

file - Indian Gaming

August 12, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Donsia Strong, DPC
Michael Schmidt, DPC

RE: American Indian Affairs

This memorandum summarizes key issues and background information that surround the issue of Indian gaming and tribal recognition.

INDIAN GAMING

On July 2, Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, asked representatives of State and Indian tribes to work together to come up with compromise amendments to the Indian Gaming Regulatory Act of 1988 (IGRA). At the start of the July 2 meeting Senator Inouye acknowledged your support for the negotiated solution being sought by the Senator's process. The two parties are continuing to negotiate as the Senator requested. Originally, the parties were requested to negotiate a compromise by July 20. The parties did not meet the deadline and continue to talk.

Apparently, the parties are still pretty far apart on the key issue: what types of gaming should be subject to negotiation when states and tribes negotiate Indian gaming compacts. States take the position that only those games expressly permitted by state law should be available for compacting. Tribes take the position that all games not expressly prohibited by state law should be available for inclusion in a compact.

If the two sides are unable to reach agreement, three alternatives are possible:

- Senator Inouye will draft and pass amendments to IGRA, without state and tribal approval. These amendments would probably make no one happy, but could slightly favor tribes over states.
- The Congress will pass the Bryan-Reid-Torricelli alternative bill, which would give states almost complete control over Indian gaming. No-one except Nevada and New Jersey are very excited about this bill (although without a serious Inouye alternative, it may leap into the vacuum and pass).
- No action will be taken -- IGRA will remain as is and the current debates will continue. This is not very likely.

BACKGROUND

Indian Gaming Pre-1988

As state lotteries began to proliferate in the late 1970s, several Indian tribes in Florida and California began raising revenues by operating bingo games offering larger prizes than those allowed under state law. When the states threatened to close these operations, the tribes sued in federal court, contending that state bingo laws were civil/regulatory in nature, and thus were not within state enforcement jurisdiction (according to federal case law, states have jurisdiction over Indian tribes in criminal/prohibitory matters, but do not have jurisdiction in civil/regulatory matters).

Of these court cases, two had a large impact on the issue of Indian gaming. First, in 1980, the Seminole Tribe of Florida won its suit against the sheriff of Broward County. A Florida court ruled that Congress did not confer authority on the states to regulate gaming activities on Indian lands, since the state permitted and regulated bingo and did not prohibit it. As a result of this verdict, gaming in Indian country began to grow rapidly. In 1987, a second case, *California v. Cabazon Band of Mission Indians*, the Supreme Court affirmed the ruling of the Florida court in the Seminole case. This case opened the door for a dramatic expansion of Indian gaming, and states began to push Congress for some sort of legislative compromise. The Indian Gaming Regulatory Act of 1988 (IGRA) was the result of this effort.

The Indian Gaming Regulatory Act of 1988 (IGRA)

Congress enacted IGRA to provide a legal basis for the operation and regulation of gaming by Indian Tribes. It represented a compromise that would provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government while maintaining the sovereignty of Indian tribes and States alike.

The Act categorized gaming into three broad categories; Class I, Class II, and Class III and further outlined a regulatory scheme that apportioned regulating authority between the federal, State, and tribal governments:

- **Class I** gaming (social games or traditional tribal games played in conjunction with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes.
- **Class II** gaming (bingo, pull-tabs, and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission (a three-person regulatory agency administratively located within the Department of Interior).
- **Class III** gaming (all other gaming, including horse racing, blackjack, roulette, slot machines, lotteries, and craps) can be conducted only after an appropriate Tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

The Act also asserted that States must negotiate in "good faith" with Indian tribes seeking to develop class III gaming operations. It was the intent of Congress that States have a role in the regulation of Class III gaming, and that it should be the responsibility of the individual tribes and States to come to mutually agreeable terms.

KEY ISSUES

Currently, a number of states are urging Congress to amend IGRA to give states more regulatory authority over Indian gaming. Over the past two years, an increasing number of states have refused to negotiate any Class III gaming compacts with Indian tribes. These states claim that IGRA has resulted in forms of gambling, particularly casino gambling on Indian reservations, in states that have not authorized these forms of gambling. As a result of state refusal to negotiate, many tribes have sought relief in court.

The major state complaint is that IGRA's vagueness in several key areas has allowed the tribes to expand their gaming activities well beyond state gaming laws and the original intent of the Act.

Gaming is being suggested to be the incentive for non-federally recognized tribes to seek federal recognition and with it the opportunity to begin lucrative gaming activities.

Set forth below are issues, such as recognition, that relate to specific tribes in particular states or regions:

Connecticut

Based in Trumbull, a faction of the Golden Hill Pugassett tribe sells tax-free cigarettes in violation of state law. The tribe also is attempting to reclaim ancestral land in Fairfield County. The tribe has filed lawsuits claiming much of the town land and as a result has frozen titles on hundreds of properties. The tribe is considering seeking federal recognition. Its members are have mixed ancestry, Indian and black.

The Mohegan Indian tribe is seeking to purchase the a former industrial site. The site is Montville's highest valued industrial site. Local officials fear the town will lose the potential tax revenues if the tribe turns the property into a casino. The tribe is currently seeking federal recognition.

New Jersey

The Nanticoke Lenni Lenape tribe has filed notice with the BIA to begin the federal recognition process.

The Delaware Indian Nation originated in New Jersey but was moved west 300 years ago is considering returning to the state. A local business has stated he will donate land upon which the tribe can establish a reservation.

The Ramapough Mountain Indians has applied for federal recognition. Its members have mixed ancestry of Dutch, Indian and black.

The prospect that any or each of the tribes could establish casino gambling has created tension in the state. Donald Trump has filed suit against the BIA in connection with the Ramapough recognition application to have IGRA declared unconstitutional.

New York

The Oneida Indian Nation has opened a casino in upstate New York. Local officials fear that the Oneida, who have already purchased more than 400 acres, will purchase land and take the property off tax rolls.

Caroli

I've not briefed Eller and neither has Mike.
Will you take care of this or should we?

Indian Country Today - the most widely read newspaper among Indians is planning a Rebuttal Editorial.

* WHITE HOUSE DENIES CLINTON ALTERED VIEW ON INDIAN GAMING
(Omaha World Herald, Aug. 20, 1993)

By David C. Beeder
World-Herald Bureau

AUG 26 RECD

WASHINGTON ----- The White House said Thursday that President Clinton's comments in an interview on Indian gambling should not be interpreted as a change in administration policy.

Bunty Anquoe, a reporter for Indian Country Today, said Thursday that Clinton told her state gambling laws should have no effect on Indian land.

The 1988 Indian Gaming Regulatory Act permits tribes to operate casinos in states where similar gambling is allowed, leaving it up to the states and tribes to work out the details.

Clinton "said he understands that the issue was not about gambling itself, but about sovereignty," said Ms. Anquoe, the Washington correspondent for the Rapid City, S.D., newspaper.

Ms. Anquoe said the president's statements to her represented a change in attitude from comments he made in May in a speech in San Diego.

"He told me it (gambling) was a positive economic development tool for our tribes," she said. "He went from taking a middle road (on Indian gambling) to supporting it."

In the San Diego speech, Ms. Anquoe said Clinton described Indian gambling as "a lousy basis for an economy, past a certain point."

But White House spokesman Jeff Eller said Clinton's statement that gambling was "a lousy basis for an economy" was not intended as criticism of Indian gambling.

"He wanted to look at the overall sociological influence," Eller said. "He didn't think it was the best base for an Indian economy to be launched from."

Ms. Anquoe said Clinton told her that since his San Diego speech he has discussed Indian gambling with Interior Secretary Bruce Babbitt and first lady Hillary Rodham Clinton. Mrs. Clinton recently visited several Indian reservations.

"He understands that gambling is an extension of tribal sovereignty," Ms. Anquoe said. "He understands that a state's public policy determines the scope of Indian gambling. Nobody disputes that. The tribes don't dispute it, but a lot of people don't understand that."

Utah and Hawaii are the only two states where all forms of gambling are banned.

END

This is not the basis to use to object to Indian gaming. It's been our view that Indians start their economy by gaming & then diversify and move out of gaming as the primary basis of the economy.

Carol,

After Michael was faxed the attached article, we attempted to track down how and where the reporter got the interview. The reporter, Bunty Anquose, was invited, along with other interest groups with a stake in the budget, to jog with the President to the monument. (The budget contained three tax credits that benefited Indian Country.) The DNC put on the event and was aware she would be asking questions.

Thanks,

Donsia

AUG 27 RECD

RE PAGE ONE



NOTE

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NGA staff
gave me this -
very interesting!
C. H. Kasso

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are you? I slow down on the steps,
but the President waves to me to
catch up. We're half-way, he says
encouragingly. Adrenaline, don't fail
me now.

8 a.m. Sheer will power gets me
through. Where's that van?
Everyone's sweating like dogs. I can't
ask him anything more since my
lungs are working to capacity. He
continues to talk to others while he's
running and HE'S PICKING UP
SPEED! The press pool waves to us
from their air-conditioned van. I'm
beginning to really resent them.

8:10 a.m. We're almost back to the
White House. We're through.
Hallelujah. Just in time. My legs feel
like noodles. But time is runni-
ng out for questions. Still sweating. Where
goes. I ask him several questions
about Indian issues, particularly gam-
ing. He demonstrates a solid knowl-
edge of Indian people and issues.
This surprises me. He called gaming
"a positive economic development
tool" for tribes.

8:25 a.m. We're still talking Indian
gaming but we've taken the discus-
sion onto the terrace and then the
White House. The President said he
would stay faithful to his Indian vot-
ers and said he has plans to meet with
100 tribal leaders this fall.

8:30 - 8:40 a.m. We all take pictures
with him and he signs our (sweaty)
shirts. We're then escorted to the
White House mess for water since
we're all so dehydrated. Turns out I
wasn't the only one who had a hard
time of it.

9:00 a.m. I'm giddy for the rest of
the day and busy regaling my friends
and family. The President is not only
knowledgeable about Indian tribes. I
discovered. He's one good runner. I
should know... I was eating his dust
more than once. I'm going to start a
running regimen. Just in case.

President Clinton backs gaming

By Bunty Anquoe
Today Washington Bureau

WASHINGTON — President Clinton has apparently changed his mind about Indian gaming.

The president took the middle ground last May when he entered the heated political fray between states and tribes over who has control over gaming on Indian lands.

Then, at a town meeting in San Diego to tout his economic plan, he observed that "Indian reservations have been kept dependent too long," but added that gambling "is a lousy basis for an economy, past a certain point."

Last week, the president told *Indian Country Today* that gaming has proven "a positive economic development tool for Indian tribes."

He said he has learned more about the contentious issue from several ongoing consultations with Interior Secretary Bruce Babbitt.

"I'm very aware of the problems on reservations," he said. "Hillary has been very active in this and is very knowledgeable."

The first lady has made several visits to Indian country and the president said she has briefed him on several Indian issues, including health care.

The Indian Gaming Regulatory Act is now under the scrutiny of Congress where several bills have been introduced to make changes in the 1988 law.

Lawmakers from Nevada and New Jersey have introduced bills to radically restrict Indian gaming to conform with state law, with strong support from the private gambling industry.

Casino mogul Donald Trump recently sued the federal government, claiming the law is unconstitutional and gives tribes an unfair advantage in the gambling business.

Recent estimates suggest Indian gaming represents less than 3 percent of the entire gambling industry nationwide.

Tribal leaders say measures in the proposed bills trample on tribal sovereignty and have denounced the "anti-Indian" bills as undisguised attempts to protect state coffers and the gaming industries of Nevada and New Jersey.

The National Governors Association, the Western Governors Association and the National Association of Attorneys General

have all passed resolutions this year to amend the gaming law to restrict Indian gaming to specific state law.

Nevada Gov. Bob Miller has made claims in the press that the president supports the governors' point of view.

President Clinton, a former Arkansas governor, said the govern-
ors have been talking to him about the issue.

The western governors, he said, are particularly concerned that Indian gaming will lead to the spread of gambling on non-Indian land. He said they have raised the "any means all" controversy where governors have expressed fear that any form of gambling in their states authorizes full-scale tribal casinos.

The president said, "I know now that's not the case," adding that he came to this conclusion from briefings by secretary Babbitt on gaming in general, court decisions and current law.

In 1987, the Supreme Court ruled in *California vs. Cabazon Band of Mission Indians* that states have no authority to regulate gaming on Indian land if the type of gaming in question does not violate the state's public policy.

Tribes contend that the federal gaming law applied under *Cabazon* allows them to negotiate with states for casino type games if a state's public policy authorizes other kinds of high-stakes gaming such as lotteries, panmutuel betting or charity casino nights.

Several subsequent federal court decisions have agreed.

States argue that the gaming law, as currently interpreted, infringes on states' rights by forcing tribal casinos on states that don't want them.

President Clinton said, "There's no question about that. State (gambling) laws should have no effect on Indian land."

A negotiating team representing tribal and state interests is now hashing out compromise legislation that would keep their differences out of court.

The president said he would "stay faithful" to his Indian voters who came out in record numbers in the general election last fall. The turnout has been credited with pushing him over the top in several key western states.

He added that he has plans to meet with about 100 tribal representa-
tives later this year.

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Committee.

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INDIAN SUMMER FESTIVAL

1993 POW WOW

DATE: October 8, 1993

TO: Carol Rasco

FROM: Donsia Strong
Mike Schmidt

RE: The Latest on NGA's Position on Indian Gaming

Per your suggestion, Mike called Scott Ferris of Governor Sullivan's staff to ask him about the latest Indian gaming developments on the NGA side. Apparently, a lot has been happening over the past week -- most importantly:

- NGA has dropped the negotiation moratorium idea and instead has prepared a paper with new proposal that Governor Sullivan likes: If a state (or anyone in the state) can do a specific type of gaming, tribes can do it too (or at least negotiate for it). For example, if the people in the state are allowed to have horse racing, then the Tribes can compact for horse racing -- but they cannot compact for slot machines or casino gambling. Apparently, Sullivan brought this concept up at the last big meeting between the Tribes and the NGA in August, and the Tribes were interested enough to ask the NGA to develop a more formal proposal on the issue.
- NGA's plan of action on this issue is now as follows:
 1. Develop a paper on the new proposal (already done)
 2. Poll the Governors on the new proposal (going on now)
 3. Go to the October 19 meeting, present the proposal to the tribes, offer it as the best offer states can make -- the NGA can't go beyond this, but it is willing to continue negotiations as long as it is over their new proposal and nothing further.
 4. If Tribes reject this proposal, and Inouye drops his own bill that is tilted toward the Tribes (which it likely would be), the NGA will get their own bill introduced.
- **The NGA has come around to the conclusion that the Reid/Torricelli bill is a political non-starter, and is not in the best interests of Tribal/State relations, even though it is close to the original NGA position on Indian gaming.** The NGA has purposely kept away from endorsing or lobbying for Reid/Torricelli, but individual Governors can do as they please.

- The NGA feels that there are three issues regarding the scope of gaming allowable under IGRA that are still in dispute:

- lottery vs. non-lottery games
- electronic vs. manual games
- banked vs. non-banked games

The lottery vs. non-lottery distinction is by far the most problematic. An example of this issue's difficulty: Many states have lottery machines that spit out cards where player scratches off apples, oranges, and lemons like a slot machine and can win cash prizes based on their card -- the question is, what's the difference between that and slot machines? Why can't Tribes compact for slot machines if a state has this form of lottery?

In my calls to the NGA and Tribal sources, both sides expressed hope that the President will continue to support the Inouye negotiation process, at least until the October 19 meeting. Both sides continue to hold out hope, however slim, that some compromise will be reached at that meeting. Their feelings on this issue mirror our recommendation to you on this issue: **that the President remain supportive of the Inouye process until the October 19 meeting.** In addition, we recommend that the President meet separately with Inouye, the NGA, and Tribal representatives before the October 19 meeting (perhaps on October 18?). At these meetings, he could reaffirm his support for the negotiation process and encourage both sides to do their best to come to a reasonable compromise. He could point out to Inouye and the NGA that with Health Care, the Crime Bill, NAFTA, and Reinventing Government on the docket, the last thing we need is a fight over Indian gaming (especially a fight within the Democratic Party). Such a meeting may provide the process with just the push it needs. If the October 19 meeting yields a stalemate, and both sides threaten to drop their own bills, the President could meet with those parties again if he wished to urge further negotiations. The last thing we want to be forced into is choosing sides between an Inouye (Tribal) bill and an NGA bill.

Please let us know what you think about all of this. We can provide you with whatever additional information on this issue that you need.



Sycuan Band of Mission Indians

*Sent 1/8
Bruce Lindsey
Pls. file w/
approp person
Kass*

TRIBAL COUNCIL

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Tribal Spokesperson

HANK MURPHY
Vice Tribal Spokesperson

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Treasurer

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Council Member

TINA MUSE
Council Member

RUDY RUIZ
Council Member

December 27, 1993

Donsia Strong
Senior Policy Analyst
Office of Domestic Policy
The White House
Room 224
Old Executive Office Building
Washington, DC 20500

Dear Ms. Strong:

I want you to know that the Sycuan Band of Mission Indians fully supports the Clinton Administration plans to nominate Peter Goelz of Missouri as the new Chairman of the National Indian Gaming Commission. Tribal leaders had the opportunity to meet with Goelz at the recent National Indian Gaming Association meeting in early December in Reno, Nevada. We were certainly impressed by his qualifications, knowledge and character of fairness. I expect he will serve the Clinton Administration with distinction in the complex and politically difficult field of American Indian gaming.

I don't believe that public endorsement by our Tribe in this situation would serve the best interests of the Clinton Administration. I am most willing, however, to provide any support or assistance you determine as appropriate to ensure a successful nomination process.

Best wishes to you, your staff and family during the Holiday Season. May the Great Spirit be with you during the New Year.

