

**ENFORCING THE INDIAN GAMING REGULATORY
ACT: THE ROLE OF THE NATIONAL INDIAN
GAMING COMMISSION AND TRIBES AS
REGULATORS**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**ENFORCING THE INDIAN GAMING
REGULATORY ACT: THE ROLE OF THE
NATIONAL INDIAN GAMING COMMISSION
AND TRIBES AS REGULATORS**

THURSDAY, JULY 28, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:45 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. The Committee will come to order.

Aloha and welcome to the Committee's oversight hearing.

This hearing is on enforcing the Indian Gaming Regulatory Act: The Role of the National Indian Gaming Commission and Tribes as Regulators.

When the Indian Gaming Regulatory Act was passed by Congress in 1988, Indian gaming was a \$100 million industry. Today, it is a \$26 billion industry and there are 236 Tribes operating 422 gaming facilities in 28 States.

It is important that such a growth industry is well regulated for Tribal Governments, patrons and the beneficiaries of the gaming revenues, the Tribal members. The Tribes, as the primary beneficiaries of Indian gaming, have the greatest interest in making sure their operations are well run.

Tribal Governments use these gaming revenues to fund essential government services such as education, health care, cultural programs and Tribal infrastructure. But the Indian Gaming Regulatory Act also created a role for States and the Federal Government, thereby setting up a three-tiered regulatory scheme for Indian gaming.

Today, there are approximately 2,800 regulators at the Tribal level; 500 at the State level, and 100 at the National Indian Gaming Commission. Tribal Governments spend approximately \$250 million each year to fund their gaming commissions. The National Indian Gaming Commission is funded at \$16 million annually.

At today's hearing, we will hear from Tracie Stevens, the Chair of the National Indian Gaming Commission. We are looking for-

ward to learning about her first year in office, the Commission's activities during the past year, and their plans going forward.

We will also hear from regulators and Tribal gaming organizations who are on the ground every day protecting the integrity of Indian gaming.

I would like to remind our witnesses that they have five minutes to present their oral testimony, and their full written testimony will be entered into the record. The hearing record will also remain open for two weeks so any other interested parties are welcome to submit written testimony for the record.

At this time, I would like to ask Senator Barrasso for any opening statement he may have.

**STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate your holding the hearing, because as you have looked into the statistics, I agree. I found the same things. According to the National Indian Gaming Commission, gross revenues for Indian gaming in 2010 was over \$26 billion. That is a lot of money and the activities that generate that kind of money must be regulated effectively.

Obviously, gaming is a cash business and keeping the business clean is critical. No one, be it contractors or vendors or players or employees, should illegally benefit at the expense of the Tribe or the gaming public.

According to the National Indian Gaming Commission 2009 Compliance Report, most Tribes did comply with the key regulatory requirements. The 2010 Compliance Report is not yet available to provide us with the most current information. However, these reports do not assess how theft and crime at Indian gaming facilities have been addressed. Also, some feel that the decision in the Colorado River Indian Tribes case has unduly limited the oversight role of the National Indian Gaming Commission.

Of course, many Tribes disagree with that view, so hopefully the Committee is going to be able to hear from the Commission on that issue, as well as from the Tribal witnesses.

So, again, thank you for holding the hearing, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Udall, any comments?

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. I would put my statement in the record so we can proceed to the witnesses. Thank you very much, Mr. Chairman.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

The regulation of Indian Gaming is an important and difficult issue. It is important that Tribal sovereignty is respected and maintained while the existing laws and regulations are implemented.

I look forward to hearing from the Chair of the National Indian Gaming Commission. I know Ms. Stevens has been in this position for about a year now, and that this is the first time in several years that there has been a fully appointed commission.

I am encouraged to hear that Chairwoman Stevens' focus on conducting meaningful government-to-government consultation with Tribes has continued throughout the last year since her appointment. I look forward to hearing more about how that consultation is going.

There are many issues relating to gaming that Tribes and the NIGC have been grappling with over the past years. I look forward to hearing the views of the panel on the future of Indian Gaming regulation, and what is needed in this area.

The CHAIRMAN. Thank you very much. It will be made part of the record.

I would like to now welcome our first witness. Ms. Tracie Stevens is the Chairwoman of the National Indian Gaming Commission.

Ms. Stevens, please proceed with your remarks.

**STATEMENT OF HON. TRACIE STEVENS, CHAIRWOMAN,
NATIONAL INDIAN GAMING COMMISSION**

Ms. STEVENS. Thank you, Chairman Akaka, Vice Chairman Barrasso and Members of the Committee for inviting me to testify here today.

My name is Tracie Stevens and I am a member of the Tulalip Tribe. It is an honor to appear before you in my capacity as Chairwoman of the National Indian Gaming Commission. With me today is Commissioner Dan Little. I would also like to take a moment to recognize my Vice Chairman from Tulalip Tribe, Glen Gobin, who is also in the audience.

Today, I will provide a brief overview of the status of Tribal gaming and an update on the Commission's progress with our four priorities: consultation and relationship-building; technical assistance and training; a review of the Commission's regulations; and a review of agency operations.

Currently, 240 federally-recognized Tribes operate a total of 422 Tribal gaming facilities in 28 States. Tribal growth gaming revenues for 2010 essentially mirror 2009 revenues of \$26.5 billion. Approximately half of Tribal gaming operations generate annual gross gaming revenues of \$25 million or less. Even modest revenues enable Tribal governments to provide much-needed services to Tribal members and create jobs in communities otherwise suffering from high unemployment.

IGRA establishes a framework under which Tribes, States and the Federal Government regulate Indian gaming. Within the Federal Government, multiple agencies take part in ensuring the integrity of the industry, including DOJ, FBI, Treasury's FinCEN, and BIA Law Enforcement. NIGC works in cooperation with these law enforcement agencies to share information that may potentially indicate a criminal violation of law.

In addition to NIGC, Tribal governments collectively employ approximately 5,900 Tribal gaming regulators and States collectively employ approximately 640 people to regulate Tribal gaming. Thus, NIGC, Tribes and States combine to employ over 6,600 people to regulate Indian gaming.

I would now like to turn to our efforts on consultation and relationship-building. We are in the final stages of revising our Tribal consultation policy. It is through meaningful government-to-government consultation that the NIGC will be able to make well informed, fully considered decisions concerning regulations and policies.

As part of our relationship-building, we work closely with the FBI, DOJ, and U.S. Attorneys' Office when we receive information indicating a violation of criminal law. This relationship-building strengthens the collective ability of Tribes, States and the Federal Government to protect Indian gaming.

The Commission believes a strong, well-targeted technical assistance and training program can preempt the need for additional regulations or for enforcement actions, can reduce compliance issues, and can enhance operations, performance and integrity.

Since June 2010, we have provided 831 instructional hours of training to over 2,800 Tribal leaders, Tribal regulators and casino operations. We are also reviewing our training catalogues with input from Tribes on how best to tailor NIGC training to meet the needs of Tribal regulators and the industry.

Training and technical assistance will be an evolving process which will be aligned with Tribal needs, as well as to ensure the integrity of the industry.

The Commission is also in the process of reviewing its current regulations, examining their effectiveness, and seeking input from Tribes, and also the public in an effort to identify areas of improvement and any needed changes. We are proceeding in a manner in which the Commission strives to circulate preliminary discussion drafts for public comment before proceeding with the rulemaking process.

As part of our regulatory review, we are examining Class III minimum internal control standards, or otherwise known as MICS in light of the CRIT decision. All Tribes have adopted internal controls. Tribes and the public universally support Class III MICS. We have heard a variety of suggested approaches to the CRIT decision as discussed more fully in my written testimony.

Let me be clear, however, that the Commission will solve this issue in a manner that ensures the integrity of the industry and that Tribes receive the revenues generated by Tribal facilities.

As part of our regulatory review, we have held 11 consultations throughout the Country, including a consultation that is being held right now at the Department of Interior and these transcripts from this consultation and comments are posted on our website as they become available.

We are also working to ensure that the NIGC in the 21st century is the smartest, more transparent and better equipped agency that continues to be responsive and adapted to the needs of the Tribal gaming industry. We have partnered with OPM to evaluate our operations and identify areas of improvement.

The Commission is committed to focusing resources and maximizing cooperation and coordination with Tribal, State and Federal agencies.

In conclusion, I want to stress my commitment to enforcing the law. While the overwhelming majority of Tribal facilities are model businesses and our goal is to keep Tribes in compliance, make no mistake: serious violations have serious consequences. When a third party unlawfully managed a facility and took unconscionable amounts of revenue that should be going to develop Tribal health and welfare, I issued a violation and ordered them to pay those Tribal funds back.

When Tribes operate facilities in disregard of the law, I work with State and Federal authorities to shut them down. I do not hesitate to refer criminal matters to the FBI and the U.S. Attorneys' offices and I will continue to do so to ensure that Tribes are the primary beneficiaries of Indian gaming.

That concludes my testimony and I am happy to answer any questions you may have.

Thank you.

[The prepared statement of Ms. Stevens follows:]

PREPARED STATEMENT OF HON. TRACIE STEVENS, CHAIRWOMAN, NATIONAL INDIAN GAMING COMMISSION

Thank you Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee for inviting me to testify today. My name is Tracie Stevens and I am a member of the Tulalip Tribes of Washington State. It is an honor to appear before you to testify in my capacity as Chairwoman of the National Indian Gaming Commission (NIGC or Commission).

When I appeared before the Committee as Chair of the Commission in July 2010, we were a new Commission. I was confirmed by the Senate and sworn into office by Secretary of the Interior, Ken Salazar in June 2010. Vice-Chairwoman Steffani Cochran and Associate Commissioner Dan Little were appointed by Secretary Salazar earlier in the year. Shortly after that hearing, I retained Paxton Myers a member of the Eastern Band of Cherokee Indians as the Chief of Staff, Dawn Houle, a member of the Chippewa Cree from the Rocky Boy Reservation as the Deputy Chief of Staff, and Lael Echo-Hawk a member of the Pawnee Nation as a Counselor to the Chair. As a Commission, we are working with staff in our continuing assessment and evaluation of the Commission's needs, opportunities for improvement and implementation of the Commission's priorities.

During the hearing last year, I discussed four important priorities of the Commission: consultation and relationship building; technical assistance and training; a review of the Commission's regulations; and a review of Agency operations. Consultation and relationship building are necessary to promote effective communications with Tribes, States and Federal Agencies and to foster comprehensive and efficient regulation of the industry. Effective technical assistance and training enhances operational performance and integrity and reduces compliance issues. Regulatory review ensures a clear and comprehensive regulatory framework that is proactive rather than reactive to the regulatory challenges of the industry. Finally, we are focused on performing our internal operations in the most effective and efficient manner so that we are able to maximize our resources. The Commission firmly believes that accomplishment of these four priorities directly results in a better regulated industry that fulfills the purposes of Indian Gaming Regulatory Act (IGRA or Act), 25 U.S.C. §§ 2701 *et seq.*

Each of these priorities serves as a foundation for enforcing IGRA. We must work with Tribes, States and Federal agencies to ensure the integrity of the industry. Our basic principle for enforcing the Act is ACE: assistance, compliance and enforcement, in that order. We are working with Tribes and States to assist regulators and ensure effective coordination in the regulation of Indian gaming. We are working with Tribes to ensure compliance with IGRA. However, if assistance and compliance do not resolve an issue, I do not hesitate to enforce the Act.

Today, I will provide a brief overview of the status of tribal gaming and provide an update on the Commission's progress with its four priorities.

Facts Concerning Indian Gaming and Regulatory Oversight

Revenue generated by tribal facilities, even modest revenues, provide much needed services to tribal members and create jobs in communities otherwise suffering from high unemployment. Over the past five years, tribal gross gaming revenues have remained stable, varying from \$24.9 billion in 2006 to a high of \$26.7 billion in 2008. The number of gaming operations over this five-year period increased approximately 6 percent from 394 in 2006 to 422 in 2010. Currently, 240 federally recognized tribes operate a total of 422 tribal gaming operations in 28 states. Tribal gross gaming revenues for 2010 essentially mirror 2009 revenues of \$26.5 billion. Collectively, tribes located in our Portland, St. Paul, Oklahoma City and Tulsa Regions have experienced an increase in tribal gross gaming revenue while gross gaming revenue for those tribes located in our Washington, D.C., Phoenix and Sacramento Regions have experienced a slight decrease. Revenue figures for 2010 compiled during our review of independently audited financial statements indicate that approximately half of the tribal gaming operations generate annual gross gaming revenues of \$25 million or less.

IGRA establishes a framework under which Tribes, States, and the Federal Government regulate Indian gaming. Within the Federal Government, multiple agencies take part in ensuring the integrity of the industry. In 2003, the Indian Gaming Working Group was established to better coordinate the efforts of federal agencies with authority over various aspects of Indian gaming. The Indian Gaming Working Group includes NIGC, the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury Financial Crimes Enforcement Network, and the Bureau of Indian Affairs Law Enforcement Services. NIGC works in cooperation with these law enforcement agencies to share information that may potentially indicate a criminal violation of law.

NIGC is the primary federal civil enforcement agency charged with regulating class II and class III gaming on Indian lands. This includes the review and approval of tribal gaming ordinances and management contracts. The Department of the Interior also performs certain functions under IGRA, including the review and approval of tribal-state compacts for class III gaming.

In addition to NIGC, tribal governments collectively employ approximately 5,900 tribal gaming regulators. In addition to tribal regulators, States collectively employ approximately 646 people to regulate tribal gaming. Thus, NIGC, Tribal Gaming Regulatory Authorities and States combine to employ over 6,600 people to regulate Indian gaming. While the precise amount expended to regulate gaming is not known, we do know that in 2009 that 4 percent of gaming tribes reported expending a total of \$26 million for state regulation of Indian gaming and that 32 percent of tribes reported expending a total of \$130 million for tribal regulation of Indian gaming. As I have repeatedly stated, one of my priorities is to ensure a strong collaborative regulatory framework and relationship among the more than 6,600 regulators employed by all three regulatory bodies to maintain the integrity of Indian gaming.

As the Committee is aware, nearly five years ago the United States Court of Appeals for the District of Columbia held that the Commission did not have authority to promulgate regulations establishing minimum internal control standards (MICS) for class III gaming. As I explained at the hearing last year, this issue is a top priority for the Commission and we continue to evaluate not only the present-day landscape of class III MICS but also how to move forward on this complicated issue in the aftermath of the decision.

MICS protect tribal gaming revenues by ensuring that casino employees follow appropriate procedures as money moves through the gaming facility. All tribes have internal controls. Tribes and the public universally support class III MICS. The outstanding issue is how to implement the MICS. In addition to seeking comment from the public, the Commission has held a number of tribal consultations to discuss potential regulatory options to address class III MICS. We have heard a variety of suggested approaches. Some suggest that we maintain the NIGC MICS or issue guidance. Others suggest that MICS are a matter to be addressed in tribal-state compacts. Finally, some suggest that MICS be incorporated in tribal gaming ordinances. Given the diversity of how Tribes and States have addressed this issue, a path forward may be a hybrid approach in which we strive to respect the sovereign interests of all three governments. But let me be clear, the Commission will solve this issue in a manner that ensures that Tribes receive the revenues generated by tribal facilities. The Commission looks forward to working with this Committee as it moves forward on this issue.

COMMISSION PRIORITIES

Consultation and Building Relationships

Over the course of our first year, we implemented significant changes to how we consult with Tribes. As a Commission, we are committed to consulting with Tribes in a manner consistent with Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments." Toward this end, we are in the final stages of revising our consultation policy. During 2010 and 2011, we held 8 consultations on revising our policy, circulated a revised draft of the policy based on comments received, and we are now evaluating final comments on the revised draft. We hope to formally adopt the revised policy within the coming weeks.

The process of consultation is just as important as the substance of consultation. Government-to-government consultation must be inclusive, it must be collaborative and meaningful, and it must be an on-going dialogue. Our consultations on broad, overarching policies such as regulatory changes are held in a group format. This format allows for a frank, open exchange of ideas, thoughts, concerns and solutions for all to hear, providing an atmosphere in which governments can identify solutions together. If a matter is specific to a particular tribe, we consult individually with that tribe, as appropriate. We are also looking at developing more effective ways to consult with Tribes to streamline this process. This means timely notice, candid discussions, and making the most of everyone's resources to achieve the most effective policies that will ensure the integrity of the industry. It is through meaningful

government-to-government consultation that the NIGC will be able to make well informed, fully considered decisions concerning regulations and policies.

Over the past year, in addition to working closely with Tribes, we have also worked with States and Federal agencies to oversee and protect Indian gaming. We work regularly with the Department of the Interior to ensure that gaming is taking place on Indian lands and if it is not, we refer those cases to federal and state agencies for appropriate enforcement. We work closely with the Federal Bureau of Investigation, the Department of Justice and United States Attorney's when we receive information indicating a violation of criminal law. In addition to these interactions, we are also working to strengthen coordination through the Indian Gaming Working Group. This relationship building strengthens the collective ability of Tribes, States and the Federal Government to protect this successful economic development tool that has made a difference in so many lives of Indian people.

Technical Assistance and Training

As I testified last year, the Commission views training and technical assistance as an essential component of statutory responsibilities as well as our mission and our commitment to collaboration with Tribes. Successful regulation depends upon a properly trained and informed workforce. Well targeted training and technical assistance programs provide a foundation that maintains the integrity and success of Indian gaming. A good, well-targeted, technical assistance and training program can preempt the need for additional regulations or for enforcement actions, can reduce compliance issues, and can enhance operational performance and integrity. In other words, proper training can help to prevent a potential problem before it can arise. Since June of 2010, we have provided 831 instructional hours of training to over 2,800 tribal leaders, tribal regulators and casino operations personnel.

Over the past year, we have reviewed our training catalog and sought input from Tribes on how to best align NIGC training to maintain the integrity of the industry. NIGC staff has played a key role in this effort. Earlier this year, we named Nimish Purohit as the Acting Director of Training. Mr. Purohit brings a wealth of experience in the gaming industry to this position, having previously worked for the New Jersey Division of Gaming Enforcement, the Pennsylvania Gaming Control Board and an independent testing laboratory. His in-depth experience in the areas of Class II technical standards and game mathematics has proven invaluable to the Commission. Mr. Purohit is in the process of updating our training catalog, examining means to better utilize existing technology and evaluating how to most efficiently provide training.

