UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL T. WARREN

Plaintiff,

vs.

UNITED STATES OF AMERICA, individually, and as trustee of the goods, credits and chattels of the federally recognized Indian nations and tribes situated in the State of New York;

KENNETH J. SALAZAR in his official capacity as Secretary of the U.S. Department of the Interior;

GEORGE SKIBINE, in his official capacity as the Assistant Secretary of the Interior for Indian Affairs;

UNITED STATES DEPARTMENT OF THE INTERIOR;

PHILIP N. HOGEN, in his capacity as Chairman of the National Indian Gaming Commission;

NATIONAL INDIAN GAMING COMMISSION;

DAVID A. PATERSON, as Governor of the State of New York;

JOHN D. SABINI, as Chairman, of the New York State Racing and Wagering Board;

BARRY E. SNYDER, SR., as President of the Seneca Nation of Indians,

E. BRIAN HANSBERRY, as President and Chief Executive Officer of Seneca Gaming Corp.,

SENECA GAMING CORPORATION

Defendants

SUPPLEMENTAL AND AMENDED VERIFIED CIVIL COMPLAINT

Case # 06-CV-00226-WMS

JURISDICTION AND VENUE

1. That this court has subject matter jurisdiction of this action which is founded on the existence of a Federal question pursuant to 28 U.S.C. §§ 1331, 1361.

2. Venue is vested in the United States District Court for the Western District of New York pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 703.

3. This action arises under the Constitution and the laws of the United States; Administrative Procedure Act (APA), 5 U. S. C. § 551 et. seq.; 10th Amendment to the United States Constitution; Article 1, § 8, Clause 3 of the United States Constitution (Indian Commerce Clause); 5th Amendment to the United States Constitution; Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 et seq., and seeks injunctive and declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202; as hereinafter more fully appears.

4. The November 12, 2002, determination of the Defendants that the tribal-state compact between the State of New York and the Seneca Nation of Indians is in effect under the Indian Gaming Regulatory Act and the NIGC's approvals of the Seneca Nation of Indians' Gaming Ordinance dated January 3, 1994 are final agency actions (25 CFR § 2.6; 5 U.S.C. § 704; 25 U.S.C. § 2714).

PARTIES

5. Plaintiff, Daniel T. Warren is a resident of the Town of West Seneca, County of Erie and State of New York and resides within 6 miles of the site of the proposed Seneca Buffalo Creek Casino.

6. Plaintiff is a duly registered voter with the Erie County Board of Elections in Erie County, New York.

7. Currently there is a small temporary casino operating on the site of the proposed Seneca Buffalo Creek Casino (hereinafter "Buffalo Site").

8. The Buffalo Site is located within the historical Cobblestone District of the City of Buffalo.

9. Plaintiff works full time in the City of Buffalo, County of Erie and State of New York within 1.5 miles of the proposed Seneca Buffalo Creek Casino and travels at least 5 times per week within 1,000 feet of the Buffalo Site.

10. Plaintiff will be travelling within 1,000 feet of the Buffalo Site on a regular and continuous basis.

11. Plaintiff is not a member of the Seneca Nation of Indian or any other Indian nation or tribe.

12. Plaintiff owns property in the Town of West Seneca, County of Erie, State of New York and pays New York State Income Taxes, Town and County property taxes on property with an assessed value of more than $1,000.00 and sales taxes on all purchases made within the State of New York.

13. Plaintiff is concerned about the increased risks and effects a gambling casino will have on him and his environment which includes, but is not limited to: the blight that such a facility may cause him to be exposed to, exposure to, and the increased risk of being a victim of, crime that will emanate from such a facility, the lack of parking and the increase in traffic and its attendant risks, air pollution and noise as well as other negative environmental, esthetic, health and social consequences that are attendant by the proposed development and use of the Buffalo Site.

14. Plaintiff is also concerned about the preservation of his right to vote and preserving its power to hold his elected officials, state and federal, accountable by his vote.

