial infiltration of organized crime on Indian gaming. The Department of Justice Office of Inspector General conducted the most recent investigation on Indian gaming at the request of Congressman Frank Wolf. Officials from the Criminal Division, the Office of Tribal Justice and the FBI were all involved in the investigation. In a July of 2001 letter report,

all parties cited a lack of evidence that concluded the lack of involvement of organized crime. The chief of the organized crime section in the Department of Justice testified in July of 2001 to this committee – this Committee – saying that, and I quote, “Indian gaming has proven to be a useful economic development tool for a number of tribes who have utilized gaming revenues to support a variety of essential services.”

While there have been isolated occasions when a crime has occurred at an Indian gaming facilities, the Department of Justice found that coordination between tribal, state and federal regulators and law enforcement ensure that offenders are caught, prosecuted and punished. Indian gaming has a good track record because tribes hire the most highly qualified people from tribal, state and federal law enforcement and regulatory agencies.

\$212 million dollars on regulation each year is a lot of money that could go to fund sorely needed programs – but Tribes realize that regulation is the cost of a successful operation. Tribal leaders deserve recognition for their diligence in ensuring the integrity of tribal gaming operations.

## **VI. NATIONAL INDIAN GAMING COMMISSION FUNDING**

Finally, that brings me to the issue of funding for the NIGC. NIGA and our Member Tribes hold the NIGC and its Commissioners in high regard. Chairman Phil Hogen served for 10 years as a U.S. Attorney and served as the Vice Chairman of the NIGC in the 1990s, before his appointment by President Bush in December 2002. Chuck Choney is a former FBI agent, with years of Indian Country law enforcement experience, and Nelson Westrin, is a former assistant state attorney general and Director of the Michigan Gaming Commission. Clearly, these gentlemen are very well qualified. Since their appointment in December of 2002, all three of the Commissioners have made the rounds and their presence known in Indian country. The NIGC serves a sound purpose – and for the most part has provided Tribal governments with solid background oversight to ensure the continued integrity of Indian gaming.

### **A. The FY 2003 Appropriations Process**

For the past five years, the NIGC was funded at a level of \$8 million each year – based on fees paid from Tribal governments. Past Chairman Montie Deer testified early in the 107<sup>th</sup> Congress that the NIGC was in need of increased funding. They were way over budget. However, he never provided specific documentation on the Commission’s spending, or what it planned to do with increased funds.

Last year, President Bush included a \$2 Million dollar request for a one-time appropriation for the NIGC – with a direction to the NIGC to work with Tribes on future increases. NIGA supported this one-time federal appropriation for FY 2003. We note that the Chairman and Vice Chairman of this Committee supported the appropriation as well.

Regrettably, somewhere during the appropriations process, a proposal to bypass the President's request for FY 2003, and authorize an immediate increase in the NIGC fee cap from 8 to \$12 million dollars for FY 2004 was approved. We believe that was the wrong way to do business. It violated the legislative process, and it ignored the consultation process. Before any permanent increase was considered, the tribal governments that must fund the increase should have been consulted.

As a practical matter, NIGC will not get any funds to fill staff vacancies until October of 2004. While Congress did include a direction to the NIGC to consult with tribal governments concerning the increase in funding for FY 2004, we believe that government-to-government consultation between the acting federal agency and affected Tribes should precede policy changes. After the fact consultation does not meet the government's obligation to consult with tribal governments on actions that will affect their interests.

While we agree that NIGC must receive adequate funding to do its job, we also believe that the full spectrum of tribal-state-and-federal regulation of Indian gaming must be taken into account when the NIGC's budget is being developed. After all, as the Federal partner in this system, the NIGC must strive to support and complement, but not duplicate, tribal and state regulatory activities.

Norm DeRosier, Commissioner for the Viejas Gaming Commission, a former state law enforcement official and a board member of the National Tribal Gaming Commission and Regulators Association (NTGCR), puts it this way: "While I support the need for the acquisition of additional resources for the NIGC, I firmly believe that there is a delicate balance to be established whereby an uncontrollable bureaucracy is not created which wastes money and duplicates the regulatory efforts of the Tribal regulatory officials." The appropriate way for NIGC to strike this balance is through government-to-government consultation with affected Tribes and accountability to this Committee, the Congress, and the Tribes. The implementation of requiring detailed, written proposals that support new budget requests would be beneficial as would comprehensive reports to explain the implementation of prior year budgets.

