

1
2 Before the
3 NATIONAL INDIAN GAMING COMMISSION
4 Regulatory Review, Tribal Consultation
5

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Participants

(speakers on the record)

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PROCEEDINGS

(9:16 a.m.)

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3 CHAIRWOMAN STEVENS: Good morning. Thanks
4 for waiting. I just wanted to make sure we had some
5 folks that were coming in, and make sure everybody
6 had the opportunity to get settled and get checked
7 in.

8 My name is Tracie Stevens. I'm the chairwoman
9 of the National Indian Gaming Commission. I will
10 turn it over for Steffani and Dan to introduce
11 themselves.

12 MS. COCHRAN: Good morning. My name is
13 Steffani Cochran. I'm the vice chairwoman of the
14 National Indian Gaming Commission, and I am a member
15 of the Chickasaw Nation of Oklahoma. Although home
16 for me right now is Santa Fe. So, it's a pleasure
17 to see everybody again, thank you for joining us.

18 COMMISSIONER LITTLE: Good morning
19 everyone. Like the chairwoman said, I'm Dam Little,
20 associate commissioner here. I just want to welcome
21 everybody and thank everybody for sticking it out
22 this whole week here to Friday morning. So, we know
23 who the troopers are, so thank you.

24 CHAIRWOMAN STEVENS: Today is the second
25 day of a two day consultation that we are conducting

1 on a number of regulations that we are considering.
2 Your agendas, everyone should have an agenda. If
3 you don't, Rita has some right there in the back. I
4 do want to recognize the staff that we have here.

5 We've got Keith, one of our field
6 investigators. Rita, who works in the D.C. office.
7 And over here, we have Jean Wagner, who is in our
8 audit division. Melissa, who is also on the right,
9 is with our general counsel's office. Did I get
10 everybody?

11 So, I want to thank them for all their work in
12 setting this up. Also Lael Echo-Hawk is right here.
13 She'll be talking a bit more as we move through the
14 agenda.

15 We've structured our agendas in such a way that
16 we divide up the groups that we've identified of
17 regulations, so that we can, well one, everybody
18 knows what we're going to talk about at what time.
19 But two, to take small bites at the agenda.

20 Today we're going to be talking about Group 5
21 and Group 3. And on the agenda, you see Group 5 is
22 self regulation of class II gaming, sole proprietary
23 interests and minimum internal control standards for
24 class III.

25 Group 3 is for minimum internal control

1 standards for class II and technical standards for
2 class II play.

3 So, those are the subjects we are going to be
4 talking about today. But I do want to say and make
5 this clear to everybody. While we are trying to do
6 this in bite-size portions, that doesn't negate the
7 possibility, or if there is a need for anybody to
8 make a statement that doesn't have anything to do
9 with these groups today, say it's something from one
10 of the other three groups or other regulations. If
11 your time is compressed and you need to make a
12 statement, we are open to that. The mic is always
13 open. We try to build in time to give tribes or
14 their representatives an opportunity to make any
15 written, submit any oral statements or their written
16 statements for the record. So, we are open to that.
17 It's a flexible agenda in other words. And so,
18 that's how we're going to conduct the meeting today.

19 Right up front here you'll see we've got time
20 here for tribal opening statements, and I'll be
21 opening the floor for any statements that need to be
22 made right now. Because of time or if you weren't
23 able to make it yesterday, please feel free if you
24 have any opening statements.

25 MS. BRYAN: Good morning. My name is

1 Stephanie Bryan, and I am the vicechair for the
2 Poarch Band of Creek Indians. And I do have a
3 statement here and some comments, if you all would
4 allow me at this time to go ahead and move forward
5 with the comments.

6 Chairman Stevens, distinguished members of the
7 commission, my name is Stephanie Bryan, and I serve
8 as the vice chair of the Poarch Band of Creek
9 Indians, and the chair of the Poarch Creek Gaming
10 Commission. Since December 2006, I have had the
11 pleasure of participating in the Tribal Gaming
12 Working Group, TGWG, a coalition comprised of
13 representatives of the class II tribal gaming
14 industry, including elected officials, tribal
15 gaming regulators and operators, gaming equipment
16 manufacturers, suppliers, gaming laboratories,
17 tribal organization, gaming attorneys and a broad
18 spectrum of technical experts to prepare the
19 documents we are submitting to you today.

20 Before expounding further on the TGWG's work,
21 allow me to first commend you on the commission's
22 effort to reach out and conduct meaningful
23 consultation with tribal governments and to elicit
24 tribal input to this important regulatory review
25 endeavor.

1 Speaking on behalf of my tribe, the Poarch Band
2 of Creek Indians, and no doubt on behalf of many
3 other tribal governments, particularly those who
4 have gone on record supporting our efforts, we are
5 heartened by the commission's commitment to work
6 collaboratively with tribal leaders and regulators
7 to ensure that the regulatory framework for class II
8 gaming is strong and effective.

9 As we all appreciate a lawful, robust and
10 well-regulated class II gaming environment serves
11 both the tribal and federal interests. On the May
12 15th, 2011, the TGWG forwarded the commission a set
13 of proposed minimum internal control standards for
14 class II gaming for its review and ultimate
15 publication as a proposed class II MICS. In so
16 doing, it was our expectation, of course, that all
17 tribal governments would have the opportunity to
18 review, consult, and comment on this draft, prior to
19 promulgation of a final rule.

20 The TGWG did not undertake this effort lightly.
21 As the commission may already be aware, I served as
22 co-chair of the TGWG MICS drafting process, along
23 with Mackey Morgan of the Chickasaw Nation, Jamie
24 Hummingbird of the Cherokee Nation of Oklahoma.

25 We all know that the current Part 543 is

1 incomplete and largely mirrors Part 542, which is
2 specific to class III gaming. It is also largely
3 derived from increasingly outdated Nevada gaming
4 regulations. These Nevada regulations, of course,
5 govern commercial gaming activities and are not
6 reflective of any Indian gaming. Try as one might,
7 simply plunking a class III state regulatory
8 framework into the tribal class II gaming
9 environment is not a workable endeavor.

10 The class II regulatory framework, as you are
11 well aware, is premised on a more limited federal
12 role with tribal gaming regulatory agencies serving
13 as a primary regulator.

14 It is, we assert, also apparent that both Parts
15 542 and 543 in their current form are difficult to
16 use and apply due to duplication across multiple
17 sections, dated terminology and procedures that are
18 obsolete and not reflective of current technology.

19 The TGWG's proposed class II MICS were drafted
20 with the intent of ensuring that all controls are
21 covered in Part 543, while at the same time removing
22 some of the strict procedural steps and tasks not
23 appropriately characterized as standards,
24 recognizing, however, that many tribal governments
25 may find a certain degree of guidance helpful.

1 These procedural steps and tasks were
2 consolidated by the TGWG into a comprehensive set of
3 guidance documents consistent with the MICS. These
4 are the documents I submit today. As a result, the
5 TGWG proposal allows for appropriate flexibility for
6 tribal gaming regulatory agencies and operations,
7 subject to TGRA oversight, to establish specific
8 controls, policies and procedures tailored to each
9 operation's individual circumstances. Still,
10 because of the use of both MICS and guidance
11 documents, these controls are subject to basic
12 common standards. Prior to the end of the
13 commission's regulatory review, the TGWG will also
14 submit a comprehensive set of checklists to
15 complement each section of the proposed MICS.

16 Taken together, we envision that these
17 documents will provide a comprehensive set of
18 unambiguous standards that will facilitate the
19 establishment of sound procedures centered around
20 best practices in the modern context of class II
21 gaming.

22 Before closing, I must note that this past
23 Tuesday, July the 26th, 2011, the Treasury
24 Department's Financial Crimes Enforcement Center,
25 FinCen, issued a final rule containing revisions to

1 the Title 31 or Bank Secrecy Act Regulations. These
2 revisions may require revision to the TGWG's
3 proposed MICS, specifically Part 543.11, and the
4 related guidance document.

5 The TGWG considered delaying submission of the
6 guidance documents until it had the opportunity to
7 carefully review FinCen's revisions and make any
8 necessary edits. Ultimately, it was decided that
9 the wisest course would be to get the work product
10 in the NIGC's hand, so that the commission may
11 commence it's review.

12 Be assured, however, that the TGWG will
13 complete its review of the new Title 31 provisions
14 and offer any necessary revisions to the MICS and
15 the MICS guidance documents within the next two
16 weeks. It will also strive to finalize the
17 attendant checklist and submit those as well.

18 Very quickly, I'd like to go over the content
19 of the package we are submitting. The core of the
20 document consists of the guidance documents. Each
21 of which contained the pertinent MICS sections.
22 There are two appendices, one containing the red
23 line of the TGWG's proposed MICS, revisions and
24 others containing a red line version of the TGWG
25 proposed revisions to Part 547 and class II

1 technical standards.

2 Please note that in completing the guidance
3 documents, the TGWG discovered that some additional
4 revisions to the MICS were necessary. The red line
5 version reflects both the previous revisions made by
6 the TGWG and the additional revisions made since our
7 initial submission.

8 We have also included a reference guide for the
9 commission's convenience. This reference guide
10 contains a detailed explanation of the TGWG's
11 objectives in relation to these proposed revisions
12 and the guidance documents.

13 In closing, we again wish to commend the NIGC
14 for providing Indian country the opportunity to
15 participate in this important endeavor. And at this
16 time, I am humbly honored to present the Tribal
17 Gaming Working Group's working document.

18 CHAIRWOMAN STEVENS: Thank you vice
19 chairwoman. We will take these and review these and
20 we will let the Poarch Band know what we plan to do
21 with these in advance. I know that there has been,
22 in our consultations, requests by other tribes to
23 see these documents and that the NIGC circulate
24 these for comment from other tribes. And as we
25 consider what to do with these, we will stay in

1 communication with the tribe, and we appreciate all
2 the hard work of the tribes that are involved in
3 their resources and representatives.

4 We know this was, just from past experience in
5 doing a working group, it is time intensive,
6 resource intensive and must be taken seriously. The
7 work products must be taken seriously. This helps
8 the commission make a fully considered, thoughtful,
9 deliberative decision on how to proceed with class
10 II internal control standards. It is helpful to us
11 to have on the ground, practical experienced people
12 such as yourself, who are both a leader and a
13 commissioner, also a regulator, to provide feedback
14 to us that tells us, in real-time, what works best
15 to protect the industry.

16 So again, I want to thank you for coming all
17 the way out. Everybody who was involved in putting
18 this together, I just want to make very clear that
19 we understand the resources it took to do this. We
20 appreciate it, and we will be very thoughtful about
21 how we proceed with this information and Steffani or
22 Dan, is there anything that you want to add?

23 COMMISSIONER LITTLE: As part of our
24 consultation, relationship building initiative, one
25 of the things that we did was we reached out to some

1 other states and other regulatory bodies, one of
2 which was Nevada. I'm very grateful for these
3 because this is similar to what Nevada does when
4 they develop their regulations. They work with the
5 industry, and I'm very pleased that we are doing the
6 same and want to commend the Tribal Gaming Working
7 Group for all the hard work and providing us with
8 some good information to work upon. So, thank you.

9 MS. BRYAN: Thank you as well. And as the
10 letter stated, the Tribal Gaming Working Group
11 consisted mainly of those in the class II industry:
12 the professions, the regulators that deal with this
13 on a daily basis. So, we feel that the document is
14 a great document that will benefit Indian country in
15 protecting the integrity of Indian gaming. So,
16 thank you for your consideration of this document,
17 and we will be in touch. I, as a leader, would like
18 to personally thank those that are here today that
19 were a part of this Tribal Gaming Working Group
20 because there were a lot of sacrifices made, a lot
21 of time away from families to create this important
22 document that will affect Indian country.

23 CHAIRWOMAN STEVENS: Again, thank you for
24 your submission and thanks to everybody that took
25 part. We will keep Indian country informed as we

1 proceed through this entire regulatory process, but
2 specifically, for those who were involved with this
3 document and also those who are interested in seeing
4 this document. Last time we were at Tulalip, when
5 we were in WinCon especially, there was a lot of
6 interest by other tribes who were not participating
7 or were not able to participate in the working
8 group, to see the document and give some feedback.
9 So, we'll be in touch, and we'll keep the
10 communication open, so you know what we're doing and
11 how we proceed.

12 This may be the part where I turn it over to
13 Lael to begin talking about Group 5. You see on
14 your agenda we are going to start with Group 5
15 regulatory summary and comment on Part 518, so
16 proprietary interest in MICS for class III.

17 MS. ECHO-HAWK: Good morning. So
18 yesterday, we covered a lot of material. Today,
19 we'll cover the rest of the material you have in
20 your agenda and the chairwoman went over.

21 Start off with Group 5, which contains as the
22 chairwoman indicated, Part 518, which is
23 self-regulation of class II gaming, potential sole
24 proprietary interest regulation or policy. And then
25 finally, Group 5 also included class III minimum

1 internal controls.

2 So Part 518, you don't currently have a draft.
3 We haven't developed one yet, so you don't have a
4 handout for this. But when we issued the notice of
5 inquiry, the commission asked whether we should
6 review the process for obtaining a self-regulation
7 certification a class II self regulation
8 certification. Now, this regulation has been around
9 since 1998, I believe, and we've only had two tribes
10 currently that have utilized this particular
11 regulation and obtained the certification.

12 We received a number of comments, including the
13 fact that the statement that the administrative
14 burden of completing the process outweighs the
15 benefits. Submission requirements are duplicative
16 and burdensome. The petition and recording
17 requirements undermine the purpose of certification.
18 We also heard that the high standards needed to be
19 maintained. The benefits and recognition for self
20 regulating tribes should be higher. And that
21 self-regulation is a hallmark of tribal sovereignty.

22 So, we've taken a look at this issue. We've
23 looked at the regulations. The regulations are old,
24 and you can tell that they were developed before we
25 developed, the agency developed, other regulations

1 such as the MICS. And that some things that are
2 requested are also contained in ordinances, for
3 example. And so, we've been looking closely at the
4 regulation, and we're trying to figure out where the
5 duplications occur.