15. Attached hereto and incorporated by reference marked as Exhibit "A" is a copy of "Measuring Industry Externalities: The Curious Case of Casinos and Crime" by Earl L. Grinols and David B. Mustard. This study concludes that 8% of crime in counties with a casino is attributable to casinos and that this increased crime results in an annual cost of

$65 per adult. The data also indicates that casinos create crime and not merely move it from one area to another.

16. Attached hereto and incorporated by reference marked as Exhibit "B" is a copy of a July 2004 report from the United States Department of Justice, Office of Justice Programs, National Institute of Justice entitled "Gambling and Crime Among Arrestees: Exploring the Link." This report concludes that compulsive or pathological gamblers represent only a small percentage of the general population. Yet those who meet APA's definition for pathological gambling accounted for slightly more than 1 in 10 arrestees surveyed in Las Vegas and about 1 in 25 in Des Moines. Together, 14.5 percent of arrestees in Las Vegas and 9.2 percent of those in DesMoines were either problem or pathological gamblers -- three to five times the percentage in the general population. Also more than 30 percent of pathological gamblers who had been arrested in Las Vegas and Des Moines reported having committed a robbery within the past year, nearly double the percentage for low-risk gamblers. Nearly one-third admitted that they had committed the robbery to pay for gambling or to pay gambling debts. In addition, about 13 percent said they had assaulted someone to get money. Nearly 40 percent had committed more than one theft in the past year, four times the number of arrestees without either a gambling or a substance use problem. Approximately 38 percent of arrestees with both gambling and substance use problems reported having sold drugs, nearly eight times the number of those with no gambling or substance use problem. One of the key conclusions of this report is that arrestees who report that they are or can be defined by their responses to interviews or questionnaires as compulsive or pathological gamblers are drawn disproportionately from the social and economic fringes of society. As legalized gambling spreads to States and localities that do not now permit gambling or have it only on a small scale, these jurisdictions must prepare to deal with the social ills engendered by problem gambling.

17. Defendant United States of America has waived sovereign immunity to actions, such as the instant action, seeking declaratory and injunctive relief pursuant to 5 U.S.C. § 702.

18. Defendant Kenneth J. Salazar in his official capacity as Secretary of the U.S. Department of the Interior is charged with the duty of carrying out the declared trust responsibility of the United States towards Indian nations and tribes. Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, et seq., the Secretary has the authority to approve or disapprove Indian gaming compacts that are governed by the Act, or to allow such compacts to be considered to have been approved.

19. Defendant George Skibine is the Acting Assistant Secretary of the Interior for Indian Affairs. In that capacity he oversees the Bureau of Indian Affairs within the U.S. Department of the Interior, and he may exercise the Secretary of the Interior's delegated authority for decisions affecting Indian Affairs.

20. Defendant United States Department of the Interior is a Cabinet-level agency of the United States government.

21. Defendant Philip N. Hogen is the Chairman of the National Indian Gaming Commission. The Chairman has the authority to approve tribal ordinances authorizing Class III gaming on "Indian lands" under Section 11 of the IGRA, 25 U.S.C. § 2710.

22. Defendant National Indian Gaming Commission is a federal agency established within the U.S. Department of the Interior by Section 5 of the IGRA, 25 U.S.C. § 2704.

23. Defendant David A. Paterson is currently the Governor of the State of New York.

24. John D. Sabini is the duly appointed Chairman of the New York State Racing and Wagering Board.

25. The Seneca Nation of Indians would be a proper party to this action but is not joined due to its contemplated assertion of tribal sovereign immunity. Although Plaintiff does not concede that the Seneca Nation of Indians (hereinafter "SNI") possesses the requisite

sovereign immunity to act as a bar to this action their joinder is not necessary and they are not indispensible parties because to the extent that their interests are adverse to Plaintiffs those interests would be adequately protected by the Defendants United States of America, Salazar, Skibine, Department of the Interior, Hogen and NIGC (hereinafter "Federal Defendants". Also since the United States is a party to this action it may implead any Indian nation or tribe. The Seneca Nation of Indians would not be subject to conflicting judgments due to their absence from this action.