As we all move forward together to ensure the integrity of Indian gaming, we believe that NIGC should stay close to its core mission of protecting Indian gaming through coordination with tribal and state regulators. NIGC should develop plans to speed the deployment of new electronic fingerprinting technology employed by the Viejas Band, concentrate on background checks, support tribal licensing determinations with timely reviews, and exercise its existing authority to review the independent audits of Indian gaming facilities. NIGC should focus on these core responsibilities and not branch out into new substantive areas where their authority is less than clear. This will help avoid duplication of efforts.

## **B. Congressional Direction to Consult with Indian Tribes**

As for the NIGC's direction to consult on its increase for FY 2004, I make the following recommendations:

**Formally Adopt Tribal Consultation Policy and Schedule.** I urge the Commission to first formally adopt a policy of government-to-government consultation in accord with recent Presidential Executive Orders. In addition, I hope that the Commission will propose a schedule of consultation meetings with Indian country soon to discuss the implementation of the FY 2004 fee increase.

**Provide Tribes with an Annual Detailed Budget.** Prior to the first of these meetings, I hope that Chairman Hogen will provide NIGA, our Member Tribes, and the Senate Committee on Indian Affairs with a detailed proposed budget. A transparent budget showing where the money has gone in the past and where it's proposed to go in the future is the only way to begin productive consultation. The implementation of requiring annual detailed, written proposals that support new budget requests would be beneficial as would comprehensive reports to explain the implementation of prior year budgets.

**Refine Operations Under Existing Authority.** NIGC should use a portion of its increased funding to deploy new electronic fingerprinting technology at each of its regional offices, and make these machines available to prospective tribal employees. This will greatly expedite the turn around time for background checks. The NIGC should also support tribal licensing determinations with timely reviews, and exercise its existing authority to review the independent audits of Indian gaming facilities.

**Expand on Self-Regulation.** I hope that the NIGC will consider using a portion of those funds to provide increased Self-regulation for Class III Tribes – The current regulations only permit self-regulation of Class II gaming. The Commission should expand these regulations to extend to class III gaming.

**Resume Quarterly Consultations with Tribal Regulators.** I hope the NIGC will resume quarterly consultations with Tribal regulators, which include providing tribes with training and technical assistance. In the past year or two, the NIGC's Regional offices brought these consultations in-house, but it's NIGA's hope that the Commission will resume the quarterly consultations. While this may be time-consuming for the Commission, it is extremely important to Tribes. This is an important core-mission.

**Other Concerns.** We understand that NIGC may want to establish new regional offices in both southern California and the Great Plains, and we urge NIGC to thoroughly consult with affected Tribes prior to the opening of those offices to ensure that resources are used to their best effect. Some other items of concern include the discontinuance of the NIGC biennial report, NIGC pay scales, and the need for a policy to promote hiring experienced tribal gaming regulators.

### C. NIGC Proposal to Amend IGRA

Finally, I would like to comment on recent statements by the Commission regarding their vision for the next three years. The proposal includes a number of recommended amendments to the Indian Gaming Regulatory Act.

**Floating Fee Cap.** The NIGC has expressed its intent to seek an amendment to IGRA that would amend the fee structure for the Commission. As stated above, for the past five years, the NIGC was funded at a level of \$8 million each year – based on fees paid from Tribal governments. The recent amendment on the FY 2003 Appropriations bill increases the Commission’s fee collection capabilities to \$12 million – a 50% increase. I would like to restate my comment from that the NIGC be required to justify its budget annually to Congress and we believe that sound regulatory partnerships are fostered by accountability at the NIGC. Accordingly, we ask that the Commission submit a detailed budget for FY 2004 to Congress before proceeding with a legislative proposal to eliminate the statutory fee cap on its regulatory assessments of Indian Tribes. Again, the budget should recognize that Indian Tribes invest over \$212 million for Federal, state and tribal regulatory systems annually and the tribal gaming regulatory agencies are the primary regulators. Clearly, with the NIGC receiving a 50% increase in FY 2004, there is no need for a further follow up amendment at this time.