6 One thing that we've asked tribes to comment on
7 is how many tribes are actually interested in
8 pursuing self-regulation. Self regulation is for
9 class II activities only, and while we know that
10 there are about 30 to 35 class III only gaming
11 operations, there are also a number of hybrid
12 facilities. Those hybrid facilities, because they
13 contain class III machines, would have to comply
14 with the class III or the compact regulation
15 requirements. So, we are interested in seeing how
16 many tribes are interested in pursuing this and how
17 to address, sort of, the hybrid operation question.

18 In response to some of the comments that we
19 heard that the burdens outweigh the benefits of
20 obtaining a class II self-regulation certification,
21 we are interested to know if there are additional
22 responsibilities or incentives for the
23 self-regulating tribes. And then finally, whether
24 the annual reporting requirements should be amended.

25 We are also interested in knowing how exactly,

1 like I mentioned, how we can streamline the
2 submission requirements for 518. And I know I've
3 received some comments on this, some comments that
4 the petition requirements should be significant, so
5 that we have all the information that we have. But
6 then the annual reporting requirements should then
7 be lessened.

8 The petition requirements contain a lot of
9 information that's on the PowerPoint. We tried to
10 summarize what the regulation says. Then in 518.4
11 there is a number of criteria that a tribe must
12 satisfy to receive the certification, including the
13 statute language which is here on this slide. "A
14 finding that the tribe conducts gaming with an
15 effective and honest accounting of all revenues,
16 with a reputation for safe, fair and honest
17 operation on a fiscally and economically sound basis
18 and no criminal or dishonest activity."

19 And then there's additional findings for
20 accounting, licensing, investigation, enforcement
21 prosecution of violations of the gaming ordinance
22 regulations. And then there are some indicators for
23 the criteria, so it's a pretty long regulation. But
24 their "Adoption and implementation of MICS that
25 leads to stringent NIGC MICS."

1 That one, kind of, we know that there are, that
2 tribes have adopted MICS, so we might be able to
3 play with some of this. Evidence that suitability
4 determinations are stringent as those for key
5 employees and primary management officials. Funding
6 for the TGRA. So, there is a lot of the indicators
7 that sort of supplement the criteria included in the
8 regulation.

9 So as you look at this, and if you've any
10 thoughts, take a look at the regulation. We're
11 interested in knowing if and how we can streamline
12 this process and make it so that it is utilized
13 better and by more tribes.

14 The other, the second issue in Group 5 is sole
15 proprietary interest. The notice of inquiry asked
16 whether the commission should consider regulation
17 defining sole proprietary interests and provide a
18 process by which the tribe may request review.

19 We had many, many comments on this. There was
20 concern about how a tribe could obtain the review by
21 the NIGC. One of the concerns that we've heard is
22 that, that process is not clear. Tribes don't know
23 when or how they can do that. So, we heard that the
24 commission should promulgate a regulation that
25 provides review only at the request of the tribe,

1 that IGRA already defines the percentages for sole
2 proprietary interest. If sole proprietary interest
3 is defined, then so should primary beneficiary. A
4 clear definition may provide stability and access to
5 financing. And then on the flip side, a definition
6 might limit the tribal access to capital. Another
7 commenter stated that the determination of sole
8 proprietary interest should be left to the courts.

9 So, we're interested in your feedback and your
10 thoughts on this issue and whether or not we should
11 develop a regulation or we should outline a process.
12 How can we go about addressing this issue? Because
13 it is one that comes in front of the commission
14 frequently.

15 So, Group 5 also contained a reference to class
16 III minimum internal control standards, with the
17 thought that we would discuss the class III MICS in
18 Group 1 and then hopefully, come up with a
19 implementation strategy or a decision on how we are
20 going to address class III MICS. We are still
21 interested in your comments on that, so if you have
22 them we'd love to hear them.

23 Group 3 also contains the class II minimum
24 internal control standards that we heard from the
25 chairwoman or the vice chair of the Poarch Band on

1 this morning, that it contains Part 543 and Part 547
2 class II minimum internal controls and technical
3 standards. The notice of inquiry asks how we should
4 deal with these parts. We know that right now we
5 have the class II bingo MICS set for an effective
6 date of October 13th of this year. The NIGC has
7 been drafting or was drafting, through last year,
8 changes to the class III mix. We are reviewing and
9 will review now the new documents that have been
10 submitted by the Tribal Gaming Working Group. But
11 we have heard a lot of comments that perhaps we
12 should take another shot at the Tribal Advisory
13 Committee.

14 So, if the commission decides to use a Tribal
15 Advisory Committee, the commission has been trying
16 to figure out how that would that work. There was a
17 lot of controversy over the last Tribal Advisory
18 Committee. How would we put a Tribal Advisory
19 Committee together? How would it be composed? How
20 would it be representative of regions, operation
21 size, regulators, operators, class II and class III
22 experience, background and expertise in various
23 subject matter, and how many members would be
24 included in the Tribal Advisory Committee? Whether
25 or not we should use a facilitator. That was a

1 strategy that was used, I think, it was in the first
2 or second Tribal Advisory Committee, and it was one
3 that was fairly successful. And then, participation
4 by tribes who don't have actual representation on
5 the Tribal Advisory Committee. How would we build
6 that component in? And then, what product would be
7 developed by the Travel Advisory Committee? So,
8 would it be another draft rule? Would it be policy
9 guidance? What would we be looking for to come out
10 of the committee?

11 And then finally, how do we build in a
12 component, a consultation component? The commission
13 is aware that a Tribal Advisory Committee does not
14 substitute for Government to Government
15 consultation, as mandated by the Executive Order
16 13175. And so, how should the commission build in
17 that consultation component after the Tribal
18 Advisory Committee has completed their work? So,
19 those are the two groups that we are going to talk
20 about today, and I'll let the chairwoman take it
21 back over.

22 CHAIRWOMAN STEVENS: Thank you, Lael. One
23 thing I want to jump to right away, and I'm aware
24 that there are individuals who may have limited time
25 here today, is the advisory committee, the Tribal

1 Advisory Committee. Even in the early onset of my
2 term in office a year ago, in the initial
3 consultations that I attended, I heard, and we've
4 all heard the tribes take on how advisory committees
5 happened over the previous, the prior eight years.
6 And that's very helpful information to have, so we
7 know what works and what doesn't work.

8 But the reason this is coming up today is we
9 are getting information from independent tribal
10 working group, proposals from tribes as alternative
11 standards under Executive Order 13175, and as we get
12 these alternative standards submitted to us, we have
13 to find a way to get input, but these are highly
14 technical, very detailed standards.

15 As you all know if you're in the industry,
16 internal controls are very specific to certain
17 areas. And doing a group meeting like this is, it
18 can be done; it's just going to take forever. So as
19 we've gone through this year, we've heard more
20 requests for another Tribal Advisory Committee
21 that's different than what we've seen in the prior
22 eight years.

23 I had the good fortune of working for the
24 Department of Interior for a year, working on one of
25 their Tribal Advisory Committees, setting them up

1 and getting tribal inclusion on that committee. And
2 I've said this before. I'm a big fan of
3 facilitators.

4 One of the things that can happen on advisory
5 committees as you all know who have sat on them,
6 they can come to a grinding halt with one obstinate
7 person digging their heels in and not wanting to
8 move. If you've got an independent group and nobody
9 is in charge, it can be a little havoc making.

10 However, we also heard from tribes that
11 previous committees facilitated by NIGC staff was
12 not as flexible. Jess, behave. Strike one, Jess.
13 You've got two to go. Kidding. I'm just echoing
14 what I heard. So, there's two ends of that spectrum
15 of no control and too much control. And that's why
16 facilitators, I'm a big fan of them, because they'll
17 work with the group to set up ground rules on how
18 the group functions, how the group will come to
19 consensus when there is a log jam, keeping everybody
20 on time and on task and keeping order, doing a lot
21 of the, sort of, minutia, the work, the copying, the
22 transcribing, keeping everybody, herding the cats,
23 keeping everybody going the same direction. So, I'm
24 a big fan. That's my plug for facilitators, and we,
25 in all likelihood, are going to use a facilitator.

1 The NIGC, who is part of the Department of the
2 Interior, has available to us great, wonderful
3 resources in one of the divisions called Cadr,
4 C-A-D-R, Collaborative Action and Dispute
5 Resolution. They work for all of the agencies in
6 Interior, which we are a part of. Did I tell you we
7 were a part of Interior? And that's a resource that
8 we should use. There's a number of options that
9 they can help us with. They're actually helping the
10 department with a number of these types of
11 committees, not just for the secretary, but for many
12 of the other bureaus that work with tribes. Very
13 cognizant of the tribal government to government
14 relationship with tribes that the federal government
15 has, Interior especially has.

16 So going down this path, we'll be working with
17 them, and it's also a way for us to reduce the
18 costs. We already pay Interior for lots of things
19 that they do for us, and this is just one of those
20 things that they can help us with. So the prospect
21 of having a facilitator, using the resources that we
22 have at hand, so that it is not as costly as
23 previous Tribal Advisory Committees were over the
24 previous eight years, because the NIGC took on all
25 of the burden. So there's that, that's why we're

1 looking at it. We've got these alternative
2 standards. How do we address them? More
3 importantly, and this is where we would like to hear
4 from tribes, I mean generally, the consensus has
5 been, "Yes we'd like to do it again. We'd like
6 another opportunity to weigh in, in a way that we
7 did not in the prior eight years." But as Lael
8 mentioned, there is a number of questions that we
9 are going to have to answer and need input on.

10 Who makes up the committee? How do we get
11 tribal input? I see the working group as a group of
12 experts that really are going to do the roll up
13 their sleeves and work on the documents. But then,
14 we're going to have to work in an element of
15 consultation where tribes have the opportunity to
16 weigh in and stay within time frames. Which again,
17 a facilitator is going to help us do.

18 So in listening to the vice chairwoman's
19 opening statement, there were representatives on the
20 independent Tribal Gaming Working Group that was
21 comprised of . . . mainly because these are class
22 II experts, tribal elected officials, gaming
23 regulators and operators, equipment manufacturers
24 and suppliers, gaming laboratories, tribal
25 organizations, gaming attorneys, and a broad

1 spectrum of experts, as you know. You're going to
2 need that, whether you're talking about the cage or
3 surveillance or counting or machines. So, that will
4 be our challenge. We would like to hear how we
5 should have this comprised, what kinds of
6 qualification there should be, any thoughts on
7 nomination processes. We would want to get moving
8 with this as soon as we can in the next probably,
9 Lael is saying two weeks, I'm going to give myself a
10 cushion.

11 If I can do it faster that would be great. But
12 we've been thinking about it as we've been talking
13 to tribes as we've been on the road and, sort of,
14 compiling this information as we go. And any
15 thoughts on how your groups have worked previously,
16 how this particular group has worked, the
17 independent Tribal Gaming Working Group. I do want
18 to say that we are on, sort of, a tight timeline.
19 Our objective is to be finished with the majority of
20 this work, especially these very detailed MICS and
21 technical standards, in a year from now.

22 In federal time, that's pretty quick. So,
23 those are our thoughts initially, and we would like
24 to hear what you all have to say about Tribal
25 Advisory Committees.

1 MS. BRYAN: Tracie, I would like to make a
2 comment in reference to that. I know, with the time
3 frame, that it's important that we move quickly. I
4 know, in the past, that there were letters sent out
5 to tribal leaders and nominations, and I know that
6 with the time frame that we're looking at, I'm not
7 sure how we can make that happen as quickly. But as
8 for a facilitator, I agree 100 percent that you do
9 need someone that can stay focused because just in
10 the Tribal Gaming Working Group efforts, it would
11 get to some point where we're just repeatedly going
12 over the same stuff and just not getting anywhere.
13 So if at some point, what is the consensus of the
14 group? We have to make a decision, so we can move
15 on, or we'll never finish this document.

16 So when you're given the timeframe, you do need
17 a facilitator that can keep on track, keep the
18 process moving as quickly as possible.

19 And as for who, formulating the TAC, those
20 individuals, I would say, that you would definitely
21 want those that have the expertise in that field,
22 whether it be class II, class III. I know it did
23 show class II and class III. So, if we're dealing
24 with class II, I think that the committee should be
25 comprised of those that have that knowledge that

1 work strongly in class II, to have their input in
2 reference to that. But I do support a TAC and a
3 facilitator.

4 As for selection of who, that is a little hard
5 to decide. I know that there are some tribes that
6 are solely class II gaming, that's it. And there
7 are some tribes that derive of largely, they have
8 class III, but they do have a significant amount of
9 class II. So, it would be advantageous for it to
10 move much quicker, if you have the expertise in the
11 area that we're trying to promulgate some rules.

12 CHAIRWOMAN STEVENS: Thank you Stephanie.
13 I think one of the things we're clear that we want
14 to do is create an advisory committee that's diverse
15 and balanced. You bring up good points about class
16 II experts, or class III experts. We're looking at
17 regions because it is different from region to
18 region. Size of operations. What may be easily and
19 readily possible for a very large operation may be
20 cumbersome, burdensome for a very small operation.
21 So, we're looking for balance.

22 The other thing that I didn't mention, but you
23 have brought up is how do we bring in experts?
24 Because when we start getting into very technical
25 areas, how do we . . . not just a question of how

1 do you get tribal consultation in once you have a
2 document formed, but how do you get expert advice.
3 And fortunately, in our initial conversations with
4 Cadr, they've done this so much they are confident
5 that the group can develop ways to bring in or
6 discuss with the experts at certain junctures of the
7 committee's work.

8 The other thing is, what areas will the
9 advisory committee cover? There's a number of
10 things that have been brought to our attention, and
11 you mentioned it in your opening statements. The
12 separation of II and III. There are controls that
13 are identical between II and II, but there's points
14 where they clearly diverge. They go different ways,
15 and I think we're going to have to address II and
16 III in the same group, so that we can say that's II
17 and that's III. And we have experts who can say
18 that's II and that's III, when we pull them apart,
19 or when those issues have to be mirrored.