In addition to our on-going internal review, the Commission distributed a survey to approximately 596 tribal leaders, commissioners and casino operations personnel. The Commission received 255 survey responses representing 123 Tribes (a 50 percent overall rate of response). Overall, respondents identified common barriers to training, such as the lack of funding, the proximity to training events and the need for better communication of training opportunities. Respondents also requested more course offerings relating to compliance with

United States Code, Title 31; advanced training on MICS; training for tribal gaming agents; and advanced training relating to audits and surveillance. The respondents identified a strong interest in the following currently offered courses: regulatory gaming technology, gaming forensics, IT MICS, internal audits and slot machine compliance. How the NIGC provides training and technical assistance will be an on-going and ever evolving process which will be tailored to meet the needs of tribal regulators and the industry to ensure the integrity of Indian gaming.

Regulatory Review

As I indicated in my testimony last year, the Commission is in the process of reviewing its current regulations, examining their effectiveness, and seeking input from Tribes and the public in an effort to identify areas of improvement and any needed changes. Our activities on this priority focus on many of the same goals identified in the President's recent Executive Order concerning Regulation and Independent Regulatory Agencies, Executive Order, 13579. During our review we are asking the public for input on which of our regulations may be outdated or insufficient and we are considering whether to modify, streamline, expand, or repeal such regulations based on this review. On November 18, 2010, the Commission issued a Notice of Inquiry (NOI) advising the public that the Commission was conducting a comprehensive review of its regulations and requesting public comment on the process for conducting the regulatory review. The NOI requested public comment on three basic questions: which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. In addition to seeking written comment, the Commission held eight regional tribal consultations on the NOI.

On April 4, 2011, NIGC published a Regulatory Review Schedule setting out a consultation schedule and process for our regulatory review. The Commission decided to proceed with its regulatory review by organizing the regulations into five groups and proceeding with a process in which the Commission would strive to circulate preliminary drafts for comment before proceeding with the rulemaking process. Our goal is to maximize input from the public.

As part of our regulatory review, and consistent with Executive Order 13175, we have held 11 consultations throughout the country, including a consultation that is being held today at the Department of the Interior. Transcripts of these consultations are posted on our website as they become available. Further, all comments received in response to the NOI and to preliminary drafts circulated by the Commission are posted on our website to facilitate input from the public. As we move forward with our regulatory review, we are continuously making improvements to this important process to ensure that we make well informed, fully considered decisions.

Agency Operations

A top priority of the Commission is to ensure that we are maximizing our resources through efficient operations. Last year I stated that because NIGC is funded entirely by tribal fees, we must strive to use these resources wisely and effectively as we carry out our responsibilities under the Act. The goal is to position the NIGC in the 21st century as a smarter, more transparent and better-equipped agency that continues to be responsive and adaptive to the needs of the tribal gaming industry.

Over the course of the past twelve months, we have been performing a top-down review of the internal workings of the Commission. We have brought in subject matter experts and are working with the Office of Personnel Management (OPM) to evaluate our operations and identify areas for improvement. Over the course of the past few months, OPM has conducted a number of employee focus groups and surveys to analyze workflows. Using this and other data, in the coming weeks, OPM will provide recommendations for the Commission's consideration.

In addition to maximizing our resources, the Commission is committed to providing greater transparency in our general operations. As a Commission, we have resumed public meetings. Our first public meeting was held on April 7, 2011 in Phoenix, Arizona and most recently, we held another public meeting on July 18th in Norman, Oklahoma. During these public meetings, senior Commission staff provides updates on business before the NIGC. Additionally, the Commission may take up votes or other business that may be pending. These meetings provide an opportunity for tribes and the general public to learn about ongoing Commission activities.

The Commission is committed to streamlining its operations in a manner that focuses resources and maximizes cooperation and coordination with Tribes, States and Federal agencies to ensure and maintain the integrity of Indian gaming.

Conclusion

This concludes my testimony. We hope that this summary of the activities of this Commission over the past year provides the Committee with information regarding NIGC's enforcement and regulatory role in Indian gaming.

Thank you again, Chairman Akaka, Vice-Chairman Barrasso and Members of the Committee for your time and attention today. I am happy to answer any questions that you may have for me.

The CHAIRMAN. Thank you very much for your testimony.

Chairwoman Stevens, your Commission has placed an emphasis on training and technical assistance for Tribal regulators. Have you noticed a decrease in enforcement actions as a result of increased training for regulators?

Ms. STEVENS. Thank you, Chairman Akaka, for your question.

My sense is that it is, although this particular initiative is a long-term initiative and we have been in office for a year and we are, like I said, revamping our curriculum. Technical assistance and training is a statutory requirement for the NIGC, but the Commission firmly believes that technical assistance and training help Tribes stay in compliance. Our basic principle is what we call ACE: assistance, compliance and enforcement, and in that order. And technical assistance and training is an essential component of that principle.

We have held 92 trainings since June of last year, with 2,800 attendees, 830 training hours, and over 200 Tribes represented.

Now, I do want to clarify. We see training and technical assistance a little differently. Training we have these classroom-style trainings that we plan. Sometimes we do this for individuals and sometimes we do this for regional Tribes so that we can meet with multiple Tribes and conduct training.

Technical assistance, on the other hand, is unique to the situation to the Tribes, and it is our field staff, which I have to commend in our Enforcement Division and our Audit Division and our General Counsel's Office, who work with Tribes on a day-to-day basis. Every day, they are talking to Tribes, providing assistance and guidance to keep them in compliance. And that is ongoing.

As I said, I think my sense is that it is helping. We do talk to our enforcement staff on a regular basis. They can keep us informed and they are in most cases able to keep Tribes in compliance and keep enforcement actions down and teach Tribes how to stay in compliance.

The CHAIRMAN. Thank you.

After you became Chair of NIGC, you committed to undertaking a comprehensive review of the *Colorado River* decision and determining whether legislative action is necessary. Where are you on that review process? And do you have any recommendations for whether legislation is necessary?

Ms. STEVENS. Thank you, Chairman Akaka, for your question.

I do recall that conversation last year, and we set out immediately on looking at what I call the post-CRIT world. The decision was made five years ago and I wanted to know more about what the landscape was for Class III minimum internal control standards, and directed the staff at the NIGC to start researching that particular topic.

Our preliminary research shows that there are 24 States that have Class III gaming compacts; 15 of those 24 States require the Tribes to adopt comprehensive minimum internal control standards that are as stringent as the NIGC's. That is 83 percent of the gross gaming revenue.

An additional nine Tribes' compacts require Tribes to adopt specific controls or to develop their own internal controls. As I said in my opening statement and in my written testimony as well, is that all Tribes have minimum internal control standards.

As part of this review, we have included the particular topic in our regulatory review that we are undergoing that I detailed in my written testimony, and are discussing this issue with Tribes to get a better understanding of where they are in their particular region or their State or with their compacts, and how this impacts them.

In terms of a recommendation, we are still in the process of reviewing what Tribes have to say because there have been a number of different ways that this could affect Tribes. As I said, if 24 States require this in compacts, I am a little concerned about upsetting an apple cart there. But as I mentioned in my written testimony, this may be a hybrid approach that we may have to take in light of the decision.

We have heard from Tribes, some suggestions from Tribes that the NIGC MICS are left in place or that we provide guidance. We have also heard suggestions that this be addressed in Tribal-State

compacts and others suggest that NIGC MICS may be adopted into Tribal ordinances.

As I said, we are still in the process of addressing this administratively and we want to solve this particular matter in a way that is respectful to all three sovereign governments: Tribes, States and the Federal Government.

The CHAIRMAN. So from what you have just said, you look at doing it administratively.

Ms. STEVENS. We are doing that right now. I understand there is not any legislation, and without language, I couldn't comment in the absence of language. But I am trying to address this administratively and be respectful to all the agreements that are out there with the States and with the Tribes.

The CHAIRMAN. Thank you very much.

Now, I would like to call on Senator McCain for your questions.

**STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

Senator MCCAIN. Well, thank you, Mr. Chairman.

The question that I asked you I guess it was seven months ago, do you believe that there is a need for a legislative fix to the CRIT decision as it is known as. I ask you that question again.

Ms. STEVENS. Thank you, Senator, for your question.

Like I mentioned to Chairman Akaka, at this time I would be remiss in trying to respond to language that I don't see.

Senator MCCAIN. I don't understand that logic. There is a problem as a result of the CRIT decision. That is the ability or lack of capability of the Indian Gaming Commission to have access to records and do the investigative work that was envisioned when the legislation was passed. Being the coauthor of that legislation, I am very intimately familiar with it.

Now, I ask you the question again seven months later. Is there a need for a legislative addressing of the impact of the CRIT decision? Now, how that is written would be the second step, I might say. The first step is, is there a need for a legislative result, seven months later. I asked that question in the beginning. You said you would consult and find out and give me an answer. You are not giving me an answer today.

Ms. STEVENS. Well, as I said in my response to Chairman Akaka, we are still in the process of discussing this with Tribes.

Senator MCCAIN. I see. And how much longer will you be in this process of discussing?

Ms. STEVENS. Right now, we are scheduled for the next six months.

Senator MCCAIN. So it will be 13 months from the time that you were made the chairman before you are able to reach a conclusion on this issue. That is really remarkable.

Are you aware that there was an FBI raid on the Choctaw casino in Mississippi last Tuesday, I believe it was, or July 13th?

Ms. STEVENS. Yes, I am.

Senator MCCAIN. Do you know anything about that?

Ms. STEVENS. That is an active investigation right now, Senator, and as much as I would like to provide you with information, I would not be able to.

Senator MCCAIN. You do know about it?

Ms. STEVENS. Yes, I do.

Senator MCCAIN. According to testimony, you have also held eight consultations “to develop more effective ways to consult with Tribes,” according to your testimony. So in other words, you have had eight consultations on how to consult.

Ms. STEVENS. I guess you could put it that way. That is one way to look at it. It is in response to the President’s memo on consultation with Tribal governments and being respectful to Tribes, an also examining our consultation policy. We would like to talk to Tribes before we change the policy.

Senator MCCAIN. Well, may I say your predecessor had a strong opinion about whether there was a need to address legislatively a CRIT fix. I think it is really remarkable it is going to be 13 months before you could reach a conclusion whether there should be a legislative fix or not. I guess it is another incredible waste of the taxpayers’ dollars.

I have no more questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator McCain.

Senator Udall, your questions?

Senator UDALL. Thank you, Senator Akaka.

Ms. Stevens, when you visited the Committee last year for a similar hearing on gaming, you expressed intentions to increase government-to-government relations with the Tribes. How has that effort been going? Have you been successful? Where do you need to do more work? How are you ensuring that all Tribes are able to give input in any future changes in regulations made by the NIGC and whether they game or not? And what is the status of your draft consultation policy?

Ms. STEVENS. Thank you, Senator, for your questions.

Upon coming into office, the three commissions met and we mapped out these four priorities that I mentioned today both orally and in my written testimony.

The first thing that was on our list is improving our consultation process. We have changed our formatting. When we consult with Tribes, we do it in a group forum so that Tribes can hear what other Tribes have to say. We can hear common problems and common solutions and it is an exchange and it is a dialogue.

The other thing that we have done is we have brought out to Tribes the NIGC to areas that don’t normally see the NIGC. So we are going to rural areas and putting the burden of travel on the NIGC.

We also give adequate and timely notice prior to a consultation so that Tribes can make arrangements to attend. And if they are unable to attend, we put our transcripts on the Internet. They are always available and have comment periods that allow Tribes time if they are unable to meet with us in person to give us their comments on any policy or changes that we may be considering.

And our draft consultation policy right now, we received input through those eight consultations that Senator McCain mentioned, so that we could look back and see what worked previously, what didn’t work previously, and consider what Tribes had to say before we started changing our policy.

We drafted a policy with Tribal input and we issued it in April. We had about a 60-day comment period for that draft consultation policy. We are in the process of reading those comments from Tribes and we will be finalizing that. And overall, we have had very supportive comments from Tribes on our revamped and revised consultation policy.

Senator UDALL. Can you give me, and maybe you can't because of the status of this, but how the comments have been going? And have they appreciated the consultation process that you have developed, and that kind of thing?

Ms. STEVENS. What we have heard so far is an appreciation for, one, timely notice; two, inclusion prior to drafting anything and that goes to honoring Executive Order 13175 that states that Federal agencies should talk to Tribes first before making changes. And that is one particular area that Tribes have been very supportive of.

And then finally just the change in format. It took everybody a little while to get accustomed to the new roundtable format, but it has been very helpful to have our format structured that way so that we can have very candid conversations. And so far, it has been very supportive.

I have to say, Tribes don't always agree with what I have to say and we are finding that out through our regulatory review process. But just because we don't agree, doesn't mean we can't be respectful.

Senator UDALL. One of the major complaints I hear with my Tribes in New Mexico, 22 Tribes, and some have gaming and some don't, is the word. You used the word consultation. And I think the fact that you are going out in advance before doing regulations and consulting and spending the time with them and giving them notice, I think that really makes a difference. It may take some time, slow down some of the rest of the things you are doing, but it is something that I think is a sore point with many Tribes, that when it comes to various governmental agencies that the word consultation is there, and yet the governmental agencies don't do it.

And so I think they appreciate the effort that you are taking, and I look forward to this Committee being briefed on that as we move forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall.

I would like to say mahalo, thank you very much, Chairwoman Stevens, for your testimony and your comments. We want to wish you well, and as I look forward to the future, we need to make every effort to keep things just and I think you folks are striving to do that.

And so I want to wish you well and to keep in touch with you on matters that affect the Indian Tribes. So thank you again for being here.

Ms. STEVENS. Thank you, Chairman, I look forward to keeping the Committee informed.

The CHAIRMAN. Thank you.

I would like to invite the second panel to the witness table: Mr. Ernest Stevens, Jr., Chairman of the National Indian Gaming As-

sociation and Mr. Jamie Hummingbird, Chairperson of the National Tribal Gaming Commissioners and Regulators.

Welcome to the Committee. It is good to have you here and hear your testimony.

Mr. Stevens, will you please proceed with your testimony?

**STATEMENT OF ERNEST L. STEVENS, JR., CHAIRMAN,
NATIONAL INDIAN GAMING ASSOCIATION; ACCOMPANIED
BY MARK VAN NORMAN, EXECUTIVE DIRECTOR**

Mr. STEVENS. Good afternoon, Mr. Chairman, Senator Udall. It is an honor to be here this afternoon. I want to thank you for this opportunity to testify on the role of Tribal governments as regulators in Indian gaming operations.

I would like to ask that my written statement be placed in the hearing record. My statement includes a number of statistics that reinforce what Indian gaming means to Indian Country and lists the significant benefits to our State and local government neighbors.

Indian gaming is Tribal self-determination. Gaming is an exercise of inherent authority affirmed, confirmed and guided by the Indian Gaming Regulatory Act.

The CHAIRMAN. It will be included in the record.

Mr. STEVENS. IGRA is largely a result of the Cabazon Supreme Court case. That decision recognized President Reagan's policy to support Tribal self-government and self-sufficiency; 237 Indian Tribes nationwide have made the Act work.

For many Tribes, Indian gaming is first and foremost about jobs and rebuilding Tribal communities. For many Indian people, Indian gaming has provided them with their first opportunity for quality employment. And more importantly, it is bringing entire families back to Indian Country. We like that, Mr. Chairman. We are excited about that.

In 2010, Indian gaming generated a total of more than 600,000 direct and indirect jobs. These jobs go to Indian and non-Indian alike. Without question, we are putting people to work.

In times when States are struggling to meet budget shortfalls, Indian Tribes are going out of their way to help make up the difference. In many States, Indian gaming charitable contributions are working to prevent layoffs of teachers, health care providers and public safety officials.

In little more than 30 years, Indian gaming has helped to begin to rebuild many struggling Native communities. New reservation economies are enhancing living conditions throughout Indian Country. Because of Indian gaming, Tribal governments are stronger, people are healthier, and an entire generation of Indian youth has hope for a better future.

So that is what is at stake. Tribal governments understand that this progress wouldn't be possible without a strong regulatory system and Tribes have committed significant resources to regulation. IGRA established a three-tiered system of regulation. The Act provides for a system of joint regulation by Tribes and the Federal Government for Class II gaming. With regard to Class III gaming, the regulatory system developed between Tribal and State govern-

ments through the compacting process. In addition, NIGC maintains a strong oversight role with respect to Class III gaming.

As a result of this three-tiered system, Indian gaming is subject to more stringent regulation and security than any gaming operation in any jurisdiction of the United States. This system employs 3,400 regulators and staff to protect Indian gaming. In 2010 alone, Tribes spent approximately \$345 million to regulate their operations. We are not perfect. People have tested our systems, but these people have been convicted, lost their gaming license, and terminated never to work in our industry again.

Against the backdrop of comprehensive regulation, the FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration of organized crime in Indian gaming. This is not an accident, Mr. Chairman. The system is costly. It is comprehensive. And our record and experience shows that it is working.

I would like to acknowledge the current Administration for its commitment to agency-wide Tribal consultation. At the Department of Justice, the increased cooperation and coordination between Tribal gaming regulators, Tribal police and the U.S. Attorneys sends a strong message that any crimes in Indian Country or against Indian gaming operations will be dealt with in accordance with the law.

Senator, if I can, I want to introduce Mr. Stanley Rocky Papasodora, a long-time Indian gaming regulator. Rocky is the Director of Security for the Leech Lake Band of Ojibwe. Rocky is standing. I want to introduce Rocky quickly because he is the Chairman of the Tribal Gaming Protections Network, a national group of national regulators and security personnel.

Now, Rocky would be the first to tell you. He is an old boxer so he still has that name, but his name is Stanley Papasodora, and he is one of our leaders in this regulatory industry. And his Tribe flew him out here to stand with us.

But he coordinates a national effort nationwide of national regulators and security folks that talk about cheats and scams throughout this Country. And he would be the first to tell you that the strength lies within the more local and regional. But they have to communicate because one goes here, the other one is going someplace else. And we are on top of it and these Indian security personnel are on top of it, and we stop crime because of it regularly.

Thank you, Rocky.

The CHAIRMAN. Welcome. Nice to have you here.

Mr. STEVENS. NIGA appreciates the increased government-to-government consultation on the part of the NIGC. Consultation has begun to repair relationships with Tribal governments, which also has led to increased coordination and further improvements to regulation.