Sincerely,

Danny Tucker

Daniel Tucker
Chairperson

LTSTRONG.369



Chairman
Rick Hill
Oneida Tribe of Indians

Vice Chairman
Daniel Tucker
Sycuan Band of Mission Indians

Treasurer
Nathan Small
Shoshone Bannock Tribe

Secretary
Jake Viarrial
Pajoaque Pueblo

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White Lacss Band of Chippewa
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Robert Boles
Sandia Indian Bingo

Buzz Guittierez
Spokane Tribe

Perry Hauser Jr
Eastern Shawnee, OK

Richard Hayward
Mashantucket Pequot Tribe

Norma Manzano
Serrano Band of Mission Indians

Philip Martin
Mississippi Band of Choctaw
Indians

Clinton M. Pattea
Fort McDowell Mohave-Appache
Community

Mark Van Norman
Cheyenne River Sioux Tribe

Executive Director
S. Timothy Wapato
Colville Confederated Tribes

Public Relations Director
A. Gay Kingman
Cheyenne River Sioux

The Honorable William Jefferson Clinton
The White House
Washington, D.C. 20003

September 29, 1993

Dear Mr. President:

This letter is written to formally request a meeting with you to personally discuss the status of Indian gaming and particularly the impact of current events on this most important economic issue. Although we recognize and appreciate the personal attention which you must give to health and other pressing issues, please recognize that to us, gaming is the vehicle through which we are able to address many of the same concerns which you currently face at the national level.

As you know, we have been involved in a negotiation process with representatives of the National Governors Association and the National Association of Attorneys General, facilitated by Senators Inouye and McCain. This process was undertaken to rectify misunderstandings surrounding the Indian Gaming Regulatory Act and to clarify legal interpretations allowing our industry to continue to exist and ideally grow toward a self sufficient future. For six months we have honored the boundaries set our by the good Senators and it has been reported to us that those at the table have indeed reached agreement on most items. We have also recently learned however, that a distinct minority (we understand 5) governors are now attempting to cut from the process and undercut a successful outcome.

As you know, gaming, when there has been good faith and compacting, has demonstrated itself as the first viable economic resource since the decimation of the buffalo. This resource allows tribal governments to build health centers, schools, roads, sewer systems; to provide improved housing and social services; and to diversify and offer sustained



economic development and employment security for thousands of Indian and non-Indian people... all at no state expense. In fact, tribal governments are hiring thousands of people, many of whom were formerly unemployed. At the same time, Indian Nations are contributing millions of dollars to their local (often non-Indian) communities. This is a win-win situation.

Through the government to government relationship, which has existed in its present form since the 1830s, we responded to Senator Inouye and Senator McCain's call. We have met in good faith to attempt to resolve the differences among the states as sovereigns and the Indian nations as sovereigns in a legitimate and earnest way. We fear that history may once again be repeating itself at our expense.

We call upon you as a statesman and peacemaker to learn from us about the particular tribal concerns. We ask that you hear from our lips the realities of the reservations and the realities of the reservations the benefits brought to the Indian nations and the states where Indian gaming is conducted. We hope that you will feel moved to exert influence to save this unique governmental enterprise before we all lose... at the national, state, and Indian nation levels.

Thank you for your consideration. We anxiously await your response. Please contact Francine R. Skenandore at the Wisconsin Oneida Nation office (414-869-4360), or call Tim Wapato at our National office (202-546-7711).

Sincerely,

Richard G. Hill
Chairman

THE WHITE HOUSE

WASHINGTON

September 14, 1993

MEMORANDUM FOR CAROL RASCO

FROM: Donsia Strong,
Michael Schmidt

RE: Indian Gaming

This memorandum summarizes background information and issues surrounding Indian gaming.

BACKGROUND

Indian Gaming Case Law Pre-1988

As state lotteries began to proliferate in the late 1970s, several Indian tribes in Florida and California began raising revenues by operating bingo games offering larger prizes than those allowed under state law. When the states threatened to close these operations, the tribes sued in federal court, contending that state bingo laws were civil/regulatory in nature, and thus were not within state enforcement jurisdiction (the Supreme Court has interpreted Federal law to grant states broad criminal jurisdiction but more limited civil jurisdiction. Bryan v. Itasca County, 426 U.S.373 (1976)).

Of these court cases, two had a large impact on the issue of Indian gaming. In Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981, *cert denied*, 455 U.S. 1020 (1982)), the Seminole tribe constructed and operated a \$900,000 bingo hall on its reservation. Florida state law strictly regulated the operation of bingo halls permitting operation no more than two days a week and capping jackpots at \$100. The Seminole's facility operated every day of the week and set no cap on jackpots. The county sheriff announced his intent to enforce the law by making arrests in case of violations, whereupon the tribe sought an injunction.

The parties agreed that the case turned on whether the statute was civil/regulatory or criminal/prohibitory. If the statute were civil/regulatory the statute could not be enforced against the tribe.

The court rejected the narrowly drawn distinction of civil/regulatory or criminal/prohibitory as inappropriate and stated that the public policy of the state should be considered; otherwise the mere inclusion of penal provisions would provide criminal jurisdiction over what would otherwise be considered an exercise of regulatory authority. The court concluded that bingo was one form of gambling that the legislature had the power to prohibit or regulate, and because the legislature decided to regulate rather than prohibit the

bingo, conducting bingo was not against the public policy of the state. The court held that Florida's statute could not be enforced against the tribe.

In a second case, California v. Cabazon Band of Mission Indians, 480 U.S. 201 (1986) two tribes sued Riverside County, California arguing that the county had no authority to apply its ordinances inside the reservations. At least one of the tribes operated a card club and each conducted bingo games on its reservation. State law did not entirely prohibit playing bingo, but rather, highly regulated the games. However, state law did prohibit certain card games.

The Supreme Court held that because California permitted a substantial amount of gambling activity, including bingo, and promoted gambling through its lottery, the state regulated rather than prohibited gambling.

This case opened the door for a dramatic expansion of Indian gaming. At the same time, all parties with interests in gambling on Indian land (tribes, states, and the non-Indian gaming industry) sought legislation which would protect their interests. During 1983 – 1988, no fewer than seven bills to regulate gaming on Indian land were introduced. A three year search for compromise legislation resulted in the Indian Gaming Regulatory Act of 1988.

The Indian Gaming Regulatory Act of 1988 (IGRA)

Congress enacted IGRA to provide a legal basis for the operation and regulation of gaming by Indian tribes. It represents a compromise that provides a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government while maintaining the sovereignty of Indian tribes and states alike. IGRA requires all profits from tribal gaming activities be used for tribal governmental purposes (social services, rebuilding infrastructure, etc.).

The Act divides gaming into three broad categories: Class I; Class II; and Class III; and further outlines a regulatory scheme that apportions regulating authority between the federal, State, and tribal governments:

- **Class I** gaming (social games or traditional tribal games played in conjunction with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes.
- **Class II** gaming (bingo, pull-tabs, and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission (a three-person regulatory agency administratively located within the Department of Interior).
- **Class III** gaming (all other gaming, including horse racing, dog racing, blackjack, roulette, slot machines, lotteries, and craps) can be conducted only after an appropriate tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

IGRA also establishes within the Department of Interior the three member National Indian Gaming Commission. The Chairman is appointed by the President and subject to Senate confirmation. The other members are appointed by the Secretary of the Interior. At least two of the members must be members of an Indian tribe. At present, the term of the current Chairman has expired. The Commission has broad powers to monitor and approve most Class II and III gaming.

IGRA sets forth the jurisdictional and regulatory scheme for each class of gaming. Key are the provisions which relate to Class III gaming. In order for a tribe to conduct a certain type of gaming, the gaming activities must be "located in a state that permits such gaming for any purpose by any person, organization or entity." Class III gaming must be "conducted in conformance with a tribal-state compact entered into by the Indian tribe and the State." Tribes are required to request that states negotiate with them to reach a compact. Upon receiving such a request, states must negotiate in good faith to enter into a compact.

IGRA's reliance on tribal-state compacts rather than a clear definition of the roles of all parties with respect to Class III gaming has resulted in protracted and complicated litigation. Even during the floor debate of the bill which became IGRA, members held differing views of the compact process and what was included.

In addition to litigation regarding the scope of Class III gaming, an increasing number of states have refused to negotiate any Class III gaming compacts with Indian tribes and have asserted the Eleventh amendment as a defense when sued. Senators Inouye and McCain (have) expressed their displeasure (which) this tack in a letter to Governor Ashcroft, the Chairman of the National Governors Association. The letter suggested that, perhaps, the federal government should negotiate the compacts and provide comprehensive federal regulation of Indian gaming.

STATUS OF CONGRESSIONAL REVIEW OF IGRA

Congressman Richardson's Subcommittee on Native American Affairs held hearings in April on IGRA, during which several Members of Congress, Governors, and tribal leaders testified. Additionally, Senator Inouye has been holding regular meetings with interested parties, and brought all sides together to discuss Indian gaming in early June.

Current Status of the Inouye Process

In July of this year, Senator Inouye set into motion a government-to-government dialogue process between states and tribes intended to produce compromise amendments to IGRA that both sides can live with. The results of this process, which have been outlined in a recent state/tribal draft set to be announced on October 19, may resolve four major areas of disagreement:

- **The scope of tribal gaming.** The question of which types of Tribal gaming should be allowed is a major area of dispute. States would prefer to limit tribal gaming to only those types of gaming that are specifically allowed by state law, while tribes are pressing for a broader interpretation more along the lines of the Cabazon decision that would allow both parties more room during the compact negotiation process.
- **Regulatory oversight.** Regulatory oversight of tribal gaming must be assigned to either the states or the Federal government -- not both.
- **Mediation processes.** A mediation process needs to be devised to deal with the breakdown of compact negotiations between states and tribes. A key issue in this area is the role of the Secretary of Interior as the final arbitrator in any mediation process.
- **The use of off-reservation lands for gaming purposes.** States would like to prohibit gaming regulated by IGRA on any lands that are not part of a Federally recognized tribe's reservation. Tribes support the current interpretation of IGRA which allows the establishment of gaming activities on territory acquired by tribes that is outside of their reservation.

There are obvious problems with some of the proposals contained in the current state/tribe draft. The concept of limiting Indian gaming to "game specific" operations is very unfair. Tribes should have the same opportunity as states for economic development. States vigorously oppose this concept. In addition, regulatory oversight should not be removed from the states. If the federal government is charged with general regulatory review the states will have little incentive to negotiate gaming compacts. Lastly, it is probably a mistake to make the decision to take impasses to the Secretary of the Interior. Again, the parties should be encouraged to negotiate compacts with the Secretary being the least attractive alternative to a stalled negotiation.

Proposed Amendments to IGRA: The Reid and Torricelli Bills

In late May of this year, a legislative proposal to amend to IGRA was introduced in the House by Representative Torricelli (D-NJ), and in the Senate by Senator Reid. These two bills, which were introduced on the same day and are almost identical, have emerged as the foremost alternative to the Inouye process.

The Reid and Torricelli bills can be interpreted as taking an extreme position on the side of the states in the debate over Indian gaming. If enacted, the bills would severely restrict the types of gaming that tribes could pursue and increase the power of states over tribes in a number of ways, most notably:

- **Restrictions are placed on Indian gaming.** IGRA allows gaming on Indian lands if "such gaming" is allowed in the state. Courts have interpreted this to mean that gaming can take place in a state that only allows such gaming as a part of a charitable event ("Las Vegas Nights" for charity, etc.). The Reid/Torricelli bills would prohibit tribal gaming unless the specific games and methods of play are expressly authorized by the laws of the state as a part of a commercial, for-profit business enterprise. This prohibition would likely exclude tribes from doing most types of gaming in almost every state.
- **Incentives for states to negotiate compacts with tribes are removed:** The Reid/Torricelli bills would reduce the incentive that the states have to negotiate compacts with tribes in two ways: by forbidding a Tribe from suing a state and; by placing the burden of proof on the tribes and the federal government to show bad faith by a state in compact negotiations. Furthermore, if a state refuses to enter into compact negotiations, the tribe is still restricted to only those games and methods of play expressly permitted by state law.

In addition to the actions outlined above, the Torricelli bill takes additional measures to weaken the tribes' position in relation to the states by placing a moratorium on any further Indian gaming until the Secretaries of Interior and Treasury and the Attorney General certify that all regulations implementing IGRA are in place. Given the fact that current IGRA regulations took almost five years to implement, this measure virtually guarantees that no additional gaming will be allowed in Indian Country for a number of years.

CONCLUSION

The current tone of the Indian gaming debate has become extremely negative and is cropping up in discussions that are arguably only tangentially related to gaming but involve Indians. We have attached copies of advertising, Dear Colleagues and talk show transcripts that illustrate this point.

ATTACHMENTS



A DIALOGUE WITH DONALD TRUMP ABOUT AMERICAN INDIAN PEOPLE

Talkshow Host Don Imus: "So what is this now? A bunch of these drunken injuns want to open a casino down here in New Jersey?"

Mr. Trump: "A lot of the reservations are being, in some people's opinion, at least to a certain extent run by organized crime and organized crime elements, as you can imagine. There's no protection. There's no anything...it's become a laughing joke."

"General George Custer was against (Indian-operated casinos) also and look what happened to him."

"They call it a nation, this great sovereign nation, the Indian tribes. All of a sudden, it's nations."

Before it wasn't a nation, before gambling. Now it's this great sovereign nation. We protect, we do this, we do that, but when it comes to gambling it's a sovereign nation."

"I think I might have more Indian blood than a lot of those so-called 'Indians' that are trying to open up the reservations. I looked at one of them...I said to him, 'I think I have more Indian blood in me than you have in you.'"

Imus: "A couple of these (Connecticut) Indians look like Michael Jordan, frankly."

Trump: "I think if you've ever been up there, you would truly say that these are not Indians."

Trump: (On whether to marry Maria Maples): "Maybe in traditional (tribal ceremony) would be the best way to do it. That way, it wouldn't be an authorized marriage."

Broadcast excerpts from 'Imus in the Morning' WFN-AM New York, June 18, 1993

Dear Mr. Trump:

Last month you launched a lawsuit and a lobbying campaign, seeking to destroy the 1988 Indian Gaming Regulatory Act because you claim that tribally-sponsored gaming operations place you at a "competitive disadvantage."

Yet last week, in a New York radio interview, after sharing your views on Indian people (see above), you couldn't resist noting that all your Atlantic City casinos were doing "record business." You said one of them alone, the Taj Mahal, made "a gross operating profit of 14 million dollars" — twice projections — in one month!

We're confused. You seem to be, too — about Indian people, our history and our sovereignty. So here's a free education:

On Indian reservations: You know how eviction works — well that's what happened to us, long before you were given your first million. We were forcibly moved to reservations, many remote and unsuitable for office-condo towers or any form of sustained economic development — until tribal gaming.

On tribal sovereignty: We lost our homelands — but we kept our dignity and our inherent sovereignty, which is enshrined in the Constitution, dozens of federal laws and numerous treaties (we made sure of that — just call it "the art of the deal.")

On tribal government: Your claim that reservations are "run by organized crime" doesn't square with what the U.S. Justice Department Criminal Division's Senior Counsel told a Senate Committee in March of 1992: "The perception...that Indian gaming operations are rife with serious criminality does not stand up under close examination...to date there has not been a widespread or successful effort by organized crime to infiltrate them. The truth is, tribal governments are run by popularly elected leaders who embody the hopes, aspirations and frustrations of their people."

On tribally sponsored gaming: Indian gaming amounts to just 2% of the total U.S. gaming industry — but it's become the primary engine of new jobs and economic growth for hundreds of communities across America.

The Act you're out to destroy, mandates that Indian gaming proceeds go for public needs. This may be hard for you, but try to picture living in one of America's poorest communities: without adequate health clinics, clean drinking water, safe roads, sturdy housing, or permanent schools. Without self-sufficient local economies.

That's where most of us live, Mr. Trump. No yachts. No jets. No Palm Beach mansions or Fifth Avenue penthouses.

But we have our identity — our heritage and culture, our pride in what it means to be First Americans — and that's no joke, sir.

And in Indian gaming, we have a proud right and proven resource — a last, best chance to build a good future for ourselves and our non-Indian neighbors.

You might ask yourself whether making another million a month, justifies trying to take that future away from our Indian children.

Sincerely,

 Rick Hill, Chairman
 NATIONAL INDIAN GAMING ASSOCIATION

ROBERT G. TORRICELLI
9TH DISTRICT, NEW JERSEY

SEP 08 1993

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Congress of the United States
House of Representatives
Washington, DC 20515-3009

September 7, 1993

U.S. NEWS
U.S. News 'World's Largest Casino' causing stir

LAS VEGAS SUN

Gambling with the mob?

Crime guys have set their sights on the booming Indian casino business

Clearer Rules for Tribal Gambling

THE NEW YORK TIMES EDITORIALS

Dear Colleague:

As these headlines show, communities across the country are being threatened by an enormous proliferation of casino gambling. These casinos are located on Indian lands but often financed by outside investors with questionable backgrounds. In fact, U.S. News and World Report recently published a story that pointed to ties between organized crime and some tribal casinos.

The 1988 Indian Gaming Regulatory Act attempted to strike a balance between overlapping jurisdictions of the states, the tribes, and the federal government. Unfortunately, that delicate balance has been upset by court interpretations that have compelled several states to reluctantly allow casinos within their borders.

~~The spread of Indian gaming is happening despite the fact that local officials do not have the resources necessary to provide~~

next con't
PT

The spread of Indian gaming is happening despite the fact that local officials do not have the resources necessary to provide reasonable law enforcement protection for their communities and the Indians themselves. A recent Interior Department report stated that Indian gaming operations are being conducted "with minimal or no effective oversight" from the federal government. In fact, the federal government spends just \$3 million for 24 regulators to oversee more than 200 legal and illegal Indian gaming establishments across the country. In stark contrast, my home state of New Jersey spends over \$50 million for 985 regulators to control 12 casinos in one small city.