20 Now, we've not made any determination on what
21 we're going to do with class III. Got plenty of
22 suggestions, we know that class III internal control
23 standards, how those are handled throughout Indian
24 country, it varies, and so we are getting a variety
25 of different approaches. But our thought here is

1 that we're going to have to deal with that anyway,
2 regardless of what we do. Whether we issue guidance
3 or bulletins or a reg, it still needs to be done.
4 And can we walk and chew gum here? Can we talk
5 about more than just one issue, not just class II
6 MICS but III and the technical standards? So it
7 may, we may have to cover all of those issues with
8 the same advisory group, with built-in mechanisms to
9 bring in experts in those areas, that the group
10 would decide. And also consider too that the
11 current schedule that we have, we would probably
12 adjust it because we didn't anticipate a TAC, but
13 what we could do is adjust the schedule, peel away
14 what we're working on that's not MICS driven or
15 technical standard driven and get those on a
16 separate path. Separate but parallel path, and let
17 those go through as we're proceeding now, and then
18 have a separate parallel track of a Travel Advisory
19 Committee and whatever path and schedule that is
20 going to take.

21 So we may adjust that schedule that's posted
22 now, that we are working off of, and then reserve
23 some of those resources for the advisory committee.
24 So, those are just some thoughts that we have right
25 now. We're certainly open to any responses to what

1 we've said today and what we've said in the past.

2 Yes, Jess.

3 MR. GREEN: My comments are in regard to
4 543 and 547. I have seen all the TACs, and there
5 were those that had one day conferences and those
6 that had two. My experience in working with
7 Stephanie's group, trying to put together the regs
8 that you just received is that a three day
9 conference is the most effective way to deal with
10 it. You start at 8:00 o'clock in the morning; you
11 go to 6:00 o'clock at night, and you only recruit
12 folks that are willing to work. It's really
13 tiresome on day three, but you make a lot of
14 progress. And two or three of those, you can go
15 through the document and address the differences
16 that are of concern.

17 You had class II and class II hybrid, as Lael
18 would call us, some of us that are not just class
19 II. People work on this, and industry people work
20 on this. The TACS in the past that have tried to do
21 class II regs have had failures because they were
22 composed largely of three quarters of class III
23 vendors that had no understanding of class II
24 issues. And I would certainly encourage you to shy
25 away. It's not that those people don't have

1 expertise, but you will get the tribal part of the
2 TAC sending you letters saying we don't know how to
3 do this. They've done it before.

4 If you look in your file, you'll find them from
5 them. I think Stephanie may have even presented
6 them or had someone present them at Tulalip. Some
7 of those letters that say, "We don't know enough to
8 do this." As bad as I hate to admit it, I think the
9 TAC is valuable. I don't like the three strikes and
10 you're out, but I think there are ways. What I
11 really think is you just ought to select the people,
12 period. I mean, you should not solicit. You
13 should be in a position that your regional people
14 should know who has participated in this drafting,
15 and who is capable of helping you make this project
16 work.

17 The people on your TAC, I believe, should be
18 regulators, management people and elected tribal
19 leaders. And you should be cognizant of selecting
20 folks that have class II hybrid experience or class
21 II experience because those with hybrid experience
22 bring the class III concepts that you are concerned
23 that we not overlook. And if you select the right
24 folks, they will bring their expertise with them
25 that they want to present.

1 I would suggest that you also, when you have
2 the conference, invite all others that want to
3 attend. In the past, we've even had folks excluded
4 from being in the room. And then we got to be in
5 room, and we couldn't talk. And then we got to be
6 in the room and we could talk at the end of the day
7 if we didn't get three strikes against us. Well, I
8 didn't get to talk on those days.

9 I think there is a huge benefit if you select
10 an elected leader to be a joint chair, and that the
11 tribal comments flow through the elected leader.
12 The NIGC, of course, sets up the agenda. The
13 elected leader sees the agenda coming and is able to
14 gather the comments that she believes need to be
15 heard from Indian country and flow through that
16 elected leader with suggestion that when we have
17 these issues that need experts, here are the ones
18 that I would like to have testify if we need any
19 testimony or explanation. I think that's a way for
20 you to deal with . . . the tribe deals with the
21 tribal side. I can bring my experts in and point
22 out that I don't think this is going to work for
23 these reasons.

24 We have, those of us that have worked on these
25 teams and even on the one that put together Hogen

1 stuff, we have proven we can work very diligently
2 together if given an opportunity. And quite
3 frankly, I see this kind of conference taking two or
4 three days.

5 I would also like to back up and make a comment
6 about 518, self-regulation. Lael brought up that
7 she's not sure how much interest there is in self
8 regulation. Well, let me assure you all the hybrid
9 class II, class III locations in Oklahoma have a
10 real high degree of interest. And you ask yourself
11 why? I am exempt from your 2706(b) authorities. I
12 mean, it says you can't come poke around in my stuff
13 without asking. You don't get to demand an ISN.
14 That's what that exemption says. We're capable of
15 doing it ourselves. There are a lot of tribes that
16 are very interested.

17 Originally, the only NIGC fees were charged to
18 class II. The original concept of Congress was that
19 if you're capable of running it yourself, as tribes
20 will get to be, then you pay one quarter of what
21 everybody else does, period. Now you ask, "Well
22 what's the incentive?" That would be a tremendous
23 incentive for class II.

24 We have no problems, those of us that are
25 seeking class II regulation, with you requiring an

1 enormous amount of information at the onset. We
2 think that is extremely wise. Those of us that have
3 been doing this for years have seen folks sue
4 federal agencies that's file was not full, and the
5 tribes have sovereign immunity, but third parties
6 would initiate suits about your decision making.
7 And so, we believe that you need to have a really
8 complete, in depth application form. I mean you
9 need to get a lot of information, enough so that you
10 won't have any problem protecting yourself if you
11 make a decision that this tribe is self regulated.
12 I think that's essential for all of us for you to be
13 able to defend the decision you make.

14 I believe we also need a well-defined set of
15 rules for when you challenge that self-regulation
16 concept. You were challenged yesterday about the
17 Mississippi Choctaws that you have no regulatory
18 authority over because they are self-regulating by
19 an act of Congress. Other tribes are looking at
20 that potential because we don't see any availability
21 of potential under these current regs, and the
22 current regs continue to require reporting which is
23 not contemplated in IGRA.

24 And my suggestion is that you keep that in
25 mind. If you've got a good set of regs for when you

1 think somebody has fallen out of the program, and
2 you've got a good set of requirements for us to get
3 in that self-regulating program, and you've got some
4 real exemptions from fees when you're in it; you
5 will have a number of the hybrid tribes move into
6 that program quickly.

7 You will have the single class II tribes, I
8 think, that are capable and doing a good job, move
9 into that program quickly. You will find that
10 reduces the amount of money you have to expend
11 because you're no longer sending your agents out to
12 check and do the inspections of contracts and the
13 like, because the tribes are self-regulating and
14 exempt from your 2706(b) requirements.

15 And as bad as I hate, I would recommend a TAC
16 for this, a specialized TAC. I think you could have
17 a one day conference about the issue. You can then
18 determine who has a high degree of interest. You
19 could pull a TAC together and have a couple of days
20 conferences with your staff, and you would have an
21 idea of what changes tribes think ought to be made,
22 and what changes you think you are capable of
23 making. I think this is very quick, very efficient,
24 and actually could be very easily done if it is
25 focused. Thank you.

1 CHAIRWOMAN STEVENS: Thank you Jess. I
2 probably shouldn't let you walk away from the
3 microphone because I wanted to make that I
4 understand you clearly. You said not to solicit
5 nominations for the TAC. Did I hear you correctly?

6 MR. GREEN: Yes. My experience with
7 having you solicit nominations is that you all tell
8 the tribes who you want them to nominate. They get
9 nominated, and the other ones just get left by the
10 wayside, anyway. Just go ahead and pick them.

11 CHAIRWOMAN STEVENS: Okay. Everybody
12 heard that on the record.

13 MR. GREEN: Y'all know who has expertise.
14 You've consulted, unlike the previous
15 administrations, you've been all over the United
16 States. You've heard people speak up about the
17 issues that they were interested in. You know the
18 tribes that will send expertise to answer tough
19 questions when, well, how do we actually do this?

20 Because unfortunately, your staff lacks a lot
21 of practical experience. The lawyers like me, have
22 none. You've got accounting questions, or you've
23 got operational questions, you need somebody from
24 accounting or operation that does it every day to
25 give you the appropriate answer. Otherwise, we're

1 going to make regs that don't work.

2 I mean, I'm an old man, that's the one thing
3 I've learned. If you don't get the people doing the
4 job to look at what you're doing, you're going to
5 create a monster. And we don't need to make things
6 worse; we need to make them better.

7 CHAIRWOMAN STEVENS: Well, I'm with you on
8 creating a monster because it can get very unwieldy,
9 very quickly. And the way, in really thinking about
10 how we are going to do this, not everybody is going
11 to like all the decisions that we make. And that's
12 going to include selection of TAC members. Somebody
13 is going to be mad at us, whether we solicit or
14 whether we don't. And so we've just, I think,
15 accepted that. Whoever we pick and whatever process
16 we go through, someone will be unhappy. But I'm not
17 here to make everybody happy. I'm here to make sure
18 that we get the best advice, we get the best product
19 out of an advisory committee that best regulates and
20 protects the industry. So, I appreciate you
21 bringing that up. It's something that we'll have to
22 consider on the, do we just pick or do we go through
23 a call, basically, of suggested names.

24 MR. GREEN: The suggestion I have to deal
25 with that is you also invite all other interested

1 people.

2 CHAIRWOMAN STEVENS: And that's next on my
3 list. And that would have to be something that, I
4 think, once we get an advisory committee together,
5 the rules of the road that any committee should set
6 forth before they start doing any work: ground rules
7 for the operation of the advisory committee, how
8 things will be decided and how they are going to
9 bring in experts and how are you going to bring in
10 everybody else, because that may also get unwieldy.
11 But there may certainly be a way to bring anybody
12 who wants to attend into the meeting. As long as
13 there are some ground rules, not so strict that,
14 "Hey, you can only comment at the end of the day,
15 after we're 16 subjects away from what you wanted to
16 talk about." But I'm sure that . . . I'm deferring
17 some of these ground rule type of decisions to the
18 committee, so they can decide how they want to
19 proceed with the facilitator at hand, who may have
20 experience to say what works and what doesn't work,
21 so we don't go down on a path that we discover later
22 is not going to help us.

23 MR. GREEN: I would suggest your invitees
24 to be in two tiers: the ones that come with a letter
25 of tribal authority that say they speak on behalf of

1 tribal leadership and are authorized to directly
2 speak with the commission about these issues and
3 those that simply come. There is a distinct
4 difference between a bunch of lawyers showing up and
5 wanting to have their way-

6 CHAIRWOMAN STEVENS: And billing their
7 client?

8 MR. GREEN: And billing their clients.
9 And having tribal leaders send people that have
10 genuine interest, that have authority from tribal
11 government to make a communication.

12 CHAIRWOMAN STEVENS: Great suggestion.

13 MR. GREEN: And if you segregate those two
14 tiers, those of us that are professionals shouldn't
15 speak unless we are called on, and I thoroughly
16 agree with that. Again, if you've got a tribal
17 co-chair, they will sift through who they want to
18 speak and when.

19 I suppose the chairs would probably visit with
20 each other about, as you point out, when the
21 appropriate time on the program that's set by the
22 NIGC would be for those professionals to make
23 comments.

24 The tribal leaders that are sent, that are not
25 invited, but have letters, I think should have the

1 ability to stand up and ask to be heard on
2 particular subjects on a different tier than the
3 rest of the world.

4 If I am carrying a letter that says I speak on
5 behalf of my tribe, that's a big thing. And you're
6 not going to get but four or five of those. Those
7 people ought to be considered, and that's a way for
8 you to deal with the people that were not selected
9 that have a high degree of interest.

10 CHAIRWOMAN STEVENS: Or people who just
11 want to sit and listen, the sit and listeners. And
12 just also to be clear, as we proceed in this
13 process, and we've said this before. I'm not going
14 to tell tribes who can speak for them. I'm not
15 going to limit this to only tribal leaders or only
16 auditors can be on this or only I say who you can
17 pick from your tribe.

18 Although, we do want to make sure, and we had
19 this issue at Interior, that who does come and speak
20 for the tribe is authorized by the governing body of
21 the tribe to speak for that tribe, and that we don't
22 have competing - not that this would this would ever
23 happen - but competing opinions from one tribe or
24 multiple opinions from one tribe. But it does
25 create some chaos, but we do really support the

1 concept of having in writing from the governing
2 body, yes, I speak for my tribe. Whoever they pick,
3 if they are going to be in the room. And we have
4 talked about this concentrated conference workshop
5 idea, where it is not just one day here, one day
6 there, we can go on forever that way.

7 That's one of the suggestions that was given to
8 us by Cadr that seemed to work the best. They had
9 hands on experience doing No Child Left Behind,
10 doing the . . . there are some other groups that
11 did the enactment of the Healthcare Improvement
12 Plan. And that's how they did it, which was you
13 find a location that has as few distractions as
14 possible, maybe a little remote, so people can't get
15 away. Committed people, who will be there on time.
16 You're not going to find them out, or maybe their
17 schedule doesn't permit them to be there. I mean,
18 we have to find people who can commit fully to the
19 length of time this is going to take, the long, long
20 days that it's going to take and also time away from
21 their tribe. Because everybody has another job, and
22 then we also, aside from our jobs, actually have a
23 personal life and families and people who count on
24 us. But who are willing to make the sacrifice, make
25 the commitment and see it all the way through.

1 That's one of the things that we've heard, and I
2 observed with previous advisory committees.
3 People were dropping like flies, and we couldn't get
4 this consistency. But we would need to look at
5 people who can make that sacrifice, make that
6 commitment. We thought about doing these
7 concentrated workshops. I mean, we all go to
8 conferences that last a week, right? And the work
9 is not necessarily that intensive, but this would
10 have to be very concentrated work, and we'd need
11 commitment to do that. So, I appreciate your
12 comments, Jess. I appreciate your suggestions.
13 Stephanie.