That said, there are several areas where we must work towards improvement. Given the complex nature of the regulations, the frequency of revisions, there is a significant need for increased training and technical assistance. In addition, there is a longstanding need to bring stability and clarity to Class II Indian gaming.

In conclusion, Mr. Chairman, I want to reiterate that Indian gaming is working. It is rebuilding Tribal economies, benefitting

non-Indian communities, and providing hope for future generations of Indian people. We are mindful of what is at stake and the Tribes nationwide are committed to maintain a strong, seamless and comprehensive system of regulation. Much of the credit of this success goes to the Tribal leaders, Mr. Chairman, who make the decisions to spend \$345 million each year to regulate their operations and to the thousands of men and women who are the day-to-day frontline regulators of the Indian gaming operations just like Mr. Papasodora and obviously Mr. Hummingbird, too. I am looking to my right. I am right-handed.

Mr. Chairman and to the Committee, this concludes my remarks. I am trying to stay within my time limit, but again, the emphasis I want to make to you, Mr. Chairman, is these people have given their life and their heart to protect our industry. We are doing a great job and work very hard at it, and we spend a lot of resources doing so.

Thank you for hearing my comments today, Mr. Chairman and Mr. Senator, sir.

[The prepared statement of Mr. Stevens follows:]

PREPARED STATEMENT OF ERNEST L. STEVENS, JR., CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION

Introduction

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. My name is Ernest Stevens, Jr., Chairman of the National Indian Gaming Association (NIGA) and a member of the Oneida Nation of Wisconsin. NIGA is an interTribal association of 184 federally recognized Indian Tribes united behind the mission of protecting Tribal sovereignty and preserving the ability of Tribes to attain economic self-sufficiency through gaming and other economic endeavors. I want to thank the Committee for this opportunity to provide our views on the role of Tribal governments and the National Indian Gaming Commission (NIGC) as regulators of Indian gaming operations.

Indian Tribes As Governments

I testified one year ago today before this Committee about the general state of Indian gaming. As I did then, I again would like to first place Indian gaming in proper context, by briefly providing some background about the Constitutional status of Indian Tribes in the United States, and discuss briefly what Indian gaming means to Indian country.

As this Committee well knows, before contact with European Nations, Indian Tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to their lands. The Nations of England, France, and Spain all acknowledged Tribes as sovereigns and entered into treaties with various Tribes to establish commerce and trade agreements, form wartime alliances, and preserve the peace.

The United States Constitution specifically acknowledges the importance of trade with Tribal governments in the Commerce Clause, which states that "Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." U.S. Constitution, Article I, section 8, clause 3. The United States also entered into hundreds of treaties with Tribal governments. Through these treaties, Tribes ceded hundreds of millions of acres of Tribal homelands to help build this great Nation. In return, the United States promised to provide for the education, health, public safety and general welfare of Indian people. The U.S. Supreme Court later acknowledged that this course of dealing with Tribal governments established a trust relationship between Tribes and the United States, with accompanying obligations on the part of the United States towards Indian people.

Over the past two centuries plus, the federal government has fallen far short in meeting these solemn treaty and trust obligations. In the late 1800's, the United States adopted and implemented a policy of forced Assimilation, whereby the federal government took Indian children from their homes, and placed them in military and religious boarding schools where they were forbidden from speaking their language

or practicing their Native religions. The concurrent policy of Allotment sought to destroy Tribal governing structures, sold off treaty-protected Indian lands, and had the result of further eroding Tribal land bases and devastating Tribal economies. Finally, the Termination policy of the 1950's again sought to put an end to Tribal governing structures, eliminate remaining Tribal land bases, and attempted to relocate individual Indians from Tribal lands with the help of one-way bus tickets to urban areas with the promise of vocational education.

These policies resulted in death of hundreds of thousands of our ancestors, the taking of hundreds of millions of acres of Tribal homelands, the suppression of Tribal religion and culture, and the destruction of Tribal economies. The aftermath of these policies continues to plague Indian country to this day.

Tribal Government Self-Determination

Time and time again, these policies were revealed as failures. The persistence and perseverance of Indian people demonstrated to the federal government that Indian country was not going to fade away. On July 8, 1970, President Nixon formally repudiated the policy of Termination and adopted a policy supporting Indian Self-Determination, which seeks to improve Indian education, fosters Tribal culture, and enhances Tribal economic development, among other goals. Self-Determination remains the Indian Affairs policy of the United States to this day. Tribal governments have seen progress in rebuilding their communities as a result of the Self-Determination policy.

In the late 1960's and early 1970's, Tribal governments took self-determination to heart, and opened the first Indian gaming operations to generate governmental revenue to fund essential Tribal government programs and meet the shortfalls in the federal obligations to provide for Indian education, health, and the general welfare of Indian people.

State governments and commercial gaming operations challenged the rights of Tribes to conduct gaming on their lands. These challenges culminated in the Supreme Court case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The *Cabazon* Court upheld the right of Tribes, as governments, to conduct gaming on their lands free from state control or interference. The Court reasoned that Indian gaming is crucial to Tribal self-determination and self-governance because it provides Tribal governments with a means to generate governmental revenue for essential services and functions.

In 1988, one year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act (IGRA). The stated goals of IGRA include the promotion of Tribal economic development and self-sufficiency, strengthening Tribal governments, and establishing a federal framework to regulate Indian gaming. The Act also established the National Indian Gaming Commission (NIGC). While there are dozens of forms of gaming in America, the NIGC is the only federal commission to regulate any form of gaming in the United States.

IGRA did not come from Indian country. A number of Tribal governments strongly opposed the federal legislation. The Act is far from perfect, and the U.S. Supreme Court has added to its imperfections. However, for nearly 23 years, more than 200 Tribes nationwide have made IGRA work to help begin to rebuild their communities and meet the stated goals of the Act.

State of Indian Gaming

Indian gaming is the Native American success story. For more than three decades, Indian gaming has proven to be the most successful tool for economic development for many Indian Tribes. In 2010, 236 of the 565 federally recognized Indian Tribal governments operated gaming to generate revenue for their communities.

Many Tribes have used revenue from Indian gaming to put a new face on their communities. Indian Tribes have dedicated gaming revenues to improve basic health, education, and public safety services on Indian lands. We have used gaming dollars to improve Tribal infrastructure, including the construction of roads, hospitals, schools, police buildings, water projects, and many others. Gaming revenues also enable Tribes to diversify their economies beyond gaming. Because of capital provided by gaming, Tribes have invested in renewable energy projects, retail operations, manufacturing and other entrepreneurial ventures.

For many Tribes, Indian gaming is first and foremost about jobs. Indian gaming is a proven job creator, establishing and fostering over 600,000 direct and indirect American jobs in 2010. Indian gaming has provided many individual Indians with their first opportunity at work. Just as importantly Indian gaming is bringing entire families back to Indian country. Because of Indian gaming, reservations are again becoming livable homes, as promised in hundreds of treaties. These American jobs

go to both Indian and non-Indian alike. Without question, we are putting people to work.

Indian gaming also benefits federal, state, and local governments. A June 2011 National Public Radio report, titled "Casino Revenue Helps Tribes Aid Local Governments," acknowledged that revenue from the Stillaguamish Tribe of Washington helped prevent additional layoffs at the local Everett, Washington prosecutor's office. The article also noted to the \$1.3 million that the Tulalip Tribes recently gave to the local school district after they heard about possible budget cuts and teacher layoffs. These same scenarios are taking place in more than a hundred local jurisdictions throughout the United States, saving thousands of jobs for American health care workers, fire fighters, police officers, and many other local officials that provide essential services to children, elders, and others.

In 2010, Indian gaming generated close to \$13 billion for federal, state and local governments budgets through compact and service agreements, indirect payment of employment, income, sales and other state taxes, and reduced general welfare payments. Despite the fact that Indian Tribes are governments, not subject to direct taxation, individual Indians pay federal income taxes, the people who work at casinos pay taxes, and those who do business with Tribal casinos pay taxes. As employers, Tribes also pay employment taxes to fund social security and participate as governments in the federal unemployment system. Indian Tribes also made more than \$100 million in charitable contributions to other Tribes, nearby state and local governments, and non-profits and private organizations. In short, Indian gaming has become a vital piece of the national economy.

As this Committee has highlighted over the past several years, much more needs to be done. Indian gaming is not a cure all, and many Tribal communities continue to suffer the devastating effects of the past failed federal policies. Too many of our people continue to live with disease and poverty. Indian health care is substandard, violent crime is multiple times the national average, and unemployment on Indian reservations nationwide averages 50 percent. Again, only 236 of the 565 federal recognized Tribes are able to use gaming as a means of economic development.

To broaden the economic success of Indian gaming, NIGA is working with our Member Tribes to further encourage Tribe-to-Tribe giving and lending. Through our American Indian Business Network, we work to highlight the benefits of hiring Native owned businesses and procurement of Native produced goods and services. Empowering Tribal entrepreneurs and Tribal government owned businesses, will serve to further diversify and strengthen Tribal economies.

In addition, we applaud the ongoing efforts of the NIGC to adopt a regulation to implement the Buy Indian Act. The Buy Indian Act, states simply: "so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior." 25 U.S.C. 47. Such a regulation should give preference to qualified Tribal government-owned and individual Indian-owned businesses when the NIGC procures goods or services. These efforts fully comport with the stated goals of IGRA to foster Tribal economic self-sufficiency.

While much more must be done, Indian gaming has proven to be one of the best available tools for Tribal economic development. Indian gaming has helped many Tribes begin to rebuild communities that were once forgotten. Because of Indian gaming, our Tribal governments are stronger, our people are healthier, and an entire generation of Indian youth has hope for a better future.

Tribal Government Regulation of Indian Gaming

That's what is at stake. Tribal governments realize that none of these benefits would be possible without a strong regulatory system to protect Tribal revenue and to preserve the integrity of our operations.

With regard to regulation, IGRA established a three-tiered system. This Committee's 1988 report on the Act makes clear the original intent for the regulatory system under the Act:

"[IGRA] provides for a system of joint regulation by Tribe and the federal government for Class II gaming on Indian lands and a system of compacts between Tribes and states for regulation of Class III gaming. The bill establishes the NIGC as an independent agency within the Department of the Interior. The Commission will have a regulatory role for Class II gaming and an oversight role with respect to Class III gaming."

Senate Report 100-446, at 1 (Aug. 3, 1988).

This regulatory system vests local Tribal government regulators with the primary day-to-day responsibility for regulating Indian gaming operations. This only makes

sense, because no one has a greater interest in protecting the integrity of Indian gaming than Tribes.

This framework contrasts from the failed framework of criminal jurisdiction in Indian country where Tribes rely on federal officials to investigate and prosecute crimes that occur on Indian lands from offices and courtrooms that are often located hundreds of miles from Indian country. Despite recent reforms, this system is a proven failure. Washington, D.C. is simply not equipped to police Indian lands or make local decisions for Tribal communities.

While Tribes take on the primary day-to-day role of regulating Indian gaming operations, IGRA requires on coordination and cooperation with the federal and state governments (in the case of Class III gaming) to make this comprehensive regulatory system work. The Tribal, state, and the federal governments must all work hand-in-hand to ensure the effective regulation of Indian gaming.

Under the Act, the NIGC has direct authority to monitor Class II gaming on Indian lands on a continuing basis and has full authority to inspect and examine all premises on which Class II gaming is being conducted.

Class III gaming is primarily regulated through a framework established through individual Tribal-state gaming compacts. Here the two sovereigns agree upon a framework to regulate Class III gaming based on arms length negotiations. As noted above, Congress intended that the NIGC would maintain an oversight of Class III gaming. As a result, under the Act, the NIGC:

- reviews and approves Class III Tribal gaming regulatory laws and ordinances;
- reviews Tribal background checks and gaming licenses of Class III gaming personnel;
- receives and reviews annual independent audits of Tribal gaming facilities, including Class III gaming (all contracts for supplies and services over \$25,000 annually are subject to those audits);
- approves all Tribal management contracts; and
- works with Tribal gaming regulatory agencies to ensure proper implementation of Tribal gaming regulatory ordinances.

This comprehensive system of regulation is expensive and time consuming, but Tribal leaders know what's at stake and know that strong regulation is the cost of a successful operation. Despite the Recession, Tribal governments have continued to dedicate tremendous resources to the regulation of Indian gaming. In 2010, Tribes spent more than \$345 million on Tribal, state, and federal regulation:

- \$250 million to fund Tribal government gaming regulatory agencies;
- \$80 million to reimburse states for state regulatory activities negotiated and agreed to pursuant to approved Tribal-state Class III gaming compacts; and
- \$16 million to fully fund the operations and activities of the National Indian Gaming Commission.

The Indian gaming regulatory system employs more than 3,400 expert regulators and staff to protect Indian gaming. Tribal governments employ approximately 2,800 gaming regulators and staff. Among the ranks of Tribal regulators are former FBI agents, BIA, Tribal and state police officers, former state gaming compliance regulators, military officers, accountants, auditors, attorneys and bank surveillance officers. In addition, state governments employ more than 500 state gaming regulators, staff and law enforcement officers to help Tribes regulate Indian gaming. At the federal level, the NIGC employs more than 100 regulators and staff.

In addition to the NIGC, a number of other federal officials help regulate and protect Indian gaming operations. Tribes work with the FBI and U.S. Attorneys offices to investigate and prosecute anyone who would cheat, embezzle, or defraud an Indian gaming facility—this applies to management, employees, and patrons. 18 U.S.C. § 1163. Tribal regulators also work with the Treasury Department's Internal Revenues Service to ensure federal tax compliance and the Financial Crimes Enforcement Network (FinCEN) to prevent money laundering. Finally, Tribes work with the Secret Service to prevent counterfeiting.

Tribal governments have also invested heavily in high tech state-of-the-art surveillance and security equipment, and employ professional personnel to operate these systems. Tribal surveillance systems are on par with the best systems in the gaming industry, and exceed standards employed by state and commercial gaming operations.

Against this backdrop of comprehensive regulation, the FBI and the Justice Department have repeatedly testified that there has been no substantial infiltration

of organized crime on Indian gaming. This system is costly, it's comprehensive, and our record and our experience shows that it's working.

NIGA is encouraged by the Administration's rededication to agency-wide government-to-government consultation with Indian Tribes. On November 5, 2009, President Obama issued an Executive Memorandum directing each federal agency to submit to the Director of the Office of Management and Budget (OMB), a detailed plan to implement the policies and directives of Executive Order 13175. Over the past two years, all agencies have submitted and have begun to implement Tribal consultation plans, and many have established offices of Tribal government relations. These offices have opened countless doors and programs to Tribes in agencies that were previously closed to Indian country.

With regard to Indian gaming, at the Department of Justice, the increased cooperation and coordination between Tribal gaming regulators, Tribal police, and U.S. Attorneys sends a strong message that any crimes in Indian country or against Indian gaming operations will be prosecuted to the fullest extent of the law.

NIGA also appreciates the increased consultation on the part of the NIGC. Increased consultation has begun to repair frayed relationships with Tribal governments, and has led to increased coordination, and further improvements to regulation.

NIGA is working with the NIGC to improve several areas, including training and technical assistance, Class II gaming regulations, and the facility licensing regulations. Tribal governments are encouraged by the NIGC's ongoing regulatory review. While these areas are detailed in comments to a variety of NIGC proposed rules, I will focus my testimony on the need to review regulations relating to Class II gaming.

Class II Indian Gaming

Congress, in enacting IGRA, struck a careful balance among the respective interests of three sovereigns: Tribal, federal, and state governments. That balance was critically upset by the Supreme Court's 1996 decision in *Seminole Tribe v. Florida*, which found that a state could refuse to negotiate Class III Tribal-state gaming compacts in good faith. This decision has resulted in a number of states (that condone and regulate other forms of gaming) exercising veto authority over Class III Indian gaming. As a result, Indian Tribes in these states rely solely on Class II gaming to generate governmental revenue to provide essential services to meet the many needs of their communities.

For most of the past decade, the NIGC has created great uncertainty in the area of Class II Indian gaming. With little Tribal input, the NIGC in past years developed unworkable gaming classification standards that went beyond the statutory authority granted to the Commission in IGRA and that threatened the economic viability of Class II gaming. Many of these proposed regulations sought to limit Class II games to only those in play in 1988. This view stands in direct conflict with congressional intent. The Senate Committee Report to IGRA states the following:

The Committee specifically rejects any inference that Tribes should restrict Class II games to existing game sizes, levels of participation, or current technology. The Committee intends that Tribes be given the opportunity to take advantage of modern methods of conducting Class II games and the language regarding technology is designed to provide maximum flexibility.

Senate Report 100-446, at 9 (Aug. 3, 1988).

To better meet these intentions, the NIGC should make it a priority to revisit regulations that affect Class II Indian gaming in consultation with all Tribal governments and Tribal regulatory agencies. Specific areas with regard to Class II gaming that deserve a closer look include the Class II Minimum Internal Control Standards, technical standards for Class II gaming, and self-regulation of Class II gaming, among other areas.

In this area, NIGA acknowledges the significant efforts of the Tribal leaders, Tribal regulators, and industry experts of the Indian Gaming Working Group. This Group invested a considerable amount of time and thought into comments and proposals to improve this area of the law and bring it closer to the original congressional intent.

Conclusion

In conclusion, the Indian Gaming Regulatory Act has worked well to promote "Tribal economic development, self-sufficiency, and strong Tribal governments," as Congress intended. Indian gaming is a true success story for Indian country and the Nation as a whole.

Tribal governments are mindful of what's at stake, and Tribes nationwide have committed significant and precious resources to maintaining a strong, seamless, and comprehensive system of regulation. Much of the credit for this success goes to the Tribal leaders who made the decision to spend more than \$345 million to regulate their operations, and to the thousands of men and women who are day-to-day front line regulators of Indian gaming operations. In short, Indian Country is proud of its gaming regulatory history and we are working hard to ensure that Tribal gaming regulation remains strong into the future.

Mr. Chairman and Members of the Committee this concludes my remarks. Again, thank you for this opportunity to testify today.

The CHAIRMAN. Thank you so much for your testimony.

And now we will hear from Mr. Hummingbird. Will you please proceed with your testimony?

**STATEMENT OF JAMIE HUMMINGBIRD, CHAIRMAN,
NATIONAL TRIBAL GAMING COMMISSIONERS/REGULATORS**

Mr. HUMMINGBIRD. Thank you, Mr. Chairman.