I recently introduced H.R. 2287, the Gaming Integrity and State Law Enforcement Act of 1993. This legislation would restore stability and reason to Indian gaming law and curb the unchecked proliferation of Indian-sponsored casinos across the country. This is not an anti-Indian bill, and it would not outlaw Indian gambling. It would simply restore the compromise that Congress intended to codify in 1988. State officials would once again have a say in whether gaming should take place. Indian casinos would be subject to at least minimal oversight and regulation.

A summary of this legislation appears on the back. If you are interested in cosponsoring H.R. 2287, or if you would like additional information, please call Michael Davidson of my staff at 5-5061.

Sincerely,



ROBERT G. TORRICELLI
Member of Congress

RGT:mid

Tuesday September 14, 1993

THE MILWAUKEE JOURNAL

Other Views

Leave Indian gaming law as is

ON BEING asked at a recent town meeting for his views on Indian gambling operations, President Clinton spoke with a forked tongue: "Indian reservations have been kept dependent too long . . . [But] gambling is a lousy basis for an economy."

Clinton's low regard for the way some 58 tribes are generating nearly \$6 billion this year in gambling revenues in 18 states is well out of line with the intent of the 1988 Indian Gaming Regulatory Act. Giving tribes "the exclusive right to regulate gaming activity on Indian lands," the law requires that earnings from these legal businesses would "promote tribal economic development, tribal self-sufficiency and strong tribal government."

That's largely how it's been working out. U.S. News & World Report stated in late August that "the vast majority" of the Indian casinos "are honest and clean." Such tribes as the Ojibwe of Minnesota, the Mashantucket Pequot of Connecticut and the Chippewa of Wisconsin suddenly have money to begin overcoming the impoverishments that have kept Indians in destitution for generations.

During his days as governor of Arkansas, Clinton wasn't heard to knock gambling operations there — pari-mutuel wagering on horse and dog races, plus off-track betting. Nor did he campaign for president against lotteries, slot machines, bingo, instant scratch games, golfing sweepstakes, Monte Carlo nights, excursion boat gambling or any other forms of legalized gaming are that bolstering the economies in 49 states. It's only an



COLMAN MCCARTHY

Donald Trump, seeking better odds for his gambling joints, has sued the federal government for supposedly giving tribes regulatory breaks. Then there are several bills pending in Congress — proposed, unsurprisingly, by members from Nevada and New Jersey — that would weaken the 1988 law by allowing state-by-state restrictions on Indian gaming.

The 1988 law was enacted after three years of intense once-overs — hearings, debates, compromises — by Congress. If it passed without much notice beyond Congress and the reservations, it was because few foresaw the huge economic boon that would befall the tribes.

A study by researchers at the University of Wisconsin reports that 4,500 people — including 2,000 non-Indians — are employed by the 15 gaming facilities in that state. Fifty percent previously were unemployed and 20% were on welfare. The annual payroll is \$68 million, with most of that spent in off-reservation stores and services.

Minnesota's 13 tribal casinos employ 9,975, with more than 75%

occasion for lousiness, it seems, when Indians are hauling it in.

The president's high-mindedness is one of many pressures felt by tribes that are finally enjoying the luck of the draw.

non-Indians. The annual payroll is \$116 million. In Michigan, the nearly 60,000 customers a week patronizing its eight casinos mostly buy gasoline locally, stay in local motels and eat in local restaurants.

Together, the financial benefits represent what Clinton keeps saying he wants: an economic stimulus package. Well, here it is. For the first time in their nearly-always disastrous relations with white leaders, tribal governments, which have sovereignty under federal law, have capital-producing businesses.

It's a tad late for moralizers to preach that money from these gambling operations is a breakdown in standards that shouldn't be sanctioned. That argument has never gone anywhere when applied to white-controlled gambling, of which the \$6 billion that tribes are earning is a small fraction. Nor is there much of a history of whites declaring that it's morally unacceptable for Indians to suffer high rates of illiteracy, disease, unemployment, alcoholism and suicide.

NO WEAKENING of the 1988 law is needed, especially not for the benefit of Trump and his ilk. The dice were given a full and fair roll five years ago by Congress. Granted, gambling operations don't rank among the noblest of human pursuits. There is also the plague of gambling addiction. None of that overrides the entrepreneurial successes that tribes are now enjoying. The odds it would happen were a million to one.

Colman McCarthy is a columnist for The Washington Post Writers Group.

U.S. bill could restrict Indian casinos

By Jane E. Allen
ASSOCIATED PRESS WRITER

WASHINGTON — A bill sponsored by New Jersey and Nevada lawmakers giving states the power to restrict Indian gaming was attacked upon its introduction yesterday as "the Donald Trump Protection Act."

Trump, owner of three casinos in Atlantic City, filed a federal suit April 30 challenging the 1988 statute that allows tribes to operate casinos on Indian lands. He said tribes receive preferential treatment.

The bill offered in the House by U.S.

Rep. Robert G. Torricelli (D., N.J.), and in the Senate by Nevada Democrats Harry Reid and Richard H. Bryan, would allow gaming on Indian lands only within states that already permit profit-making gaming.

The legislation also would give governors power to restrict new gaming and take away a tribe's power to circumvent state objections in the federal courts.

The way the bill is written, existing Indian casino operations, which generate \$6 billion a year, would not be affected.

Torricelli told reporters the bill was a reaction to the proliferation of Indian gaming establishments and the requests of 49 governors for some reforms to current law.

In New Jersey, Torricelli noted that three Indian tribes, "all within 20 miles of Manhattan" are seeking federal recognition required for casino operations.

"The consequence of not acting now," Torricelli predicted, is that "soon this industry will have in place the influences of organized crime."

USA TODAY • THURSDAY, MAY 27, 1993

Congress takes on reservation gambling

By Linda Kanemine
USA TODAY

Members of Congress Wednesday — led by big-casino states New Jersey and Nevada — introduced bills to reform gaming on Indian reservations.

The goal is to give states the muscle to regulate reservation gambling and deny games not allowed elsewhere.

"There is not a doubt in my mind a great number of (tribal) casinos are fronts for organized crime," says Rep. Robert Torricelli, D-N.J.

But Native Americans attack the move as an undisguised attempt to halt competition — and infringe on tribal sovereignty rights.

They dub the bill "the Donald Trump Protection Act" for the Atlantic City casino owner who is suing the U.S. government claiming tribes have an unfair advantage as exempt from state or local taxes.

"Mr. Trump and his friends are effectively declaring war on the advancement of American Indian tribes," says Marge Anderson of the Mille Lacs Band of Chippewa in Minnesota. In two years, her tribe's casino lowered unemployment from 45% to "effectively zero."

Native American gaming has evolved from a few bingo halls to casinos generating almost \$6 billion annually.

Tribes say their gaming in 24 states represents only 2% of the U.S. industry. But it has fueled improvements — new homes, schools and roads.

The bill will force Congress to speed up review of the 1988 Indian Gaming Regulatory Act, which forces tribes to negotiate casino contracts with states.

Several states are in court fighting. Native Americans request for slots, poker, blackjack and baccarat. Governors of every state but Hawaii and the National Association of Attorneys General want reform.

Wednesday, Arizona Gov. Fife Symington called a June 7 legislative session to repeal a statewide ban on casino-style gambling and enact compromises for tribal gaming.

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"The consequence of not acting now," Torricelli predicted, is that "soon this industry will have in place the influences of organized crime."

Casinos, with their heavy cash flow, constitute "a virtual invitation" to money-laundering, while Indian tribes don't have the resources to put in place law enforcement of the magnitude found in Las Vegas and Atlantic City, he said.

Torricelli said he believed members of organized crime barred from involvement in New Jersey's casinos by state regulators had infiltrated Indian gaming.

When pressed for details, he responded: "If you think I'm going to mention soldiers of individual families, I'm not."

Tia Wapato, executive director of the National Indian Gaming Association, said he knew of no such cases and noted that "the FBI testified last year there is no infiltration."

~~Wapato, a retired Los Angeles police lieutenant with vice and narcotics enforcement experience, said Indian gaming establishments welcomed federal law enforcement help.~~

"We want to make sure our games are clean," he said.

Wapato said the lawmakers' efforts, expressed in terms of staunching the spread of organized crime and protecting states' rights, were merely attempts to protect the casinos of Atlantic City and Las Vegas.

More pointedly, he charged that the lawmakers were doing the bidding of the man who owns Trump's Castle, Trump Plaza and Trump Taj Mahal in Atlantic City.

"What this bill looks like is economic racism," charged Wapato. "It's an attempt to forestall the economic development of some Indian tribes for the benefit of some white man in New Jersey."

He said it "tramples all over Indian tribal sovereignty," and takes away tribes' ability to raise revenues for building schools, sewer systems, and water treatment plants.

Sen. Alan Simpson, R-Wyo., a sponsor of the Senate legislation, said the proposed legislation was meant to correct flaws in the 1988 bill.

He used the example of the Mashantucket Pequot tribe that used the law to set up casino gambling in Connecticut, where such gambling is otherwise illegal.

"Our original intent was to put the Indian tribes on equal footing," Simpson said. "It was never the intent to give tribes an advantage."

The lawmakers introduced their legislation as Sens. Daniel Inouye, D-Hawaii and John McCain, R-Ariz., have been talking to governors, tribal leaders and the administration to see what modifications might be needed in the gaming law.

'The Donald' Keeps His Clout

Donald Trump may no longer be a billionaire, but he still has enough clout to get a personal audience with top lawmakers on a busy day.

Both House Speaker Thomas S. Foley, Wash., and House Ways and Means Committee Chairman Dan Rostenkowski, Ill., took time yesterday from a crucial Democratic Caucus on the reconciliation bill to meet with Trump.

"I'm just making some courtesy calls, saying hello," said Trump. But Rostenkowski said Trump wanted to discuss gambling legislation. Trump has casinos in New Jersey, and is reportedly worried that the expansion of Indian reservation gambling could cut into his business.

Rep. Robert G. Torricelli, D-N.J., who escorted Trump to the leadership meetings, later introduced legislation that would let states restrict gambling on Indian reservations. He was joined by the entire Nevada delegation and other lawmakers. A Torricelli aide said Trump's visit was unexpected.

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NATIONAL MARKET COVERAGE

TRANSCRIPT

FOR STATION WABC-TV

PROGRAM NEW JERSEY VIEWPOINT CITY NY

DATE 09/05/93 08:30AM AUDIENCE

SUBJECT

FULL TEXT

HARRY MARTIN, ANCHOR: Are they getting ready to roll the dice and take a chance on casino gambling for parts of Northern New Jersey?

That's a question that some people are asking about the Ramapo Indians and also the possibility that they want to open a gambling casino in Bergen County.

Good morning. I'm Harry Martin, and this is NEW JERSEY VIEWPOINT.

The Ramapo Indians have asked the federal government to recognize them as an Indian tribe. Now, this is a move that could mean some big bucks to a group of about 2 thousand Native Americans now living on the New Jersey/New York border near Mahwah.

Talk about gambling in the Garden State, and this is what people envision: Slots in Atlantic City. Proponents point to the glitz and the glitter along with the amount of money that gets plowed into the state treasury. But critics point to scenes like this, rundown houses and crime in the shadow of the good life and high rollers.

3 years ago one mayoral candidate painted a bleak picture.

SETH GROSSMAN, FMR. MAYORAL CANDIDATE: The take takes the money from Atlantic City, but takes no responsibility for helping us solve these problems. The welfare, the crime, the drug problems are all problems that have their roots in state policy.

MARTIN: But Native Americans say that there can be another, brighter side to gambling, and they point to this highly successful casino in Connecticut to prove it. The Foxwoods Casino may be a textbook case of success. With revenues of \$1 billion last year and estimated profits of \$140 million, the Native Americans in

Ledyard are plowing the profits right back into health care and education for the tribe. In addition, they're in the middle of a huge construction project which will make this the largest casino in the Northern hemisphere. And with casinos comes jobs.

J. MICHAEL BROWN, FOXWOODS C.E.O.: We opened this place with 2300 employees on February 15th, 1992. January 1st of this year we had 3200 employees. Last Friday we signed paychecks for 4,370 employees. By the end of the year we'll have in excess of 8,000 employees.

MARTIN: And about 30 miles East of Syracuse, here in Verona, the Oneida Indians are in the process of opening up a similar casino. Many local residents say that they welcome the employment opportunities that come along with gambling and the Indian casinos.

JEANNETTE BROWKA, TOWN COUNSELOR: You can't turn your nose up at two thousand and three thousand jobs. A lot of these jobs are gonna be well-paying jobs. \$40 thousand a year? That's very good.

MARTIN: So, why not the Ramapo Indians? Why is there so much controversy over their trying to get federal recognition as an Indian tribe? And what's so bad about more casinos in the state of New Jersey?

In just a moment we'll meet 2 New Jersey legislators who can answer some of those questions. Stay with us.

* * *

MARTIN: And welcome back to NEW JERSEY VIEWPOINT. I'm Harry Martin, and we're talking about casino gambling and the Ramapo Indians this morning.

We want to point out that we asked a Ramapo representative to join us in this discussion this morning. But they declined.

But joining us this morning:

Congressman Robert Toricelli, who once supported the Ramapos and the Indian casino gambling. Now he opposes it.

Also, Congressman Donald Payne, who has joined a number of other Congressmen in New Jersey in supporting the Ramapos in their fight for recognition as an Indian tribe.

And joining us from the Eyewitness News Room is John Holder. He is a member of the (UNCLEAR) Pequot Indians in Connecticut where they have just opened a new portion of their Ledyard Casino.

Thank you all for joining us.

What's wrong with casino gambling, Congressman Toricelli?

REP. ROBERT TORICELLI (D) NEW JERSEY: Well, I suppose, something that you said in your introduction best summarizes it. Like many in New Jersey, I once supported the Ramapos getting a fair hearing on the question of whether they should be recognized as a tribe.

When it became clear that what they're really after is to open an unregulated, untaxed casino in Northern New Jersey, under the guise of this tribal recognition, I, many others, opposed it. We do not need a casino in Bergen County without any regulation, which, I think, is a magnet for the kind of organized crime infiltration that we so successfully have kept out of Atlantic City.

MARTIN: Congressman Payne, why is that not right? Why do you disagree with that?

REP. DONALD PAYNE (D) NEW JERSEY: Well, I think that the Ramapo Indians are asking for recognition as a tribe. They've been recognized by the state of New Jersey, the state of New York a decade ago. They have been recognized by the Bureau of Indian Affairs Educational component of its national government.

I think that we're mixing apples with oranges. I think that the Ramapos have asked that their heritage be recognized, that they are able to benefit from educational issues. They're able to benefit from job opportunities, economic development, which all goes along with recognition.

I think the question is: Are they, in fact and indeed, a legitimate Indian tribe, because they have shown documentation for hundreds of years.

MARTIN: Well, certainly, that's the face of the debate. I mean, I think, everybody agrees that they should have a right to some sort of recognition. The rub seems to come when we talk about gambling and their opening a casino. Do you agree that they should be able to open a casino?

PAYNE: Well, I am not dealing with casinos as this point, opening a casino, or not opening a casino. I think that their civil rights are that they should be entitled to whatever any Indian tribe in the United States of America is entitled to.

I have not seen where they said, as my colleague indicated, that they want this recognition in order to open up a gambling casino, because recognition was asked for 9 years before the national Indian Gambling Commission was even created.

(OVERLAPPING VOICES)

TORICELLI: I think this is the evidence, that in 1979, the Ramapos applied to be an Indian tribe, and they were rejected by the Bureau of Indian Affairs. They were rejected because under the federal law there's a standard that has to be met. That standard is there must be a distinct, separate, Indian society, with a community that has elected leadership.

I've lived in Bergen County all my life. I would defy anyone who lives in the county to find me the distinct Ramapo Indian community that lives in Bergen County. I don't know where it is.

Now, the question then becomes: When they lost in 1979, they were dormant for a period of years. They came back after 1988 when the casino operations were opened by the federal courts, and those who were recognized as tribes were able to get casino licenses. That's why they're back.

MARTIN: Well, you bring up an interesting point. Let me get John Holder in on this, because John, if I'm not mistaken, as far as the (UNCLEAR) Pequot Indians are concerned, in Ledyard, I believe that there were only 2 remaining members of a tribe, when this, when you got the ball rolling for your casino. Is that correct?

JOHN HOLDER, FOXWOOD CASINOS: Well, there was 2 remaining members left, living in the reservation, and that came from--

MARTIN: I'm having trouble hearing, John, right now. Maybe we can correct that.

HOLDER: Can you hear me now?

MARTIN: John, can you hear us?

HOLDER: I can hear you. Can you hear me?

MARTIN: I believe there were only 2 members of the tribe left when you started the ball rolling there.

HOLDER: There was 2 members remaining, living on the reservation. That's true. And the reason for that was that over a period of years, other members had to leave the reservation to go and seek employment in other areas. Also, housing was an issue also, because there was difficulty in receiving bank financing to put a house on an Indian reservation.

MARTIN: Okay. So, what does this all mean in terms of New Jersey? I mean, do we get down to a debate here that, that we're either pro or con, in terms of gambling?

PAYNE: Like I said before, I think the issue right now, and I think that the letter that was sent back from Secretary of the Interior indicated that the question is not gambling. The question is whether this Indian tribe is duly certified, certifiable to be a legitimate Indian tribe. That's the issue.

TORICELLI: But we can't separate that from the reality, though, that if they're recognized--

PAYNE: Oh, we can separate it.

TORICELLI: --they're gonna come back and open a casino.

PAYNE: That's like saying (OVERLAPPING VOICES)

TORICELLI: ...and under the federal courts...

PAYNE: ...before you're innocent. How are you gonna based someone based on some other criteria, when this would be the first Indian tribe in the United States of America that was stopped because someone felt that they might want gambling? Now, I'm not (OVERLAPPING VOICES)

TORICELLI: ...everywhere across the country is now trying to stop these recognitions, because, indeed, if they get recognized, they will immediately be back in federal court and get recogni-- recognition to open a casino in Bergen County, which we don't want.

Our state ad a debate 15 years ago, and we decided that if we were going to have casinos, we wanted them in Atlantic City only so we could contain them. We wanted to tax them, which we do. We wanted to ensure that they were protected from organized crime. You open an Indian casino in Mahwah, and it will become the kind of money-laundering operation, tied up with organized crime families that we'll never be able to control.