14 MS. BRYAN: Yes, I know through the
15 process of the Tribal Gaming Working Group, we did
16 at some point split off into subcommittees, in order
17 for us to make it happen as quickly. We had those
18 that had that expertise in IT working on this
19 document, then they bring it back, and we all
20 discuss. And I know, especially with Poarch Creek,
21 I can speak on behalf of Poarch Creek, if we were in
22 the Tribal Gaming Working Group and we were
23 discussing IT issues, technology, I'm clueless to
24 some point. I can read and interpret, but as far
25 as technology, I am not the wiz. That's why I have

1 an IT director. So, I would always have them
2 participate and have valuable input because they
3 deal with it on a daily basis. So once again, I
4 strongly recommend that it is those individuals that
5 have that expertise, or else we never know what type
6 of regulations that we're going to try to put out
7 there, if they do not deal with this on a daily
8 basis.

9 CHAIRWOMAN STEVENS: Okay. The request is
10 if you have a cell phone, move it away from the
11 microphones, they are getting some feedback. That
12 includes the commissioners. We're moving all of our
13 phones.

14 The other thing before we break is some
15 thoughts. We talked about having class II, class
16 III and technical standards, how to deal with
17 experts, bringing those in, authorization from
18 tribes that they speak for their tribe, the
19 concentrated schedule, the commitment of people, how
20 to choose the committee.

21 One of the things we're thinking about doing,
22 and it's been proposed to us, and we know that
23 previous commissions and advisory committees have
24 done this, is taking these alternative standards
25 that we've received from a tribe, under the

1 Executive Order 13175, and publishing them so that
2 tribes can comment while we develop our TAC and put
3 the structure together. And that when the Tribal
4 Advisory gets together in their inaugural meeting,
5 not only are they setting ground rules, but the work
6 has started for them.

7 Here's the document. Here are the comments
8 from the tribes after we've published it. Find the
9 differences and work on them. And so, we're looking
10 at, like, narrowing the scope and having that set up
11 before the committee has to start its work, rather
12 than starting from scratch. Not just this document
13 and comments from tribes, but NIGC's observations on
14 the comparison of the current MICS and what has been
15 proposed. I'd like to hear thoughts on that. We
16 figured that might be a way to garner tribal input,
17 set the stage for the work that the TAC would do and
18 save us all some time and some resources. And also,
19 give tribes an opportunity to weigh in.

20 MS. BRYAN: I definitely agree with that
21 process, Chairwoman Stevens, because if you do have
22 a document and you do get those comments, and you
23 know where there is going to be some controversial
24 issues that may not work for different tribes. And
25 then the TAC group can work from that, from those

1 comments, and try to provide a document that will
2 benefit Indian country as a whole.

3 CHAIRWOMAN STEVENS: Thank you. Elliot?

4 MR. MILHOLIN: Just a quick question for
5 clarification. When you say, "Publication" do you
6 mean publication as a proposed rule in the Federal
7 Register under the APA, or do you mean publication
8 of discussion draft in the context of tribal
9 government to government consultation in the
10 pre-publication stage?

11 CHAIRWOMAN STEVENS: Actually, we're
12 discussing how we can do this, and we've been
13 talking to - is it the GPO? - the Printing Office,
14 about how we can do this because other agencies do
15 that. It may not be a proposed rule from us, but it
16 will probably be in the proposed section. They have
17 buckets of where you can publish things based on
18 what it is. So, it's not unheard of to put it into
19 the register, but it would not be a proposed rule
20 from us is what we're talking about. We're trying
21 to sort that out, so that it's clear what we're
22 doing. Certainly it would be a discussion draft,
23 but it wouldn't be a proposed rule for us.

24 As I said, other agencies apparently have done
25 this, where stakeholders have offered alternatives

1 and that they're not necessarily the agency's
2 document, but you have to find some mechanism to get
3 this out. So, it would not be our proposed rule.
4 We wouldn't be triggering a proposed, the rule
5 making process by publishing this. So, we're still
6 working out the mechanism to publish. Yes, Liz.

7 MS. HOMER: Thank you Madam Chair,
8 Elizabeth Homer. A couple of things on the
9 consultation process. And at the risk like sounding
10 like I'm arguing with my colleague, Mr. Green, I've
11 been doing, I haven't always been a lawyer in
12 private practice. I've also served in government,
13 and I participated many, many, many consultation
14 efforts within the Department of the Interior and
15 other agencies.

16 And I think that number one, the way to make
17 consultation truly work is to establish a level of
18 trust. When everyone believes in the process and
19 trusts that the process is open and candid, and
20 everyone is acting in good faith, you have good
21 processes. People enjoy these joint collaborative
22 efforts if they are done positively.

23 I think that it's also important for the agency
24 . . . let me put on my fed hat. From the agency's
25 perspective, is I think that you need to give

1 everybody an opportunity to volunteer to serve on
2 these things. And I think that if you don't, then
3 you get accused of cherry picking your buddies and
4 the go along to get along people that are just going
5 to, kind of, do the agency's bidding. And it
6 sometimes can get off on a bad start just because
7 there may be a suspicion out there. And the other
8 thing is that it is a big commitment, and your
9 letter of solicitation for input can make it very
10 clear that it is a big commitment of time. So,
11 you've got those kinds of issues. I think it's
12 very, very wise to use the third-party facilitator.
13 I think that right now the attitude in Indian
14 country toward the NIGC is very positive and very
15 hopeful. If it weren't, I would say you probably
16 wouldn't want to use an Interior department entity
17 to facilitate your meeting, that you would find
18 somebody completely independent. But I think that
19 because there is a sense throughout Indian country
20 that the NIGC is acting in good faith, that the
21 center is probably, or is an acceptable choice.

22 I also think that it's going to be really hard
23 to balance the group with class II and class III. I
24 think you're right, that there many things that are
25 identical: the way you handle accounting, the way

1 you do a drop. Well, there actually may be some
2 differences in how you do a drop with class II and
3 how you do it with class III.

4 Bur most of your accounting kinds of things,
5 and those are going to be very similar. But there
6 are going to be really specific differences. And I
7 think that you want to make sure that if you're
8 going to try to do this together, both sections
9 together, that you do it in a way that there is
10 clearly a balance of expertise on your committee.

11 I've sat through, I guess years of, eight years
12 of going to almost all the NIGC consultations on the
13 MICS, and I had clients that were members of those
14 advisory committees, and it was a really terrible
15 process. There weren't ground rules. There wasn't
16 a protocol. There wasn't a consensus mechanism.
17 And consensus is very important. That doesn't mean
18 we have to be in complete agreement, but we can get
19 to someplace that we can all live with. All of
20 those kinds of things were not done in those
21 processes. They were not transparent. They started
22 out trying to close the doors on everyone, which, of
23 course increased the suspicion and established an
24 environment of distrust. And in some of them there
25 was not a commission level person there. So, it was

1 not really a consultative process on a government to
2 government basis because the decision-makers weren't
3 at the table. It was being driven by the staff, and
4 I think that, that was a big mistake. And that was
5 something that certainly, during my tenure. You
6 know we all go back to our Halcyon days, right?
7 During my tenure, we made a special effort not to do
8 that. That there would be a commissioner, a
9 decision maker, present at all times during these
10 meetings, so that the agency was committed as well
11 as the participants on the working group.

12 And finally, the hardest issue and the one that
13 everyone has struggled with, going back 20 years of
14 doing negotiated rulemaking activities or other
15 collaborative processes in developing rules and
16 regulations and programs and what have you, is what
17 do you to start with?

18 We always tried, based on my experience, to not
19 have a purely federal document to start with.
20 Because that automatically, at least from the tribal
21 perspective, they view that as the agency has
22 already committed to this concept and this idea.
23 And they've already done all this work, so they're
24 not going to change, and we set up an adversarial
25 process.

1 So for example, when I was the chair or the
2 co-chair of the committee that did the environment
3 public health and safety regulations, number one.
4 The first effort, I didn't come to the table with a
5 draft. We came to the table with a concept. Now
6 what we've done here with the TGWG is basically,
7 kind of, fixes this problem. Because you are not
8 necessarily, if you started with the TGWG's
9 document, it's not a federal document. Now we would
10 presume that you all would want to take a look at
11 it, but I think the most important thing about it,
12 whatever the specifics in the documents are, is the
13 concept. And is there buy-in across Indian country
14 of this concept, which starts out with this idea
15 that there are federal standards. These are the
16 standards; this is why we are doing these things.

17 Then you have tribal regulations. The tribal
18 regulations put more flesh on the federal standards,
19 so at the TGRA level. And then ultimately, these
20 documents, these standards are going to be
21 implemented as internal control policies and
22 procedures at the operational level.

23 So, you have these three things, each one
24 getting more specific. And if everyone buys into
25 that idea, you've got a nice place to start with

1 this working group document. And, kind of, to the
2 last point I wanted to make, you were saying that
3 you were trying to figure out what would be the best
4 way to put this out for comment to Indian country.
5 I'm hopeful that we could agree or you could be
6 persuaded that what we've done here today does that.
7 Because you are publishing all of the things that
8 have been submitted, you are publishing the records
9 of these proceedings, and these documents have been
10 submitted as a part of this effort, so they can be
11 published on the agency's website and made available
12 to all of Indian country, and we can immediately
13 start that feedback process.

14 Because you know the committee, now we're not
15 saying that this is the end-all and be-all, but we
16 think we've done pretty good job. We've worked
17 really, really hard, but we also want other feedback
18 and input. Not everybody can spend weeks and months
19 and hours that this group did, and we want that.
20 So, we think that we found a way for the agency to
21 do that. It's not your product. You're not
22 endorsing it. You haven't even had a chance to look
23 at it yet. But we can get it out into the world and
24 get that process started.

25 CHAIRWOMAN STEVENS: Thank you Liz. So,

1 you're suggesting skip the Federal Register and just
2 post it. Our internal discussions have been, there
3 are some folks who don't engage unless we put
4 something in the Federal Register. I mean we're
5 posting all sorts of stuff up on the web site. When
6 we get the most feedback is when we trigger a
7 Federal Register Notice. That's why we're thinking
8 about it. It goes right to Elliot's point. That
9 how are you going to do this? And correct me if I'm
10 wrong, but it seems like when Federal Register
11 stuff, when we print something in the Federal
12 Register, responses pour in.

13 We have, sort of, in some areas when we do the
14 discussion drafts, we post these on the website. We
15 get feedback, but it increases substantially when we
16 do a Federal Register notice, however that notice
17 appears. So, that's why we're thinking about it.
18 We can do both too. In terms of the Federal
19 Register, we want to be very careful about how we
20 present it.

21 MS. HOMER: Yeah, I think that's
22 absolutely correct. How you characterize it is
23 going to be key. But I would talk to the Federal
24 Register people. They're full of good ideas on
25 alternative ways of doing what it is you want to do

1 including just a cross-referenced to your webpage.

2 CHAIRWOMAN STEVENS: Yeah, we're talking
3 to them now about how we can do this and exactly
4 what this is. It's not new, and you're right. They
5 have been very helpful. I'm looking at Ernie
6 because I'm not sure if you were waiting to make a
7 statement, but we're past our break time. Would you
8 mind if we took a break, or would you like to make
9 your statement?

10 MR. STEVENS: I am here, eyes and ears,
11 and I'm just here to support this working group that
12 put this document together. I'm here to be
13 supportive and respectful of this process of
14 communicating with the National Indian Gaming
15 Commission.

16 I think yesterday's hearing reflects how much
17 work we have to do and how hard our job is. And we
18 have a lot of people that understand where we come
19 from, a lot of people understand what we have to do,
20 and some people just don't understand. And no
21 matter how hard we work at this, they may not ever.
22 But I think for the most part the majority of
23 America understands what we're doing and why we make
24 these kinds of documents such a priority. What this
25 kind of work is such a priority for Indian country.

1 So, I think that's really all I had. I just wanted
2 to be here for a little while. I'm trying to get
3 back. I have the benefit of being able to go home
4 just about every weekend. And again, to the extent,
5 to these lawyer lobbyists that helped us in this
6 working group, the tribal leaders and to yourselves,
7 the work you have to do.

8 I know that we are not always the most
9 agreeable and not always the easiest to work with.
10 But the professionalism and work commitment
11 expressed on behalf of the NIGC, I think is
12 commendable, and I wanted you folks to know that I
13 appreciate it. So hopefully, when me or my team,
14 I've only got one team member here today; he'll stay
15 with you. But when we are difficult or not
16 understanding some of the process, even though you
17 know we know the system. You know that we respect
18 you, and we appreciate what you do. So, to that
19 extent the working group, NIGC, we want to continue
20 to do the best we can do for the future of Indian
21 country. And I know that everybody knows that's our
22 process, but I wanted you to know, Chairwoman
23 Stevens, and your colleagues. I want you to know
24 that we respect you. We look forward to working
25 with you, and we want to do a good job because

1 everybody here, no matter what our role, our
2 position, our capacity, we know that it is for the
3 future of our children and protecting the integrity
4 of Indian country.

5 I think that's why we're so successful at what
6 we do. It's not about your team or my team. It's
7 about our communities. And I think that's what I
8 tried to express yesterday in the hearing, and I
9 hope that, that's the statement. The press picks up
10 something different, but the statement is true, and
11 I said this the last time we testified, maybe about
12 a year ago. That our community, they're the ones
13 that judge us. They are the ones that look at us,
14 and they are the ones that are striving for us to be
15 successful at what we do.

16 So I'll conclude with this, Chairwoman Stevens.
17 I'm going to go home, and every time I get home, I
18 eat breakfast Saturday and Sunday morning with one
19 of my youngest of 10 grandkids, one of my daughters
20 or sons, always my wife of 32 years, but my grandma
21 is 101 years old. And you know she lived through
22 the depression era. She got taken away from her
23 parents. The guy that raised her was a Civil War
24 veteran. So, I won't give you the veteran spiel,
25 because everybody knows that people of Indian

1 country are soldiers. But this guy used to ride by
2 the boarding school, and my grandma was not even
3 kindergarten age, to throw candy. But he would
4 always look straight ahead because the government
5 said, "You can't even look at your kids." But this
6 Civil War veteran, his brother is buried somewhere
7 in the South because he gave his life for this
8 country. So, we know that our responsibility
9 started with my grandpa. His name is David
10 Chrisshaw (phonetic), and to my grandmother, 101
11 years old, she lives on her own. She lives
12 independently in a facility built with gaming
13 dollars, but she never asked for anything. Her
14 house that she moved out of, she still paid taxes
15 on. And that's the bottom line. My little
16 grandbaby to my 101 year old grandmother, that's who
17 we're working for. And I wanted you to know, again,
18 if we are a little gruff sometimes, you can blame it
19 on Richard. But we've got a job to do, and we're
20 going to do it, and we're going to do the best. We
21 have a great working group, did a great task. But
22 we respect you. We appreciate you, and we want to
23 do the best for Indian country for my grandma, my
24 little grandbaby and everybody in between.