I want to say on behalf of the National Tribal Gaming Commissioners and Regulators that I am pleased to appear before you today to provide insight into the regulatory side of the Indian gaming industry from the perspective of a Tribal gaming regulator.

As Mr. Stevens mentioned, my name is Jamie Hummingbird. I am a member and citizen of the Cherokee Nation where I serve as the Director. And I have been serving in my capacity as a regulator for 13 years. Before that, I had served in various capacities with the nation and have served my nation for 20 years.

Prior to the enactment of the Indian Gaming Regulatory Act, or IGRA, in 1988, Tribal gaming regulatory authorities, or TGRAs, played a pivotal role in overseeing the conduct of gaming offered on Indian lands. It was in the pre-IGRA era that the regulatory principles and responsibilities of gaming regulators were established and continue to be the foundation for each TGRA today, namely the protection of Tribal assets, protecting the integrity of the gaming environment, and accountability of the gaming operations.

One constant concept in the minds of Tribes and TGRAs as these principles were expressed was that they were and remain an exercise of the Tribe's inherent sovereign authority to determine the conduct of its operations. The IGRA required Tribes to draft gaming ordinances establishing their respective gaming regulatory authorities. The Act further clarified the role of Tribal gaming regulators by specifying that Indian Tribes have the exclusive right to regulate gaming on Indian lands.

In seeking balance of interests of the Federal Government and the State governments, IGRA also created the National Indian Gaming Commission to provide Federal regulatory oversight and, as necessary, various States were expected to utilize their existing regulatory bodies or to create them pursuant to the terms of a Tribal State compact.

Further, IGRA allowed Tribes to offer games that were not expressly prohibited within the State in which they reside, and IGRA created gaming classifications and designated responsibility for regulating the various classes of gaming where Tribes are the sole regulators of Class I gaming and the primary regulator in Class II gaming, with the NIGC maintaining and oversight role.

Tribes also share responsibility for regulation with States under the terms of the Tribal-State compacts.

The Tribal gaming ordinances which are subject to the review and approval of the Chairman of the NIGC, fulfill basic requirements for Tribal propriety, revenue distribution, audits, the environment, public health and safety, and management background investigations.

Tribal gaming regulatory authorities must evaluate their gaming environment and devise rules and regulations that are fitting to their unique circumstances. As extensions of the gaming ordinances, these regulations clarify the duties, authorities and methods by which Tribal gaming facilities are to be governed.

The regulations address the licensing of gaming facilities, individuals and vendors, approval of games that are to be offered, handling tort and prize claims, surveillance, security, auditing and overseeing compliance with environmental and public health and safety activities.

Tribes also utilize internal control standards as a tool to gauge a gaming facility's level of compliance with applicable laws and regulations. There are numerous other tools and processes that are utilized in these efforts, beginning with the employment of qualified personnel.

Currently, and has been stated previously, the Tribal gaming industry is directly or indirectly responsible for employing over 600,000 individuals where there are approximately 4,000 Tribal gaming regulators monitoring and ensuring the maximum effective level of compliance with all gaming laws and regulations.

TGRAs also maintain strong lines of communication with Federal law enforcement agencies, among them the Internal Revenue Service, the Financial Crimes Enforcement Network, the Office of Foreign Asset Control, and the Secret Service. Tribes also maintain healthy relationships with the State and the NIGC regulatory offices as they each have a role to play in the regulation of Indian gaming.

Over the past several decades, Tribal gaming facilities have increased the level of sophistication of their gaming activities by using technology available as provided for by IGRA. Tribal regulators have also attained highly sophisticated levels of security and the qualifications of regulatory personnel have also increased. It is not uncommon for a TGRA to employ credentialed professionals such as certified fraud examiners, certified internal auditors, network security administrators and background investigation specialists. Each of these disciplines aids in the development and the refinement of Tribal gaming regulations and internal controls.

The TGRAs must remain up to date as technology advances. In the recent past, gaming vendors have introduced wireless gaming and systems-based gaming and presently Internet gaming has become a topic that has garnered a great deal of attention by everyone in the gaming industry, including Tribes. And this issue and its potential impact on Tribal gaming will be carefully monitored by Tribes.

In conclusion, Chairman Akaka, while everyone involved in Indian gaming can probably agree that the IGRA is less than perfect, it has proven to be a stable base for regulation. The IGRA has sur-

vived numerous amendment attempts due to the many successes that we have shown that overshadow its relatively minor shortcomings.

Tribes have consistently demonstrated substantial compliance with all Tribal, Federal and where applicable, State laws and regulations. Tribal gaming regulators are capably performing the due diligence necessary to protect the Tribes and are proud of our history of protecting the integrity of the Indian gaming industry.

The responsibility of regulating Tribal gaming facilities is a task that Tribal gaming regulators take very seriously, and it is the obligation to our Tribal citizens that drive us to excel.

On behalf of the National Tribal Gaming Commissioners and Regulators, I thank you for the opportunity to appear before you today and welcome any questions that you may have.

[The prepared statement of Mr. Hummingbird follows:]

PREPARED STATEMENT OF JAMIE HUMMINGBIRD, CHAIRMAN, NATIONAL TRIBAL GAMING COMMISSIONERS/REGULATORS

Good afternoon Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee. My name is Jamie Hummingbird, Chairman of the National Tribal Gaming Commissioners/Regulators and member of the Cherokee Nation where I serve as Director of the Gaming Commission.

The National Tribal Gaming Commissioners/Regulators is an organization comprised of Tribal gaming regulators from across America whose purpose is to promote the exchange of thoughts, information and ideas in the pursuit of regulatory practices that are consistent, stable, and fair.

On behalf of the National Tribal Gaming Commissioners/Regulators I would like to express our thanks for being provided the opportunity to offer comments before the Committee from the perspective of a Tribal gaming regulator. I would also like to thank the Committee and the National Indian Gaming Commission (NIGC) for the approach you have undertaken in seeking input from Tribes and their Gaming Commissions and Agencies in a transparent manner.

The following comments are based upon the views of the membership of the National Tribal Gaming Commissioners/Regulators (NTGCR) experiences and their familiarity with the subject of today's hearing. Hopefully the comments will assist with a better understanding as to the manner by which the day-to-day regulators of Indian gaming operations view the role of the NIGC and the Tribal regulators in regard to their specific responsibilities.

Defining the Regulatory Structure

Prior to the enactment of the Indian Gaming Regulatory Act (IGRA; the Act) in 1988, each Tribe's Tribal Gaming Regulatory Authorities (TGRA) played a pivotal role in overseeing the conduct of gaming offered on its respective Indian lands. It was in this pre-IGRA era that the principles of regulation, roles and responsibilities of gaming regulators were established, namely: protection of the Tribe's assets; protection of the integrity of the gaming environment; and accountability of the gaming operations. These principles of regulation were included as part of the IGRA and remain the foundation for each TGRA today.

One constant concept incorporated in the regulations developed by the various Tribes and their TGRAs was that they were and remain an exercise of the Tribe's inherent sovereign authority to determine the conduct of their own affairs. This concept, although stated in a different manner, was articulated in the discussions and hearings held by the Select Committee on Indian Affairs leading up to the passage of and contained within the bill that would become the Indian Gaming Regulatory Act, Senate Bill 555. This concept of Tribal sovereign authority is reflected in the primary goal of the IGRA, which is to "preserve the right of Tribes to self-government." The senate report discussing S. 555 stated:

"In determining what patterns of jurisdiction and regulation should govern the conduct of gaming activities on Indian lands, the Committee has sought to preserve the principles which have guided the evolution of Federal-Indian law for over 150 years. The Committee recognizes and affirms the principle that by virtue of their original Tribal sovereignty, Tribes reserved certain rights when en-

tering into treaties with the United States, and that today, Tribal governments retain all rights that were not expressly relinquished.”

The Committee also sought to balance the interests of the states and the federal government along with those of the Tribes. The language contained in the IGRA provided the foundation on which the Indian gaming regulatory structure would be built.

IGRA required Tribes to draft gaming ordinances that established their respective regulatory authorities to preside over the regulation of gaming activities occurring on Tribal lands. The Act further clarified the role of Tribal gaming regulators at 25 USC 2701 by specifying:

“The Congress finds that . . .

- (5) Indian Tribes have the *exclusive right to regulate gaming activity on Indian lands* if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.”

The Act also created the NIGC to provide the federal presence in the Indian gaming regulatory realm. When necessary, the various states were expected to utilize their existing regulatory bodies or create them pursuant to the terms of a Tribal-state compact.

With the advent of game classifications, games were placed in various categories which were subject to different regulatory systems. The responsibility for regulating the various classes of gaming was delineated as follows:

Class I Gaming—social or traditional games played as a part of Tribal ceremonies or celebrations falls under the exclusive jurisdiction of the Tribes.

Class II Gaming—bingo, pull-tabs, instant bingo, non-house banked card games and other similar games wherein the Tribal gaming regulatory authorities were established as the primary regulators over gaming activities with the NIGC providing oversight.

Class III Gaming—all other forms of gaming that are not Class I or Class II, which are traditionally considered slot machines, horse-racing, and house banked card games, could only be played in accordance with the terms of a Tribal-state compact in which regulatory responsibility was shared between the states and Tribes.

Tribal Gaming Regulatory Authorities—Roles and Responsibilities

IGRA required Tribes to enact gaming ordinances, subject to the review and approval of the Chairman of the NIGC, that provides six (6) basic requirements:

1. The Indian Tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;
2. Net revenues from any Tribal gaming are not to be used for purposes other than:
 - a. to fund Tribal government operations or programs;
 - b. to provide for the general welfare of the Indian Tribe and its members;
 - c. to promote Tribal economic development;
 - d. to donate to charitable organizations; or
 - e. to help fund operations of local government agencies;
3. Annual outside audits of the gaming, which may be encompassed within existing independent Tribal audit systems, will be provided by the Indian Tribe to the Commission;
4. All contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;
5. The construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and
6. There is an adequate system which ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis.

In order to fulfill this mandate, TGRAs must evaluate their Tribe's gaming environment and devise a set of rules and regulations that is compatible with their unique circumstances. As extensions of the gaming ordinances, these regulations clarify the duties, authorities, and methods by which Tribal gaming facilities are to be governed. The licensing of gaming facilities, individuals and vendors, approval of games that are to be offered, handling tort and prize claims, surveillance, security, auditing, and overseeing compliance with environmental, public health and safety activities.

Tribes also utilize internal control standards as a tool to gauge a gaming facility's level of compliance with applicable laws and regulations. As you may be aware it was the National Indian Gaming Association (NIGA) and the National Congress of the American Indians (NCAI) Tribal Leaders Task Force in the 1990's that had the foresight to organize a group composed of Tribal regulatory professionals to develop Tribal Minimum Internal Control Standards based upon gaming industry standards. This group developed the first set of Tribal Minimum Internal Control Standards (MICS) that was later adopted by the NIGC as its MICS as a regulation. Since that time the NIGC has called upon Tribal professionals to review and/or assist in the development of various Indian gaming regulations.

In addition since the development of the NIGA/NCAI Task Force, Tribes developed their own internal policies, procedures, and regulations in regard to day-to-day regulation. The NTGCR has assisted Tribes in developing their own internal regulations and procedures that have assisted many if not most TGRAs to be independent of the possible influence of Tribal politics.

Numerous other tools are utilized in these efforts, none more effective than the employment of qualified personnel. The array educational and training skill sets of regulatory personnel range from former law enforcement and former military personnel to accountants, auditors, surveillance, and information systems professionals. This does not include other professionals retained by gaming regulators in the performance of their duties, such as professionals in the areas of law, environmental health, and risk management.

It is estimated that there are over 628,000 persons employed by or in service to Tribal gaming facilities. These persons are employed by the gaming facility, vendors, and third-party lessees. The vast majority of these individuals must successfully complete a background investigation in order to be considered eligible to work in a Tribal gaming facility. Most often, the background investigation is performed by the TGRA, but may also be conducted by a state regulatory agency pursuant to a Tribal-state compact. The results of all investigations are provided to the NIGC for their review. Further, these investigations are performed at regular intervals after a person and/or vendor receives their initial gaming license, a large number of which must undergo the process on an annual basis.

Currently, there are an estimated 3,500 individuals directly employed by Tribal gaming regulators that oversee all Tribal gaming operations on a daily basis. In addition, the National Indian Gaming Commission directly employs roughly 100 people to carry out its responsibilities. After accounting for the regulatory staff employed by the respective state gaming agencies and there are approximately over 4,000 individuals that monitor and ensure the maximum level of compliance with all gaming laws and regulations across the nation in Indian country.

These resources, including those utilized by the state and federal governments, are paid for by Tribes. Some individual TGRAs, by virtue of the number and/or size of their gaming operations, maintain operating budgets that rival that of the NIGC.

According to data contained in the NIGA 2009 economic impact report on Indian gaming, there are 237 Indian Tribes operating 446 gaming facilities in 28 states. As a part of this, Tribes spent over an estimated \$350 million in the following areas to regulate Indian gaming:

- \$260 million to fund Tribal gaming regulatory authorities;
- \$80 million to fund state regulatory agencies;
- \$14 million to fund the National Indian Gaming Commission.

TGRAs also call upon outside agencies as necessary to address issues warranting their particular expertise. Tribal, federal, and/or local law enforcement may assume control over any potential criminal activity. Likewise Tribal prosecutors, local district attorneys, or the United States Attorney General's office may prosecute any crime identified at a Tribal gaming facility. Across the country, state and federal attorneys have successfully prosecuted those that would jeopardize the integrity of the gaming facilities.

The Department of the Treasury, through its various agencies, receives regular contact from Tribal gaming regulators and casino personnel as a part of maintaining strict oversight of transactions. Whether complying with the requirements of the In-

ternal Revenue Service, the Financial Crimes Enforcement Network, or the Office of Foreign Asset Control, Tribes maintain strong lines of communication with federal agencies.

Tribes also work closely with the Secret Service in the event any potentially counterfeit currency is confiscated. These relationships have led to several major arrests and prosecution of the offenders. Tribes have also assisted federal task forces investigating money laundering. These same cooperative relationships have been established with local police departments and sheriff's offices.

Indian Gaming—Past, Present, and Future

Tribes have historically maintained a regulatory presence at its gaming facilities since their inception. This presence, although similar to the current state of Indian gaming regulation, began at a time when the number of Tribes participating in gaming and the number of facilities they operated were a fraction of the number currently in operation. The early regulatory systems were simpler in nature and relied heavily on records to be maintained either manually or within limited electronic data systems.

Over the past several decades, Tribal gaming facilities began to expand their locations and increased the level of sophistication of its gaming activities by using the technology available at the time as permitted by the IGRA. Tribal regulators also grew in sophistication. Now, Tribal gaming facilities and regulators use state-of-the-art surveillance systems and computer monitoring systems to keep a watchful eye over Tribal assets and gaming facility activities.

In addition to utilizing the newest technology to assist in overseeing Tribal gaming operations, TGRAs have become more adept in using qualified third parties for support. It is not uncommon for a Tribal gaming regulatory authority to employ individuals with credentials such as Certified Fraud Examiner, Certified Public Accountant, Certified Internal Auditor, Software Engineer, Systems Administrator, and Network Security Administrator, Pre-employment Screening and Background Investigation Specialist to name just a few. Each of these disciplines has aided in the development or refinement of Tribal gaming regulations and internal controls.

Educating Tribal gaming regulators is a continual process, requiring constant monitoring of the gaming environment in an effort to prepare for emerging technology as well as changes in the legislative setting. TGRAs have led the way in developing meaningful regulations for their operations and continue to impact regulation development at the state and federal level. Tribal working groups working in various states as well as those formed to address federal regulations offer a collaborative means to creating effective and efficient regulations.

That is not to say that once a regulation has been adopted that the process ends. Regulations must be regularly reviewed to determine their validity and effectiveness in relation to the state of the gaming industry. For example, in the past several years, gaming vendors have introduced wireless gaming and systems-based/server-assisted games. Most recently, Internet gaming has become a topic that has garnered a great deal of attention by everyone in the gaming industry, including Tribes, regardless of their role. This issue and its potential impact on Tribal gaming, like so many other developments in the gaming industry over the past three decades, will be carefully monitored by Tribes so that a system of regulation can be established.

Several amendments to the Indian Gaming Regulatory Act have been proposed over the years. Two (2) of the more recent proposed amendments focused on off-reservation gaming and expanding the role and authorities of the National Indian Gaming Commission in light of the decision rendered in the *Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006)(i.e. the CRIT case). Tribes, too have sought to amend the Indian Gaming Regulatory Act so to address the decision rendered by the Supreme Court in the *Seminole Tribe of Florida v. Florida, et. al.*, 517 U.S. 44, whereby the Court ruled that IGRA requires compacts are to be negotiated in good faith by both the states and Tribes.

While everyone that deals with Indian gaming may agree that the IGRA is less than perfect, it has proven to be a stable base on which so much has been built. The Act has survived numerous amendment attempts due in large part to the great many successes that overshadow the few failures that have been experienced. Tribes have consistently demonstrated substantial compliance with all Tribal, federal, and, where applicable, state laws and regulations. These facts have been attested to by both state and federal oversight officials.

Conclusion

Indian gaming had humble beginnings, as did the Tribal gaming regulators. The growth of Indian gaming under the IGRA has contributed to success of Tribal eco-

conomic development and has led to the building of world-class gaming facilities. Along the way, Tribal gaming regulators have evolved into world-class regulators. The responsibility of regulating Tribal gaming facilities is a task that Tribal gaming regulators take very seriously. It is the obligation to our people that drives us to excel.

It is our membership's belief that Tribal gaming regulators are capably performing the due diligence necessary to protect the assets of the Tribes and are proud of our history of protecting the integrity of the Indian gaming industry.

The CHAIRMAN. Thank you very much, Mr. Hummingbird.

Mr. Stevens, thank you so much for your statement. Let me specifically ask you this question about an issue. Do you think the Colorado River decision weakened Class III regulation at the Tribal level?

Mr. STEVENS. No, sir. Absolutely not. I believe that our systems are as strong or stronger today than they were five and a half or so years ago when this decision came down.

Indian Country, and many of them are in the room today, has been real responsible about developing regulations to protect our industry. I think Mr. Hummingbird has the honor of not just representing his own Tribe, but working with all these Tribes to put together a solid foundation in Indian gaming regulatory responsibility, and we believe that we are on top of the game. We don't think we are perfect, but every day we are working hard to get better at it, sir.