(OVERLAPPING VOICES)

MARTIN: Is that really the case? I mean, is that a foregone conclusion? I mean, is there, I mean, we have a case in point in Connecticut, and is there organized crime involved at that particular casino?

TORICELLI: Well, there's 124 Indian casinos now in America, 124. Whether or not they're legitimate, whether or not they're tied up with organized crime, to a large extent, we don't know, because there are 24 regulators looking at 124 casinos across this country.

In Atlantic City alone, there are 12 casinos. We have 984 regulators. 3 organized crime families in Florida, California, and

now in Minnesota, with the Genovese crime family, have already been found to be involved in Indian gaming.

The firm that has been hired by the Ramapos to lead their application in Washington, now for recognition, later for casino gaming, the former president has already been indicted in California on a racketeering scheme, including involvement in organized crime.

MARTIN: Okay, John, how do you--

TORICELLI: So, the danger is hardly theoretical.

MARTIN: Okay. John, how do you keep organized crime out of the casinos in Connecticut? How can everybody be absolutely sure there's no organized crime involved in gambling operations there?

HOLDER: Well, operate under a compact agreement with the state, and the state and the tribe both agreed on regulations. There's the State Gaming Revenue, the Department of Special Revenue that monitors the operation, and we have our own gaming commission that monitors all the operation. And I think one of the issues that makes that free from organized crime is the fact that all employees of casino come directly under the tribe. We don't hire out to a management contract agreement with anybody. They're all (INAUDIBLE)

TORICELLI: In most of these cases across the country and, I assume, in the case of the Ramapos, people think that we're helping Indians by having casino gaming. But, in fact, like, in this instance, what is really happening is the Indians are just signing a contract with someone from New York or Los Angeles (OVERLAPPING VOICES)

MARTIN: And you're saying that they turn it over to somebody else.

TORICELLI: And often that becomes someone infiltrated by organized crime.

PAYNE: When an Indian tribe becomes recognized, that doesn't mean they start building a casino. I think Congressman knows that. They have to enter into a contract with the state of New Jersey, must be approved by the state of New Jersey, and then on to the Bureau of Indian Affairs, which has to then approve whatever is the contract that is agreed to between the state and the Indian tribe.

And, so, once again, and secondly, I understand that there was some management group that was involved originally. But over 2 years ago. Our record indicates that they're no longer involved. So, that's old news.

MARTIN: Okay. Would you be in favor of, of gambling, Indian casinos in Northern New Jersey?

PAYNE: I have no position on it yet. I would certainly have to study it. I'm not opposed or in favor of it. Right now, my only entrance into this whole debate was I felt that a group's civil rights were being violated. I thought that they had documentation to show that from 1700s on, they've been living in this area. They have death records and tax records and genealogical records to show that that's where they've been, and they are reapplying for a license to (OVERLAPPING VOICES)

MARTIN: Let me rephrase the question.

PAYNE: But the other, but the other thing that's important is that it's not uncommon for an Indian tribe to be rejected. I think it's a very complicated issue. As a matter of fact, none of them ever get it on so-called the first shot. They have to go back. They have to get more material.

So, it's not uncommon, and I'm not sure that they stopped their--I have not been told that in 1979, when it was rejected that they therefore said: We don't want to be recognized anymore.

MARTIN: If the Ramapos came to you and said: We want recognition and we're going to open a casino as soon as we get it, would you still support the recognition?

PAYNE: Something I would have to consider. But I'm not opposed to them being recognized. I mean they're two different issues.

TORICELLI: As you know, I posed that question to the Ramapos. The Ramapos came to me as someone who previously was sympathetic to them, and I said to them: If you will tell me that you're not going to open a casino, I'll be glad to help. To their credit, they wouldn't lie. They told me that, indeed, they wanted to keep that option of opening a casino.

This idea that they're also applying for Indian recognition so that they can get health and education benefits, Marge Roukema and I both have gone to them in the past and offered to help them get federal benefits for them. They've never even taken us up on it.

That's not their interest. They've got one interest. They want an unregulated, untaxed casino. And I don't blame them for trying. This could mean millions of dollars. But if they get it, it will be an outrage.

PAYNE: Marge Roukema condemned them for coming to her for assistance. On a TV show we had 2 weeks ago. Making it like it

was unusual. So, you know, I get mixed signals when I talk with her and then talk with you, because she said they'd been at her office on a number of occasions. So, I don't know when this offer to help and the way to go for the benefits is to be recognized as an Indian tribe, rather than to try to get specific help for a particular group. When they're recognized, these benefits come to them automatically.

MARTIN: John, how important is it to have this kind of recognition that we're talking about in terms of recognition of a tribe, as a people? What does it mean to you?

HOLDER: Well, it allowed us to come under the Bureau of Indian Affairs, and it helped us to put together programs for our people. As far as the fact of a casino, we tried other ways first of trying to regain economic values. We tried restaurants and actually hydroponic gardening and all that and there just wasn't the revenue to operate on our government. And right now we're able to help our people with health benefits and educational benefits. But the casino, as long as it's regulated properly, which ours is, we have strict regulations we operate under with the state and all employees and all vendors go through a rigorous disclosure form, and that's all done through the state, and that's part of our compact agreement.

MARTIN: What kind of advice would you give to the Ramapos in order to get this kind of recognition? And if they want to, what kind of advice would you give them to start up a casino? Would you be in favor of that?

HOLDER: I, myself and my tribe, we support any Indian tribe that wants to economically improve themselves. Advice, my advice would be to be cautious as far as entering into a management agreement. They should establish their own leadership as far as management within a casino, and that the tribe should be the deciding factor for all decisions. Our casino's operated by Michael Brown. He's our CEO, and he runs the day-to-day operations. But he also weekly reports to the tribe, and he gets all of his directions from them.

MARTIN: Okay. And how much benefit do you think the tribe has gotten out of this whole arrangement?

HOLDER: Well, the tribe has gotten a lot of benefit obviously, financially. It's also allowed the tribe once again to put all of its members to work and to be able to keep its government operating and actually to rebuild our community.

It goes farther than that, though. There's also the effects in the entire region. The region that we're in is, was financed primarily by the development of the weapons, which are now, because

of the decline of the Cold War, doesn't seem to be important anymore.

But what it did was, we currently now employ over 4500 employees. We're putting our \$95 million a year payroll out. There's probably 30 or 40 million dollars in vendor supplies and services.

So, it's not just the tribe that it's helping. (OVERLAPPING VOICES)

MARTIN: ...not just important for Native Americans. What is wrong with that (OVERLAPPING VOICES) on the face of it, like a pretty decent deal.

TORICELLI: What does this say about our society? We're going to take an individual racial group and tell them: Well, you have the right to operate an industry outside of the law. You'll have a right to operate an industry that won't be available to anybody else of any other racial or ethnic group. What kind of a society is that (OVERLAPPING VOICES)

MARTIN: Charities were able to do it before the federal law was passed in 1988. That was the basis of the whole law.

TORICELLI: (OVERLAPPING VOICES) You're wrong. What the federal court decision was based on is that the federal court said that if states allowed, as the actual case was, the Catholic Church to run a Las Vegas night for charity, one night a year, therefore, Indian tribes had to be allowed to have professional casinos 365 days a year for profit.

That was not the intention of the Congress, and that's why the Congress, I think there'll be an effort this year to correct it. The federal court's knocked a hole in it. And what we are left with is that contrary, I believe, to sound principle and constitutional law, we are setting up a racial group that has a distinct right to operate an industry that is not available to any other American.

It would be as if we went to people of African-American origin and said: You can operate the auto industry or the airplane industry. And we won't tax you and we won't regulate you, because of your race. This is no way to run a country.

And I'm glad that the community is able to rebuild itself and, indeed, it's been necessary because Indian tribes in this country have been ignored for so long. But this is no way to do it. It's dangerous to society. And although there are agreements with Connecticut for some inspection, do not have the impression this is similar to Las Vegas or Atlantic City. Federal bankruptcy laws, anti-laundering laws, the background checks, FBI checks, the

things that have kept Atlantic City clean do not exist in many or all of these tribes.

PAYNE: I think that the Congressman kind of answered his own question. He said: What kind of society is this that would say this group should have this special privilege? I think we have to evaluate why has the federal government decided to give the American Indian this kind of consideration. I think we have to just review history. I think it's something that we've taken people's land. We've taken them and marched them from the East Coast all the way to the Midwest where most of them died on the Long March, which we don't read about in history books. But sometimes we ought to do that.

And, so, now they're trying to give a little special help to a group that for 300 years had been denied...We take you up on that auto--automobile business for African-Americans, because there should be some consideration for that, too.

But my position is that if it's (OVERLAPPING VOICES)

TORICELLI: ...one I'll come up with for Italian-Americans. We'll all come up with...

(OVERLAPPING VOICES)

MARTIN: ...we're gonna take a real quick break here. We'll be back in just a second.

TORICELLI: All right.

MARTIN: Hang on. Hang on to that thought. We'll be back in just a moment. Stay with us.

* * *

MARTIN: Should there be casino gambling in Northern New Jersey? And should the Ramapo Indians have the right to open casinos? That's what we're talking about this morning.

I think we left off with you, Congressman Payne, about this. You're saying that this is more a civil rights issue than anything else?

PAYNE: I think so. I think that if they are certifiable and if the Bureau of Indian Affairs find that all of their records indicate that they should have the right to be declared an American Indian group, I think they should.

The thing that's interesting, though, is you get a man who came over to New Jersey, Donald Trump from New York, who decided that the free-enterprise system which he profited by tremendously

shouldn't go for other people evidently, because he sued the Department of the Interior to stop this Indian recognition for gaming. I think that that's unfair. I think that the whole question of whether people are entitled to something once they're recognized is a second issue. But for someone who's benefitted so much, to try to stop a small group of people from gaining their recognition I think is totally wrong.

MARTIN: John Holder, let me just ask you. Are you concerned at all if there is Indian casino gambling in Northern New Jersey, do you think that's going to bite into any of your profits, any of the people coming up to Connecticut? Are you concerned about that at all?

HOLDER: We don't really have concerns that's going to take a bite out of our profits. I believe that there's enough gaming to go around for everybody that chooses to have gaming. One of the things I keep hearing is that there's no taxes paid on the gaming revenues. There are a lot of taxes, primarily on sales and use and, of course, the property taxes that try to buy outside of their reservation lands.

But one of the things that we were looking at when the state was first opposing us was that the state also already had gaming within the state, such as jai lai and dog tracks and state lottery and all, and the question that comes to mind is how much of that they pay in income tax to Uncle Sam. I believe, none.

MARTIN: Okay. (GARBLED) Toricelli?

TORICELLI: Well, it's said that Atlantic City doesn't want the competition. In fact, free and fair competition is what everybody would welcome. But that's not what we're talking about here. We're talking about taking one racial group in this country and giving them an industry that is not available to any other person in the country. It is not regulated. There are none of the protections against infiltration by organized crime that we all fear.

And for those of us in New Jersey, the stakes couldn't be higher. This is a \$600 million industry. That's what it provides in revenue, in taxes to the state of New Jersey. Hires 75 thousand people, many of the minorities, without other opportunities. A \$7 billion investment.

What Donald Trump or other operators remind us, their loss, if we allow an unregulated, untaxed competition on Indian tribes, is our loss. Those tax dollars today fund the pharmaceutical fund for senior citizens, fund institutions for the state of New Jersey, fund 5% of New Jersey's budget. If we lose it, that money has to be made up by real-estate taxes, state income taxes. Their loss is our loss. That is why, I think, we've got to stop the Ramapos from

getting this recognition, or they're gonna get a casino, sure as you're sittin' there.

MARTIN: Okay, John Holder from the (UNCLEAR) Pequot Indians, we thank you, sir, for joining us this morning. Congressman Robert Toricelli, we thank you. And Congressman Donald Payne, we thank you very much for joining us about this discussion of the Ramapo Indians, and should they have the right to open casinos in Northern New Jersey.

My name is Harry Martin. Thank you for joining us this morning.

(END)



economic development and employment security for thousands of Indian and non-Indian people... all at no state expense. In fact, tribal governments are hiring thousands of people, many of whom were formerly unemployed. At the same time, Indian Nations are contributing millions of dollars to their local (often non-Indian) communities. This is a win-win situation.

Through the government to government relationship, which has existed in its present form since the 1830s, we responded to Senator Inouye and Senator McCain's call. We have met in good faith to attempt to resolve the differences among the states as sovereigns and the Indian nations as sovereigns in a legitimate and earnest way. We fear that history may once again be repeating itself at our expense.

We call upon you as a statesman and peacemaker to learn from us about the particular tribal concerns. We ask that you hear from our lips the realities of the reservations and the realities of the reservations the benefits brought to the Indian nations and the states where Indian gaming is conducted. We hope that you will feel moved to exert influence to save this unique governmental enterprise before we all lose... at the national, state, and Indian nation levels.

Thank you for your consideration. We anxiously await your response. Please contact Francine R. Skenandore at the Wisconsin Oneida Nation office (414-869-4360), or call Tim Wapato at our National office (202-546-7711).

Sincerely,

Richard G. Hill
Chairman



Chairman
Rick Hill
Cheida Tribe of Indians

Vice Chairman
Daniel Tucker
Arcuan Band of Mission Indians

Treasurer
Nathan Small
Shoshone Bannock Tribe

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Norma Manzano
Serrano Band of Mission Indians

Philip Martin
Mississippi Band of Choctaw
Indians

Clinton M. Pattee
Fort McDowell Mohave-Apache
Community

Mark Van Norman
Cheyenne River Sioux Tribe

Executive Director
S. Timotny Wapato
Colville Confederated Tribes

Public Relations Director
A. Gay Kingman
Cheyenne River Sioux

The Honorable William Jefferson Clinton
The White House
Washington, D.C. 20003

September 29, 1993

Dear Mr. President:

This letter is written to formally request a meeting with you to personally discuss the status of Indian gaming and particularly the impact of current events on this most important economic issue. Although we recognize and appreciate the personal attention which you must give to health and other pressing issues, please recognize that to us, gaming is the vehicle through which we are able to address many of the same concerns which you currently face at the national level.

As you know, we have been involved in a negotiation process with representatives of the National Governors Association and the National Association of Attorneys General, facilitated by Senators Inouye and McCain. This process was undertaken to rectify misunderstandings surrounding the Indian Gaming Regulatory Act and to clarify legal interpretations allowing our industry to continue to exist and ideally grow toward a self sufficient future. For six months we have honored the boundaries set out by the good Senators and it has been reported to us that those at the table have indeed reached agreement on most items. We have also recently learned however, that a distinct minority (we understand 5) governors are now attempting to cut from the process and undercut a successful outcome.

As you know, gaming, when there has been good faith and compacting, has demonstrated itself as the first viable economic resource since the decimation of the buffalo. This resource allows tribal governments to build health centers, schools, roads, sewer systems; to provide improved housing and social services; and to diversify and offer sustained

THE WHITE HOUSE

WASHINGTON

October 1, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco
SUBJECT: Indian Gaming

As I mentioned to you last week in our brief meeting on the Tennessee health care issue, we needed this week to discuss the issue of Indian Gaming. Because a briefing session for me never materialized I am submitting this information to you before you go to California as you got a question on Indian Gaming the last time you were in California and also, the attached invitation has come to you this week from the National Indian Gaming Association (NIGA) and has been forwarded to the scheduling office.

The reference in the invitation to only 5 governors now undercutting the process is incorrect. The governors as a whole have reached a decision that it is impossible to place a national solution on this issue and this week asked the tribes to agree to a one year cooling off period between both sides and in the meantime, while solutions to the gaming problems were sought the governors would put on a serious seminar, summit, whatever on economic development for Native Americans. The Indians at last word have declined and Inouye is expected to put in a bill very soon. There is far more detail to all of this we should discuss and Howard Paster should be with us as he and I recently visited Senators Reid and Bryan on this issue.

The Native Americans for Clinton-Gore are having a one day meeting in DC next week and this issue will come up there as well, very likely.

Again, we should discuss this early next week when we are both back in town. In the meantime, you should glance at some of this (in particular the invitation and the memo prepared per your earlier request by my staff which you and I have had no briefing time to go over) and give as answers to any questions you receive that the issue is under thorough review. In truth, the issue is a mess.

cc: Presidential Scheduling (with copy of attachment)

THE WHITE HOUSE

WASHINGTON

October 1, 1993

MEMORANDUM FOR CAROL RASCO

FROM: Donsia Strong,
Michael Schmidt

RE: Indian Gaming

This memorandum summarizes background information and issues surrounding Indian gaming.

BACKGROUND

Indian Gaming Case Law Pre-1988

As state lotteries began to proliferate in the late 1970s, several Indian tribes in Florida and California began raising revenues by operating bingo games offering larger prizes than those allowed under state law. When the states threatened to close these operations, the tribes sued in federal court, contending that state bingo laws were civil/regulatory in nature, and thus were not within state enforcement jurisdiction (the Supreme Court has interpreted Federal law to grant states broad criminal jurisdiction but more limited civil jurisdiction. Bryan v. Itasca County, 426 U.S.373 (1976)).

Of these court cases, two had a large impact on the issue of Indian gaming. In Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981, *cert denied*, 455 U.S. 1020 (1982)), the Seminole tribe constructed and operated a \$900,000 bingo hall on its reservation. Florida state law strictly regulated the operation of bingo halls permitting operation no more than two days a week and capping jackpots at \$100. The Seminole's facility operated every day of the week and set no cap on jackpots. The county sheriff announced his intent to enforce the law by making arrests in case of violations, whereupon the tribe sought an injunction.

The parties agreed that the case turned on whether the statute was civil/regulatory or criminal/prohibitory. If the statute were civil/regulatory the statute could not be enforced against the tribe.