26. The Bureau of Indian Affairs currently recognizes over 550 Indian tribes in the contiguous 48 states and Alaska. See Notice of Indian Entities Recognized and Eligible to Receive Services, 72 Fed. Reg. 13647-13652 (Mar. 22, 2007).

27. With the newfound wealth resulting from high stakes gaming activities and other commercial ventures conducted on many of the reservations, the number of tribal businesses venturing into commercial activities with non-Indians outside Indian lands has increased dramatically. These tribal businesses not only operate as restaurants, hotels, and casinos on tribal lands--as a business person dealing with a tribe might expect--but also run construction companies, manufacturing plants, power plants, mining operations, banks, gas stations, pharmacies, and retail and convenience stores, employing thousands of non-Indian citizens on non-tribal lands.

28. Millions of non-Indian citizens patronize tribal businesses both on and off tribal lands including over 400 Indian casinos.

29. Tribe-owned businesses increasingly do not perform traditional governmental functions for which immunity was created.

30. Tribal businesses frequently compete with private businesses in commercial markets with no ties to traditional tribal affairs. The only public benefits they provide are employment for tribe members and commercial profits for the tribe. Any grounds that may justify

tribal immunity for the performance of governmental functions cannot reasonably be extended to shield purely commercial enterprises from regulatory, tort and contract liability.

31. Immunity for tribal businesses creates huge economic disparities that unfairly benefit tribal businesses at the expense of non-Indian customers, suppliers, and competitors. A customer seriously injured at a tribe-owned restaurant might be surprised to learn that Congress intended to cut off her right to recover personal injury damages to promote the tribe's economic development. Likewise, a jobber with an advantageous long-term contract to deliver gasoline to a tribe-owned station might more easily be persuaded to modify the contract once informed that it would have no remedy for a breach of the contract. And a neighboring station with a similar contract might justifiably wonder why it was unable to renegotiate the terms of its contract and can no longer compete with the tribe-owned business. In short, tribal immunity for commercial enterprises serves no legitimate purpose and is a "trap" for an unsuspecting non-Indian business.

32. Barry E. Snyder, Sr., is the duly elected President of the Seneca Nation of Indians.

33. E. Brian Hansberry, is the duly appointed President and Chief Executive Officer of Seneca Gaming Corp.,

34. Seneca Gaming Corp., is a corporation chartered and existing under the laws of the Seneca Nation of Indians with its principle place of business located at 310 Fourth St. in the City of Niagara Falls, County of Niagara and State of New York (hereinafter "SGC").

35. The Fifth Amended Restated Charter of the Seneca Gaming Corporation (available at: http://www.senecagamingcorporation.com/pdf/charter-sgnc.pdf) demonstrates that it operates solely as a commercial entity and not as a governmental entity and therefore the SNI's immunity from suit, to the extent such exists, does not extend to it.

36. According to the Seneca Gaming Corporations 10-K filing with the SEC and its agreement with the City of Buffalo, New York it will employ non-Indians and its patrons will be predominantly non-members of the Seneca Nation of Indians.

37. It provides that it is "organized for the purpose of developing, constructing, owning, leasing, operating, managing, maintaining, promoting and financing Nation Gaming Facilities" and other lawful activities. It goes on to provide that "the power of gaming regulation, gaming licensing and enforcement of applicable law, which powers are reserved to the Nation. It also provides that "The Company shall have no power to exercise any regulatory or legislative power; the Nation reserves from the Company all regulatory, legislative and other governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating Gaming on the territories of the Nation.

38. The assets of the SNI are shielded from loss by any action against the Seneca Gaming Corporation. Its Charter specifically provides: "No activity of the Company nor any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Nation or another Nation Entity not assigned or leased in writing to the Company."

39. The SGC's charter contains a "sue and be sued" clause (Page 5 Item 7 and & Page 11 Item 8(d)(xxiv)). Such "sue and be sued" clauses waives any purported immunity with respect to its corporate activities.

40. According to the Seneca Gaming Corporation's 10-K filings with the SEC and its agreement with the City of Buffalo, New York it will employ non-Indians and its patrons will be predominantly non-members of the Seneca Nation of Indians.