The CHAIRMAN. Well, it is good to hear that.

Mr. Hummingbird, how has the role of Tribal gaming regulators changed in the 23 years since IGRA was enacted?

Mr. HUMMINGBIRD. The Tribal gaming regulators today have seen their potential augmented by the work that has been done in the last 23 years. In those early days of Indian gaming under IGRA, the systems were much simpler. The operations were a little smaller. But as the years have seen the growth of Indian gaming just increase almost exponentially, so too has the experience and the effectiveness of Tribal gaming regulators.

We have learned what the IGRA's intent is. We have made IGRA work. We are on the frontlines every day looking to advance, as Mr. Stevens just mentioned, looking for ways to improve what it is that we do. And not just because it is a requirement under IGRA, but because it is a part of our fulfillment of our obligation to our Tribe. We always seek to do better. We always want to stay ahead of the curve because we know there that things are out there that are coming our way.

Just as we started this journey 23 years ago, I don't think anybody really contemplated where IGRA would take Tribes in the gaming arena. But now that we have had that 23 years and we have seen what has happened over the past two decades, we can anticipate and expect to have that same experience in the future. So we are always looking to evolve. We are always looking to advance.

The CHAIRMAN. Well, thank you for those remarks. You know that as you become more successful, as you are seeing, it requires stronger regulations and I am glad to hear that you are keeping up with that.

I have a question for both of you. There are some who believe IGRA should be opened up to revision. What are your thoughts on

whether IGRA needs to be revised? And what, if any, legislative changes would you recommend?

Mr. Stevens?

Mr. STEVENS. I apologize. I didn't introduce Mr. Van Norman because I didn't want to cut into my five minutes. So if I could, I want to introduce Mr. Mark Van Norman. He is the Executive Director of the National Indian Gaming Association. He is a lawyer and long-time veteran here in Washington, D.C., and he is a member of the Cheyenne River Sioux Tribe. I would like to have him give a quick summary of NIGA's position regarding that, as directed by the Tribal leadership.

The CHAIRMAN. Thank you. We would love to hear from him.

Mr. T4Van Norman. Thank you, Senator.

We feel that there is already a strong system in place under the Indian Gaming Regulatory Act and that the NIGC does have authority. And they have been going out to Tribes to conduct reviews of the Tribal audits that are submitted to them on an annual basis.

In addition, they have authority under the Act to review the Tribe's enforcement of the Tribal gaming regulatory ordinances that the NIGC approves. So when they go out for these audits, they can also review the Tribe's performance under their own Tribal laws.

And this is a good system because it recognizes Indian sovereignty and self-determination and gives a level of oversight from the Federal Government that is not unduly intrusive on the legislative authority of Tribes. So we believe that the system is strong that is in place.

One failing that there has been is that the Supreme Court struck down the safeguard for the Tribal-State compact system, and the Tribal-State compact system is set up as a system for two sovereigns, the Tribe and the State, to sit down and negotiate a regulatory framework and issues related to Class III gaming.

And good faith is presumed on the part of the State, but if the State refuses to negotiate or does not negotiate in good faith, the Tribe may commence litigation. But in the Seminole case, the Supreme Court said that Congress did not have authority to waive the State's 11 th Amendment immunity. And we feel that if there were any legislation that that is the primary issue to be addressed.

Thank you.

The CHAIRMAN. Thank you very much.

Mr. STEVENS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Hummingbird?

Mr. HUMMINGBIRD. Thank you, Mr. Chairman.

I believe that, just as Mr. Van Norman has stated, I think Tribes would not necessarily be in favor of opening up IGRA to amendment simply because what we have built and what we have come to know as Indian gaming regulation has been made possible and has functioned well under the terms of IGRA as it is currently written.

However, IGRA is open. I would highly suggest and highly recommend that there be equal representation. That there would be a good process that would allow Tribes and States and the Federal Government to maintain a level of parity that is equal to all.

It is important I think to have regulatory input into such discussions as individuals in my field offer a great deal of insight into what constitutes and what can help lead to the development of meaningful regulation or meaningful policy.

But in short, I would say that IGRA is working fine. There is an old saying, if it ain't broke, don't fix it.

The CHAIRMAN. Thank you very much, Mr. Hummingbird.

Mr. Udall, I'll ask for your questions.

Senator UDALL. Thank you, Chairman Akaka.

Mr. Hummingbird, in your testimony you spoke about Tribal gaming regulatory authorities. How can the NIGC be more effective in supporting Tribes in establishing their gaming regulations and monitoring? And does the technical assistance provided by NIGC help? And how could that be more effective?

Mr. HUMMINGBIRD. Thank you, Senator Udall.

I think the role and the efforts that Chairwoman Stevens and her administration have undertaken are very beneficial to Tribes. I applaud the approach that she has taken with the consultations in seeking out from Tribes their input on what their needs are, as I believe that is one of the primary responsibilities that the NIGC has under IGRA.

Tribes have come a long way. We are very effective at what we do, but that does not mean that we sit on our laurels and don't look to grow, and that we don't look to advance. And as people come into the regulatory world, as oftentimes turnover does lead to new people coming in, it is important to get the technical assistance and technical training out to Tribes. But it is important also for the NIGC to know what kind of training is needed out there and make a very targeted approach to meeting the needs of the Tribes.

So I think the process that Chairwoman Stevens has undertaken will lead to a much better and a much more effective approach in providing the technical assistance that Tribes need.

Senator UDALL. And your sense is that the Tribal regulators, they get a lot of assistance and they are getting additional assistance from the NIGC, and that is an ongoing process that as it needs to be.

Mr. HUMMINGBIRD. And continuing education is always a never-ending process. Organizations such as mine, we provide training to Tribal regulators specifically. NIGA provides training and there are other areas for that, but NIGC has a unique role to play in this and I think that they are on the right track to meeting that goal.

Senator UDALL. Shifting direction back to Mark Van Norman and Mr. Stevens on this issue of opening IGRA up, as I understood Mark's testimony, what he was saying is that if there was any area that Congress ought to look at it is this whole good faith negotiation area. And what you can have happen is the statute says that there should be good faith negotiations between States and Tribes. But if it doesn't happen, then Tribes have no place to go, basically.

Is that what we are saying? I mean, they can go to court, but we have the ruling that the statute did not waive the 11th Amendment immunity. And so they can go to court, but then the State's put up immunity so there is no place for them to go.

How many Tribes are in that situation now? Do you have a sense of that? Somebody is whispering in your ear there.

Mr. T4Van Norman. We have a sense that Tribes have actually been very active in terms of engaging with the States and engaging with the public. And that there is a high level of support for Indian gaming among the public. We have been doing polling for years and what we have seen is a level of about 65 percent public support. When people have a little bit of opportunity to come out to Indian Country and see the facilities, you see the support going up to 75 percent or more.

So some of the Tribes who have been frustrated in the compact process have been able to go to the ballot and have successfully done initiatives to get some of their compacts going.

We have other Tribes, as in New Mexico, that have worked with the legislature to get compacts going. California, they have waived the 11th Amendment immunity, but there have been some Tribes that have been frustrated by the States raising 11th Amendment immunity. I think Montana, it would be an issue up there.

So that is still an outstanding issue. We had a case in the Fifth Circuit and the court was split on the Secretary's regulations that were intended to fill that gap, and two of the judges said the Secretary either didn't have the authority or had not done it right. And one of the judges said the Secretary was spot-on.

So that is an area that if there were going to be any legislation that Tribes would like to see remedied. I think in general, as Chairman Hummingbird mentioned, Tribes are not eager to amend the Indian Gaming Regulatory Act because I think folks are not convinced that Tribal rights would increase through that legislative process.

Senator UDALL. And so really what you are saying is that there are other avenues, though. There may not be avenues in court, but there may be avenues to go to public opinion. You can go to the legislature. You can get a referendum or some process you have citizens vote on. So there is some of that going on.

And I know in New Mexico, the Governors, whether it is Democrats or Republicans, know that there are gaming facilities out there and they are enjoyed by people that like to go there. And so if an issue comes up of another Tribe wanting to do something, they are willing to negotiate with them. But I guess there are some areas where Tribes are blocked.

Mr. T4Van Norman. Well, I could think of in Louisiana, there is one of the Tribes that is more newly recognized and the other Tribes have compacts, but then they were not able to get a compact and the Governor more recently has not been willing to negotiate with the Tribe that was newly recognized.

So there are situations where the Tribes are completely blocked. But Tribes have worked hard under the Act to make the Act work.

Senator UDALL. Yes, and I think that statement is very true, your last statement. They have worked very hard to make it work.

Thank you, Mr. Chairman. Thanks for your courtesy. Sorry about going over a little bit there.

Mr. STEVENS. Mr. Chairman, if I could, Mr. Chairman.

Senator, I wanted just to tag onto the question of training and technical assistance. NIGA has advocated for many years that this be made a high priority. Now, we are, as Chairman Hummingbird has indicated, encouraged by the current National Indian Gaming

Commission's posture regarding this as a priority. But we appreciate you asking that question because it is something that is very important to us and something that will help us to build the integrity in our operations. It is something that is of high priority of the 184-member Tribes that we represent.

Thank you.

The CHAIRMAN. Thank you very much for your responses. I want to tell you that your responses have been valuable to us and will help us proceed with you. And again, I want to stress that it is important that we keep in touch and continue to work together on these issues.

So I want to thank you very much for being here today and helping us in this respect.

Mr. STEVENS. Thank you, Mr. Chairman. We will make sure this information gets out to our member Tribes. And they will utilize their voice maybe to submit comments through the written process.

The CHAIRMAN. Thank you, Mr. Stevens.

Thank you, Mr. Hummingbird.

Mr. HUMMINGBIRD. Thank you for the opportunity to be here today.

The CHAIRMAN. Thank you.

Now, I would like to invite the third panel to the witness table: Mr. J. Kurt Luger who is Executive Director of the Great Plains Indian Gaming Association; Ms. Sheila Morago, Executive Director of the Oklahoma Indian Gaming Association; and Mr. John Meskill, Executive Director of the Mohegan Tribal Gaming Commission. I want to welcome you to the Committee.

Mr. Luger, will you please proceed with your testimony?

**STATEMENT OF J. KURT LUGER, EXECUTIVE DIRECTOR,
GREAT PLAINS INDIAN GAMING ASSOCIATION**

Mr. LUGER. But I am going to throw some quantitative figures at you that you very seldom get to hear.

I represent 36 Tribes in the Great Plains region, that is Montana, North Dakota, South Dakota, Wyoming, Iowa, Kansas and Nebraska. So I go from Kansas to the Texas border. You can see why I have to wear a hat on my bald head to get by.

With that said, first of all, I want to give you our feelings on NIGC currently. We feel they are on the right track. Unfortunately, Senator McCain left here kind of in a huff, which is getting to be predictable, and quite frankly, we are getting tired of it.

But the current NIGC has quantified in this regard. They have complied with *Indian Educators v. Kempthorne*. That is important to us. It is Indian preference in our Indian bureaucracies, Executive Order 13175 supported by Clinton, Bush and Obama. During Chairman Stevens' tenure, she has complied with that. Chairman Hogan, her predecessor, would not.

What does it say? Respect for Tribal self-government and sovereignty, provide Tribes with maximum administrative discretion as possible, encourage Tribes to develop their own policies to achieve objectives, defer to Tribal standards where possible, and otherwise preserve the prerogatives under Indian authority.

I don't see anything too darn wrong about that.

Let's take North Dakota, for example. My dear friend, then Governor Hoeven, now Senator Hoeven, presided over three terms of our compact process. I have a strong message from our Tribes. We would like more respect for our Tribal Gaming Commissions. We know what the score is. We know damn well that we need to keep our customers satisfied and that we have to keep our doors open vis-a-vis three tiers of regulation. We are not idiots.

If we don't comply and we don't regulate, we have no revenue. We have no option. We must be credible to our customers and we damn well are.

Senator McCain picked out one FBI case, one out of a \$26 billion industry. That is a pretty damn good record. He doesn't say anything about the ones we have caught using our State and gaming compact people, our Tribal officials and Federal officials. It is a success story.

In North Dakota, my little five operations in a State of 800,000 people spent \$7.1 million in regulatory costs last year. They have 325 regulators in our field in these little tiny, small, modest operations. We are regulated upon regulation upon regulation.

In South Dakota, they spent \$6.5 million in regulatory expenses last year. All the North Dakota Tribes and South Dakota Tribes have worked diligently through a State gaming compact process that needs to be recognized. We are under the gun. We meet every two years with our State Minority Leaders, Majority Leaders, Attorneys General, the Governor's Office. How are things going and do we need to make any adjustments.

I would think that Senator Hoeven would tell you he has a pretty good understanding of how these relationships work. And obviously, being the authorizing body for three terms and felt more than comfortable with it, he certainly was satisfied and so was his Attorney General, both Republican.

Our compacts provide GAAP IGRA standards for accounting, regulation, testing, reporting for machines to the State, regulations for table games, background checks conducted by the State Attorney General's Office, and licensing standards by our Tribal Gaming Commissioners, random inspections by the State Attorney General's Office. He can call up anytime and look at any dang thing he wants to, and Tribal gaming commissioners.

I know for a fact, and I am sorry that Senator Hoeven was not feeling well today, but he has a great respect for the Tribal nations. You can see by the amount of votes that he won in that State to take this seat. And part of that, a large part of it is the way he handled one of the largest business we now operate which is gaming.

And to think that we might need more regulation, I use Senator McCain's words, talk about a waste of taxpayers' expense in a recession we want to consider more regulation on our industry? I don't get it. Approximately, look at the economic impact. We are the epitome of IGRA in my region; 4,000 full-time working people in the States of North and South Dakota with full benefits, including insurance. That is unheard of when I grew up there.

Mr. Chairman, Mr. Udall, other Members of the Committee, you have known of projects over decades and decades that have failed and failed, but by God, this one didn't. It provided the employment

feature. It provided us the relationship with the financial institutions to finally get a loan once in a while. It has enhanced our relationships regionally, locally, and politically.

In 2010, our in-State purchasing in North and South Dakota was \$125 million; 122 communities in North Dakota got checks from our casinos; 91 communities in the State of South Dakota got checks from our casinos. It is working.

Federal and State reporting requirements, that would be a problem. We do have some redundancy in there, but that seems to be formatting in nature, things that can take place.

And I have to stop to say hello to my dear and good friend, Senator Hoeven. I just got done bragging you up, Senator. I am sorry. [Laughter.]

Mr. LUGER. You will see it in the testimony. And as Senator Hoeven sits, I am here to tell you that I doubt there are few in Congress, and I am bragging on Senator Hoeven's part, that would have the unique responsibility of dealing with these treaty issues on a day-to-day basis in the Executive Branch for three terms. And he left there, I could not say that this man would have any more respect for our Tribal membership, our veterans, and our businesses than you can have.

And I am here to tell you, I am ready to answer the two questions. We damn well don't need a legislative fix. It is the last thing we need. The predecessor he was talking about in my opinion and many in Indian Country was a personal bone and it is time to bury that bone. There has been no ill effects out of the Colorado River case. We are more astute than that. If anything, our radar screens went on even higher to make sure that there wasn't. But the fact remains that you can go out to the Attorney General's Office and the Governor's Office and say what is wrong out there in Indian Country. Where are all these crimes taking place?

And I am here to tell you under Governor Hoeven, his Attorney General and their law enforcement people, our Tribal gaming enforcement people, and our State law enforcement people worked together. And whenever we did find a problem, the only question was where could we send them to the maximum jurisdiction for sentencing? And it was a cooperative effort led by this fine gentleman right here, now Senator Hoeven.

And in closing, I would like to say that it has almost become predictable for this legislative fix to come up and I can't see how it would ever get into law anyway. I just don't see a legislative track for it because I am telling you, for me, as I am here testifying, that I don't see the need for it. There is no hue and cry for it out there in the Executive Branch world and our State governments or their Attorneys General office.

In closing, I would like to thank the Honorable Members of the Commission for their continued support of our veterans, our beloved veterans. They need care of their in-service and when they come back from service. Senator Hoeven is a perfect example of somebody that went out of his way to do everything he could. He has buried several of our Tribal members; has been there; has seen the sorrow; has seen the needs.

And with that said, I cannot thank you enough to the Members I know on this Committee of your previous support for our veterans' affairs.

And the last thing is, and I reflect directly on this man here as well as myself, the flood damage on the Missouri River. Please don't forget that. That is a huge story that is not being played out in the media. Our good Senator lost his own home. I lost my home. There are many others out there that have and it still continues today.

So I want to thank the Members of this Committee for their time. I am honored to be here and stand ready to answer any questions that you have of me.

Thank you.

[The prepared statement of Mr. Luger follows:]

PREPARED STATEMENT OF J. KURT LUGER, EXECUTIVE DIRECTOR, GREAT PLAINS
INDIAN GAMING ASSOCIATION

Good Morning, Chairman Akaka and Members of the Committee. Thank you for inviting me to testify this morning.

My name is Kurt Luger and I am a member of the Cheyenne River Sioux Tribe. I grew up on the Standing Rock Sioux reservation in North Dakota on my family ranch and my family operates a grocery store and small business in Fort Yates, North Dakota.

I serve as the Executive Director of the Great Plains Indian Gaming Association which covers North Dakota, South Dakota, Nebraska, Iowa, Kansas, Wyoming, and Montana. GPIGA was in 1997, and we have 289 Tribes as Members. Together these Tribal nations exercise jurisdiction over fifteen (15) million acres of federal trust land.

At GPIGA, our mission is to bring together the federally recognized Indian Nations in the Great Plains Region who are operating gaming enterprises in a spirit of cooperation to develop common strategies and positions concerning issues affecting all gaming Tribes; to promote Tribal economic development and its positive impacts within the Great Plains; to provide pertinent and contemporary information for the benefit of the GPIGA member nations; to draw upon the unique status of those Great Plains Indian Nations which have treaties between themselves and the United States; and to provide our Member Tribes with information about national legislation and issues affecting Tribal economic development.

The National Indian Gaming Commission was established to assist Indian Tribes with the regulation of Indian gaming. Under IGRA, Tribal gaming regulators are the primary day-to-day regulators of Indian gaming and they regulate Indian gaming under Tribal gaming ordinances, which are approved by the NIGC provided that they conform to minimum federal statutory standards.