The court rejected the narrowly drawn distinction of civil/regulatory or criminal/prohibitory as inappropriate and stated that the public policy of the state should be considered; otherwise the mere inclusion of penal provisions would provide criminal jurisdiction over what would otherwise be considered an exercise of regulatory authority. The court concluded that bingo was one form of gambling that the legislature had the power to prohibit or regulate, and because the legislature decided to regulate rather than prohibit the

bingo, conducting bingo was not against the public policy of the state. The court held that Florida's statute could not be enforced against the tribe.

In a second case, California v. Cabazon Band of Mission Indians, 480 U.S. 201 (1986) two tribes sued Riverside County, California arguing that the county had no authority to apply its ordinances inside the reservations. At least one of the tribes operated a card club and each conducted bingo games on its reservation. State law did not entirely prohibit playing bingo, but rather, highly regulated the games. However, state law did prohibit certain card games.

The Supreme Court held that because California permitted a substantial amount of gambling activity, including bingo, and promoted gambling through its lottery, the state regulated rather than prohibited gambling.

This case opened the door for a dramatic expansion of Indian gaming. At the same time, all parties with interests in gambling on Indian land (tribes, states, and the non-Indian gaming industry) sought legislation which would protect their interests. During 1983 – 1988, no fewer than seven bills to regulate gaming on Indian land were introduced. A three year search for compromise legislation resulted in the Indian Gaming Regulatory Act of 1988.

The Indian Gaming Regulatory Act of 1988 (IGRA)

Congress enacted IGRA to provide a legal basis for the operation and regulation of gaming by Indian tribes. It represents a compromise that provides a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government while maintaining the sovereignty of Indian tribes and states alike. IGRA requires all profits from tribal gaming activities be used for tribal governmental purposes (social services, rebuilding infrastructure, etc.).

The Act divides gaming into three broad categories: Class I; Class II; and Class III; and further outlines a regulatory scheme that apportions regulating authority between the federal, State, and tribal governments:

- **Class I** gaming (social games or traditional tribal games played in conjunction with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes.
- **Class II** gaming (bingo, pull-tabs, and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission (a three-person regulatory agency administratively located within the Department of Interior).
- **Class III** gaming (all other gaming, including horse racing, dog racing, blackjack, roulette, slot machines, lotteries, and craps) can be conducted only after an appropriate tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

IGRA also establishes within the Department of Interior the three member National Indian Gaming Commission. The Chairman is appointed by the President and subject to Senate confirmation. The other members are appointed by the Secretary of the Interior. At least two of the members must be members of an Indian tribe. At present, the term of the current Chairman has expired. The Commission has broad powers to monitor and approve most Class II and III gaming.

IGRA sets forth the jurisdictional and regulatory scheme for each class of gaming. Key are the provisions which relate to Class III gaming. In order for a tribe to conduct a certain type of gaming, the gaming activities must be "located in a state that permits such gaming for any purpose by any person, organization or entity." Class III gaming must be "conducted in conformance with a tribal-state compact entered into by the Indian tribe and the State." Tribes are required to request that states negotiate with them to reach a compact. Upon receiving such a request, states must negotiate in good faith to enter into a compact.

IGRA's reliance on tribal-state compacts rather than a clear definition of the roles of all parties with respect to Class III gaming has resulted in protracted and complicated litigation. Even during the floor debate of the bill which became IGRA, members held differing views of the compact process and what was included.

In addition to litigation regarding the scope of Class III gaming, an increasing number of states have refused to negotiate any Class III gaming compacts with Indian tribes and have asserted the Eleventh amendment as a defense when sued. Senators Inouye and McCain have expressed their displeasure with this tack in a letter to Governor Ashcroft a few years ago in his position as chair of the National Governors' Association. Their letter suggested that, perhaps, the federal government should negotiate the compacts and provide comprehensive federal regulation of Indian gaming.

STATUS OF CONGRESSIONAL REVIEW OF IGRA

Congressman Richardson's Subcommittee on Native American Affairs held hearings in April on IGRA, during which several Members of Congress, Governors, and tribal leaders testified. Additionally, Senator Inouye has been holding regular meetings with interested parties, and brought all sides together to discuss Indian gaming in early June.

Current Status of the Inouye Process

In July of this year, Senator Inouye set into motion a government-to-government dialogue process between states and tribes intended to produce compromise amendments to IGRA that both sides can live with. The results of this process, which have been outlined in a recent state/tribal draft set to be announced on October 19, may resolve four major areas of disagreement:

- **The scope of tribal gaming.** The question of which types of Tribal gaming should be allowed is a major area of dispute. States would prefer to limit tribal gaming to only those types of gaming that are specifically allowed by state law, while tribes are pressing for a broader interpretation more along the lines of the Cabazon decision that would allow both parties more room during the compact negotiation process.
- **Regulatory oversight.** Regulatory oversight of tribal gaming must be assigned to either the states or the Federal government -- not both.
- **Mediation processes.** A mediation process needs to be devised to deal with the breakdown of compact negotiations between states and tribes. A key issue in this area is the role of the Secretary of Interior as the final arbitrator in any mediation process.
- **The use of off-reservation lands for gaming purposes.** States would like to prohibit gaming regulated by IGRA on any lands that are not part of a Federally recognized tribe's reservation. Tribes support the current interpretation of IGRA which allows the establishment of gaming activities on territory acquired by tribes that is outside of their reservation.

There are obvious problems with some of the proposals contained in the current state/tribe draft. The concept of limiting Indian gaming to "game specific" operations is very unfair. Tribes should have the same opportunity as states for economic development. States vigorously oppose this concept. In addition, regulatory oversight should not be removed from the states. If the federal government is charged with general regulatory review the states will have little incentive to negotiate gaming compacts. Lastly, it is probably a mistake to make the decision to take impasses to the Secretary of the Interior. Again, the parties should be encouraged to negotiate compacts with the Secretary being the least attractive alternative to a stalled negotiation.

Proposed Amendments to IGRA: The Reid and Torricelli Bills

In late May of this year, a legislative proposal to amend to IGRA was introduced in the House by Representative Torricelli (D-NJ), and in the Senate by Senator Reid. These two bills, which were introduced on the same day and are almost identical, have emerged as the foremost alternative to the Inouye process.

The Reid and Torricelli bills can be interpreted as taking an extreme position on the side of the states in the debate over Indian gaming. If enacted, the bills would severely restrict the types of gaming that tribes could pursue and increase the power of states over tribes in a number of ways, most notably:

- **Restrictions are placed on Indian gaming.** IGRA allows gaming on Indian lands if "such gaming" is allowed in the state. Courts have interpreted this to mean that gaming can take place in a state that only allows such gaming as a part of a charitable event ("Las Vegas Nights" for charity, etc.). The Reid/Torricelli bills would prohibit tribal gaming unless the specific games and methods of play are expressly authorized by the laws of the state as a part of a commercial, for-profit business enterprise. This prohibition would likely exclude tribes from doing most types of gaming in almost every state.
- **Incentives for states to negotiate compacts with tribes are removed:** The Reid/Torricelli bills would reduce the incentive that the states have to negotiate compacts with tribes in two ways: by forbidding a Tribe from suing a state and; by placing the burden of proof on the tribes and the federal government to show bad faith by a state in compact negotiations. Furthermore, if a state refuses to enter into compact negotiations, the tribe is still restricted to only those games and methods of play expressly permitted by state law.

In addition to the actions outlined above, the Torricelli bill takes additional measures to weaken the tribes' position in relation to the states by placing a moratorium on any further Indian gaming until the Secretaries of Interior and Treasury and the Attorney General certify that all regulations implementing IGRA are in place. Given the fact that current IGRA regulations took almost five years to implement, this measure virtually guarantees that no additional gaming will be allowed in Indian Country for a number of years.

CONCLUSION

The current tone of the Indian gaming debate has become extremely negative and is cropping up in discussions that are arguably only tangentially related to gaming but involve Indians. We have attached copies of advertising, Dear Colleagues and talk show transcripts that illustrate this point.



A DIALOGUE WITH DONALD TRUMP ABOUT AMERICAN INDIAN PEOPLE

Talkshow Host Don Issue: "So what is this now? A bunch of these drunken Indians want to open a casino down there in New Jersey?"

Mr. Trump: "A lot of the reservations are being, in some people's opinion, at least to a certain extent run by organized crime and organized crime elements, as you can imagine. There's no protection. There's no anything...it's become a laughing joke."

"General George Custer was against Indian-operated casinos) also and look what happened to him."

"They call it a nation, this great sovereign nation, the Indian tribes. All of a sudden, it's nations,

Before it wasn't a nation, before gambling. Now it's this great sovereign nation. We protect, we do this, we do that, but when it comes to gambling it's a sovereign nation."

"I think I might have more Indian blood than a lot of those so-called Indians that are trying to open up the reservations. I looked at one of them...I said to him, 'I think I have more Indian blood in me than you have in you.'"

Issue: "A couple of these [Connecticut] Indians look like Michael Jordan, frankly."

Trump: "I think if you've ever been up there, you would truly say that these are not Indians."

Trump: (On whether to marry Maria Manies). "Maybe in traditional [tribal ceremony] would be the best way to do it. That way, it wouldn't be an authorized marriage."

Broadcast excerpts from "Issues in the Morning"
WFAN-AM New York, June 18, 1989

Dear Mr. Trump:

Last month you launched a lawsuit and a lobbying campaign, seeking to destroy the 1988 Indian Gaming Regulatory Act because you claim that tribally-sponsored gaming operations place you at a "competitive disadvantage."

Yet last week, in a New York radio interview, after sharing your views on Indian people (see above), you couldn't resist noting that all your Atlantic City casinos were doing "record business." You said one of them alone, the Taj Mahal, made "a gross operating profit of 14 million dollars" — (twice projections — in one month!

We're confused. You seem to be, too — about Indian people, our history and our sovereignty. So here's a free education:

On Indian reservations: You know how eviction works — well that's what happened to us, long before you were given your first million. We were forcibly moved to reservations, many remote and unsuitable for office-condo towers or any form of sustained economic development — until tribal gaming.

On tribal sovereignty: We lost our homelands — but we kept our dignity and our inherent sovereignty, which is enshrined in the Constitution, dozens of federal laws and numerous treaties (we made sure of that — just call it "the art of the deal.")

On tribal government: Your claim that reservations are "run by organized crime" doesn't square with what the U.S. Justice Department Criminal Division's Senior Counsel told a Senate Committee in March of 1992: "The perception...that Indian gaming operations are rife with serious criminality does not stand up under close examination...to date there has not been a widespread or successful effort by organized crime to infiltrate" them. The truth is, tribal governments are run by popularly elected leaders who embody the hopes, aspirations and frustrations of their people.

On tribally sponsored gaming: Indian gaming amounts to just 2% of the total U.S. gaming industry — but it's become the primary engine of new jobs and economic growth for hundreds of communities across America.

The Act you're out to destroy, mandates that Indian gaming proceeds go for public needs. This may be hard for you, but try to picture living in one of America's poorest communities: without adequate health clinics, clean drinking water, safe roads, sturdy housing, or permanent schools. Without self-sufficient local economies.

That's where most of us live, Mr. Trump. No yachts. No jets. No Palm Beach mansions or Fifth Avenue penthouses.

But we have our identity — our heritage and culture, our pride in what it means to be First Americans — and that's no joke, sir.

And in Indian gaming, we have a proud right and proven resource — a last, best chance to build a good future for ourselves and our non-Indian neighbors.

You might ask yourself whether making another million a month, justifies trying to take that future away from our Indian children.

Sincerely,

Rick Hill, Chairman
NATIONAL INDIAN GAMING ASSOCIATION

SEP 9 '93 10:24

PAGE .002

ROBERT G. TORRICELLI
9TH DISTRICT, NEW JERSEY

COMMITTEES:
FOREIGN AFFAIRS
CHAIRMAN, SUBCOMMITTEE ON WESTERN
HEMISPHERE AFFAIRS
COMMITTEE ON SPACE AND TECHNOLOGY
SELECT INTELLIGENCE



Congress of the United States
House of Representatives
Washington, DC 20515-3009

September 7, 1993

SEP 08 1993

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ibbe's 'World's Largest Casino' causing stir
S.NEWS
gambling with the mob?
LAS VEGAS SUN

U.S. News & World Report's 'World's Largest Casino' causing stir

S. NEWS

LAS VEGAS SUN

Gambling with the mob?

These guys have set their sights on the booming Indian casino business

Clearer Rules for Tribal Gambling

THE NEW YORK TIMES EDITORIALS

Dear Colleague:

As these headlines show, communities across the country are being threatened by an enormous proliferation of casino gambling. These casinos are located on Indian lands but often financed by outside investors with questionable backgrounds. In fact, U.S. News and World Report recently published a story that pointed to ties between organized crime and some tribal casinos.

The 1988 Indian Gaming Regulatory Act attempted to strike a balance between overlapping jurisdictions of the states, the tribes, and the federal government. Unfortunately, that delicate balance has been upset by court interpretations that have compelled several states to reluctantly allow casinos within their borders.

The spread of Indian gaming is happening despite the fact that local officials do not have the resources necessary to provide reasonable law enforcement protection for their communities and the Indians themselves. A recent Interior Department report stated that Indian gaming operations are being conducted "with minimal or no effective oversight" from the federal government. In fact, the federal government spends just \$3 million for 24 regulators to oversee more than 200 legal and illegal Indian gaming establishments across the country. In stark contrast, my home state of New Jersey spends over \$50 million for 985 regulators to control 12 casinos in one small city.

I recently introduced H.R. 2287, the Gaming Integrity and State Law Enforcement Act of 1993. This legislation would restore stability and reason to Indian gaming law and curb the unchecked proliferation of Indian-sponsored casinos across the country. This is not an anti-Indian bill, and it would not outlaw Indian gambling. It would simply restore the compromise that Congress intended to codify in 1988. State officials would once again have a say in whether gaming should take place. Indian casinos would be subject to at least minimal oversight and regulation.

A summary of this legislation appears on the back. If you are interested in cosponsoring H.R. 2287, or if you would like additional information, please call Michael Davidson of my staff at 5-5061.

Sincerely,



ROBERT G. TORRICELLI
Member of Congress

RGT:mid

cc

THE WHITE HOUSE

WASHINGTON

TO: Mack McLarty
Roy Neel

FROM: Carol H. Rasco

SUBJ: Indian Gaming

DATE: October 5, 1993

Attached is a briefing packet I prepared for the President prior to his California trip. I am deeply concerned that we all coordinate on this issue as it is a fire quickly raging out of control. I have been with the President in meetings with governors and my staff has met numerous times with representatives of the tribes. As noted in my cover memo to the President, the negotiations between the Governors/AG's and Indians have broken down as it currently stands.

The memo by Donsia and Mike was originally prepared at the President's request of me earlier in September. I then had only about 7 minutes of briefing time total in three weeks, always seeming to get put off or squeezed out. The time I did have with the President was spent on the fire of the time, in one case, the Tennessee waiver. I plan to bring Donsia with me on Wednesday, October 6 and we hope to cover Indian Gaming, immigration and the Crime Bill among other issues. Perhaps you could join us in that briefing or we can visit with you another time prior to your meeting on Thursday with Representative Torricelli?

Thank you.

cc: Marcia Hale

THE WHITE HOUSE
WASHINGTON

October 1, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco
SUBJECT: Indian Gaming

As I mentioned to you last week in our brief meeting on the Tennessee health care issue, we needed this week to discuss the issue of Indian Gaming. Because a briefing session for me never materialized I am submitting this information to you before you go to California as you got a question on Indian Gaming the last time you were in California and also, the attached invitation has come to you this week from the National Indian Gaming Association (NIGA) and has been forwarded to the scheduling office.

The reference in the invitation to only 5 governors now undercutting the process is incorrect. The governors as a whole have reached a decision that it is impossible to place a national solution on this issue and this week asked the tribes to agree to a one year cooling off period between both sides and in the meantime, while solutions to the gaming problems were sought the governors would put on a serious seminar, summit, whatever on economic development for Native Americans. The Indians at last word have declined and Inouye is expected to put in a bill very soon. There is far more detail to all of this we should discuss and Howard Paster should be with us as he and I recently visited Senators Reid and Bryan on this issue.

The Native Americans for Clinton-Gore are having a one day meeting in DC next week and this issue will come up there as well very likely.

Again, we should discuss this early next week when we are both back in town. In the meantime, you should glance at some of this (in particular the invitation and the memo prepared per your earlier request by my staff which you and I have had no briefing time to go over) and give as answers to any questions you receive that the issue is under thorough review. In truth, the issue is a mess.

cc: Presidential Scheduling (with copy of attachment)



Chairman
Rick Hill
Oneida Band of Indians

Vice Chairman
Daniel Tucker
Tribun Band of Mission Indians

Treasurer
Nathan Small
Shoshone Bannock Tribe

Secretary
Jake Viarriat
Pawnee People

At-Large Board Members

Elaine Benjamin
Prairie Band of Okmowewa
Indians

Kurt Bluedog
Sisseton Wahpeton, SD

Robert Boles
Sandia Indian Bingo

Buzz Guittierez
Spokane Tribe

Perry Hauser Jr
Eastern Shawnee, OK

Richard Hayward
Washantucket Penquoit Tribe

Norma Manzano
Serrano Band of Mission Indians

Philip Martin
Mississippi Band of Choctaw
Indians

Clinton M. Pattea
Fort McDowell Mohave-Apache
Community

Mark Van Norman
Cheyenne River Sioux Tribe

Executive Director
S. Timothy Wapato
Colville Confederated Tribes

Public Relations Director
A. Gay Kingman
Cheyenne River Sioux

The Honorable William Jefferson Clinton
The White House
Washington, D.C. 20003

September 29, 1993

Dear Mr. President:

This letter is written to formally request a meeting with you to personally discuss the status of Indian gaming and particularly the impact of current events on this most important economic issue. Although we recognize and appreciate the personal attention which you must give to health and other pressing issues, please recognize that to us, gaming is the vehicle through which we are able to address many of the same concerns which you currently face at the national level.