41. Defendant David A. Paterson, is the current Governor of the State of New York.

42. Defendant John D. Sabini, is the duly appointed commissioner of the New York State Racing and Wagering Board.

43. Defendants Paterson and Sabini (hereinafter "State Defendants") are not protected by the sovereign immunity of the State of New York to the extent that they are acting in excess of their authority and in violation of federal law as alleged herein and to the extent that this actions seeks prospective and declaratory and injunctive relief.

44. Defendants SGC, Snyder and Hansberry (hereinafter "Seneca Defendants") are not protected by the sovereign immunity of the Seneca nation of Indians to the extent that they are acting in excess of their authority and in violation of federal law as alleged herein and to the extent that this actions seeks prospective and declaratory and injunctive relief.

FACTUAL ALLEGATIONS

45. In or about May 1995, Dennis C. Vacco, as Attorney General of the State of New York and acting on behalf of the State of New York and within his authority and scope of powers, along with a number of other States' Attorney Generals, submitted to the United States Supreme Court an amicus brief in the case of Seminole Tribe v. Florida in which he argued the position of the State of New York that the Indian Gaming Regulatory Act violated the Tenth Amendment to the United States Constitution.

46. On October 24, 2001 the NYS Legislature passed bill S5828 & A9459 which ultimately became law and recorded in Chapter 383 of the Laws of 2001.

47. This bill was for twenty seven different purposes ranging from providing low cost electricity to businesses dislocated by the events of 9-11 to establishing tourism councils.

48. The portion of this bill/act which is the subject of this action is Part B. This part added a new § 12 to the Executive Law, added a New Section 99-h to the State Finance Law, and amended section 225.30 of the Penal Law.

49. This act purported to authorize the Governor of the State of New York to negotiate and enter into tribal-state compacts with Indian nations and tribes for 6 casinos. Three of these casinos would be operated by the Seneca Nation of Indians consistent with the "memorandum of understanding between the governor and the president of the Seneca Nation of Indians executed on June twentieth, two thousand one and filed with the department of state on June twenty-first, two thousand one." With up to three other "Class III gaming facilities in the counties of Sullivan and Ulster"

50. On or about the 10th day of September, 2002 a compact was executed by former Governor Pataki and the President of the Seneca Nation of Indians (hereinafter SNI) that purports to be a compact under the Indian Gaming Regulatory Act that will permit Class III gaming at three locations in the State of New York.

51. The compact also provides that a Casino will be located within the County of Erie, New York.

52. A place where illegal gambling occurs in the State of New York is a nuisance.

53. In New York gambling that is not authorized by law is illegal.

54. Members of the Seneca Nation of Indians that reside in New York are citizens of the State of New York and the United States of America.

55. Enrollment/membership in the Seneca Nation of Indians is based on matrilineal descent. In other words, the mother must be an enrolled member in order for the children to be enrolled.

56. On or about May 14, 2002 the members of the Seneca Nation of Indians voted on the question of whether or not they should pursue commercialized gambling under the Indian Gaming Regulatory Act.

57. Plaintiff and other voters who were not members of the Seneca Nation of Indians did not have the opportunity to vote on the question of whether the State of New York should pursue commercialized gambling under the Indian Gaming Regulatory Act.

58. On or about October 25, 2002, the SNI acquired approximately 12.8 acres of land in downtown Niagara Falls, New York, known as the Niagara Falls Convention and Civic Center Property, from the New York State Urban Development Corporation for a purchase price of $1.00 (hereinafter "Niagara Site").

59. On or about the same day, the SNI leased the Niagara Site to the New York State Urban Development Corporation n/k/a Empire State Development Corporation. Also on the same day, the New York State Urban Development Corporation n/k/a Empire State Development Corporation subleased the Niagara Site to Defendant Seneca Gaming Corporation.

60. On October 29, 2002, the SNI requested the Secretary of the Interior to have the Niagara Site placed into restricted fee status pursuant to Section 8(c) of the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c).