25 CHAIRWOMAN STEVENS: Thank you, Chairman

1 Stevens. And one, I want to say thank you for
2 coming to the consultation today and representing
3 your member tribes. But two, I agree. We're not
4 always going to agree, and like I said, we're not
5 here to make everybody happy. We are going to come
6 across that, but that doesn't mean that we shouldn't
7 be respectful of one another. And just because we
8 disagree doesn't mean we should be disagreeable.

9 I am a proud Snohomish woman, and I was brought
10 up in a good way that even in the face of . . . and
11 I say that for all three of us, that we can disagree
12 and still move on with what we need to do. And then
13 finally, enjoy your time with your grandmother.
14 Take all of her wisdom and carry it with you and
15 pass it on to your grandbabies. So with that, let's
16 take a break. We've got about 15 or 20 minutes.

17 (WHEREUPON, A break was taken.)

18 CHAIRWOMAN STEVENS: Okay, we're going to
19 go ahead and get started again. I appreciate
20 everybody waiting. I do want to turn over the
21 meeting to Vice chairwoman Steffani Cochran and
22 Commissioner Dan Little. I have other engagements
23 right now that I need to go attend. So, I
24 appreciate everyone's attendance today, look forward
25 to your comments throughout the rest of the morning

1 and afternoon. And for all of those who came in
2 from other areas, safe travels, thank you.

3 MR. LITTLE: All right, as we continue,
4 was there any other comments on the discussion
5 before we broke on the Tribal Advisory Committee?
6 Dan.

7 MR. MCGHE: This is Daniel McGhe, with
8 Poarch Creek. I was just talking with someone
9 outside, and it may be something to consider when
10 you do decide to do your advisory committee, is to
11 predetermine the dates and set them out for however
12 long you think it's going to take, because one of
13 the big obstacles, even with the TGWG and other
14 working groups, is finding a time when everybody can
15 be there to meet, and it would prolong the effort.

16 Whereas in the beginning, if someone knows they
17 are being considered for this committee and the
18 dates are there before them, they can commit to say,
19 "Okay, yes I can do this, and I can do it on these
20 dates," and put it on their calendar. So they don't
21 schedule things, and it always be open. Something
22 to consider.

23 COMMISSIONER LITTLE: That, I
24 wholeheartedly agree with you. That's a very good
25 comment, and I think something we have discussed

1 before. I think, especially this commission, a lot
2 of us have pointed out that when we came on, we took
3 on these responsibilities. We knew that we were
4 here for a set amount of time, and we really wanted
5 to get something accomplished, and we are bound by,
6 basically, dates when our terms expire. We've got a
7 Presidential election coming up next year. So, we
8 understand that we have a small window to complete
9 this business here. I think our goal is August of
10 next year to have final rules completed. And this
11 Tribal Advisory Committee, we know, I think the last
12 one continued on for a couple of years. We don't
13 have that much time. We need to probably get
14 something done by early spring next year. So, very
15 good point, very well taken, and we'll definitely
16 consider that. So, thank you.

17 Was there any other comments on the discussion
18 of potentially, a Tribal Advisory Committee?

19 Before we move on, and I know there are some
20 tribal leaders at the table. I definitely want to,
21 if there is a particular issue you would like to
22 address now versus me just continuing on with the
23 agenda? We'll probably start with the self
24 regulation, regulation. I would entertain if
25 anybody wants to bring up an issue that is important

1 to them right now? Yes, sir.

2 MR. CARROLL: Yes, Bob Carroll, with the
3 Chitimacha Tribe. Not the self regulation, but in
4 regard to the sole proprietary interest. That is an
5 area we would request clarification, do a definition
6 on that. We've had numerous interactions with
7 lenders. We are building a hotel now. And the
8 Wells Fargo issue came up, in terms of the other
9 aspects of the sole proprietary interest. So, I
10 know there was an offer whether people would want a
11 definition. We would. We would request a
12 clarification on that particular point.

13 And also our chairman had to leave. I just
14 wanted to express on behalf of the tribe the
15 appreciation to the commission for having the
16 consultations and allowing us to participate to the
17 level that we all are. We think it is very helpful.
18 The Tribal Advisory Committee is also a good step.

19 We have minimal class II in our facility now.
20 We're grossly disproportionate with regard to class
21 III. But just in terms of the reaching out, and we
22 know the timetable is getting tight for a lot of
23 these things. We'll be as aggressive as we can
24 getting comments back in regard to what Lael and
25 Steffani had provided us yesterday. They did a good

1 job, so we appreciate the opportunity. Thank you.

2 COMMISSIONER LITTLE: Great, thank you. I
3 guess we can continue on the sole proprietary
4 interest discussion. Is there any other comments on
5 that? Is everybody, I guess, I could maybe, kind
6 of, throw out some, is there a general feeling that
7 this needs to be defined? Obviously, it needs to be
8 clarified, and if so, who should define it? Can't
9 hear you. Oh, deadline for comments. No, we don't
10 have one yet.

11 MR. MCGHE: I know Poarch Creek had some
12 concern, but they plan on writing something, putting
13 it in writing.

14 COMMISSIONER LITTLE: Okay. I hate to
15 move on. Jess, you are more than welcome to take a
16 seat at the table if you would like, if that would
17 be easier. I just want to get you to walk all the
18 way across the room there.

19 MS. COCHRAN: Turn on your microphone.

20 MR. GREEN: Thank you for allowing me to
21 sit down. I think the chair was just trying to
22 torture me by keeping me standing up.

23 I have said this before, but I want to be sure
24 that everybody understands. There is a real danger
25 about sole proprietary interest. And the danger

1 doesn't lie in the definition. It lies in the
2 change of facts.

3 If the commission is ever put in a position to
4 opine whether this contract has a sole proprietary
5 interest, the contract may not be, today. That does
6 not mean that if economic conditions change that,
7 that contract or that loan or that lending situation
8 doesn't have the tribe on the treadmill where
9 they're just paying interest.

10 The critical issue when you start considering
11 these sort of ownership interests is that tribes
12 can't declare Chapter 11 bankruptcy. We don't have
13 any way, like Donald Trump, to write down the debt,
14 except by agreement. And this is one of the
15 provisions that helps us do that. The more
16 definition you put into it, you need to be cognizant
17 that, that's one of the uses of this provision.

18 And the sole proprietary interest can be
19 violated, not just by a single contract, but by a
20 careless manager that gives lots of 3 percent
21 contracts. If the manager waives sovereign immunity
22 of the facility and has the authority and gives too
23 many percentage contracts that come off the gross,
24 again, tribes are in a position that they don't make
25 any money. They've waived sovereign immunity. All

1 the money is going someplace else.

2 The benefits of ownership no longer reside with
3 the tribe. And it may not be any single entity. So
4 when you start trying to consider what you need to
5 say about this, this is a very, very complex
6 situation. I know folks like Wells Fargo would like
7 for you to be able to review and say, "No, this is
8 not sole proprietary interest. No, this is not a
9 management contract." But while it may not be a
10 management contract or sole proprietary interest
11 today, if someone builds between you and the
12 population base and puts up a larger casino, it
13 might be tomorrow. And the problem that we do not
14 have a Chapter 11 ability, when the creditor
15 situation overwhelms us, has to be considered. This
16 is one of the mechanisms we use to hold that off
17 with, as well as, this becomes a management
18 contract.

19 Now long before the Wells Fargo decision, I
20 told lenders and bondholders that presented
21 obligations to me, I said, "This won't work." And
22 they said, "Why?" And I said, "Because when you
23 retain the right to come in and absorb and
24 administer the management or to make management
25 decisions, it becomes a management contract then.

1 And then you've got all these requirements to go
2 through the NIGC." "Well we'll go get an opinion
3 now that says it's not."

4 I said, "That might work, but when the
5 situation occurs, and you start doing whatever it is
6 you intend to do, the actions may become a
7 management contract." Because again, life is also
8 about not only how the paper is written, but how the
9 work is actually accomplished.

10 I pay very close attention. There is a Sac and
11 Fox decision out of their Supreme Court in Oklahoma
12 recently, that has 15 pages or recitals of pleadings
13 about how they were in tribal court, they were in
14 federal court, they were back in tribal court. And
15 then the Tribal Supreme Court gives it's analysis.
16 And it's basic analysis is the totality of these
17 three agreements is a management contract, and
18 here's why. And the difference is that they cited
19 the little pieces that they attached could have been
20 left out of the contract, so that when you tie them
21 together, they might not have been a management
22 contract. But the way they were trying to use them
23 created that. And I think it was a very good
24 decision and a sign post for a lot of us that work
25 in this area.

1 A combination of agreements, the combination of
2 unforeseen circumstances, the development of new
3 agreements with third parties, all have an impact on
4 what that sole proprietary interest is. And I'm not
5 sure that I'm smart enough to give you any
6 assistance whatsoever in writing regs. All I see is
7 I do not have the ability to foresee all of the
8 circumstances. I can only look at the circumstance
9 that occurs today. And I would caution you, if you
10 write any opinions, that you limit it to the
11 circumstances today. And if you write regs, that
12 you be very, very careful. Because changing
13 economic conditions, changing facts and management
14 decisions that occur can have a drastic effect on
15 what the sole proprietary interest is. Thank you.

16 COMMISSIONER LITTLE: Thank you for that
17 comment. Is there any other comments on whether or
18 not the sole proprietor interest should be defined
19 through a regulation? Steffani, you have something?

20 MS. COCHRAN: Jess, you have made the same
21 or similar statements, I know, consistently
22 throughout the consultation process. And in your
23 opinion, is there any inherent value to guidance
24 though, to help? Because what we are hearing from
25 the tribes outside of . . . you're absolutely

1 right. It measures a point in time. But as tribes
2 prepare agreements, enter into agreements, compile
3 their documents, some were saying this helps us to
4 understand at least the parameters of those
5 negotiations at a period of time in the negotiation.

6 Is there any value to guidance documents where
7 we lay out what we'll do, the process, those types
8 of factors?

9 MR. GREEN: I think you have hit on
10 something that might be of value, that might solve
11 some of the tribal interests.

12 Guidance documents, it says you're only going
13 to look at the situation as it is actually in
14 practice right now. That the operations of the
15 documents, the way they're actually being used
16 together, could affect your decision later on. And
17 that the economic circumstances could change your
18 opinion. And that certainly, you don't need to have
19 in your lending documents that the lender can come
20 in and operate the facility.

21 I think these are things, that these kind of
22 guidance statements would be helpful. Might well
23 deal with some of the problems that you are having
24 with lenders. But the problem with lenders is they
25 don't get the fact that economic conditions can put

1 them in a position where we are on a treadmill. And
2 if that ever happens, we don't have a sole
3 proprietary interest anymore. If all I'm doing is
4 paying interest and I can't foresee ever stopping,
5 and the tribe is not getting any money, we've got to
6 make a change. Because if I don't, the tribe will
7 just make it illegal. I mean, there is no basis for
8 us to continue.

9 And of course, a lot of these contracts try to
10 interfere with the legislative authority of the
11 tribe, saying the tribe will not make any act that
12 does this or this or this. Well, if they look at
13 the history of litigation, one legislature can't
14 bind the next one. Last year's general counsel can
15 certainly be different from this year's. Or this
16 year's tribal legislature, they will approach things
17 entirely differently, in my experience. I've been
18 working all over Indian country for 35 years and
19 that's the other thing I know, is that tomorrow's
20 legislative group will change, and they will have a
21 different approach.

22 And so yes, I think your concept of guidance is
23 very valuable.

24 MS. COCHRAN: But isn't there a
25 relationship here, Jess, when tribal gaming

1 ordinance has to have a provision which says sole
2 proprietary interest will rest with the tribe. So a
3 new legislator, the tribe still has remedies under
4 its own provisions?

5 MR. GREEN: Not all the gaming ordinances
6 say that. We've got a lot of old gaming ordinances,
7 and you would be shocked at what some of them say.

8 MS. COCHRAN: Okay, then let me throw out
9 a thought. Again, just a thought. What if we look
10 at it in terms of making sure that those provisions
11 are part of the ordinances?

12 Because my understanding, and correct me if I'm
13 wrong, I don't practice in a legal sense in this
14 area day to day. Doesn't IGRA require it?

15 MR. GREEN: IGRA requires that you meet a
16 check list of requirements for your gaming ordinance
17 to be approved. There is no authority in IGRA for
18 you to require that we put anything in a gaming
19 ordinance. The issue is are these things met, and
20 if the chair finds they are, they are supposed to
21 approve them.

22 Now, there have been other chairs in the NIGC
23 that have made contrary statements, but that's what
24 the statute says. If you meet these requirements,
25 it shall be approved. And there are a lot of early

1 ordinances that are in contradiction to some of your
2 later regulations. And the tribes that have those
3 are very careful to hold onto them because it
4 enlarges the scope of class II gaming in some
5 instances.

6 Again, we have the statement in IGRA that
7 governs if your tribal ordinance says you're going
8 to follow IGRA, then you basically have made this
9 statement.

10 It is important to understand that where the
11 conflict in sole proprietor interest comes is the
12 tribe is not getting enough money. And that's also
13 driven by economics and driven by other contracts,
14 not just this one. And while the first two
15 contracts you had don't create a sole proprietary
16 interest, this last consulting agreement that your
17 chairman entered into with them, even though he's
18 not identically the same group, it is essentially a
19 part of the same group, and that pushes you over the
20 edge.