As you know, we have been involved in a negotiation process with representatives of the National Governors Association and the National Association of Attorneys General, facilitated by Senators Inouye and McCain. This process was undertaken to rectify misunderstandings surrounding the Indian Gaming Regulatory Act and to clarify legal interpretations allowing our industry to continue to exist and ideally grow toward a self sufficient future. For six months we have honored the boundaries set out by the good Senators and it has been reported to us that those at the table have indeed reached agreement on most items. We have also recently learned however, that a distinct minority (we understand 5) governors are now attempting to cut from the process and undercut a successful outcome.

As you know, gaming, when there has been good faith and compacting, has demonstrated itself as the first viable economic resource since the decimation of the buffalo. This resource allows tribal governments to build health centers, schools, roads, sewer systems; to provide improved housing and social services; and to diversify and offer sustained



economic development and employment security for thousands of Indian and non-Indian people... all at no state expense. In fact, tribal governments are hiring thousands of people, many of whom were formerly unemployed. At the same time, Indian Nations are contributing millions of dollars to their local (often non-Indian) communities. This is a win-win situation.

Through the government to government relationship, which has existed in its present form since the 1830s, we responded to Senator Inouye and Senator McCain's call. We have met in good faith to attempt to resolve the differences among the states as sovereigns and the Indian nations as sovereigns in a legitimate and earnest way. We fear that history may once again be repeating itself at our expense.

We call upon you as a statesman and peacemaker to learn from us about the particular tribal concerns. We ask that you hear from our lips the realities of the reservations and the realities of the reservations the benefits brought to the Indian nations and the states where Indian gaming is conducted. We hope that you will feel moved to exert influence to save this unique governmental enterprise before we all lose... at the national, state, and Indian nation levels.

Thank you for your consideration. We anxiously await your response. Please contact Francine R. Skenandore at the Wisconsin Oneida Nation office (414-869-4360), or call Tim Wapato at our National office (202-546-7711).

Sincerely,

Richard G. Hill
Chairman

THE WHITE HOUSE

WASHINGTON

June 28, 1993

MEMORANDUM FOR CAROL RASCO

FROM DONSIA STRONG

SUBJECT Indian Gaming

During the time of the National Indian Gaming Association (NIGA) Convention, NIGA requested that the White House respond positively to a press release issued by parties interested in Indian gaming. Specifically, the press release was issued by the National Governors Association, the National Association of Attorneys General, and NIGA. In addition, Senator Inouye provided his views within the statement.

On Friday, during a hearing on the issue, Rep. Bilbray released a letter from Secretary Bentson which urged that Indian gaming be subject to the same types of reporting as other casinos. I reviewed a version of the letter and personally requested that John Duffy, Interior and Ed Knight, Treasury work together to ensure our intent was clear. (The two of them never spoke.) The letter was not sent to be used during the hearing. The letter had been discussed with Senator Bryan during negotiations on reconciliation. Senator Bryan did not vote for the package that passed.

The press coverage of the hearing and the letter has not been positive. Portions of the letter were excerpted and give an unintended impression that the Administration is anxious about Indian gaming.

I recommend that the White House issue a statement in support of the process or some White House official make a telephone call to Senator Inouye acknowledging the President's support for the negotiated solution being sought by the Senator's process. In addition, I have received no response from Ray Neel regarding your memo to him. However, it is critical that everyone realize the implications of speaking to the press without talking with you first.

FOCUS - 8 OF 9 STORIES

Copyright 1993 States News Service
States News Service

June 25, 1993, Friday

LENGTH: 841 words

HEADLINE: LAWMAKERS CALL FOR TIGHTER POLICING OF INDIAN GAMING

BYLINE: By Ellen Gamerman, States News Service

DATELINE: WASHINGTON

KEYWORD: GAME

BODY:

Imagine legendary mobster Bugsy Siegel's Flamingo casino -- once an oasis for gamblers and gangsters in the Las Vegas desert -- appearing in the place of a quiet Indian reservation.

For Nevada Democratic Rep. James Bilbray, that's where the future of Indian gaming lies, unless the federal government steps in and changes a 1988 law governing one of the most lucrative industries in Indian country.

"It has taken fifty years to weed out this kind of image, to clean up southern Nevada," he said Friday, when a House Natural Resources subcommittee held the third in a series of hearings on amendments to the Indian Gaming Regulatory Act. "Indian tribes are just like anybody else. There are good people. There are bad people. There are average people. And there are corruptible people."

Bilbray is not alone in his fears, and came to the hearing armed with a letter from Treasury Secretary Lloyd Bentsen urging Indian gaming controls for the same reasons. Bentsen wrote the letter to Nevada Democratic Sen. Richard Bryan earlier this week.

"Casinos, as cash intensive businesses offering many financial services, had been used in the past for drug money laundering and other criminal purposes," Bentsen states in the letter, dated June 22. "It is our view that without adequate recordkeeping, internal controls and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering."

Bilbray said the cost of stepped-up policing could tally in the "hundreds of millions" of dollars, but would not cost the federal government any money because it would be paid for with taxes on Indian casino revenues and licensing fees.

But the idea is abhorrent to many tribes, who say they already police themselves with oversight from the National Indian Gaming Commission. Bilbray's opponents say the argument is simply a scare-tactic used to protect the lucrative gaming industry from new competitors.

"The tribes are the most highly regulated of any of the gaming entities," said Tim Wapato, executive director of the National Indian Gaming Association, which represents 88 tribes. "The first line of defense is the tribe itself,

States News Service, June 25, 1993

FOCUS

which is a lifeline for tribal government. They want and need a clean operation, a credible operation, one with integrity, because the operation represents the tribe."

Wapato said Bentsen's concerns are valid, and tribes are willing to comply with federal rules against money laundering. But Wapato added that new regulations should come from the congressional committees that oversee Indian gaming, not from lawmakers like Bilbray who he said "just want a 'Donald Trump protection act.'"

Currently, there are more than 260 Indian gaming operations, involving 170 reservations in 24 states, according to Nevada delegation estimates. With a 5 percent share of the national gaming market and revenues at \$1.5 billion, Indian gaming represents the fastest growing segment of the gaming industry.

Revenues at Indian gaming operations doubled in 1992, and are expected to double again this year, Will E. Cummings, a financial analyst for the track betting industry, told the subcommittee.

At the hearing, executives from the horse and dog racing industries also took a shot at current Indian gaming law, but aimed at a different area. They argued that looser regulations for tribes promote unfair competition and cost non-Indian businesses jobs and revenue.

"Gambling on Indian reservations will continue to expand with no regard for the laws or policies of the various states in which reservations are located," said R. Anthony Chamblin, president of the Association of Racing Commissioners International Inc.

John C. Dill, a lawyer for the American Greyhound Track Operators Association, also wants the tribes to return to the negotiating table, saying "we do not seek to prohibit gaming on Indian lands, we do insist on fair competition and a level playing field."

James Hickey Jr., president of the American Horse Council, said the \$15.2 billion horse racing industry is getting skittish.

"The racing industry considers this gambling . . . as competition for a limited wagering and entertainment dollar," he said. "The health of the racing industry . . . depends on our ability to compete with these other forms of gambling and entertainment."

These groups are lobbying for a bill Sen. Bryan, Sen. Harry Reid, D-Nev., and Rep. Bob Toricelli, D-N.J., introduced last month that would tighten state control of Indian gaming, including putting slot machines and video gambling under state control.

In the Senate, meanwhile, Sens. Daniel Inouye, D-Hawaii, and John McCain, R-Ariz., chairman and vice chairman of the Senate Committee on Indian Affairs, have been meeting with representatives for governors, tribes and state attorneys general since May to try to compromise on revisions to Indian gaming act. Inouye has instructed all the parties not to discuss negotiations until the end of July, when a decision is expected to be announced.

FOCUS - 1 OF 9 STORIES

Copyright 1993 Chicago Tribune Company
Chicago Tribune

June 27, 1993, Sunday, CITY EDITION

SECTION: NEWS; Pg. 22; ZONE: C

LENGTH: 134 words

HEADLINE: U.S. acts to tighten tribal casino controls

BYLINE: From Chicago Tribune wires.

DATELINE: WASHINGTON

BODY:

The Clinton administration favors stricter financial controls for Indian gambling casinos to discourage money laundering by organized crime and drug dealers. Treasury Secretary Lloyd Bentsen said in a letter released Friday that he will support legislation authorizing him to require Indian-owned casinos to record and report large cash transactions. Ambiguity in the 1988 law setting up the current regulations for tribal gambling operations effectively exempts the casinos from requirements of the Bank Secrecy Act, Bentsen said. That law, which requires financial institutions to report cash transactions of more than \$10,000 to the government, has been applied to privately owned casinos in Nevada and Atlantic City to help detect money laundering, tax evasion and other financial crimes.

TERMS: FEDERAL; PROBE; LAW; CRIME; GAMBLING; FRAUD

FOCUS - 5 OF 9 STORIES

The Associated Press

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June 25, 1993, Friday, AM cycle

SECTION: Washington Dateline

LENGTH: 567 words

HEADLINE: Administration To Back Tighter Indian Casino Control

BYLINE: By JAMES ROWLEY, Associated Press Writer

DATELINE: WASHINGTON

KEYWORD: Indian Gambling

BODY:

The Clinton administration favors stricter financial controls for Indian gambling casinos to discourage money laundering by organized crime and drug dealers.

Treasury Secretary Lloyd Bentsen said in a letter released Friday that he would support legislation authorizing him to require Indian-owned casinos to record and report large cash transactions.

Ambiguity in the 1988 law setting up the current regulations for Indian gambling operations effectively exempts tribal casinos from requirements of the Bank Secrecy Act, Bentsen said.

That law, which requires financial institutions to report cash transactions of more than \$ 10,000 to the government, has been applied to privately owned casinos in Nevada and Atlantic City, N.J., to help detect money laundering, tax evasion and other financial crimes.

"Without adequate recordkeeping, internal controls, and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering," Bentsen said in the June 22 letter to Sen. Richard H. Bryan, D-Nev.

The letter was released at a hearing of the House Native American Affairs subcommittee by another Nevada lawmaker, Democratic Rep. James Bilbray. It was the Clinton administration's first statement on the issue.

Bilbray supports legislation sponsored by Sen. Harry Reid, D-Nev. and Rep. Robert G. Torricelli, D-N.J., that would give states greater power to regulate Indian gambling.

"I don't know of any tribes that would oppose the Bank Secrecy Act if it is applied as it is applied to New Jersey and Las Vegas operations," said Tun Wapato, executive director of the National Indian Gambling Association.

But Wapato said in an interview that tribes would oppose empowering the states to require such reports. He charged that the legislation to expand the states' power is motivated by "economic racism" to protect the commercial interests of gambling in Nevada and New Jersey.

The legislation is one of many proposals to change the 1988 Indian Gaming Regulatory Act, which gave states the authority to negotiate regulatory agreements with Indian tribes.

Indian gambling, which includes bingo, keno and other games of chance, produces an estimated \$ 1.5 billion a year in revenue, said Will E. Cummings, an industry consultant.

But Bilbray warned that unless Congress gave the National Gaming Commission set up to oversee Indian gambling more resources, organized crime would infiltrate the industry.

"The tribes don't have the resources" of states like Nevada to do extensive background checks of people seeking to run their casinos, Bilbray said. "They would never know they are dealing with Vito Genovese's godson. These people are very nervy."

"And if the tribes wanted to get rid of them, God help them," he said.

"People who would not and could not be licensed in the state of Nevada" are trying to get involved in Indian gambling, he said.

The Justice Department, however, told Congress last year that it had no evidence of organized crime involvement in Indian gambling.

Anthony J. Hope, chairman of the National Indian Gaming Commission, blamed states for the failure to adequately regulate casino gambling on Indian reservations. The 1988 law gave states the responsibility for this function "and they don't want it," he said in an interview.

The federal commission's role is to regulate bingo but not casino operations, he said.

FOCUS - 7 OF 9 STORIES

Copyright 1993 Gannett Company, Inc.
GANNETT NEWS SERVICE

June 25, 1993, Friday

LENGTH: 657 words

HEADLINE: CONGRESS URGED TO TIGHTEN INDIAN GAMING REGULATIONS

BYLINE: CHET LUNNER; Gannett News Service

DATELINE: WASHINGTON

KEYWORD: INDIANGAMING

BODY:

Indian gaming is so lightly regulated that tribes could be unknowingly hiring major crime figures to run their reservation casinos, a Nevada congressman warned Friday.

Rep. James Bilbray, a Las Vegas Democrat, called for the hiring of hundreds of federal investigators on a scale practiced by Nevada and New Jersey state gambling commissions. Currently, Indian tribes negotiate the amount and type of regulation with the individual states.

But when Congress authorized Indian gaming in 1988, the law limited the National Indian Gaming Commission to oversight of bingo games - not the lucrative casino-style Class III gaming that has generated powerful opposition from state governors and commercial gaming interests.

"Mr. Chairman, I want to first dispel the belief that those of us who want to revisit the (1988) act are pursuing it because of racism or possible economic gain as some are suggesting," Bilbray told Rep. Bill Richardson, D-N.M., who chaired the hearing of the House Indian affairs subcommittee. "It has also been suggested that the efforts of those of us from Nevada and New Jersey are just trying to protect the gaming interests in our states. Such a statement is ludicrous."

Bilbray said those who question the viability of Indian gaming operations have Native American interests at heart "due to a number of unethical and mismanagement concerns." He cited an Interior Department report that found \$ 12 million in theft and mismanagement at Indian operations, including one instance where an unnamed tribe rented slot machines for \$ 6.4 million more than the actual cost of the devices.

Bilbray also released a letter from Treasury Secretary Lloyd Bentsen calling for an amendment to the law that would require tribes to report large transactions under the Bank Secrecy Act.

"Casinos ... had been used in the past for drug money laundering and other criminal purposes," Bentsen wrote in a June 22 letter to Sen. Richard Bryan, D-Nev. "It is our view that without adequate record-keeping, internal controls and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering."

Bilbray noted that the Nevada Gaming Control Board employs 372 staffers, including 100 auditors and 100 in its enforcement division.

"If it takes that many people to supervise gaming operations in one state, can you imagine the staff needed to cover this entire nation and the massive revenues Indian gaming would generate?" he said.

"Each Nevada gaming employee regulates an average of six operators," Bilbray said. "Federally, six employees must regulate Indian gaming operations in 257 tribal casinos across the nation.

"If the federal government is truly going to regulate Indian gaming, they're going to need hundreds and hundreds of investigators," Bilbray said.

Earlier this week, Sen. Daniel Inouye, D-Hawaii, chairman of the Senate Indian Affairs Committee, said negotiations on changes to the federal law are continuing in a positive vein among Native American leaders, state and federal officials.

Participants have been sworn to secrecy as the negotiations proceed, but a source familiar with the talks indicated that the authority of the National Indian Gaming Commission may be expanded to include oversight of Class III gaming where states decline to regulate it themselves.

Under such a plan, the tribes could be charged a percentage of their revenues to finance the regulatory agency, as is done with commercial casinos in Nevada and New Jersey.

Officials from dog and horse racing associations also testified, urging the lawmakers to tighten restrictions on Indian-operated gaming.

"All gaming is not created equal," complained William Bissett, of the American Greyhound Track Operators Association. "Studies have shown that when pari-mutuel facilities go toe-to-toe with casino gaming, the fall-off in a track's 'handle' is between 40 percent to 100 percent."

SUBJECT: AMERICAN INDIAN; INDIAN RESERVATION; GAMBLING; CONGRESS; REGULATION;
INDIAN GAMING REGULATION: JAMES BILBRAY

National Indian Gaming Association

304 Century Avenue, S.E., Washington, DC 20003
Telephone: (202) 545-7711 FAX: (202) 545-1755

On May 2, 1993, a meeting was held with states' attorneys general, and on May 18, 1993, a meeting was held with governors of states affected by Indian gaming. The National Association of Attorneys General has also adopted a resolution supporting the process of governmental dialogue.

Meetings have subsequently been conducted with the Secretary of the Department of the Interior, the Chairman and Commissioners of the National Indian Gaming Commission, and representatives of the Department of Justice. On June 25, 1993, a further meeting will be held with tribal government leaders.

Members of the National Governors Association, the National Association of Attorneys General, the NIGA/NCAG Gaming Task Force, and representatives of the Departments of Interior and Justice and the National Indian Gaming Commission have now agreed to come together on Friday, July 2nd, 1993 in Washington, D.C. to meet with Senators Inouye and McCain to discuss the issues raised by the principals in earlier meetings.

"In an effort to assure a full and frank discussion of the issues, I have called upon the parties not to engage in any contact with the media with regard to the substance of these discussions, until at least the first round of meetings is completed," said Senator Inouye.

Inouye added, "Our initial discussions have revealed that there is more potential for consensus than we might have otherwise thought going into this process. I am hopeful that by sitting down together and addressing our respective concerns, face-to-face, on a rational basis, the federal, state and tribal governments can effect a workable solution to the problems that confront them."

Governor Mike Sullivan, who chairs the working group established by the National Governors Association, commenting on the meetings he and other governors have had with members of the Senate Indian Affairs Committee, said, "NGA is committed to the process initiated by Senator Inouye and Senator McCain to move legislation clarifying the 1988 law as early as possible in July. We are encouraged by their initial response to governors' concerns and look forward to reaching agreement in the next few weeks on ways to improve implementation of the Act."

Rick Hill, Chairman of the Oneida Tribe of Wisconsin, Chairman of the National Indian Gaming Association (NIGA) and leader of the NIGA/NCAI gaming task force said, "The tribes are prepared to fully participate in the Inouye-McCain process and have adopted a resolution fully supporting the process."

Hill continued, "Tribal leaders have had a series of meetings preparatory to discussions on July 2, 1993. We are encouraged by the commitments of governors, attorneys general and federal agencies to open dialogue on a government-to-government

basis with the tribes."