It bears repeating that Tribal regulators are the primary regulators of Indian gaming. In North Dakota for example, Tribal governments employ more than 325 Tribal regulators and staff. Tribal governments spend more than \$7.4 million on Tribal and state regulation of Indian gaming in North Dakota. That's \$1.48 million per Tribal government and we run relatively modest operations. In the future, our Tribal government's regulatory efforts and expenditures need to be recognized to provide an accurate overall picture of regulatory expenditures in Indian country.

Naturally, we are concerned about the manner in which the NIGC approaches its mission to assist Tribes in regulating Indian gaming. Under the previous administration we found an uncooperative environment and often Tribes were left with the impression the NIGC had chosen to write regulations without Tribal input. In addition, we were concerned with the lack of training and technical assistance on those regulations to Indian Tribes and Tribal regulators. Under the current NIGC Commission chaired by the Honorable Tracie Stevens, the atmosphere is one of greater cooperation and understanding of the role of the Tribal gaming commissions. The current Commission has improved the relationship between our Tribal gaming industry and the federal regulatory authority. They have taken sincere steps to improve government to government relationships with our Tribal nations through the implementation of a real Tribal consultation policy. The current Commission has complied with *Indian Educators Federation v. Kempthorne*, which ruled that Indian preference in hiring applied to all "positions in the Department of the Interior,

whether within or without the Bureau of Indian Affairs, that directly and primarily relate to providing services to Indians . . .”

The current Commission has taken great strides to strengthen the United States’ government-to-government relationships with Indian Tribes. In 2000, President Clinton issued Executive Order No. 13175, which directed Federal agencies to consult and coordinate with Indian Tribes on Federal rulemaking and agency actions that had substantial direct impacts on Tribal self-government, Tribal lands and treaty rights. The Executive Order provided that agencies shall adhere to the following criteria:

- Respect for Tribal self-government and sovereignty, treaty and other rights that arise from the Federal trust relationship;
- Provide Tribes with the maximum administrative discretion possible; and
- Encourage Tribes to develop their own policies to achieve objectives, defer to Tribal standards where possible, and otherwise preserve the prerogatives authority of Indian Tribes.

The Executive Order also directed Federal agencies to consider the need for the regulation in light of Tribal interests, take Tribal concerns into account, and use consensual mechanisms for decisionmaking, including negotiated rulemaking, where appropriate. On September 23, 2004, President Bush issued an Executive Memorandum directing Federal agencies to adhere to Executive Order 13175. On November 5, 2009 President Obama signed a memorandum which directed each agency head to submit a detailed plan of how they would implement the policies and directives of Executive Order 13175. With the current Commission’s extensive consultation schedule the Federal-Tribal government-to-government relationship has become more meaningful.

In closing, we encourage the NIGC to continue the direction of cooperation and mutual respect for our Tribal economic development ventures.

The CHAIRMAN. Thank you very much.

Ms. Morago, will you please proceed with your testimony?

**STATEMENT OF SHEILA MORAGO, EXECUTIVE DIRECTOR,
OKLAHOMA INDIAN GAMING ASSOCIATION**

Ms. MORAGO. Thank you, Chairman Akaka and distinguished Members of the Committee. On behalf of the Oklahoma Indian Gaming Association and its 22 member Tribes, allow me to extend my deepest appreciation for this opportunity to provide testimony to you today.

My name is Sheila Morago. I am a proud member of the Gila River Indian Community. I am the Executive Director of the Oklahoma Indian Gaming Association, a position I have held for the last two months.

While my tenure at OIGA has recently begun, I have been in the business of Indian gaming since 1994. Most recently, I spent eight years as the Executive Director for the Arizona Indian Gaming Association.

Tribal governmental gaming in Oklahoma has come a long way from our first days in bingo halls in the early 1980s to now being the fourth-largest gaming jurisdiction in the United States, doing over \$3 billion in business. We are surpassed only by Nevada, California, and New Jersey in size of total gaming revenues generated.

In 2009, the gross rate of gaming in Oklahoma led the Nation. Oklahoma is home to 39 Tribes, 33 of whom engage in gaming as a form of economic development. These 33 Tribes operate 111 gaming facilities, which range in size from a fuel stop with a few machines to large, full-scale destination resorts.

While many think that we have become large overnight, our growth has been slow and deliberate. Since the early days in Okla-

homa, Tribes have used their gaming revenues to better the lives of their Tribal members. Gaming revenue has been used to backfill ever-shrinking Federal funds and we have used these revenues to educate our children, take care of our elders, improve our infrastructure, and taking to heart the true meaning of IGRA.

The first Tribal-State compacts were signed in 1992, which allowed horse racing wagers in Tribal casinos. The current compacts in Oklahoma were approved by the citizens of the State through referendum in 2004. Through these compacts, for the first time the Tribes share their revenues from compacted games with the State. This revenue-sharing with the State of Oklahoma has now grown to exceed \$100 million annually.

While the 2005 compacts expanded Class III gaming options available to our customers, Oklahoma remains a very strong Class II market. For that reason, we occupy a very unique niche in the Indian gaming industry and we understand our business very well as evidenced by the continued strong growth of our gaming business. We have applied these lessons learned with every expansion we have undertaken.

We also understand how to regulate our gaming very effectively. While I say that with pride, it is not a meaningless boast. The Tribal gaming regulators from Oklahoma are among the most highly regarded regulators in the Country. In fact, many State regulators have come to visit our regulators seeking the benefit of their expertise.

One of the reasons Oklahoma Tribes have developed such a strong regulatory pedigree is they realized early on that in the development of smart and effective regulations, our Tribal regulators had to work closely with our facility operators. This process has worked very effectively for many years in jurisdictions like Nevada. It has enabled them to promulgate regulations that are workable because the regulations are based on real business operations that take place in the casinos.

This regulatory development process has been very important in Oklahoma because our Tribes have been leaders in Class II gaming to where it is today, including the tremendous technological innovations we have made.

There are many unique features to our machines. To be smart and effective in our regulatory efforts, we have had to develop processes and procedures specifically tailored to Class II gaming. So to be honest, our Tribes were disappointed when the prior NIGC Chair and his staff did not respect our many years of expertise and refused to consider opinions we offered on how the NIGC can best write effective regulations, particularly with regard to the Class II games.

We never expected NIGC to agree with us on all matters all the time. However, we merely asked for respectful consideration of our views. We are very pleased now to say that from our perspective, the current NIGC Chair and her staff have taken the time to hear our views and to carefully deliberate on how to develop the most effective regulations.

Again, we do not anticipate the NIGC to agree with us on all matters all the time. However, we greatly appreciate the respectful consideration of our opinions. The OIGA member Tribes have been

pleased with the deliberate pace at which the NIGC has proceeded in its regulatory review. It has been our desire to have the most effective and efficient regulations, and we believe that it is important to take our time to get it right.

Unlike commercial gaming, Oklahoma Tribes use their gaming revenues for governmental purposes. We are responsible to our Tribal members to operate our gaming facilities in the most efficient and effective manner possible in keeping with sound business and good regulatory practice. Every dollar that is not wisely spent in our gaming operations and regulation are dollars that do not go to educate our children, provide health care to our elders, and build safer roads or any of the other myriad government responsibilities we have.

This current consultation and regulatory schedule we believe will result in the right regulations. Furthermore, it will provide the NIGC with the time to ensure they will be able to fulfill their Federal trust responsibilities under IGRA. And finally, having regulations that are drafted so they fit our unique industry will end the constant redrafting and reworking of Class II Federal regulations that have taken so much time and exhausted Tribal resources that are needed badly elsewhere.

Thank you, Members of the Committee, for the opportunity to present our views of the OIGA member Tribes. I stand ready to answer any questions you may have.

[The prepared statement of Ms. Morago follows:]

PREPARED STATEMENT OF SHEILA MORAGO, EXECUTIVE DIRECTOR, OKLAHOMA
INDIAN GAMING ASSOCIATION

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee.

On behalf the Oklahoma Indian Gaming Association and its 22 member Tribes, allow me to extend my deepest appreciation for this opportunity to provide testimony to you today. My name is Sheila Morago and I am a proud member of the Gila River Indian Community. I am the Executive Director of the Oklahoma Indian Gaming Association, a position I have held for the last two months. While my tenure at OIGA has really just begun, I have been in the business of Indian Gaming since 1994. Most recently I spent 8 years as the Executive Director of the Arizona Indian Gaming Association.

Tribal Governmental Gaming in Oklahoma has come a long way from our first days as bingo halls in the early 1980s, to now being the fourth largest gaming jurisdiction in the United States doing over \$3 billion in business. We are surpassed only by Nevada, California and New Jersey in size of total gaming revenues generated. In 2009 the growth rate of gaming in Oklahoma led the nation.

Oklahoma is home to 39 Tribes, 33 of whom engage in gaming as a form of economic development. These 33 Tribes operate 111 gaming facilities, which range in size from fuel stops with a few machines, to large full-scale destination resorts. While many may think that we have become large overnight our growth has been slow and deliberate.

Since it's earliest day's Tribes in Oklahoma have used their gaming revenues to better the lives of their Tribal members. Gaming revenues have been used to back-fill ever shrinking federal funds and we have used these revenues to educate our children, take care of our elders, improved our infrastructure and taking to heart the true meaning of IGRA.

The first Tribal state compacts were signed in 1992, which allowed horseracing wagers at Tribal casinos. The current compacts in Oklahoma were approved by the citizens of the state through a referendum in 2004. Through these compacts, for the first time, the Tribes shared their revenues from compacted games with the state. This revenue sharing with the state of Oklahoma has grown to now exceed \$100 million annually.

While the 2005 compacts expanded the Class III gaming options available to our customers, Oklahoma remains a very strong Class II gaming market. For that reason we occupy a unique niche in the Indian gaming industry. And we understand our business very well, as is evidenced by the continued strong growth in our gaming businesses. We have applied our lessons learned to each expansion we have done.

We also understand how to regulate our gaming very effectively. While I say this with pride, it is not a meaningless boast. The Tribal gaming regulators from Oklahoma are among the most highly regarded regulators in the country. In fact, many state regulators have come to visit with our regulators seeking to benefit from their expertise.

One of the reasons the Oklahoma Tribes have developed such a strong regulatory pedigree, is they recognized early on that to develop "smart" and effective regulations, our Tribal regulators had to work closely with our facility operators. This process has worked very effectively for years in jurisdictions like Nevada. It has enabled them to promulgate regulations that are workable because the regulations are based on the real business operations that take place in the casino.

This regulatory development process has been very important in Oklahoma. Because our Tribes have been the leaders in advancing Class II gaming to where it is today, including the tremendous technological innovations we have made, there are many unique features to our games. To be smart and effective in our regulatory efforts, we have had to develop processes and procedures that are specifically tailored to Class II gaming.

So to be honest, our Tribes were disappointed when the prior NIGC chairman and his staff did not respect our many years of expertise and refused to consider the opinions we offered on how the NIGC can best write effective regulations, particularly with regard to Class II games. We never expected the NIGC to agree with us on all matters all the time. However, we merely asked for respectful consideration of our views.

We are very pleased now to say that, from our perspective, the current NIGC chair and her staff have taken the time to hear our views, and to carefully deliberate on how to develop the most effective regulations. Again, we do not anticipate that the NIGC will agree with us on all matters all the time. However, we greatly appreciate the respectful consideration of our opinions.

The OIGA member Tribes have been pleased with the deliberate pace with which the NIGC has proceeded in its regulatory review. It has always been our desire to have the most efficient and effective regulation, and we believe that it is important to take the time to get it right.

Unlike commercial gaming, Oklahoma Tribes use their gaming revenues for governmental purposes. We are responsible to our Tribal members to operate our gaming facilities in the most efficient and effective manner possible, in keeping with sound business practices and good regulatory practices. Every dollar that is not wisely spent in our gaming operation and regulation, is a dollar that does not go to educate our children, provide healthcare to our elders, build safer roads, or any other of the myriad governmental responsibilities we have.

This current consultation and regulatory promulgation schedule we believe will result in the "right" regulations. Furthermore, it will provide the NIGC with the time to insure they will be able to fulfill their federal trust responsibilities under IGRA. And finally, having regulations that are drafted so they fit our unique industry will end the constant redrafting and reworking of Class II federal regulations that has taken so much time and exhausted Tribal resources that are badly needed elsewhere.

Thank you members of the Committee for the opportunity to present the views of the OIGA member Tribes, and I stand ready to answer any questions you may have.

The CHAIRMAN. Thank you very much for your testimony.
Mr. Meskill, will you please proceed with your testimony?

**STATEMENT OF JOHN MESKILL, DIRECTOR, MOHEGAN
TRIBAL GAMING COMMISSION**

Mr. MESKILL. Thank you, Chairman Akaka, Members of the Committee and staff.

My name is John Meskill. I have been the Director of the Mohegan Tribal Gaming Commission since April of 2001. Prior to my

employment by the Mohegan Tribe, I served as the Executive Director of the Mashantucket Pequot Gaming Commission, and before that, I served for four and a half years as the Executive Director of the State of Connecticut's Gaming Regulatory Agency, the Division of Special Revenue.

I was also a member of the NIGC's Minimum Internal Controls Advisory Committee in 2004 and 2005.

I appreciate the opportunity to testify today regarding the role of Tribal regulators as the primary regulatory authority of Tribal gaming operations. In my 19-plus years as a gaming regulator, I have seen first-hand the serious commitment the Tribes have to protect the integrity of their gaming operations. This commitment involves considerable resources expended by the Tribes.

For example, in fiscal year 2011, the Mohegan Tribe will spend over \$26 million on regulatory costs for its own employees, including police, public safety and compliance personnel, plus outside auditors and an additional \$6.8 million for costs assessed by the State of Connecticut for regulatory services the State provides related to Mohegan Sun. Detail on these regulatory services and expenses are set forth in schedule A that is attached to my testimony.

Under the Mohegan Tribe's compact with the State of Connecticut, I work closely with the State Gaming Agency in administering a comprehensive regulatory framework that is closely tailored to the types of games and scope of gaming which are enjoyed under the constant development of Mohegan Sun.

Under our Tribal-State compact, which was first signed and approved in 1994, the State Gaming Agency and the Commission I oversee jointly regulate all aspects of Class III gaming on the Mohegan Reservation through standards of operation and management.

Each proposed change to the standards of operation and management, which are necessarily frequent, is required to be sent to the State Gaming Agency for its review and comment, and in certain sensitive areas such as cage operations and technical standards for slot machines, State approval is required before such standards may be implemented.

This process, which also includes outside certification, for example, of new gaming equipment, can be lengthy and detailed. So my agency appreciates the NIGC as a valuable resource when it comes to developing and enhancing standards. However, we also appreciate that the Commission's role for Class III gaming does not extend a third layer of review and regulation over those standards of operation and management, which of necessity need to be adaptable to the needs of a particular Tribal gaming jurisdiction.

By compact, the State Gaming Agency also licenses Mohegan Sun's gaming employees after a background investigation for each employee has been completed by the Connecticut State Police. While we don't always agree with the State on all regulatory issues, we are usually able to find common ground in resolving our differences.

In the 15 years the Mohegan Tribe has operated its casino, the State has never alleged that the Tribe has failed to comply with the provisions of the State gaming compact.

Over the years, I have also worked closely with NIGC and I have a great deal of respect for the wide range of expertise that has been assembled at that agency. While the CRIT decision has altered the mission of the agency, the NIGC continues to be a valuable resource for Tribal regulators when we seek advice on accounting and auditing issues, and questions about gaming technology that they have reviewed in other jurisdictions, and best practices for internal controls. I have always found the staff at NIGC to be informative and responsive.

And in closing, I also want to thank the Committee for scheduling this hearing to coincide with NIGC consultation, which I am also attending with the Vice Chairman of the Mohegan Tribe, James Gessner. I know that the Mohegan Tribe appreciates this Committee's longstanding respect for the government-to-government relationships between the Tribes and the Federal Government and the Tribe also appreciates NIGC's renewed efforts to consult with the Tribes in all aspects of the regulatory rules and rule-making.

Again, I would like to thank the Chairman and the Members of the Committee for the opportunity to testify today.

Thank you.

[The prepared statement of Mr. Meskill follows:]

PREPARED STATEMENT OF JOHN MESKILL, DIRECTOR, MOHEGAN TRIBAL GAMING
COMMISSION

Good afternoon Chairman Akaka, Vice Chairman Barasso and Members of the Committee and staff. My name is John Meskill; I have been the Director of the Mohegan Tribal Gaming Commission since April of 2001. Prior to my employment with the Mohegan Tribe I served as the executive director of the Mashantucket Pequot Tribal Gaming Commission and before that I served for four and one-half years as the executive director of the State of Connecticut's gaming regulatory agency, the Division of Special Revenue. I was also a member of the NIGC's Minimum Internal Control Standards (MICS) Advisory Committee in 2004 and 2005.

I appreciate this opportunity to testify today regarding the role of tribal regulators as the primary regulatory authority of Tribal gaming operations. In my 19 plus years as a gaming regulator I have seen firsthand the serious commitment that Tribes have to protect the integrity of their gaming operations. This commitment involves considerable resources expended by Tribes. For example in fiscal 2011 the Mohegan Tribe will spend over \$26 million dollars on regulatory costs for its own employees, including police, public safety and compliance personnel, plus outside auditors and an additional \$6.8 million dollars for costs assessed by the State of Connecticut for regulatory services the State provides related to Mohegan Sun. Detail on these regulatory services and expenses are set forth in Schedule A attached to my testimony.

Under the Mohegan Tribe's compact with the State of Connecticut I work closely with the State Gaming Agency in administering a comprehensive regulatory framework that is closely tailored to the types of games and scope of gaming which are enjoyed and under constant development at Mohegan Sun. Under our Tribal-State Compact, which was first signed and approved in 1994, the State Gaming Agency and the Commission I oversee jointly regulate all aspects of Class III gaming on the Mohegan Reservation through Standards of Operation and Management. Each proposed change to the Standards of Operation, and changes

are necessarily frequent, is required to be sent to the State Gaming Agency for its review and comment and, in certain sensitive areas such as cage operations and technical standards for slot machines, state approval is required before such standards may be implemented. This process, which often includes outside certification, for example of new gaming equipment, can be lengthy and detailed, so my agency appreciates that the NIGC is a valuable resource when it comes to developing and enhancing standards. However, we also appreciate that the Commission's role for Class III gaming does not extend a third layer of review and regulation over these Standards of Operation, which of necessity need to be flexible and adaptable to the needs of a particular Tribal gaming jurisdiction. By Compact the State Gaming Agency also licenses the Mohegan Tribe's gaming employees after a background investigation for each employee has been completed by the Connecticut State Police. While we don't always agree with the State on all regulatory issues, we are usually able to reach common ground in resolving our differences. In the fifteen years the Mohegan Tribes has operated its casino the State has never alleged that the Tribe has failed to comply with the provisions of the State Gaming Compact.