21 Those are issues that I think are going to have
22 to be looked at, based on a time. A snapshot in
23 time.

24 MS. COCHRAN: Thank you, Jess. Thank you,
25 Commissioner.

1 MR. CARROLL: I'd like to, if I could add
2 on that. Fundamentally, I agree with many of your
3 comments. But I just want to point out we face the
4 real-life issue now of in dealing with lenders,
5 confusion on the part of the lenders as to now
6 requesting very onerous terms to, what they think,
7 to protect their investment and so forth.
8 Understanding their recourse against the tribes is
9 limited.

10 What we felt is that some guidance is needed.
11 Now, we haven't, I'm not prepared to say it has to
12 be a regulation per se, but they are looking for
13 opinions. They're getting opinions often times from
14 commercial law firms with little or no experience in
15 Indian country. We have been asked on numerous
16 occasions now, to give legal opinions about the
17 enforceability of contracts that tribes are
18 executing. And the firms are picking up on the
19 issue coming out of Wells Fargo and so forth, and
20 saying, "Well now that this has been created, we
21 need a whole new set of requirements." And we've
22 resisted that. And little by little, we've been
23 chipping away at it, and we think we pushed it back
24 to where it is comfortable again. But it would be
25 helpful to us if there is a set of guidelines that

1 we could point to that would take into account the
2 enforceability limitations. But also from the
3 perspective of the lenders, give them some comfort,
4 so that we're not being shut down in terms of
5 getting favorable lending rates and getting access
6 to lenders.

7 And I know this is being faced by many tribes,
8 but in our particular case, it has been very
9 current. We've been able to hammer out with the
10 commercial law firms representing the banks, based
11 on conversations we've had with the commission and
12 so forth. And then, some of the recent case law
13 that's come out that has been helpful.

14 So I'm confident it's going to be worked
15 through, but we've talked about it and said if we
16 can get some guidance, it would be really helpful.
17 The vehicle of that guidance is really open to
18 discussion.

19 COMMISSIONER LITTLE: Okay, thank you.
20 Does anybody else have any comments on this? Ms.
21 Homer.

22 MS. HOMER: Thank you, Commissioner. You
23 know, I think this is a very complicated issue, and
24 it has many ramifications. But at the same time,
25 it's a pretty simple and straightforward concept.

1 And that concept is, nobody but an Indian tribe can
2 own a tribal gaming facility. And if a third party
3 is going to be managing a tribal gaming facility,
4 their contract has to be submitted for review by the
5 NIGC, for lawfulness and consistency with IGRA, and
6 that regardless of the above, the tribe has to be
7 the primary beneficiary of the gaming revenue. In
8 other words, you can't have predators coming in,
9 taking over the gaming operation and getting all of
10 the funds that are supposed to go to the tribal
11 government for basic governmental services and
12 benefits and programs of that nature.

13 I think it will be very hard to come up with a
14 hard and fast definition of sole proprietary
15 interest that meets the objective of having a
16 definition. Which is a definition that you apply
17 equally to all facts in all situations.

18 So, my view is that the underutilized NIGC
19 bulletin process is one potential mechanism for
20 addressing these things. Maybe in a discussion
21 sense to begin with, and maybe as time goes by, to
22 flesh it out further. But I do think the NIGC's
23 bulletins on management contracts need to be updated
24 with subsequent experience.

25 I think that probably, if you look at federal

1 case law, the most highly developed case law is in
2 the area of management contracts. And I went
3 through this sad little exercise some years ago of
4 reading all the NIGC's sole proprietary interest
5 decisions. And there is some, there are some things
6 that can be elicited out of that, but I have to tell
7 you that it's basically a repetition of the same
8 things. The citation of the same cases. It's
9 really not helpful to read all of those opinions.
10 They are not helpful.

11 And I think that experience, there can be
12 certain principles that can be synthesized out and
13 provide some greater guidance to the industry.
14 I also think that in some respects, the NIGC needs
15 to hold the line around these core ideas. And that
16 goes back to my simple statement, Only tribes can
17 own a tribal gaming operation. Only tribes can
18 manage and regulate this, except in accordance with
19 a lawfully approved management contract, and the
20 tribe is to receive the primary benefit. I think
21 that, that's susceptible to a discussion paper or a
22 bulletin.

23 COMMISSIONER LITTLE: You just brought up
24 a pretty good point about when economic conditions
25 change and tribes don't have the ability to file for

1 bankruptcy, and all they can do is renegotiate with
2 the lenders. And at some point, you're right, all
3 they are doing is paying interest. I mean, is there
4 a way to put together guidance that takes those
5 factors that do happen, and is happening, where the
6 only ability for a tribe to work out an agreement is
7 to renegotiate the terms of the contract and the
8 next thing you know, they are paying very, very high
9 interest.

10 MR. GREEN: Unfortunately, we do have some
11 tribes in that circumstance. And I have been
12 approached by major lenders who have asked me on
13 behalf of tribal, "What would you suggest to comfort
14 us?" And my statement is, "Put in your contract a
15 private Chapter 11 and require it of any person that
16 is going to be a major creditor of the tribe, so we
17 all go in this together."

18 You've got the biggest contract. If you're
19 going to make this big loan for something, you've
20 got the biggest contract. Do you want to have it
21 fixed, so you get it written down, or you get it
22 declared illegal? And again, this is not any
23 different than you would have if you signed an
24 agreement with Donald Trump. If the circumstances
25 change, so the money is not there to pay you,

1 everybody needs to take a lesser amount, so we can
2 go on and continue operations, and everybody gets
3 something out of this arrangement.

4 That's the only guidance I've been able to give
5 to deal with the circumstance you just described,
6 where either the initial projections or a change in
7 economic conditions.

8 I mean in Oklahoma, there are two or three
9 gaming locations that were built way back early in
10 the 90's that were very large. I know one in
11 particular. And then after Oklahoma signed their
12 compacts where we got class III gaming, there were
13 two larger locations built on either side of one of
14 these places that basically turned a 3,000 seat
15 facility into a 300 seat facility. Simply because
16 they are only going to get 300 players, because the
17 other two locations on the two lead roads cut them
18 off to the population base.

19 If they had, had an enormous amount of debt on
20 the facility, it would not have been paid for.
21 Fortunately, they had already paid for the facility
22 and their big issue is how do I make ends meet? How
23 do I cut my size back, and how do I explained to the
24 tribal electorate that the money I made five years
25 ago, we're not going to be able to achieve?

1 But these kind of circumstances are out there
2 in Indian country. And lenders, if they have
3 intelligent lawyers, it's been my experience, will
4 listen to you when you give them these kinds of
5 alternatives if they want to participate in the
6 deal.

7 Now, I also understand the frustration that
8 you're citing with the commercial lawyers having no
9 understanding of Indian law. And again, the Wells
10 Fargo banking disaster for them was caused by them
11 not hiring an expert in Indian law that would point
12 out to them you can't just run in and seize
13 management. And then when you have a disagreement,
14 instead of sitting down and talking to the tribe,
15 you can't just run over to federal court and make a
16 filing and seize management.

17 I mean there are a number of really bad
18 decisions made by the lender that caused that
19 decision. Because if they had sit down and worked
20 with the tribe, everybody would've understood that
21 needs to be some compromise. When you force things
22 to a quick decision, sometimes you get answers you
23 really didn't want. And I grasp, you all are being
24 asked to solve these problems. What I tend to
25 encourage you to tell them is that we're not the

1 end-all answer to everything. We can give you some
2 guidance. I think Steffani's guidance idea is
3 great. I think Liz's bulletin concept is great.
4 But you need to be very careful about being, this is
5 time specific, and this is contract specific. And
6 if you put two of these together, this opinion will
7 not hold. And I think you need to be very cautious
8 in pointing out that just because you're not the
9 identical entity doesn't mean we won't put the
10 contracts together, because I certainly have seen
11 that happen in a number of places. Thank you.

12 COMMISSIONER LITTLE: Go ahead, Lael.

13 MS. ECHO-HAWK: So, one of the things that
14 we see frequently are tribes presenting to us a pile
15 of documents, a pile of agreements that are with
16 various . . . they are with the slot companies, slot
17 lease agreement, they are with a developer and a
18 consultant and a management contract, and you put
19 the total of that together and the tribe is no
20 longer, it appears is no longer the primary
21 beneficiary because all the money is going out.

22 One of the things we've been grappling with is
23 who has the ownership interest? Can all of them, do
24 all of those . . . I mean if we're talking about
25 sole proprietary interest, can the sole proprietary

1 interest provision be violated by accumulation of
2 agreements with various individuals or companies?

3 MR. GREEN: You pushed first, go ahead.

4 MS. HOMER: I pushed first.

5 MS. ECHO-HAWK: This is not Jeopardy.

6 MS. HOMER: I've got to tell you, Lael, I
7 have seen exactly what you're talking about. I have
8 seen a complex development process project, and
9 everything was fine until you read the depository
10 agreement. An agreement that hardly anybody even
11 looks at, right? At least the client doesn't
12 realize how important the depository agreement is.
13 And in that depository agreement, it provides that
14 all of the money goes to the management contractor,
15 and none of it goes to the tribe. And it's
16 completely contrary to everything that's in the
17 "Approved management contract." Except for it says,
18 "This shall supersede any provisions in attachment
19 A." Which is the approved management contract. So
20 my rule of thumb in lawyering for my clients is the
21 more complex the arrangement the higher my radar
22 goes, as to how these different provisions operate.
23 There is another element here that, kind of,
24 goes into this discussion, which is the fact that
25 the tribes need these kinds of protections.

1 People will say, "Well, some money is better than
2 none."

3 I've seen tribes at the desperate end of the
4 thing, where they really are facing a predatory
5 lending situation, but without that loan, it's a
6 mission impossible. And my heart really goes out to
7 them. But at the same time, that doesn't mean that
8 we relax federal standards or recommend federal
9 standards to relax, because that's the very
10 circumstances where the most protection is needed.
11 It's when you're really, really desperate, and the
12 lenders are taking advantage of that.

13 So I mean, part of me says yes, a deal is a
14 deal is a deal, and that we're all grown-ups here,
15 and that we have the competence and the capability
16 to enter into our own contracts. And I think all of
17 that is correct. Except that it needs to be
18 consistent with the law. And the law is there for a
19 particular set of reasons, and those reasons are
20 there to protect tribal interests. So, I think that
21 in some of these big cases where bad things have
22 happened, I know that the lenders, they go to
23 Congress. They probably contract the NIGC. They
24 feel kind of angry that they didn't get their own
25 competent counsel that understands what the law is.

1 And so I guess part of me feels sympathetic, and the
2 other part says the law is there to protect the
3 tribes. And we need to hold the line there. Do we
4 need to give guidance? Yes. But we also need to
5 recognize that the tribes are not always in a
6 superior bargaining position, and the law is really
7 there to protect those tribes.

8 COMMISSIONER LITTLE: Go ahead, Jess.

9 MR. GREEN: I have actually been in a
10 circumstance when a depository agreement in
11 application prevented the tribe from getting money.
12 It wasn't in a gaming circumstance, but it was in
13 another circumstance.

14 The depository agreements, if you don't
15 scrutinize them carefully, usually say, number one,
16 the bank loan will get paid first. Because you've
17 got to deposit all the money to me and I'm going to
18 pay me first.

19 Secondary, I'm going to pay the management
20 contractor. Third, I'm going to pay the tribal
21 guaranteed payment, and if there are any payments
22 left over after that, then the tribe can access them
23 after they have set aside X amount of monies to
24 repair games. They've got like 40 percent if
25 anything is left that the tribe has to set aside to

1 maintain the facility during the terms of the
2 lending agreement with the bank.

3 That's why I pointed out that operation of the
4 agreement is so imperative. As long as money is
5 being made at an appropriate level, the tribe is
6 always getting their payment and always getting some
7 extra.

8 But when economic conditions turn down or you
9 don't meet your projections, what happens is the
10 bank gets their money. The tribe doesn't even get
11 to buy tobacco, Coke or Pepsi, whichever one of the
12 two vendors. You have to use one or the other. I
13 don't know if you all are aware of that, but they
14 make you pick one. You either use Coke or Pepsi.
15 But you don't have money to pay that with. And so,
16 the facility just gets in a terrible bind. And so,
17 that's why I say that you certainly need to
18 scrutinize it. And again, if you don't look at that
19 depository agreement when you're reviewing all those
20 contracts, again, lot's of times it's not sent.
21 It's where the real danger lies. Because the bank
22 in practice will send the money, based on its
23 availability, and that depends on how it is
24 deposited.

25 And we don't have a Chapter 11 for tribes, and

1 that's the source of these kind of problems. When
2 there's not enough money to pay everybody, what do
3 we do? And that's why I continue to emphasize that
4 you have to be sure that these things are time and
5 action specific. Because a depository agreement
6 with those kind of priorities, when there is plenty
7 of money works fine.

8 MS. HOMER: Could I just make one
9 suggestion? I think something that would be really
10 useful is to have an off the record roundtable,
11 maybe with Lael or some folks from the Office of
12 General Counsel and those attorneys that have had
13 experience on this side and maybe attorneys who have
14 had experience on the other side. Just, kind of,
15 talk about these issues, and there are creative ways
16 to address these issues. There are, I think Jess
17 mentioned one, which is to have a contract
18 provision, a default contract provision that does .
19 . . back in my Department of Interior days, we use
20 to do all these plans for the management of say a
21 dam. And we would have the drought year plan.

22 Well. if the contracts had the drought year
23 plan in it, then there would be those provisions
24 that would make it less contentious, and everyone
25 has discussed those things and are on board with it

1 from the outset of the contract. So I think that
2 maybe we could, a group of attorneys could, help
3 advance the thinking on this. I'm not suggesting we
4 write a regulation or write a bulletin or whatever.
5 But we just do a brainstorm, and I know that Michael
6 Cox is here, and he's being awfully quiet. But he's
7 got tons of experience in this area, and I think
8 that the benefit of just, kind of, a roundtable
9 discussion, and Elliott, would be a really good
10 thing.