Minnesota Attorney General Hubert H. Humphrey III, President-Elect of the National Association of Attorneys General, said, "Senators Inouye and McCain have initiated a constructive dialogue between the tribes, the federal government and the states for resolving concerns about federal law on Indian gaming. NAAG is committed to working together to reach a consensus on amendments to the Act by the end of July."

file: Indian Gaming

TO: George S.
cc: Jody Greenstone for Gergen
Mark Gearan
Howard Paster
FROM: Carol H. Rasco **CLR**
SUBJ: Indian Gaming meeting
DATE: June 21, 1993

As you and I discussed last week, Donsia Strong of my staff will represent the White House at a convention of Indian Gaming officials this week in New Orleans in the spirit of communication/listening to them per their strong request to this office. She has prepared with others in the Administration working on the issue the attached set of talking points to use in her brief remarks. I would appreciate any comments by 9 a.m. Tuesday morning.

Thank you.

REMARKS BEFORE THE NATIONAL INDIAN GAMING ASSOCIATION

1. The federal-tribal relationship is premised on two basic principles. They are -- Indian tribes are sovereign and must be supported -- and the U.S. has a long standing, special trust relationship with American Indians.
2. This Administration reaffirms the unique government-to-government relationship between tribes and the United States and is promoting true consultation between the U.S. government and American Indians.
3. The federal government must take its proper role in alleviating obstacles to investment of private capital in Indian reservations. It is extremely important that federal government policy include improved conditions for capital formation and financing. Successful financing will lead to economic strength and self-sufficiency.
4. We must provide incentives for Indian entrepreneurs because small businesses create most of the new jobs in this country and they need to flourish if we are all to prosper.
5. Indian gaming is an industry which has provided Indian Country with profound positive economic growth and increased self-sufficiency. In addition, the benefits of Indian gaming extend not just to the tribes involved but to the surrounding communities as well.
6. The proceeds of gaming must, by law, be used to facilitate other economic development or to provide social services to tribal members. Tribal governments have built housing units, replaced dangerous water and sanitation facilities, built child care facilities, and created tribal police, fire and ambulance services which serve not only reservations but surrounding communities as well. It is clear that Indian gaming has provided substantial benefits.
7. However, as many Tribal leaders have stated it is extremely important that Tribal governments continue to move to diversify Tribal economies. We applaud the success and efforts many Tribal governments have made in developing other business interests. As we develop policies, the Administration will be cognizant of Native American efforts in this area and work to help you achieve your goals.
8. With a real tribal-federal partnership, American Indians can build dynamic, long lasting and self-sustaining economies while at the same time preserving traditional religions and respect for the land.

THE WHITE HOUSE
WASHINGTON

Indian Gaming file

George S. / Howard P.

I will bring up Indian gaming yet again on Wed. morning when I make a report but in the meantime, can we issue a statement or should someone (whom?) make a call to Inouye as recommended in last of attached memo. I rec. a phone call at minimum.

CHRaseo

originals of all:
CHR

cc of all: George
Howard

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THE WHITE HOUSE

WASHINGTON

June 28, 1993

MEMORANDUM FOR CAROL RASCO

FROM DONSIA STRONG

SUBJECT Indian Gaming

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FOCUS - 8 OF 9 STORIES

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States News Service

June 25, 1993, Friday

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BYLINE: By Ellen Gamerman, States News Service

DATELINE: WASHINGTON

KEYWORD: GAME

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"It has taken fifty years to weed out this kind of image, to clean up southern Nevada," he said Friday, when a House Natural Resources subcommittee held the third in a series of hearings on amendments to the Indian Gaming Regulatory Act. "Indian tribes are just like anybody else. There are good people. There are bad people. There are average people. And there are corruptible people."

Bilbray is not alone in his fears, and came to the hearing armed with a letter from Treasury Secretary Lloyd Bentsen urging Indian gaming controls for the same reasons. Bentsen wrote the letter to Nevada Democratic Sen. Richard Bryan earlier this week.

"Casinos, as cash intensive businesses offering many financial services, had been used in the past for drug money laundering and other criminal purposes," Bentsen states in the letter, dated June 22. "It is our view that without adequate recordkeeping, internal controls and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering."

Bilbray said the cost of stepped-up policing could tally in the "hundreds of millions" of dollars, but would not cost the federal government any money because it would be paid for with taxes on Indian casino revenues and licensing fees.

But the idea is abhorrent to many tribes, who say they already police themselves with oversight from the National Indian Gaming Commission. Bilbray's opponents say the argument is simply a scare-tactic used to protect the lucrative gaming industry from new competitors.

"The tribes are the most highly regulated of any of the gaming entities," said Tim Wapato, executive director of the National Indian Gaming Association, which represents 88 tribes. "The first line of defense is the tribe itself,

States News Service, June 25, 1993

FOCUS

which is a lifeline for tribal government. They want and need a clean operation, a credible operation, one with integrity, because the operation represents the tribe."

Wapato said Bentsen's concerns are valid, and tribes are willing to comply with federal rules against money laundering. But Wapato added that new regulations should come from the congressional committees that oversee Indian gaming, not from lawmakers like Bilbray who he said "just want a 'Donald Trump protection act.'"

Currently, there are more than 260 Indian gaming operations, involving 170 reservations in 24 states, according to Nevada delegation estimates. With a 5 percent share of the national gaming market and revenues at \$1.5 billion, Indian gaming represents the fastest growing segment of the gaming industry.

Revenues at Indian gaming operations doubled in 1992, and are expected to double again this year, Will E. Cummings, a financial analyst for the track betting industry, told the subcommittee.

At the hearing, executives from the horse and dog racing industries also took a shot at current Indian gaming law, but aimed at a different area. They argued that looser regulations for tribes promote unfair competition and cost non-Indian businesses jobs and revenue.

"Gambling on Indian reservations will continue to expand with no regard for the laws or policies of the various states in which reservations are located," said R. Anthony Chamblin, president of the Association of Racing Commissioners International Inc.

John C. Dill, a lawyer for the American Greyhound Track Operators Association, also wants the tribes to return to the negotiating table, saying "we do not seek to prohibit gaming on Indian lands, we do insist on fair competition and a level playing field."

James Hickey Jr., president of the American Horse Council, said the \$15.2 billion horse racing industry is getting skittish.

"The racing industry considers this gambling . . . as competition for a limited wagering and entertainment dollar," he said. "The health of the racing industry . . . depends on our ability to compete with these other forms of gambling and entertainment."

These groups are lobbying for a bill Sen. Bryan, Sen. Harry Reid, D-Nev., and Rep. Bob Toricelli, D-N.J., introduced last month that would tighten state control of Indian gaming, including putting slot machines and video gambling under state control.

In the Senate, meanwhile, Sens. Daniel Inouye, D-Hawaii, and John McCain, R-Ariz., chairman and vice chairman of the Senate Committee on Indian Affairs, have been meeting with representatives for governors, tribes and state attorneys general since May to try to compromise on revisions to Indian gaming act. Inouye has instructed all the parties not to discuss negotiations until the end of July, when a decision is expected to be announced.

FOCUS - 1 OF 9 STORIES

Copyright 1993 Chicago Tribune Company
Chicago Tribune

June 27, 1993, Sunday, CITY EDITION

SECTION: NEWS; Pg. 22; ZONE: C

LENGTH: 134 words

HEADLINE: U.S. acts to tighten tribal casino controls

BYLINE: From Chicago Tribune wires.

DATELINE: WASHINGTON

BODY:

The Clinton administration favors stricter financial controls for Indian gambling casinos to discourage money laundering by organized crime and drug dealers. Treasury Secretary Lloyd Bentsen said in a letter released Friday that he will support legislation authorizing him to require Indian-owned casinos to record and report large cash transactions. Ambiguity in the 1988 law setting up the current regulations for tribal gambling operations effectively exempts the casinos from requirements of the Bank Secrecy Act, Bentsen said. That law, which requires financial institutions to report cash transactions of more than \$10,000 to the government, has been applied to privately owned casinos in Nevada and Atlantic City to help detect money laundering, tax evasion and other financial crimes.

TERMS: FEDERAL; PROBE; LAW; CRIME; GAMBLING; FRAUD

FOCUS - 5 OF 9 STORIES

The Associated Press

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June 25, 1993, Friday, AM cycle

SECTION: Washington Dateline

LENGTH: 567 words

HEADLINE: Administration To Back Tighter Indian Casino Control

BYLINE: By JAMES ROWLEY, Associated Press Writer

DATELINE: WASHINGTON

KEYWORD: Indian Gambling

BODY:

The Clinton administration favors stricter financial controls for Indian gambling casinos to discourage money laundering by organized crime and drug dealers.

Treasury Secretary Lloyd Bentsen said in a letter released Friday that he would support legislation authorizing him to require Indian-owned casinos to record and report large cash transactions.

Ambiguity in the 1988 law setting up the current regulations for Indian gambling operations effectively exempts tribal casinos from requirements of the Bank Secrecy Act, Bentsen said.

That law, which requires financial institutions to report cash transactions of more than \$ 10,000 to the government, has been applied to privately owned casinos in Nevada and Atlantic City, N.J., to help detect money laundering, tax evasion and other financial crimes.

"Without adequate recordkeeping, internal controls, and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering," Bentsen said in the June 22 letter to Sen. Richard H. Bryan, D-Nev.

The letter was released at a hearing of the House Native American Affairs subcommittee by another Nevada lawmaker, Democratic Rep. James Bilbray. It was the Clinton administration's first statement on the issue.

Bilbray supports legislation sponsored by Sen. Harry Reid, D-Nev. and Rep. Robert G. Torricelli, D-N.J., that would give states greater power to regulate Indian gambling.

"I don't know of any tribes that would oppose the Bank Secrecy Act if it is applied as it is applied to New Jersey and Las Vegas operations," said Tun Wapato, executive director of the National Indian Gambling Association.

The Associated Press, June 25, 1993

FOCUS

But Wapato said in an interview that tribes would oppose empowering the states to require such reports. He charged that the legislation to expand the states' power is motivated by "economic racism" to protect the commercial interests of gambling in Nevada and New Jersey.

The legislation is one of many proposals to change the 1988 Indian Gaming Regulatory Act, which gave states the authority to negotiate regulatory agreements with Indian tribes.

Indian gambling, which includes bingo, keno and other games of chance, produces an estimated \$ 1.5 billion a year in revenue, said Will E. Cummings, an industry consultant.

But Bilbray warned that unless Congress gave the National Gaming Commission set up to oversee Indian gambling more resources, organized crime would infiltrate the industry.

"The tribes don't have the resources" of states like Nevada to do extensive background checks of people seeking to run their casinos, Bilbray said. "They would never know they are dealing with Vito Genovese's godson. These people are very nervy."

"And if the tribes wanted to get rid of them, God help them," he said.

"People who would not and could not be licensed in the state of Nevada" are trying to get involved in Indian gambling, he said.

The Justice Department, however, told Congress last year that it had no evidence of organized crime involvement in Indian gambling.

Anthony J. Hope, chairman of the National Indian Gaming Commission, blamed states for the failure to adequately regulate casino gambling on Indian reservations. The 1988 law gave states the responsibility for this function "and they don't want it," he said in an interview.

The federal commission's role is to regulate bingo but not casino operations, he said.

FOCUS - 7 OF 9 STORIES

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GANNETT NEWS SERVICE

June 25, 1993, Friday

LENGTH: 657 words

HEADLINE: CONGRESS URGED TO TIGHTEN INDIAN GAMING REGULATIONS

BYLINE: CHET LUNNER; Gannett News Service

DATELINE: WASHINGTON

KEYWORD: INDIANGAMING

BODY:

Indian gaming is so lightly regulated that tribes could be unknowingly hiring major crime figures to run their reservation casinos, a Nevada congressman warned Friday.

Rep. James Bilbray, a Las Vegas Democrat, called for the hiring of hundreds of federal investigators on a scale practiced by Nevada and New Jersey state gambling commissions. Currently, Indian tribes negotiate the amount and type of regulation with the individual states.

But when Congress authorized Indian gaming in 1988, the law limited the National Indian Gaming Commission to oversight of bingo games - not the lucrative casino-style Class III gaming that has generated powerful opposition from state governors and commercial gaming interests.

"Mr. Chairman, I want to first dispel the belief that those of us who want to revisit the (1988) act are pursuing it because of racism or possible economic gain as some are suggesting," Bilbray told Rep. Bill Richardson, D-N.M., who chaired the hearing of the House Indian affairs subcommittee. "It has also been suggested that the efforts of those of us from Nevada and New Jersey are just trying to protect the gaming interests in our states. Such a statement is ludicrous."

Bilbray said those who question the viability of Indian gaming operations have Native American interests at heart "due to a number of unethical and mismanagement concerns." He cited an Interior Department report that found \$ 12 million in theft and mismanagement at Indian operations, including one instance where an unnamed tribe rented slot machines for \$ 6.4 million more than the actual cost of the devices.

Bilbray also released a letter from Treasury Secretary Lloyd Bentsen calling for an amendment to the law that would require tribes to report large transactions under the Bank Secrecy Act.

"Casinos ... had been used in the past for drug money laundering and other criminal purposes," Bentsen wrote in a June 22 letter to Sen. Richard Bryan, D-Nev. "It is our view that without adequate record-keeping, internal controls and currency reporting, Indian gaming has a similar potential to be an attractive target for money laundering."

GANNETT NEWS SERVICE, June 25, 1993

FOCUS

Bilbray noted that the Nevada Gaming Control Board employs 372 staffers, including 100 auditors and 100 in its enforcement division.

"If it takes that many people to supervise gaming operations in one state, can you imagine the staff needed to cover this entire nation and the massive revenues Indian gaming would generate?" he said.

"Each Nevada gaming employee regulates an average of six operators," Bilbray said. "Federally, six employees must regulate Indian gaming operations in 257 tribal casinos across the nation.

"If the federal government is truly going to regulate Indian gaming, they're going to need hundreds and hundreds of investigators," Bilbray said.

Earlier this week, Sen. Daniel Inouye, D-Hawaii, chairman of the Senate Indian Affairs Committee, said negotiations on changes to the federal law are continuing in a positive vein among Native American leaders, state and federal officials.

Participants have been sworn to secrecy as the negotiations proceed, but a source familiar with the talks indicated that the authority of the National Indian Gaming Commission may be expanded to include oversight of Class III gaming where states decline to regulate it themselves.

Under such a plan, the tribes could be charged a percentage of their revenues to finance the regulatory agency, as is done with commercial casinos in Nevada and New Jersey.

Officials from dog and horse racing associations also testified, urging the lawmakers to tighten restrictions on Indian-operated gaming.

"All gaming is not created equal," complained William Bissett, of the American Greyhound Track Operators Association. "Studies have shown that when pari-mutuel facilities go toe-to-toe with casino gaming, the fall-off in a track's 'handle' is between 40 percent to 100 percent."

SUBJECT: AMERICAN INDIAN; INDIAN RESERVATION; GAMBLING; CONGRESS; REGULATION;
INDIAN GAMING REGULATION: JAMES BILBRAY

National Indian Gaming Association

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On May 2, 1993, a meeting was held with states' attorneys general, and on May 18, 1993, a meeting was held with governors of states affected by Indian gaming. The National Association of Attorneys General has also adopted a resolution supporting the process of governmental dialogue.

Meetings have subsequently been conducted with the Secretary of the Department of the Interior, the Chairman and Commissioners of the National Indian Gaming Commission, and representatives of the Department of Justice. On June 25, 1993, a further meeting will be held with tribal government leaders.

Members of the National Governors Association, the National Association of Attorneys General, the NIGA/NCAI Gaming Task Force, and representatives of the Departments of Interior and Justice and the National Indian Gaming Commission have now agreed to come together on Friday, July 2nd, 1993 in Washington, D.C. to meet with Senators Inouye and McCain to discuss the issues raised by the principals in earlier meetings.

"In an effort to assure a full and frank discussion of the issues, I have called upon the parties not to engage in any contact with the media with regard to the substance of these discussions, until at least the first round of meetings is completed," said Senator Inouye.

Inouye added, "Our initial discussions have revealed that there is more potential for consensus than we might have otherwise thought going into this process. I am hopeful that by sitting down together and addressing our respective concerns, face-to-face, on a rational basis, the federal, state and tribal governments can effect a workable solution to the problems that confront them."

Governor Mike Sullivan, who chairs the working group established by the National Governors Association, commenting on the meetings he and other governors have had with members of the Senate Indian Affairs Committee, said, "NGA is committed to the process initiated by Senator Inouye and Senator McCain to move legislation clarifying the 1983 law as early as possible in July. We are encouraged by their initial response to governors' concerns and look forward to reaching agreement in the next few weeks on ways to improve implementation of the Act."

Rick Hill, Chairman of the Oneida Tribe of Wisconsin, Chairman of the National Indian Gaming Association (NIGA) and leader of the NIGA/NCAI gaming task force said, "The tribes are prepared to fully participate in the Inouye-McCain process and have adopted a resolution fully supporting the process."

Hill continued, "Tribal leaders have had a series of meetings preparatory to discussions on July 2, 1993. We are encouraged by the commitments of governors, attorneys general and federal agencies to open dialogue on a government-to-government

basis with the tribes."

Minnesota Attorney General Hubert H. Humphrey III, President-Elect of the National Association of Attorneys General, said, "Senators Inouye and McCain have initiated a constructive dialogic between the tribes, the federal government and the states for resolving concerns about federal law on Indian gaming. NAAG is committed to working together to reach a consensus on amendments to the Act by the end of July."

DATE: July 2, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: Senator Inouye's Indian Gaming Meeting

Sorry I missed your brown-bag session this afternoon, but as you know I was representing DPC at Senator Inouye's meeting on Indian Gaming. The meeting was attended by several state governors and state attorney generals, a few federal agencies, and a number of tribal leaders. The purpose of the meeting was to try and find some middle ground between states and tribes in their continuing dispute over the implementation of the Indian Gaming Regulatory Act (IGRA) of 1988. In this memo, I will briefly summarize what happened at the meeting. For further information/details, I would be happy to meet with you at your convenience (I have a funny story about the meeting that I would love to share with you!), or draft a more comprehensive memorandum.