Over the years I have also worked closely with the NIGC and have a great deal of respect for the wide range of expertise that has been assembled in that agency.

While the CRIT decision has altered the mission of the agency, the NIGC continues to be a valuable resource for Tribal regulators when we seek advice on accounting and auditing issues, questions about gaming technology that they have reviewed in other jurisdictions and best practices for internal controls. I have always found the staff at NIGC to be informative and responsive.

In closing, I want to also thank the Committee for scheduling this hearing to coincide with the NIGC consultation which I am also attending with the Vice Chairman of the Mohegan Tribe, James Gessner. I know that the Mohegan Tribe appreciates this Committee's long-standing respect for the government-to-government relationships between Tribes and the federal government and also appreciates the NIGC's renewed efforts to consult with Tribes in all aspects of their regulatory roles and rulemaking.

Again, I would like to thank the Chairman, Vice-Chairman and Members of the Committee for the opportunity to testify today.

Schedule A

MOHEGAN TRIBE/MTGA: Regulatory Expenses (2011 Budget)					
Department	Direct Payroll and Fringe	Other Expenditures	Total Department Costs	Full-Time Equivalents	Per FTE Cost
Gaming Commission	\$2,602,000	\$100,000	\$2,702,000	40	\$67,550
Police	\$4,700,000	\$45,000	\$4,745,000	19	\$249,737
Public Safety, Including Services	\$2,000,000	\$0	\$2,000,000	41	\$48,780
Protective Services	\$1,000,000	\$0	\$1,000,000	60	\$16,667
Corporate Governance	\$60,000	\$10,000	\$70,000	14	\$5,000
Health Fees	\$0	\$0	\$0	0	\$0
Legal Services	\$1,000,000	\$0	\$1,000,000	22	\$45,455
Board Regulatory Expenses	\$10,000	\$10,000	\$20,000	5	\$4,000
State Regulatory Personnel	\$1,000,000	\$10,000	\$1,010,000	35	\$28,857
Total Mohegan Regulatory Costs	\$12,762,000	\$100,000	\$12,862,000	354.5	\$36,300

The CHAIRMAN. Thank you very much, Mr. Meskill.

Now, we will have questions for you. I would like to defer first to Senator Udall for questions.

Senator UDALL. Chairman Akaka, I would defer to Senator Hoeven. I have had an opportunity to question here, and if he has any questions or any statement he wants to make, I would let him go first. Thank you.

The CHAIRMAN. Senator Hoeven?

**STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman.

I would like to thank all of the witnesses for being here today.

Kurt, good to see you again. During my 10 years as Governor, I had the opportunity to work with Kurt and others on our gaming compacts on behalf of Native Americans in our State. And it has been a tremendous working relationship. And I think he is right. I think if it works that well in other States, it really is not in need of a legislative solution. We were always able to come together both through the Governor's Office and through Kurt as our State Director, working with the Tribal Chairman; a tremendous mutual respect and great working relationship. And it has been tremendously beneficial to the Tribe.

And the other thing is through Kurt's good work that I hope happens in other States is there was also the opportunity to reach out to our legislature and engage them not just on issues that related to Tribal gaming, but the whole gamut of other issues that really opened a door. The working relationship that was established both between the Executive Branch in North Dakota and the Legislative Branch with the Tribes through the work we did on our gaming compacts opened up the door to other opportunities in regard to economic issues, for example, drilling oil wells on particularly one of our reservations, which now is a tremendous economic activity.

And again, I think that relationship really developed out of a lot of the work that Kurt had helped facilitate through the gaming compacts, but also on social issues, law enforcement, education, as well as just the opportunity to build those personal relationships that created some bonds and some trust.

The Luger family also raises and trains horses, and as a matter of fact, we had many occasions to ride horses together. Nobody trains them better than Kurt and his brother.

My point being I think you can get things done when you build those kind of relationships. So however we approach this at the Federal level, it is still going to come back to the people and building those bonds and those relationships and that aspect of trust I think to truly make progress.

So I am really pleased you are here. I think you have so much to offer in terms of how to do this. Kurt also worked for Senator Daschle at one time, and so he understands not only both sides of the aisle, but also the federal-state-Tribal relationship.

And so I really want to commend our Chairman for inviting Kurt to be part of the panel and these other outstanding panel members as well. Also, I really would look, Kurt, maybe to you to just I guess give us some of your thoughts in terms of as we, I mean from either a Federal or a State perspective, what are the three keys to

making sure that we handle these gaming compacts well? And then also a couple of keys as we wrestle with some of these tough issues like Internet gaming, which can also be very controversial. Just your thoughts.

And then I would ask the other panel members for their thoughts in both regards. What makes for a successful State relationship, in your opinion? How do we really make sure we have the framework from a Federal perspective to have those successful State relationships with the Tribal nations, to just address for a minute the Internet gaming issue that obviously is a big issue right now.

Mr. LUGER. The three at the top of the list are very easy for me. I practice them every day. One is trust. You have to take the time and energy, the Tribes, to engage the legislature and the Executive Branch and build those relationships. You have to. There is no other way around it. There is no easy cut. People need to know you before they trust you.

Transparency. I think now-Senator Hoeven, then-Governor Hoeven will tell you that the key to our relationship was transparency and being able to trust when one said something, we were going to stick to it. It is a must in any relationship, and if you don't know somebody, you can't build to that.

And the third, i.e. the Internet, is we have to be able to as Tribes to be able to report accurately to our State counterparts and our colleagues and quantify what the actual data is. What is the score? How well are you doing? What are your activities, whether it be criminal activities or revenue, things of that nature.

But I get back to those trusting relationships. This Committee is very lucky. This man is committed to Indian Country; has been for a long time. And the trust that we got during his Administration led to a lot more baloney sandwiches in Indian Country than before he got there. And it is key and it is not easy. You have to get to know each other and stay engaged.

And that would be my advice to Tribes not to shy away from State legislatures and the Executive Branch; engage them because it is part of the story. We have all been used to engaging in the Federal end of things, but times are changing. And Senator Hoeven and I had a common goal, and we were the epitome of it: jobs, jobs and jobs.

We got 4,000 new jobs in the State of North Dakota. That is hard to create. And so if that is what you are looking for, that you want your people gainfully employed, their quality of standards brought up, you can figure out the obstacles that are in between those two central thoughts.

And again, I cannot tell you, the Committee, that you are going to enjoy the presence of our dear former Governor is a tremendous fellow and a dear, dear friend.

Senator HOEVEN. Mr. Chairman, I see my time has expired, so I will defer if that is best. I can come back. I would like to ask about Internet gaming for just a minute when there is time, and to the other panel members, thank you.

The CHAIRMAN. Senator Udall?

Senator UDALL. Thank you, Chairman Akaka.

Kurt, you mentioned the Colorado River case, and I think you said, I don't want to quote you directly, that our radar went up. And then you said something, we took additional actions. And I am wondering what did that case mean to the three members of the panel? And were there things that you did? And any thoughts you have on that issue?

Mr. LUGER. Mostly from a sensitive point of view. We had been doing the technical things, but we were beat up badly by the media and that is where this disrespect. We kept wondering, well, this is one case, one scenario. But at the same time, we felt, the rest of us in Indian Country were being disregarded on all the good work that we were doing.

We spend our checkbook and work our buns off I know in the State of North Dakota to make sure that our games are clean. And I tell you what, if we are not doing that, the Attorney General is standing right there with that State Indian compact reassuring that it gets a secondary eyeball there. So there is a lot of attention to it.

To answer your question, it would be the sensitivity that that case represented to everybody, when in fact our gaming commissions have worked diligently from day one.

And the other thing I think is forgotten in here, and I know Senator Hoeven knows well about this of a particular case that we had in Spirit Lake. We have invested in the best technology out there when it comes to security and surveillance. We all have. And that stuff is expensive. I can pick the pigment out of your skin in every one of my casinos. Just drop a card and I will pick you up. And that is expensive and it is top of the line, first class stuff, the same thing that Las Vegas uses, if not better and we don't get credit for that.

And so those are the things that we just doubly check the i's and cross the t's in making sure that our main thing, and you know this, that our customers are assured that when they come into our house of entertainment, that the games are credible.

Senator UDALL. Ms. Morago or Mr. Meskill, do you have any thoughts on that issue?

Ms. MORAGO. Senator Udall, I do. I could repeat everything because I thoroughly agree with Kurt and the other panelists on this.

But I would like to give you one additional thought process. There have been many financial commitments based on current law. And one of the things we have to think of is when you change current law, what does that do to financial commitments? People have loans. People have bonds out. So we have to take a look at that, too. And I agree with Kurt completely on the parts and pieces where Tribes are doing well on this. If it ain't broke, don't fix it.

Mr. MESKILL. Senator, I think that probably the CRIT decision just reinforced to us what our role was. We always knew we were the primary regulator and we knew we were the first line of defense for the Tribe. So I think it just instilled in us that we have to do that much better a job and we have to work better with the State.

But I would say that those minimum internal control standards that the NIGC has in place. It is about a 100-page document. It is a good base document, but every Tribe I have dealt with has in-

ternal controls that far exceed those MICS. So the Tribes are well ahead of the curve anyway, I think. And the CRIT decision I think just reinforced that we are the front line.

Senator UDALL. Thank you very much.

Thank you, Chairman Akaka. I don't have any more questions.

The CHAIRMAN. Thank you very much, Senator Udall.

Let me defer to Senator Hoeven for further questions.

Senator HOEVEN. Well, I just wanted to follow up a little bit maybe with all three of the panel members on your feelings on Internet gaming. Because you know that is a hot topic and an issue now. And are having experience, and you see it on the ground every day and how it affects people and so forth. I would just like, from all three of you, your perspective on it is good, is it bad, how should it be addressed, and what the impacts would be.

Mr. LUGER. Obviously, Senator, as you know better than most, is the brick and mortar operations. In a rural setting like the States of North Dakota, South Dakota, Montana, are dear friend Mr. Udall in your area, and we see it as this. The Federal prohibition has played its role. It is still in play. There is a lot of talk that there are a lot of pressures coming from certain States to bring it from that direction.

But as we speak now, Indian Country is very concerned that the State gaming compact process be maintained and respected. We took years to work those regulatory items; two, that Federal taxes are not applied to those. We feel strongly about that. And three, that the current foreign operations, and I think somebody quoted me the other day that they are now quantifying it as a \$10 billion industry out there in the Caymans and so on and so forth.

We need to be assured that there is going to be a fair playing field when it comes to regulation. Now, as it is, poker is the only game in town. That is what everybody is talking about. But we are very concerned that anything that comes down the road that the respect for our current Federal-State gaming compact relationship, the fact that we feel strongly that this is something that should amount to a Federal tax for us, and a strong consideration that the brick-and-mortar systems which we in the domestic market are relying upon, especially in North and South Dakota, have a way to participate.

And I will just give you an idea. We are currently talking about a consortium and a collective effort. The Internet is a huge place. And you know, Senator, if someone puts their little finger up in the air, I don't know if it is ever going to attract enough attention. So the branding of that aspect to create a business acumen that we have to apply to it is certainly a challenge to us.

But from a policy point of view, we are very concerned that our State gaming compact relationship is reviewed and considered. We feel strongly that we shouldn't be paying taxes with it. And this is something that needs to be moved along very, very carefully because of the infrastructure investment that we already have in our brick-and-mortar systems.

Ms. MORAGO. Senator, NIGA came up with some general principles about the Internet last year that all the Tribes agreed upon. And having said that, we support all those general principles.

But I think we have to look at it in terms of any past legislation that has been put forth that specifically deals with commercial gaming. And it gives commercial gaming a real step up on this economic development. And I have to say that we are as capable as a commercial gaming entity of doing this economic adventure.

So while we are looking at this and drafting, I think it is important for us to look at it in terms of commercial and Nevada isn't the only game in town. We are perfectly capable of operating and regulating this new adventure. And I think that while you are looking at these proposals being put forward that you have to remember that. This shouldn't be a monopoly for the commercial gaming industry where we don't have access to it.

So we think whatever legislation comes down the pike, it has got to be open for everybody to have access to it and not just for the few people that can do it.

Mr. MESKILL. Senator, I concur with everything that has been said. It seems like Internet gaming is going to happen. It is a question of when. I know the Tribe that I work for if it occurs, they certainly would like to be in a position that they can protect their investment that they have in their facility, you know, the billions of dollars that they put into their facility.

So if consideration is given to the Tribes to participate, it would somehow be complementary to the facilities that they have built over the years. And I think it is important that the Tribes' interests are protected when that legislation happens because, as Sheila said, if it is left exclusively to the commercial casino operators, Tribal gaming is going to suffer greatly.

Senator HOEVEN. Well, again, I want to thank you. Did you have anything else, Kurt, or anyone else to add? If you have any other thoughts on Internet gaming because obviously it is something we will be dealing with. And so we certainly want your thoughts.

Mr. LUGER. Briefly, I just happen to have something that I know would be of great interest to you. We have six principles that we put together from our Great Plains Tribes and I will provide a draft to the Committee. But they are as follows. Indian Tribes and Tribal governments are ready to operate, regulate, tax and license Internet gaming and those rights must not be subordinated by non-Federal authority. Internet gaming authorized by Indian Tribes must be available to customers in any locale where Internet gaming is not criminally prohibited.

Consistent with long-held Federal law and policy, Tribal revenues not be subject to tax. Existing Tribal government rights under State compacts must be respected. And five, the legislation must not open up the Indian Gaming Regulatory Act for amendments. And our sixth plank that we submitting to NIGA is Federal legalization of Internet gaming must provide positive economic benefits for Indian Country.

So thank you very much for your time.

Senator HOEVEN. Thanks, Kurt.

Any other thoughts? Again, I want to thank the panel members and I want to thank the Chairman for bringing in people who are very knowledgeable on this important issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator, for your questions.

In the interests of time, I do have questions. I will submit my questions for the record.

It is good to hear from you and directly from the Tribes, and we want to maintain that relationship with you and continue to communicate with you on issues that can in some cases improve what is happening here.

One of the questions that we are asking was whether some of these changes, if changes are needed, should come administratively or legislatively. And so this is what we can work on as we continue here.

And as I said, you have really been successful. Your whole industry is increasing and proceeding quickly. And as a result, I think you will agree with me that we need to work hard at keeping up with the law and also to apply justice to what we have out there. And of course, to continue to help our Tribes with their needs.

So again, I want to thank you so much and thank the Members of this Committee, as well as the staff on both sides of the aisle of this Committee for the work that they have done. We will, of course, again look down the line and see where we are in regards to gaming. And so let's keep working together on this.

So let me express again my mahalo and thank you very much to the witnesses today. The Committee, like the NIGC and Tribal regulators, takes its oversight role over Indian gaming very seriously, and Indian gaming has proven to be the single most effective economic development that the Tribes can participate in, and provide services for their Tribal members.

I am encouraged by what I have heard today from the Federal and Tribal regulators. The diligence that you show every day in ensuring that Indian gaming is being conducted as intended under IGRA is commendable.

So let's continue this, and again thank you very much.

And this hearing is adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HAROLD A. MONTEAU, ATTORNEY, ALBUQUERQUE, NEW MEXICO

Thank you Chairman Akaka and Senators of the Committee for the invitation to testify. Unfortunately, I am unable to travel at this time to appear in person before the Committee. I take the opportunity to submit the following Written Testimony.

My testimony today will address the issue of the lack of adherence to the tenets of "Buy Indian and Indian Preference in Procurement, Hiring and Contracting" within the Indian Gaming Industry and the real and potential loss to Tribal economies and to the future sustainability of Tribal economies.

I am a Chippewa Cree Indian from Montana and I live in Albuquerque, New Mexico. I am an attorney, having practiced in the area of Federal Indian Law, including Indian Gaming, for at least two decades. I am presently unemployed although I do realize a small income from writing a periodic column for Indian Country Today Media, which is owned by the Oneida Nation of New York.

My present unemployment/underemployment is actually the genesis of my ongoing advocacy in the area of Buy Indian and Indian Preference in Hiring, Contracting and Procurement, as it pertains to the Indian Gaming Industry and Tribal Governmental activities that are supported though federal funds authorized by the Indian Self-determination and Education Assistance Act (P.L. 93-638, sometimes simply called "638"). I believe these two issues are closely related and the solutions to one may facilitate a solution to the other.

I will use my own experience to illustrate the lack of adherence to Indian Preference in the Tribal Gaming Industry. However, I can assure you that my experience is not unique. Indian Small Business Owners are experiencing, on a daily basis, what I call the "Red Ceiling", when it comes to their repeated attempts to break into the "Indian Gaming Supply Chain" which is now 95 percent dominated by non-Indian owned companies.

I believe that our failure as Tribal People and Tribal Governments to adhere to the tenets of Buy Indian and Indian Preference within the Indian Gaming Industry may be directly correlated to the lack of Federal Enforcement of Buy Indian and Indian Preference requirement in Federal Law, Federal Policy and Federal Contracting; particularly P.L. 93-638 Self-determination Contracting and Self-governance Compacting. What the National Indian Gaming Commission can do about this issue is probably limited to "advocacy" and "encouragement" as, the Indian Gaming Regulatory Act (IGRA) does not address the issue although the passage of the Act was premised on maximizing the benefits of Indian Gaming for Tribes and Tribal people.

I now relate my personal experience. Over the last four (4) years I have submitted job applications to some two dozen Tribal Governments, Tribal Business Entities and the U.S. Government, most of which have a written law or policy mandating Indian Preference in hiring, contracting and Indian Preference. Having served as a Presidential Appointee (National Indian Gaming Commission Chairman 1994-1997) I have what amounts to SES (Senior Executive Service) experience both in the Federal Government and the Private Sector, I was overqualified for many of these positions. Here is just a sampling of the Tribes or Tribal Business Entities to which I applied or sent job inquires to: Seneca Nation of New York, Oneida Nation of New York, Mohegan Tribe of Connecticut, Mashantucket Pequot Tribe, Sault Ste. Marie Chippewa, Bay Mills Indian Community, Gila River Indian Community, Salt River Indian Community, Puyallup Tribe, Snoqualmie Tribe, Stillaguamish Tribe, Sauk-Sauk Tribe, Blackfeet Tribe, Spokane Tribe, Kalispel Tribe, Coeur d'Alene Tribe, Santa Ana Pueblo, Laguna Pueblo, Acoma Pueblo, Isleta Pueblo, Colville Tribe, National Congress of American Indians (NCAI), National Center for American Indian Enterprise Development (NCAIED), National Indian Council on Aging (NICOA), Bureau of Indian Affairs (BIA), Office of Special Trustee, Assistant Secretary for Indian Affairs, AMERIND (Indian Housing Insurance Pool), Columbia River Fish Commission and Mille Lacs Band of Ojibwa.