11 COMMISSIONER LITTLE: Okay, thank you.
12 Sir, do you have a comment?

13 MR. CARROLL: Just one other comment. I
14 just want it clear for the record. We face this in
15 two different contexts. One has been in the
16 management contract interpretation, where the
17 management may do some interpretations that would
18 infringe on the primary beneficiary and also the
19 sole proprietary interest principle.

20 And separate from that would be straight loans,
21 not necessarily involving a management contract,
22 maybe involving the gaming facility, but without the
23 manager, per se. So it's a problem that we don't
24 see as shrinking. It's actually becoming more
25 impactful as we progress. And I think all the

1 suggestions have been very good, and I've actually
2 taken some notes here of some of the suggestions as
3 to alternatives. We've dealt with it head on. I
4 mean, we've been dealing with these commercial firms
5 representing the banks, and we've been successful in
6 backing them off on a lot of the Wells Fargo
7 principles.

8 But there's still this concern out there, and
9 we haven't been negatively impacted by that yet.
10 But it was in terms of interest rates and
11 availability of financing, we did feel some pressure
12 in that regard.

13 So whatever assistance we could be given,
14 whether a roundtable is setup. We would certainly
15 be willing to participate in that and help in any
16 way we could, because I think it's something we are
17 going to continue to face. It's funny, a lot of
18 these banks that we deal with don't seem to . . .
19 they look at it, and they say, "Well this is the way
20 we're going to lend the money, and that's it."
21 There's no recognition, no respect for the tribal
22 principles that are at play.

23 Fortunately, we've been successful in it, but I
24 think other banks that we haven't yet dealt with
25 really have to be educated. So, thank you.

1 COMMISSIONER LITTLE: Okay, thank you.
2 You know we're coming up on our lunch break, and I
3 want to, I don't want to leave this subject if
4 there's still more comments. But I also want to
5 make sure we touch on self regulation, regulation
6 before noon, in case there is anyone here who can't
7 be here after lunch.

8 I know we did briefly speak about the self
9 regulation, regulation before, earlier this morning.
10 Does anybody want to talk about that or the
11 reasoning? I know some of the comments this morning
12 stated that the self regulation, in order to receive
13 a certificate, it should be, I don't want to say
14 cumbersome, but there should be a lot of information
15 requested. But in the NOIs, some of the comments
16 that we got was the fact that it's too cumbersome
17 right now, and tribes are avoiding applying for a
18 certificate because of that. How do we reach a
19 happy medium? What is too much information?
20 Reviewing the regulation, I think there's
21 requirements for public notices that seem
22 interesting when you read them, but does anybody
23 want to further continue discussion on the
24 self-regulation, regulation?

25 MS. HOMER: Just one comment on that. I

1 think that if you took a look at the self-governance
2 regulations and compare that to the self regulation,
3 regulations promulgated by the NIGC, you're going to
4 see a completely different approach.

5 Under the current self-regulation program at
6 the NIGC, basically, the NIGC's audit division
7 descends upon your facility for a period of six or
8 eight weeks, they go through everything soup to
9 nuts. There is interviews with everybody. It is a
10 very difficult process. If you take a look at the
11 self governance regulations, to be a self-governance
12 tribe, and with that come tremendous responsibility
13 as well. Just as being self-regulating on your
14 gaming and selfgovernance context, I mean the tribe
15 is actually carrying out trust functions on behalf
16 of the United States, running all of its own
17 programs.

18 And basically, they require three years of
19 clean audits, a resolution from the tribal
20 government, and I think that there is one other
21 element which I now forget. But it is not nearly
22 as hard to become self-regulating for everything as
23 it is to become self-regulating for your gaming,
24 which you really are already the primary regulator
25 of the gaming.

1 And notice that when the focus of the NIGC
2 study for self regulation is not on the regulatory
3 mechanism to determine the competence and ability of
4 the regulatory mechanism, it is a soup to nuts
5 review of the management. Which to me is like, I
6 guess if the management is operating well, you could
7 presume that the regulatory agency is operating well
8 or functioning well. But it would seem to me that
9 to be self-regulating, the focus is on do you have
10 an adequate capacity, a regulatory capacity? Or do
11 you have a sufficient staff? Those kinds of things,
12 as opposed to just long difficult review of
13 operations. So, I think that something in between.
14 Maybe three elements and then a six or eight week
15 evaluation is probably the right kind of place to
16 try to get.

17 COMMISSIONER LITTLE: And the once a
18 certificate is granted, do you have any comments on
19 a required annual report? Is that something that
20 you think is intrusive or overly burdensome?

21 MS. HOMER: I think the statute requires
22 that the NIGC get the audit, regardless of whether
23 you are self regulating, whether you are class II or
24 III, whatever. All of the annual audit reports go
25 back to the NIGC, so that's already done.

1 There is already, I don't know if you guys know
2 this, but there is already an informal
3 self-regulation process. Your regional people make
4 a lot of their work plans around which tribes have
5 good, well functioning regulatory agencies that are
6 doing their job, and that's how they prioritize
7 their time. So, they're going to spend less time on
8 tribe X, because tribe X has got this comprehensive
9 system of regulation, and they're actually doing it,
10 and all of those kinds of things. So there already
11 is this, kind of, informal process anyway. I think
12 that there may be some guidance there. Or some
13 principles to be elicited from that informal
14 process, that would be useful to maybe capture in
15 language. And you could also do it through a
16 compacting process, kind of a voluntary process,
17 where if the Tribal Gaming Regulatory Agency, for
18 example, needs your help. Maybe there is a federal
19 case here, that there could be a way of making sure
20 the NIGC is always notified by the regulatory agency
21 when it needs assistance, support et cetera.

22 Strengthening tribal government is a key
23 purpose of the Indian Gaming Act, and I think that
24 making decisions from the commission that will
25 strengthen the regulatory framework of tribal

1 government advances that legislative objective.

2 COMMISSIONER LITTLE: Thank you. Anybody
3 else? Mr. Green.

4 MR. GREEN: I want to reiterate my earlier
5 comments that I think, certainly, the history of the
6 organization, how well it's done is an issue. But I
7 want to join with Liz, in that you need to get away
8 from operations and get over to regulation. If I've
9 got 75 workers in my gaming regulatory body, if I
10 spend over 3 or 4 million dollars a year, and if I
11 handle tort claims, prize claims, and I've got a
12 history that I can demonstrate that these have been
13 done, these have been completed, this is my
14 relationship with the state government for any of
15 the claims that have arisen.

16 I think that kind of relationship showing
17 competence from the Gaming Commission is the history
18 you need in your file, not the competence of
19 operations. Because if you are challenged by a
20 third party for the self-regulation, and again
21 that's my big concern, I want your file to be full
22 not of documentation about operations, but
23 documentation about the regulator.

24 And when I said earlier, in my earlier
25 comments, that we don't mind filling up your file,

1 we don't mind filling up your file with information
2 about our regulatory body.

3 Now certainly if there were historical failures
4 that we've had, that's an issue. But if my
5 regulatory body is well, and it services, its
6 actions are well documented, so that it's been able
7 to deal with problems. The fact that problems arise
8 shouldn't be the held against you. The issue is did
9 you deal with them? Because the bigger you are the
10 more problems you have. And were you able to deal
11 from a regulatory basis with those problems? And
12 as I said earlier, the benefit of becoming self
13 regulating is that you are omitted from 2706(b) 1
14 through 4 requirements, which is where you have most
15 of your ability to stick your nose in my business.

16 So, there are a lot of tribes that I think
17 would be more than willing to jump right in. The
18 other thing you end up is the more of these tribes
19 that you have given that self regulation certificate
20 to, the more you can point that tribes are doing a
21 good job, they are maturing and their regulatory
22 system's for class II are working.

23 And I think Liz has also pointed out that there
24 are little tribes that are always going to need lots
25 of assistance. They are not going to be petitioning

1 for this. They want to be able to call you and have
2 you send your people down and tell them what to do
3 next. And as an attorney that represents some of
4 those people, I want you all to come promptly and
5 give me that assistance. Because I don't want a big
6 problem. I want somebody to tell my people what to
7 do next. So, thank you.

8 COMMISSIONER LITTLE: All right, thank
9 you. Do you have anything, Steffani?

10 MS. COCHRAN: (Indicating negatively.)

11 COMMISSIONER LITTLE: Does anybody else
12 have any comments about the self-regulation,
13 regulation? Any way we can streamline the process,
14 or is there any on the list of requirements that is
15 not necessary?

16 MS. HOMER: Well again, Dan, I think that
17 under the present process that the regulatory
18 framework is not really even a part of the
19 evaluation. And that's the biggest, kind of,
20 problem.

21 COMMISSIONER LITTLE: We're just about at
22 the lunch break here, and I don't know if we want to
23 take a break now?

24 MS. HOMER: Dan, can I make just one off
25 the record comment?.

1 COMMISSIONER LITTLE: I think you'll be on
2 the record.

3 MS. HOMER: Do we have to stay on the
4 record?

5 COMMISSIONER LITTLE: Yeah, we, kind of,
6 do.

7 MR. GREEN: Make it at lunch.

8 MS. HOMER: Okay.

9 COMMISSIONER LITTLE: We're going to break
10 for lunch a couple of minutes early. We'll be back
11 at 1:30. In the event there are some folks that
12 were planning to be here after lunch, I'm not sure
13 how long that's going to go. So, we will see you at
14 1:30. So, thank you.

15 (WHEREUPON, A break was taken.)

16 COMMISSIONER LITTLE: All right, good
17 afternoon everybody. We're going to bring this
18 meeting back to order here. In the afternoon on the
19 agenda, we have Group 3, Part 543, the minimum
20 internal control standards for class II, and Part
21 547, the technical standards. I know we did discuss
22 some of these this morning, but I want to open up
23 the floor for any questions or any comments that any
24 of you that have stuck it out this afternoon here
25 want to make. Come on Linda, you've got some

1 something to say, I know you do.

2 MS. COCHRAN: One of the things I'll, if
3 I could, Commissioner. I'll elaborate on, just for
4 people who may not have heard the statement made.

5 The chairwoman talked this morning, and I
6 talked yesterday as well, about the possibility of
7 using a TAC and pulling MICS off and pulling the
8 internal controls off. And one of the things that
9 we want to be clear is part of the thought process
10 behind that was if we pull it off, away from and put
11 it on a separate track from the other changes that
12 are going on in the other parts of the regs, we
13 won't slow those down.

14 We're really concerned about those getting
15 bogged down in the technicality of MICS and the
16 technical standards. So, they will take two
17 parallel but different paths, which should help
18 facilitate moving some things forward, is our hope.

19 COMMISSIONER LITTLE: And you know it's,
20 kind of, when we started the process here, we knew
21 that there could be a time during this whole
22 procedure here that we may have to adjust and do
23 something different. And clearly there is. We're
24 hearing from tribes that Tribal Advisory Committee
25 is what folks think could be very helpful in us

1 coming to a resolution on these complicated issues.

2 So, does anybody have anything else they want
3 to share about potential Tribal Advisory Committee,
4 or composition, time frames, participation? I know
5 we've gone through these a lot. Linda, go ahead.

6 MS. MCGHE: Linda McGhe, Poarch Creek.
7 He's the one that broke my arm two months ago. I
8 told you my boss did it.

9 COMMISSIONER LITTLE: For the record?

10 MS. MCGHE: For the record. No, I just
11 wanted to reiterate what Daniel said about having
12 the time frame already laid out, so that people can
13 plan that we are going to be occupied on this for
14 the next six months or the next year, however long
15 it is going to take. But we are committed to be at
16 those things. And also, whoever you pick to be on
17 that committee, if they are allowed to bring
18 experts, to let those experts speak at the point in
19 time when something is being discussed, not let it
20 happen six, seven hours later, when it's, kind of,
21 null and void for them to speak at that time.

22 COMMISSIONER LITTLE: That's a very good
23 point. I appreciate you pointing that out; makes
24 sense. Anything?

25 MS. COCHRAN: The chairwoman, I know is

1 already in the process, as we talked with Interior,
2 has asked our legal staff to examine FACA and some
3 of the limitations that we may or may not have under
4 federal law. And we look at that and interpret it
5 in light of our objectives. And the initial
6 indications are that we're going to be able to do
7 some things that haven't happened in the past, at
8 least initially. I know some of you weren't here
9 yesterday, and we covered a great deal of parts.
10 Did you have any comments you wanted to offer or
11 revisit from the agenda? I mean, we're happy to
12 take them.

13 COMMISSIONER LITTLE: Does anybody have
14 any comments about the technical standards? One
15 question I think that might be helpful to discuss is
16 back on the Tribal Advisory Committee, does anybody
17 have any comments on how we would handle class II
18 and class III? Whether they be separated, whether
19 we break into smaller working groups to handle those
20 specifically, whether they be done in a combined
21 effort? Guidelines.

22 MS. COCHRAN: Mr. Green, would you please
23 get on the record.

24 COMMISSIONER LITTLE: I'm sorry, Linda, go
25 ahead. You have the floor.

1 MS. MCGHE: Yeah, I just wanted to say
2 working with class II and class III at the same
3 time, in my opinion, if you are not going to break
4 them out in different groups, it's going to defeat
5 your purpose. Because you're going to have class
6 III people in the room that are arguing over class
7 II regs, that they don't really know what they're
8 talking about and vice versa. So, I don't see any
9 problem with doing them at the same time, but you
10 need to break them apart because it's going to be
11 more confusing. And also, when you do set up the
12 committee, it is good to have a variety, and it
13 doesn't hurt to have the class II and class III on
14 the same agenda because there are people that have a
15 class II and class III facility at the same time.
16 So, that is going to be, kind of, difficult to keep
17 them separate that way, but I know we ran into a lot
18 of things that it was, we were reviewing the class
19 III regulations, and we were told when we were
20 reviewing stuff, "Well, this is not really a class
21 II issue. This is more class II. We're going to
22 put it over in class II."

23 And that was fine, but we never got to review
24 the class II document. We were just told this wa
25 now going to be over here in class II, but we didn't

1 get to see how it fit in the context of that class
2 II document.