BACKGROUND

IGRA has come under attack by a number of states for a variety of reasons. The major state complaint is that the Act's vagueness in several key areas has allowed tribes to expand their gaming activities well beyond state gaming laws and the original intent of the Act. Accordingly, Senators Reid and Bryan (Nevada) and Representative Toricelli (New Jersey) have introduced a bill that would severely tighten state control of Indian gaming (a cynical person might add that it is ironic that the representatives from the two states with the largest organized gambling industries/interests would be introducing this bill, but far be it from me to take such a skeptical position). Senator Inouye, who chairs the Senate Select Committee on Indian Affairs, and his Vice-Chair Senator McCain worry that without reaching some agreement between states and tribes and introducing compromise amendments to IGRA before the August recess, Senator Reid's bill will pass and wipe out all of the positive progress that IGRA has achieved.

TODAY'S MEETING

Areas of Compromise

Today's meeting was successful in that it seemed to set the tone for compromise in four areas:

Alternatives to Lawsuits: a process was proposed that would hopefully eliminate constitutional challenges to the Act and lawsuits between states and tribal governments.

Law Enforcement Issues: states and tribes agreed on a number of law enforcement issues, including the application of Bank Secrecy Act provisions to tribal gaming, sharing of costs for law enforcement in and around tribal gaming facilities, clarification of state and federal law enforcement responsibilities, and access to law enforcement data.

Acquisition of Off-Reservation Land for Gaming Purposes: basic agreement was reached on the process by which tribes can acquire off-reservation land for gaming purposes.

Other Economic Development Issues: both sides agreed that methods and initiatives in which states and tribes can work together to stimulate economic development on reservations must be explored together. The two sides agreed to set up another meeting in a similar forum to discuss economic development issues.

In order to come up with the specifics of the compromises for the first three issues listed above (alternatives to lawsuits, law enforcement, and acquiring off-reservation land), a working group was formed consisting of a small number of tribal leaders, state representatives, and federal agencies. This group will hammer out the details of compromise proposals in these three areas and report back to Senator Inouye by July 20. **Question: Do we want to participate as an observer in this working group?** We certainly would be welcome if we so desired, and it may be a nice way to keep involved in the process, but in my opinion there is no great need for us to participate at this level.

Scope of Tribal Gaming

Unfortunately, the two sides seemed to remain far apart on the single most important issue facing IGRA -- the scope of tribal gaming allowed by state-tribal compacts. Highlights of the discussion on this issue include:

- States hold firm to the notion that IGRA should be amended to say that states and tribes are only able to negotiate over gaming that is specifically allowed by state law. They concede that, if a type of gaming is allowed for charitable purposes (i.e. "Casino Nights"), tribes should have the opportunity to negotiate for that type of gaming.
- Tribes counter that the "public policy test" set forward in the Cabazon case and written into IGRA (whether or not it is the public policy of the state to criminally prohibit or merely regulate a certain type of gaming) has been successful in the 80 instances where states and tribes have entered into compact negotiations in good faith, and should therefore not be altered.

- Tribes also reminded the states that the IGRA compacting process was a serious concession of tribal sovereignty, and was originally seen as a victory by the states in 1988.
- Finally, tribes pointed out that the state has the ability to avoid this problem by prohibiting any types of gaming that it wants to -- Wisconsin has done this. The problem seems to be that some states are not willing to be that specific over what types of gaming it does and does not want to allow.
- Senator McCain acknowledged that the tribes were correct in pointing out that the current system is working when both sides abide by the IGRA process. Unfortunately, the problem is not legal or practical, but political instead. Misconceptions about the way IGRA works threaten to cause the Congress to vote for Senator Reid's regressive gaming bill unless a compromise on this issue is reached soon.

Both sides agreed to address this issue further in the Working Group and report back by July 20. I am not sure at this time what kind of compromise will (or can) be reached on this issue.

IMPLEMENTATION OF THE INDIAN GAMING REGULATORY ACT: ISSUES SUMMARY

BACKGROUND ON THE INDIAN GAMING REGULATORY ACT (IGRA)

As state lotteries began to proliferate in the late 1970s, several Indian tribes in Florida and California began raising revenues by operating bingo games offering larger prizes than those allowed under state law. When the states threatened to close these operations, the tribes sued in federal court, contending that Indian gaming establishments were not within state enforcement jurisdiction.

Of these court cases, two had a large impact on the issue of Indian gaming. First, in *Seminole Tribe v. Butterworth* (1981), a Federal Circuit Court ruled that Congress did not confer authority on the states to regulate gaming activities on Indian lands, since the state permitted and regulated bingo and did not prohibit it. As a result of this verdict, gaming in Indian country began to grow rapidly. In 1987, a second case, *California v. Cabazon Band of Mission Indians*, the Supreme Court affirmed the ruling of the Florida court. This case opened the door for a dramatic expansion of Indian gaming, and states began to push Congress for some sort of legislative compromise. The Indian Gaming Regulatory Act of 1988 (IGRA) was the result of this effort.

The Indian Gaming Regulatory Act of 1988 (IGRA) was enacted as a compromise between Tribes and states that provides a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government while maintaining the sovereignty of Indian tribes and States alike. The Act categorizes gaming into three broad categories; class I, class II, and class III and further outlines a regulatory scheme that apportions regulating authority between the federal, State, and tribal governments:

Class I gaming (social games or traditional tribal games played in conjunction with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes.

Class II gaming (bingo, pull-tabs, and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission (a three-person regulatory agency administratively located within the Department of Interior).

Class III gaming (all other gaming, including horse racing, blackjack, roulette, slot machines, lotteries, and craps) can be conducted only after an appropriate Tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

The Act also asserted that States must negotiate in "good faith" with Indian tribes seeking to develop class III gaming operations. It was the intent of Congress that States have a role in the regulation of Class III gaming, and that it should be the responsibility of the individual tribes and States to come to mutually agreeable terms.

KEY ISSUES

Currently, a number of states are urging Congress to amend IGRA to give states more regulatory authority over Indian gaming. Over the past two years, an increasing number of states have refused to negotiate any Class III gaming compacts with Indian tribes. These states claim that IGRA has resulted in forms of gambling, particularly casino gambling on Indian reservations, in states that have not authorized these forms of gambling. As a result of state refusal to negotiate, many tribes have sought relief in court. This conflict over Indian gaming and IGRA revolves around a few key issues:

IGRA As a Compromise. While many states view IGRA as giving Indian tribes too much power over the regulation of tribal gaming, tribes see IGRA as a compromise between states and Indian tribes over this very issue. According to the *Cabazon* decision in 1987, states lacked jurisdiction to enforce their gaming laws against tribal gaming activities on reservations. IGRA's Class III compact provisions created a means by which states could enforce their gaming laws that otherwise would be inapplicable to reservation gaming. The tribes see this as a major inroad into tribal self-governance that they objected to but accepted reluctantly as the political price to be paid for reaping the economic benefits gained by Class III gaming.

Civil/Regulatory Laws vs. Criminal/Prohibitory Laws -- The "Any Means All" Controversy. Perhaps the biggest point of controversy between states and tribal governments revolves around the notion that if a state authorizes one form of Class III gaming (ie. a state lottery), Indian tribes in that state are automatically entitled to negotiate compacts for all forms of Class III gaming. This notion, commonly referred to as the "any means all" standard, is one of the primary arguments used by states trying to amend IGRA. However, the "any means all" concept is probably an oversimplification. In a series of rulings on this issue over the past five years, a number of courts have held that if the intent of state law is to prohibit a certain conduct (gaming), it falls within the criminal jurisdiction of the state, but if state law permits the conduct at issue subject to regulation, it must be classified as civil/regulatory and hence be negotiable. In other words, unless state policy reflects an absolute criminal prohibition with respect to the gaming activities in question, the state's statutory restrictions are deemed regulatory rather than prohibitory.

The Meaning of "Good Faith" in IGRA. States feel that the meaning of negotiating in "good faith" in IGRA should be clarified and applied to both states and tribes equally, with the burden of proving the allegation should rest with the party alleging that the other side is not acting in good faith. They argue that mere inability to agree upon a compact, especially in regards to a state's adherence to its own gaming laws, should not indicate bad faith by either party. Currently, IGRA places the burden of proof on the states. Tribes argue that placing this burden on the states corrects for an imbalance and should therefore stay in place -- under IGRA, tribes cannot conduct Class III gaming unless they successfully negotiate compacts with states, but states have no such obligation to negotiate and have little incentive to successfully negotiate a compact with tribes.

Economic Development in Indian Country. There is no question that gaming is the single most successful economic development opportunity to occur on Indian country in over a century. Since Congress passed IGRA in 1988, annual revenues from gaming on reservations has reached over \$5 billion, and tens of thousands of jobs have been created for Indian and non-Indians alike. Under IGRA, Indian gaming revenues must be used solely for governmental or charitable purposes, and tribes have used these funds to promote economic and community development in a number of innovative ways. So far, states and others who wish to limit or abolish Indian gaming have not yet come up with an alternative form of economic development that can come close to matching the revenues generated by Indian gaming.

CURRENT STATUS OF IGRA

On July 2, Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, brought together representatives of the states and tribes to try and find some areas of agreement between the two sides on the issues listed above. After hours of discussion and debate, the tribes and states agreed to form a high level working group to try and work out specific amendments to IGRA that both sides can live with. The working group has pledged to report back to Senator Inouye by July 20, and the Senator hopes to introduce amendments to IGRA before the August recess. Senator Inouye's time table on amending IGRA is being driven by the recent introduction of a bill by Senators Reid and (Nevada) that would give states almost-complete control over the regulation of Indian gaming. Senator Inouye feels that if he is unable to offer any reasonable amendments to IGRA in the near future, the House and Senate will likely pass the Reid- bill.

THE WHITE HOUSE

WASHINGTON

June 16, 1993

MEMORANDUM FOR MARK GEARAN

FROM: Carol H. Rasco *CHR*

SUBJECT: Briefing Materials

As requested, attached are materials that may prove helpful in preparing briefing materials for the President's press conference tomorrow. Please let me know if additional information is needed.

Thank you.

DATE: June 16, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: Presidential Press Conference Tomorrow Night

I got your memo on the press conference tomorrow night and was not sure whether any of my issues were "hot" enough to include in a briefing for the President. However, just to be safe, I whipped up short "blurbs" on two issues that could conceivably (though not very likely) come up in an off-the-wall question during the press conference:

- **Status of the Forest Management Plan for the Pacific Northwest:** The Office of Environmental Policy has received reports from all three interagency working groups (A Scientific Group tasked to come up with forest management options, an Economic Group tasked with developing an economic assistance package for affected workers, firms, and communities, and a Coordination Group tasked with looking at ways that federal agencies can better coordinate their delivery of services) and is currently synthesizing them into one comprehensive document. The plan is to accelerate the normal internal White House clearance process and get a decision document to the President as soon as possible. As soon as the President signs off on a set of policy recommendations, we can begin serious negotiations with the Hill (The Office of Environmental Policy may have submitted briefing materials on this subject for the press conference tomorrow night -- if so, I would go with their materials).
- **Status of Indian Gaming and the Indian Gaming Regulatory Act (IGRA):** Senator Inouye, Chairman of the Senate Indian Affairs Committee, has been holding extensive meetings with all interested parties (Tribal leaders, representatives from the states, etc.) on possible changes to the Indian Gaming Regulatory Act. Over the past few years, a number of states and Indian Tribes have been at odds over the implementation of IGRA. Chairman Inouye hopes to find a solution that will be acceptable to both the Tribes and the states on this issue. (Donsia and I wrote up a three-page brief on Indian Gaming if you are interested in further information on this subject).

Please let me know if I can provide anything more on these or any other topics.

June 16, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: Donsia Strong, DPC
Michael Schmidt, DPC

RE: Indian Gaming

This memorandum summarizes key issues and background information that surround the issue of Indian gaming.

BACKGROUND

Indian Gaming Pre-1988

As state lotteries began to proliferate in the late 1970s, several Indian tribes in Florida and California began raising revenues by operating bingo games offering larger prizes than those allowed under state law. When the states threatened to close these operations, the tribes sued in federal court, contending that state bingo laws were civil/regulatory in nature, and thus were not within state enforcement jurisdiction (according to federal case law, states have jurisdiction over Indian tribes in criminal/prohibitory matters, but do not have jurisdiction in civil/regulatory matters).

Of these court cases, two had a large impact on the issue of Indian gaming. First, in 1980, the Seminole Tribe of Florida won its suit against the sheriff of Broward County. A Florida court ruled that Congress did not confer authority on the states to regulate gaming activities on Indian lands, since the state permitted and regulated bingo and did not prohibit it. As a result of this verdict, gaming in Indian country began to grow rapidly. In 1987, a second case, *California v. Cabazon Band of Mission Indians*, the Supreme Court affirmed the ruling of the Florida court in the Seminole case. This case opened the door for a dramatic expansion of Indian gaming, and states began to push Congress for some sort of legislative compromise. The Indian Gaming Regulatory Act of 1988 (IGRA) was the result of this effort.

The Indian Gaming Regulatory Act of 1988 (IGRA)

Congress enacted IGRA to provide a legal basis for the operation and regulation of gaming by Indian Tribes. It represented a compromise that would provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government while maintaining the sovereignty of Indian tribes and States alike.

The Act categorized gaming into three broad categories; Class I, Class II, and Class III and further outlined a regulatory scheme that apportioned regulating authority between the federal, State, and tribal governments:

- **Class I gaming** (social games or traditional tribal games played in conjunction with tribal ceremonies) is regulated under the exclusive jurisdiction of the tribes.
- **Class II gaming** (bingo, pull-tabs, and related games) is within the jurisdiction of the tribes, but is also regulated by the National Indian Gaming Commission (a three-person regulatory agency administratively located within the Department of Interior).
- **Class III gaming** (all other gaming, including horse racing, blackjack, roulette, slot machines, lotteries, and craps) can be conducted only after an appropriate Tribal-State compact is negotiated with final approval given by the Secretary of the Interior.

The Act also asserted that States must negotiate in "good faith" with Indian tribes seeking to develop class III gaming operations. It was the intent of Congress that States have a role in the regulation of Class III gaming, and that it should be the responsibility of the individual tribes and States to come to mutually agreeable terms.

KEY ISSUES

Currently, a number of states are urging Congress to amend IGRA to give states more regulatory authority over Indian gaming. Over the past two years, an increasing number of states have refused to negotiate any Class III gaming compacts with Indian tribes. These states claim that IGRA has resulted in forms of gambling, particularly casino gambling on Indian reservations, in states that have not authorized these forms of gambling. As a result of state refusal to negotiate, many tribes have sought relief in court. This conflict over Indian gaming and IGRA revolves around a few key issues:

- **IGRA As a Compromise.** While many states view IGRA as giving Indian tribes too much power over the regulation of tribal gaming, tribes see IGRA as a compromise between states and Indian tribes over this very issue. According to the *Cabazon* decision in 1987, states lacked jurisdiction to enforce their gaming laws against tribal gaming activities on reservations. IGRA's Class III compact provisions created a means by which states could enforce their gaming laws that otherwise would be inapplicable to reservation gaming. The tribes see this as a major inroad into tribal self-governance that they objected to but accepted reluctantly as the political price to be paid for reaping the economic benefits gained by Class III gaming.

- **Civil/Regulatory Laws vs. Criminal/Prohibitory Laws -- The "Any Means All" Controversy.** Perhaps the biggest point of controversy between states and tribal governments revolves around the notion that if a state authorizes one form of Class III gaming (ie. a state lottery), Indian tribes in that state are automatically entitled to negotiate compacts for all forms of Class III gaming. This notion, commonly referred to as the "any means all" standard, is one of the primary arguments used by states trying to amend IGRA. However, the "any means all" concept is probably an oversimplification. In a series of rulings on this issue over the past five years, a number of courts have held that if the intent of state law is to prohibit a certain conduct (gaming), it falls within the criminal jurisdiction of the state, but if state law permits the conduct at issue subject to regulation, it must be classified as civil/regulatory and hence be negotiable. In other words, unless state policy reflects an absolute criminal prohibition with respect to the gaming activities in question, the state's statutory restrictions are deemed regulatory rather than prohibitory.
- **The Meaning of "Good Faith" in IGRA.** States feel that the meaning of negotiating in "good faith" in IGRA should be clarified and applied to both states and tribes equally, with the burden of proving the allegation should rest with the party alleging that the other side is not acting in good faith. They argue that mere inability to agree upon a compact, especially in regards to a state's adherence to its own gaming laws, should not indicate bad faith by either party. Currently, IGRA places the burden of proof on the states. Tribes argue that placing this burden on the states corrects for an imbalance and should therefore stay in place -- under IGRA, tribes cannot conduct Class III gaming unless they successfully negotiate compacts with states, but states have no such obligation to negotiate and have little incentive to successfully negotiate a compact with tribes.
- **Economic Development in Indian Country.** There is no question that gaming is the single most successful economic development opportunity to occur on Indian country in over a century. Indian reservations are among the poorest communities in the United States today. Indian unemployment averages around six times the national average, and Indian health, education, and income statistics are depressingly low. Additionally, many reservations are located in rural areas that have historically lacked the infrastructure to attract serious economic development. Since Congress passed IGRA in 1988, annual revenues from gaming on reservations has reached over \$5 billion, and tens of thousands of jobs have been created for Indian and non-Indians alike. Under IGRA, Indian gaming revenues must be used solely for governmental or charitable purposes, and tribes have used these funds to promote economic and community development in a number of innovative ways. So far, states and others who wish to limit or abolish Indian gaming have not yet come up with an alternative form of economic development that can come close to matching the revenues generated by Indian gaming.

- **Tribal Sovereignty.** Tribes see IGRA as giving major concessions to state governments on this front, and thus oppose any further erosion of their sovereignty. Indian tribes have long been recognized by the United States as sovereign nations with the inherent right to govern themselves. As far back as 1832, the Supreme Court has recognized and upheld this right, and absent Congressional action, no state may impose its laws on Indian reservations.