Each and every one of these entities either receives federal funds under a “638” contract which requires that Indians who meet the minimum qualifications are given preference. Almost all have a written Human Resource or Affirmative Action Policy or a Tribal Human Resources Law or Tribal Employment Rights Ordinance (TERO) that would require that Indians who meet the minimum qualifications for a position should be given first preference in hiring. Almost every Tribe that has an Indian Gaming Operation has a similar written policy or is subject to the Tribal Government Law or Policy on the issue. The problem is not that policies and laws do not exist to address this issue; the problem is non-enforcement and improper application of the law.

While each and every Indian Casino Executive, Board Member or Tribal Leader associated with an Indian Casino will tell you that they adhere to Indian Preference; what they really mean is they have a written policy or law. The degree to which it is followed by both Tribal Government and Casino Managers is a different story. How it’s applied is also problematic.

I recently wrote for Indian Country Today Media on the issue of the lack of both Federal and Tribal enforcement of the Federal Law Requirements of Buy Indian and Indian Preference in hiring, contracting and procurement. I have written previous articles on the lack of enforcement of Indian Preference, especially as it pertains to procurement, within the Indian Gaming Industry. As to the former, enforcement falls on the Contract Officers of BIA, IHS, HUD, DOL and other agencies. The Inspectors General of these offices have the investigatory power to investigate complaints. Unfortunately most Indian People do not know that you can even complain to these entities. In their mind the Tribes can do what they want and Sovereign Immunity protects them against any complaints. As with regard to commerce and positions created using Gaming Revenues, this is true. Only Tribal Law and Policy applies when Indian Gaming revenues are involved and if the Tribe or Tribal Managers either misapply Indian Preference or don’t apply it at all, there is not one to complaint to except perhaps a TERO office, if one exists, the Human Resources Office that did the wrongful application in the first place and the Tribal Government itself.

The lack of enforcement or wrongful application of Indian Preference and Buy Indian in the Indian Gaming Industry has resulted in over 95 percent of the Indian Gaming Supply Chain being serviced by non-Indian Companies. Indian Companies make up a very small percentage and Tribal Companies and even small percentage. We have failed dismally to “vertically integrate” our own industry despite decades of talking about it. No incentives seem to exist for such organization like NIGA and NCAI to make development of an on-the-ground strategy a priority. No incentives seem to exist for Tribes to make sure their managers in both government and business are properly enforcing Indian Preference and Buy Indian. You would think that the potential to create locally owned Indian Businesses and jobs would be enough but that has not been the case. One major gaming Tribe just recently made it very difficult for local Indian owned companies to obtain goods and services contract with its, casino. They cited “too much money going to just a few Tribal individuals”. It makes one wonder, “who would they rather it go to?”

About five years ago the National Tribal Development Association (NTDA), which was started by my mentor the late John “Roddy” Sunchild, introduced a concept for “vertical integration” of Tribal and Indian owned businesses into the Indian Gaming Supply Chain. NTDA and other convinced NIGA to pass a resolution at it’s convention setting a goal of 10 percent purchasing by its member Tribes from Indian owned sources. Not much has happened since then other than a list of Tribal Businesses was made and it turned out to be not such a long list. Also, very few of the NIGA member Tribes actually went back to their communities and took action to implement and enforce the 10 percent Buy Indian Initiative. There were no local Tribal Resolutions or amendments to existing policy and codes or requirements placed upon managers to meet the 10 percent goal. It was rendered meaningless. Indian and Tribally owned businesses continue to have the door blocked when they try to get into the Indian Casino Supply and Service Supply Chain, which some estimates say is in the \$15 Billion dollar a year range if you count Tribal Governmental spending. Tribal Managers and Casino Managers still appear to enjoy an “immunity by default” when they fail to implement honest Buy Indian and Indian Preference.

This phenomenon of “immunity by default” has spilled over from the Indian Gaming Industry into Tribal Government. Despite the Buy Indian and Indian Preference requirements of Federal Law as they apply to “638” Contracts, Compacts and Grants, the lack of enforcement by Contracting Officers, and the improper application by Tribal Human Resources and other hiring authorities, results in a “nullification” of the Federal Requirements as well as the expressions in Tribal Law. Sometimes with the tacit approval of the Tribal Governments or Tribal Officers involved.

My recent experience with the Coeur d'Alene Tribe is but one example and there are many others. I met the minimum qualifications for their Chief Judge position, as advertised, including the Indian Preference qualification, and I was interviewed. However, a non-Indian former County Prosecutor was hired. How could that have happened under a proper application of Indian Preference? I sought appeal only to find out that most of the Tribal Government Executive Team, including the TERO Director, were non-Indian. Apparently this Tribe believes and/or has been informed by its legal counsel that merely giving Indian a "chance to apply" or "giving Indians "an interview" is compliance with Indian Preference. It is not. It defeats the intent of Congress when a Tribe applies Indian Preference in this manner. I would have no complaints if a Coeur d'Alene Tribal member had been hired as under "638" that is permissible. How are we ever going to get our Indian People in charge of our own affairs if we pass them over, even if they meet the advertised qualifications, and hire a non-Indian?

You probably have heard the story from other Indian Entrepreneurs, of how hard it is to break through the "red ceiling" that keeps us out of the Casino Supply Chain. Even when Tribal Officials, such as TERO, open the doors for us, we still run into many, many obstacles thrown in our paths by Casino Procurement and Marketing Managers. One major problem is that what the "Buy Indian Preference" is, even if the Tribe has a written code or policy. It is not defined. So managers, including Tribal Government Managers, are free to implement it as they want. As a result, Indian Firms are losing bids for as little as a penny an item. You would think that being within a penny of the high bid, under a Buy Indian or Indian Preference Policy or Law would make the Indian Firm the winner. It is not happening.

Are their solutions. Absolutely. I think one solution is an immediate direction to BIA, IHS and other federal contracting officers to investigate non-enforcement or miss-enforcement by Tribal Contractors to determine how wide-spread the problem may be in the governmental sector and to take action to facilitate proper enforcement and the train contractors as to the proper "preference" parameters that will be applied.

This would have a spill-over effect leading to the proper application and enforcement of Tribal law and policy as it pertains to positions, contracts and procurement by the Indian Gaming Industry. However, I would encourage the Committee and the Congress not to leave the resolution of these issues to chance. As you well know their have been challenges to Buy Indian and Indian Preference rules at the highest levels of the governmental agencies dedicated to carrying out the Trust Relationship of the Federal Government and the Indian Tribes. The Congress must make it clear in law and policy that Indian Preference applies from the Office of the Assistant Secretary and throughout the entire structure of Bureau of Indian Affairs. The same should be done for other Departments and agencies such as Indian Health Service and Indian Housing.

The Congress, particularly this Committee should hold hearings to determine the scope of the problem of the lack of enforcement of Buy Indian and Indian Preference in Indian Country, including in the Indian Gaming Industry. It should hold hearings to determine why, 23 years after the passage of the IGRA, we still have so few Indians in Executive Positions within the Indian Gaming Industry, especially in the largest grossing casinos. Congress should also authorize studies from Academia to determine the causes of this phenomenon. Congress should also hold hearings as to why 95 percent of the services and supply vendors in the Indian Casino Industry are non-Indian and what barriers are preventing Indian owned companies from breaking into the Indian Casino Supply Chain. Congress should also authorize funding funds developing strategies for stemming the flow of an estimated \$15 Billion annually that flows away from reservation economies because most purchasing is done off-reservation from non-Indian companies and why it is so difficult to create Indian owned enterprises to serve our multi-billion dollar per year industry. The Committee also may consider amendments to the IGRA that would stimulate the adherence to Buy Indian and Indian Preference, especially by the highest grossing casino operations. Perhaps NIGA, as well intentioned that its present efforts are on this issue, can be asked to ask it's member Tribes to do more, such as amend local law and policy to enforce Buy Indian and Indian Preference locally and make it part of the everyday operational procedures of not only the Casino operations but for all aspects of Tribal Government.

I think it is not only ludicrous, but dishonest, for anyone to argue that proper enforcement of Buy Indian and Indian Preference in the Indian Gaming Industry would result in lowered profits for Tribes. How insulting to the mentality of Tribal people it is to argue that. The amount of money that is involved in a 5 percent or 10 percent Buy Indian Preference is miniscule in the overall scheme. It is a small price to pay for building local businesses owned by Indian People or the Tribe and

which employ Indian People and contribute, in the long run, to a sustainable Tribal economy. After all, under the present circumstances the 5–10 percent Buy Indian Preference would only apply to less than 5 percent of procurement contracts. The other 95 percent non-Indian segment would not even be effected. The argument is dishonest and self-serving.

I thank the Chairman and the Committee for this opportunity to testify and to submit written testimony. Please Contact me if there is any further information you need or I can be of assistance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO
JOHN MESKILL

Traci Stevens' written testimony states that successful regulation depends upon a properly trained workforce to prevent potential problems. But to assess the effectiveness of the workforce and training, there needs to be some tangible measurements.

Question: How would you measure the effectiveness of the training and workforce to ensure the adequacy of regulation? The Mohegan Tribal Gaming Commission (MTGC) is fortunate to have a very seasoned workforce with the average gaming inspector having more than 13 years' experience in gaming regulation. We are confident that each inspector has extensive understanding of his/her role as a gaming regulator. Our most significant challenge is to keep them educated on the latest developments in game technology. We accomplish this through on-site instruction from representatives of our independent gaming laboratories and the representatives of gaming manufacturers who come on property to install and service their equipment. We also use gaming consultants as our budget permits to conduct on-site training for gaming commission and surveillance department employees.

Reporting on regulatory compliance with the *Indian Gaming Regulatory Act* is one aspect of accountability. It is helpful to some extent in determining the effectiveness of the regulatory system, but it does not cover all criminal activity occurring at Indian gaming facilities.

Question: What mechanisms are available to track and report on the theft, crimes, and responses to such occurrences? MTGC maintains a database that compiles information, incident reports on all criminal activities that occur at the facility. Access to this database is shared by MTGC with the Tribe's Surveillance Department and the Casino's Investigations Unit. Through this access and sharing of information we are able to identify trends of criminal activities and coordinate appropriate responses with on-site Connecticut State Police (CSP) Officers and the Mohegan Tribal Police Department. Cooperation and communication with CSP, and other state, local and federal authorities is critical to effectively deterring the many types of crimes that can occur in casino gaming facilities.

The *Indian Gaming Regulatory Act* requires an independent audit of certain vendor contracts in excess of \$25,000 annually.

Question: What types of due diligence is involved in these audits and in selecting these vendors? At Mohegan all vendors receive due diligence scrutiny in determining whether they are suitable to do business with Mohegan Sun Casino. Every prospective vendor is required to fill out a disclosure questionnaire and subjected to a background investigation before they can be an approved vendor. We have a comprehensive audit program mandated by our Gaming Compact with Connecticut and the Securities and Exchange Commission due to the Mohegan Tribal Gaming Authority being an SEC registrant.

Question: Should the vendors be subject to background checks? If not, why not? Yes, vendors should be subject to background checks. Our class III gaming compact with Connecticut requires that all vendors that provide gaming equipment or gaming services to Mohegan Sun Casino are subject to a background investigation conducted by the Connecticut State Police and licensing by the Gaming Division of Connecticut Department of Consumer Protection. All non-gaming vendors of Mohegan Sun Casino are licensed by and have their background investigated by the Mohegan Tribal Gaming Commission. The Mohegan Tribe has been supportive of efforts to allow reciprocity of vendor licensing with the state and tribal regulators in other jurisdictions.

The decision in the *Colorado River Indian Tribes* found that the National Indian Gaming Commission lacked statutory authority to regulate Class III gaming under the IGRA. Chairman Tracie Stevens testified that all Indian gaming facilities have some internal control standards.

Question: Have there been any studies or reports on the effectiveness of tribal internal control standards or that compare or describe the different internal control standards used by Indian tribes in their gaming facilities. If yes, please identify any such studies or reports. I am not aware of any studies or reports on the effectiveness of tribal internal control standards or that compare or describe the different internal control standards used by Indian tribes at their gaming facilities.

Question: Please provide your own assessment of the impact of *Colorado River Indian Tribes* decision on Indian gaming regulation on the National Indian Gaming Commission's ability to regulate Indian gaming. The *CRIT* decision affirmed what every tribal regulator had already known, that IGRA designated Tribal Gaming Agencies -- not NIGC -- as the primary regulators of Tribal gaming facilities. The *CRIT* decision changed NIGC's role to an advisor on Class III gaming regulation rather than a regulator. NIGC still provides a valuable role to Tribal Gaming Agencies by being a resource for Class III regulatory questions on accounting controls and new gaming technology.

Question: Do you know if any Indian tribes changed or adjusted their own regulatory strategies in light of, or in reaction to, the decision in the *Colorado River Indian Tribes* case? If yes, please describe the changes and/or adjustments. The Mohegan Tribal Gaming Commission did not change our regulatory strategies in reaction to the *CRIT* decision. As discussed above we always knew that we had the primary regulating responsibility for the Tribe's gaming facility so we have continued to diligently perform that role.

Question: In your view, has the National Indian Gaming Commission made any changes or adjustments in its processes or procedures in light of, or in reaction to, the *Colorado River Indian Tribes* decision? If yes, please describe the changes and/or adjustments. NIGC has adjusted its processes in regard to Class III gaming in response to *CRIT*. Instead of doing on-site audits of Class III activities and opining on the adequacy of a Tribe's MICS' compliance NIGC responds in an advisory capacity to Tribal regulatory agencies questions regarding MICS compliance. It also appears that NIGC is doing much more field training in MICS compliance and effective regulation strategies for emerging gaming technology. The availability of this type of training is very valuable to tribal gaming agencies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO SHEILA MORAGO

Question 1. How would you measure the effectiveness of the training and work-force to ensure the adequacy of regulation?

Answer. The most tangible measurement would be a decrease in audit findings. One issue of particular importance is that effective training needs to be done to the specific regulatory rules of a particular region or area. Many Tribal/state compacts have very specific regulatory requirements that are far more detailed than the NIGC MICS. Training needs to be specific to those compacts. You don't want people trained on Oklahoma standards when they work in Arizona.

Question 2. What mechanisms are available to track and report on theft, crimes, and responses to such occurrences?

Answer. There are many mechanisms currently in place for any Tribal gaming facility. One of the most important mechanisms are the internal controls of the operation. These internal controls are the rules, policies and procedures that the Tribal gaming operation and regulators must follow, and contain an audit trail to follow for any policy set forth by the Tribe. The Tribal gaming commission or regulatory authority then tracks and reports on any discrepancies in following the controls. If the discrepancy appears significant, they will investigate to determine whether it is simple error or something worse. Depending on what that is the Tribal gaming commission investigation reveals, they can file a report on whether they believe it

is theft, a crime or a simple mistake. If it is a theft or crime then it will then be followed up by the appropriate law enforcement agency. That agency may be the state gaming regulatory office, the U.S. Attorney's office, the NIGC, Tribal police and or the BIA.

Question 3. What types of due diligence is involved in these audits and in selecting these vendors?

Answer. The professional vendors that perform the independent outside audits must be independent of the operation, gaming commission and the Tribe. They must be specifically trained and skilled in casino audits. There is usually a Request for Proposals (RFP) that goes out to the industry and the Tribe makes the selection.

Question 4. Should the vendors be subject to background checks? If not, why not?
Answer. All vendors that have access to the sensitive information being checked by the independent outside audit should go through a background check, unless they are a member of a licensed profession (ie. Lawyer or accountant) and have a current valid license. Vendors who provide everyday goods and services ideally should be subject to background checks, dependent upon the sensitivity of the goods or services or the value or volume of annual business that vendor does with the specific operation. The policy decision on where to draw that line is made by the Tribal government, through its regulatory authority, and may vary from Tribe to Tribe based on numerous factors, such as size of operation.

Question 5. Have there been any studies or reports on the effectiveness of Tribal internal controls standards or that compare or describe the different internal control standards used by Indian Tribes in their gaming facilities. If yes, please identify any such studies or reports.

Answer. Not to my knowledge.

Question 6. Please provide your own assessment of the impact of Colorado River Indian Tribes decision on Indian gaming regulation on the National Indian Gaming Commission's ability to regulate Indian gaming.

Answer. I believe that the NIGC has access to all the information they need to effectively regulate Tribal gaming. The most important piece of information the NIGC has access to is the independent audits that have to be filed every year by every gaming operation. These audits give the NIGC a window into the gaming operation. Any findings in the audit report should trigger a follow up by the NIGC.

Additionally, over [90 percent] of Tribes have adopted the past NIGC MICS or something more stringent. The NIGC is authorized under IGRA to enforce these Tribal laws.

Independent audits and MICS provide NIGC all the tools they really need.

Question 7. Do you know if any Indian Tribes changed or adjusted their own regulatory strategies in light of, or in reaction to, the decision in the Colorado River Indian Tribes case? If yes, please describe the changes and/or adjustments.

Answer. Being more familiar with the regulatory structure in Arizona I can say the answer is no. The regulatory structure that was set up in Arizona exceeds that MICS of the NIGC and was done prior to the CRIT decision. Additionally, it is my understanding that no OIGA Member Tribes altered their regulatory procedures in response to CRIT, since the Oklahoma compact requires use of the NIGC by the Tribes.

Question 8. In your view, has the National Indian Gaming Commission made any changes or adjustments in its processes or procedures in light of, or in reaction to, the Colorado River Indian Tribes decision? If yes, please describe the changes and/or adjustments.

Answer. I don't believe so. The NIGC still has Minimum Internal Control Standards, which are written into many compacts and Tribal ordinances. They still review all audits coming from all the gaming operations and now work closely with those operators and regulators to fix any audit findings.