**Vendor Licensing Proposal.** The NIGC has recently recommended that IGRA be amended to grant it authority to license vendors, consultants, and “any person associated or seeking to become associated with a tribal gaming operation”. The NIGC should acknowledge that Indian Tribes are already undertaking such licensing and must respect tribal regulatory systems. Accordingly, I recommend that any vendor licensing initiative be conducted on a voluntary basis to assist Tribes where requested. It should not be used to put in place a new barrier to economic activity in Indian country. The NIGC has proved too slow in reviewing management contracts, and adding the responsibility of vendors, consultants, and others that work or wish to work with tribal gaming operations may prove too burdensome for both the Commission and tribal gaming operations.

**NIGC Authority Over Class III Gaming.** The Commission has also stated that it would like to amend IGRA to “clarify” its authority over class III gaming operations. The IGRA established the Tribal-State Compact Process to establish the regulatory framework for Class III gaming. The NIGC was tasked with the responsibility to review and approve tribal gaming ordinances, which the Chairman “shall” approve so long as they meet minimum statutory requirements. The reason for the narrow review of class III ordinances was to require the Commission to defer to the tribal-state compacting process. Accordingly, the NIGC should not seek additional authority, but should instead clarify – through regulation – that it will defer to tribal-state compacts to govern class III gaming and work with Indian Tribes on the basis of mutual consent, to promote positive standards in tribal gaming ordinances consistent with IGRA.

**Affirm the Interior Department Alternative Compacting Regulations.**

Finally, we applaud the NIGC for its intention to seek an amendment that will correct the Supreme Court's decision in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996). I want to state for the record that any legislation to amend IGRA should include an amendment to provide a correction to the Seminole case. That case was decided in 1996, and continues to haunt many Tribes.

Congress, through IGRA, required State governments to negotiate class III gaming compacts with Tribes in good faith, and Tribes were permitted to sue States in federal court for failure to meet that obligation. The Supreme Court's decision in Seminole Tribe v. Florida frustrated Congress's intention by permitting States to raise a sovereign immunity defense to such suits. This in effect gives States a veto power over the compacting process – an outcome clearly not intended by Congress. The Interior Department has promulgated regulations for alternative procedures for Class III gaming in lieu of a compact where States fail to negotiate in good faith and where they raise sovereign immunity as a defense.

NIGA and its Member Tribes firmly believe that these regulations on this issue fully reflect the intent of Congress in enacting the IGRA and should be affirmed in federal legislation. Senator McCain stated at the time of the passage of the Act:

I would like to serve notice that I, Senator Inouye, Senator Evans, and other members of the Senate Select Committee on Indian Affairs will be watching very carefully what happens in Indian Country. If the states take advantage of this relationship, the so-called compacts, then I would be one of the first to appear before my colleagues and work to repeal this legislation because we must ensure that the Indians are given a level playing field that are the same as the states in which they reside and will not be prevented from doing so because of the self-interest of the states in which they reside.

Senator John McCain, Cong. Rec. (Sept. 15, 1988). Now is the appropriate time for Congress to legislatively affirm those regulations, and I hope that the Committee will consider including such a provision in any IGRA amendment introduced this Session. Congress never intended the States to have a veto power over the compacting process.

**CONCLUSION**

In conclusion, I appreciate the recognition that this Committee has given to the commitment of Indian Tribes to regulation. However, I hope that Congress as a whole will take formal note of the hard work, tireless hours, and hundreds of millions of dollars that tribal governments and their employees spend on regulating Indian gaming operations. The ethnocentric view that Indian gaming is only being regulated by the 70 employees and \$8 million that fund the NIGC is not valid, it ignores the hard work that's being done by thousands of Indian regulatory employees, and it should be put to rest.

Finally, I urge the NGIC to adhere to a sound policy of government-to-government consultation and increased communication between Tribes and the NIGC. Such a practice will only serve to further strengthen the regulation of Indian gaming.

Mr. Chairman and Members of the Committee this concludes my remarks this morning. Once again thank you for providing me this opportunity to testify. I am available for any questions.