3 So that was a problem, by us studying both at
4 the same time. And that's when I was on the working
5 group.

6 COMMISSIONER LITTLE: Thank you.

7 MS. MCGHE: Yeah, the advisory committee.

8 COMMISSIONER LITTLE: Okay, thank you.

9 MS. HOMER: I will be very brief. But I
10 just want to point out a couple of things in Part
11 542. It still has all the class II in it, okay?
12 And that bingo section, which is the heart of the
13 minimum internal control standards, contains all.
14 It's all a mish mosh of different things: the
15 accounting standards, the audit provisions. In the
16 work product that we gave you, we pulled out all of
17 those redundancies. So, now there is an accounting
18 and auditing section. They are broken up into the
19 specific kinds of audits that are conducted: daily
20 audits, weekly audits, monthly audits, annual
21 financial audits, procedural MICS audits.

22 So, I think you have two choices with a 542.
23 And that is leave it alone and let somebody else
24 worry about that one and get the class II MICS and
25 technical standards final fixed and ready to go. Or

1 you're going to have to do a major revision to 542
2 and strip out all of the class II stuff because
3 there's tons of class II stuff in Part 542. And
4 that's going to be a big job. That's a really big
5 job, and then you'll have to figure out whether you
6 need to replace that stuff.

7 My view is it might be better just to leave
8 well enough alone and do nothing with Part 542.
9 That just might be the thing to do.

10 COMMISSIONER LITTLE: What about
11 developing guidance documents?

12 MS. HOMER: You know I really love the
13 approach that we took. And I will just be honest
14 with you. When we first started doing this, I
15 wasn't a big fan of it. I was thinking, "Oh my God,
16 we're going to have relaxed standards here, and it's
17 going to look bad for the agency. It's going to
18 look bad for the tribes." I was worried about it.
19 I just thought somebody sees something that's
20 completely different looking. They're going to
21 think that we are somehow . . . we've let the horse
22 out of the barn here, and it's going to run amok.
23 But what I like about how we resolved that is
24 through these guidance documents, which can be
25 highly detailed.

1 We actually started getting into fights that we
2 had gone too far in the guidance documents to
3 establish best practices. Because once you've said
4 these are the best practices, then if you don't do
5 the best practices, then you look bad. I go, "Yeah
6 well, that's probably is true. If you don't do the
7 best practices, it's probably not a good thing.
8 Deal with it."

9 But by doing it this way, we make really clear
10 what the standards are. Nobody's going to have to
11 say, "Oh gee, why are we doing this?" Because you
12 know you are doing this to prevent fraud or forgery.
13 You're doing this to prevent counterfeiting. You're
14 doing this to prevent embezzlement. And under the
15 MICS right now, I don't know if you guys have read
16 them. I mean they are gibberish, and they're really
17 made for manual systems, for back in the day when
18 you had coin operated slot machines. And that is
19 just not the environment that we live in, in Indian
20 country. I mean the irony of how Indian gaming has
21 developed that almost without exception, our casinos
22 are more modern, have better technology than what
23 you are going to have in Atlantic City or New
24 Jersey. And that's just how our industry has
25 developed. So, you have automated systems, but the

1 MICS, the way they are right now, they don't tell
2 you how to deal with your automated system. You
3 have to figure it out yourself anyway.

4 So anyway, I think we might be beating the dead
5 horse of Part 542, when what we really need to do is
6 focus on our class II, where the authority isn't in
7 question, where most everybody is in agreement, and
8 we can actually get something done in the time that
9 you guys have available to you.

10 COMMISSIONER LITTLE: Thank you. Does
11 anyone else have any?

12 MR. GREEN: Please do not try to mix class
13 III and class II minimum internal control standard
14 discussions. You have issues with you being able to
15 spend any money. And again, I don't mean it to be a
16 threat, but I mean for you to fully understand. You
17 have less than a year and a half to complete, based
18 on your terms. If a lawsuit is initiated to stop
19 you from spending money, that's a year and a half,
20 because government is not going to answer for 90
21 days. I mean you've got to go over to Justice,
22 you've got to talk to them, and they've got to
23 develop a reaction. CRIT say you don't have any
24 authority to.

25 Now, the tribes are not interested in stirring

1 up that CRIT argument with that kind of litigation.
2 I certainly hope that the commission is not because
3 that is what we would do. Those people that say we
4 need a CRIT remedy would feel obliged to take more
5 steps were that the circumstance.

6 If you want to finish something, the effort
7 that tribal people have spent trying to put these
8 class II things in front of you, I think needs to be
9 considered simply as class II. If you try to mix
10 that with your class III expenditure of funds, I
11 really believe someone is going to call your hand on
12 it because of your 20 percent increase. And if you
13 spend money on it after the lawsuit is instituted,
14 and the court then decides that you shouldn't have
15 spent money on it, where are you going to get that
16 money?

17 You are going to put yourself in a real
18 quandary. There's no need to force the CRIT issue
19 any further than it already is. And the Oklahoma
20 tribes in particular, compact says we're going to
21 use what we had in November of 2004, when the
22 compact was authorized. There is no provision for
23 those to be updated.

24 So by compact, unless the SCA, the State
25 Regulating Compliance Agency, unless they agree,

1 that's what we'll have to use. But the compact says
2 that's what we're going to have to use from that
3 date.

4 I think your chairwoman made a very good point,
5 that 81 percent of the tribes have what their MIC
6 standards are going to be locked in stone in
7 compact. You've got another 1 percent that are self
8 regulated. The issue that you bring up for class
9 III only affects 18 percent, and please don't mix it
10 with our class II effort.

11 COMMISSIONER LITTLE: Okay, thank you for
12 that comment. Is there anything else that anyone
13 would like to say, regarding the class II MICS? Or
14 the technical standards, Part 547? Dan.

15 MR. MCGHE: And I'm not sure if I got your
16 intent, but were you asking advice on whether or not
17 you should have separate advisory committees for 543
18 and a separate one for 547? Or were you thinking of
19 one advisory committee to handle both?

20 COMMISSIONER LITTLE: I think there's just
21 one advisory. I think we wanted to break apart all
22 three things, parts 542, 543 and 547. I was just
23 trying to figure out what would be the best process?
24 To develop subgroups or working groups and then.

25 MR. MCGHE: Yeah, I agree with not mixing

1 the class II and the class III. But I would also
2 consider strongly having a separate group tackle 543
3 and 547 because my experience is it's a totally
4 different group of people a lot of times, that are
5 attacking those technical issues.

6 Even when we were working in the TGWG group, we
7 ended up have to bring people in that had those
8 expertise. So, you may have a group that you know
9 for 543 is very strong and experienced and
10 qualified, but may not be your people you need for
11 547. They're going to end up bringing in people
12 anyway, so the people who actually do the document
13 will end up being a different set of people that
14 your committee chose. That's my opinion.

15 COMMISSIONER LITTLE: All right,
16 appreciate it, thank you.

17 MR. GREEN: I don't mean to disagree with
18 the concept, but these are linked at the hip. The
19 547 technical standards are further explanations,
20 and I grasp exactly what you're saying. You're
21 certainly more operationally motivated in 547 than
22 you are regulatory motivated. But you have to go
23 back and read the 543 to make sure the 547 works
24 with it. And I recall us doing exactly what you
25 said, and it being difficult. But I think there

1 needs to be some real thought given to the fact that
2 they have to mesh hand in glove, and you may need to
3 get all of those people in the room at the same time
4 for that to happen. I know it's a lot more
5 cumbersome process.

6 COMMISSIONER LITTLE: So, what you're
7 saying is, setting aside 542, 543 and 547 should
8 work together, okay, thank you.

9 MS. HOMER: Well, let me suggest that I
10 think that at least the TGWG has proposed relatively
11 minor changes to Part 547. You already have a
12 regulation that with about four major points of
13 contention everyone is happy with and can live with.
14 It may be that Part 547 is a candidate for just
15 notice in comment rulemaking, as opposed to a Tribal
16 Advisory Committee to do any further work on it. I
17 mean it's pretty done, and it's working, and it's
18 working well, and people are pretty happy with it,
19 except for those four or five points of contention.

20 You've got a suggested way of addressing those
21 four or five points that we think is appropriate and
22 which nonetheless, kind of, took into account the
23 prior commission's concern about the safety of the
24 equipment. I think we found a way to finesse that,
25 that's acceptable. We made it really clear that the

1 reflexive technology is unlawful, and we've actually
2 tightened up because there have been some recent
3 incidents in the press and in the paper that gave us
4 some insights as to these reflexive issues. So,
5 we've tightened that little piece of it up, and made
6 it clear what harm we're trying to prevent.

7 So, we may not really have to even have a big
8 major working group on that because it's not that
9 complex anymore. It used to be, not anymore.

10 MR. GREEN: I think your 543 people will
11 be able to grasp your 547 and just buzz right
12 through it.

13 MR. MCGHE: And I agree with that
14 approach. If you're not going to have a Tribal
15 Gaming Working Group then that would probably be the
16 best way to go. Like you said, you have a pretty
17 good document. If you were going to develop one,
18 then I would stick with what I said before.

19 MS. HOMER: And I think that what goes
20 with that is anyone that is going to have an issue
21 with the Part 547, is really going to be in the
22 industry, and they're not tribal leaders that are,
23 kind of, handy to you to use for a consultation
24 system. But through a notice in comment, their
25 opinions will be elicited as well, and you'll have

1 the benefit of that. So, I just think that's simple
2 and easy to do.

3 MS. MCGHE: Yeah, I agree with Liz because
4 I remember when we were going over the 547 document,
5 there were very few changes from the document that
6 currently exists now. So, if a group of all of us
7 regulators and attorneys and tribal leaders couldn't
8 find that much to change then I think we, kind of,
9 need to leave that document alone.

10 COMMISSIONER LITTLE: Okay.

11 MS. MCGHE: Well, other than our few
12 changes.

13 COMMISSIONER LITTLE: Thanks for the
14 comment.

15 MR. GREEN: I want to put you on notice
16 that when we would take up the three or four changes
17 that we made, we would often start calling people
18 that we knew had vested interest in those issues, or
19 people who had argued with the Hogen administration,
20 and we would have various operator experts and legal
21 experts, all communicating about those changes. But
22 I don't think it's going to be a terribly complex
23 endeavor, but the same group of people that put
24 together 543, put together the 547 changes. They
25 will all be here at the same time, and I simply

1 think it would be easy to go through both pieces,
2 since the same group of people examine them.

3 COMMISSIONER LITTLE: Okay, sounds good,
4 thank you. State your name.

5 MS. SHAPIRO: Judy Shapiro. There are a
6 couple of things that tie this together. I
7 understand that yesterday there was some discussion
8 about the fact that the NIGC decided not to post
9 these documents on the website, that they can get it
10 from elsewhere, that people can get it from
11 elsewhere. Is that correct? Did I misunderstand?

12 COMMISSIONER LITTLE: I don't think so, go
13 ahead.

14 MS. COCHRAN: Yeah, Judy, as of yesterday,
15 because we did not have this-

16 MS. SHAPIRO: Oh, you didn't have it.

17 MS. COCHRAN: The chairwoman talked this
18 morning about we were trying to figure out if there
19 is a way that we can share the information through
20 the Federal Register, our website or, now that we
21 have. Yeah, that was-

22 MS. SHAPIRO: I apologize, I missed that.
23 Okay, so I withdraw that concern. But the other
24 thing I heard, which also may be old news, is that
25 at some of your other consultations there has been

1 discussion about people who had not been able to
2 participate in the Tribal Gaming Working Group and
3 perhaps are not fully educated on this one.

4 I think at the point that you reach discussion
5 of this document, I think it would be good to reach
6 out to tribes, particularly those were not able to
7 participate, and set up some process. Because I
8 know at least amongst some of my clients, there is
9 confusion out there, because there is a 543 that's
10 in place, there are proposed edits to 543, there's
11 this new proposed thing. I think that it would
12 serve the product and serve the tribal industry if
13 there were an education process ongoing soon, so
14 that tribal commissioners who have not been as
15 active in this process can see what's coming, and
16 can make good decisions now. I've gotten calls from
17 tribal gaming commissioners saying, "We're about to
18 open a class II facility, and so we're going to
19 adopt the existing 543. That works, right?" Well,
20 no.

21 And it would be good even if this were part of
22 the technical training stuff, to say these are the
23 areas that are in flux. These are the areas we are
24 thinking about. Here are some suggestions that have
25 been made to us. We would welcome an opportunity to

1 talk with you about it, and to set up, perhaps, one
2 of these consultations to be more informational in
3 that way. An exchange of information from people
4 who have made this proposal, so it's not just a
5 massive document sitting on the website, but an
6 interactive process.

7 COMMISSIONER LITTLE: You know, I think
8 that's why the chairwoman this morning was talking
9 about, if there was a mechanism where we can take
10 what the Tribal Gaming Working Group has provided us
11 and maybe put it on line or use it as a discussion
12 starting point or something like that. So, we're
13 going to talk about that, and I'm sure we'll have
14 some information to share soon.

15 MS. SHAPIRO: So, I'm obviously redundant.

16 COMMISSIONER LITTLE: Never redundant,
17 Judy. Was there anything else? Any other comments?
18 Anything you want to share, Lael? Well, if there is
19 nothing else I would probably say maybe we can,
20 we'll probably wrap up here. One last shot.
21 Steffani, do you want to make any final comments?

22 MS. COCHRAN: No, I just want to say thank
23 you for your time, staying with us in this heat and
24 spending your afternoon with us. It really is
25 useful for us to take the time to listen, to talk

1 with tribes, even if the conversations may be more
2 robust some days and shorter on others. So thank
3 you, please have safe travels going home, and I look
4 forward to seeing you soon.

5 COMMISSIONER LITTLE: I just want to
6 remind everybody, if you have comments that you want
7 to submit, you're more than welcome to submit
8 written comments. And I just want to thank all our
9 staff. I know they have been putting in a lot of
10 hours. A lot of the staff back in the office, in
11 the regional office, they spent a lot of time
12 putting together these consultations. And while
13 it's the commission that performs the consultations,
14 they are the ones that are doing all the work. So,
15 we are very grateful to them. And other than that,
16 I wish everybody safe travels and thank you for
17 coming.

18 (WHEREUPON, The proceedings were concluded at 2:22
19 p.m.)

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