61. On or about October 24, 2002, Secretary Norton announced that she would, in accordance with § 11(d)(8)(C) of IGRA, neither approve or disapprove the Class III gaming compact between the Seneca Nation of Indians and the State of New York and that the compact is considered to have been approved, but only to the extent that its terms comply with the requirements of IGRA.

62. On November 12, 2002 Secretary Norton declined to approve or disapprove of the Compact between the State of New York and the Seneca Nation of New York. Attached hereto and marked as Exhibit "C" is a copy of Secretary Norton's letter to Seneca Nation President Schindler.

63. Notice of the approval of the tribal-state compact between the Seneca Nation of Indians and the State of New York was published in the Federal Register on or about December 29, 2002 (67 FR 72968).

64. On or about November 25, 2002, the SNI submitted a Class III Gaming Ordinance to the National Indian Gaming Commission for approval. The gaming ordinance was accompanied by a copy of the Compact. By letter of November 26, 2002, to the SNI President, the Chairman of the National Indian Gaming Commission approved the SNI Class III Gaming Ordinance.

65. Attached hereto and marked as Exhibit "D" is the July 9, 2003 testimony of Aurene Martin, Acting Assistant Secretary – Indian Affairs before the United States Senate Committee on Indian Affairs. This document was obtained from the Department of Interior's website (http://www.doi.gov/ocl/2003/IndianGaming.htm) and this Court is requested to take judicial notice of it. In this testimony Assistant Secretary Martin testified that only three section 20(b)(1)(a) approvals have been granted since the enactment of the IGRA. She further testified that those three approvals were for "the Forest County Potawatomi gaming establishment in Milwaukee, Wisconsin; the Kalispel Tribe gaming establishment in Airway Heights, Washington; and the Keweenaw Bay Indian Community gaming establishment near Marquette, Michigan."

66. In May 2004, Plaintiff, commenced an action in the Supreme Court of the State of New York, County of Erie under Index # 2004-5270 entitled Daniel T. Warren, Plaintiff v. George E. Pataki, et al., Defendants.

67. This action challenged the constitutionality of Part B of Chapter 383 of the Laws of 2001 which among other things enacted New York Executive Law § 12.

68. The State Defendants in that action asserted various defenses including ripeness, that the state court action was preempted by IGRA, the absence of necessary and indispensible parties (namely the Seneca Nation of Indians and other Indian nations).

69. The Oneida Indian Nation of New York appeared specially and moved to dismiss the action based on the argument that it was a necessary and indispensible party and since it enjoyed sovereign immunity from suit which it would not waive the action should be dismissed. The State Defendants in that action also moved to dismiss the action on various grounds including the failure to join necessary and indispensible parties.

70. In November 2004, Justice Tills after hearing oral arguments granted the Oneida Nation of Indians motion to dismiss as well as the motion of the State Defendants from the bench.

71. This dismissal was based on the defense of Plaintiff failing to join necessary and indispensible parties who enjoy sovereign immunity and not on the merits.

72. The Seneca Nation of Indians Court of Appeals issued a decision in the matter of Jones, et. al v. Brown, et al, TRO#1129-03-1, dated August 10, 2004, in which it held "that Tribally Incorporated Entities should not be viewed as one in the same as the Seneca Nation for the purpose of 'sovereign immunity' as defined in the Seneca Constitution."

73. On or about July 27, 2005, Penny Coleman, Acting General Counsel of Defendant National Indian Gaming Commission testified before the Senate Committee on Indian Affairs. Attached hereto and marked as Exhibit "E" is a copy of her testimony.

74. On or about July 27, 2005, George T. Skibine, Acting Deputy Assistant Secretary – Indian Affairs For Policy And Economic Development of Defendant Department of Interior, testified before the Senate Committee on Indian Affairs. Attached hereto and marked as Exhibit "F" is a copy of his testimony.

75. In or about July 2005 the Federal Defendants launched a full-scale review of every tribal casino to ensure they are operating within the law.

76. That prior to July 2005 the Federal Defendants did not have a system to track the land status of all 404 tribal casinos and identify new concerns. The goal of this full-scale review is to determine whether the casinos are operating on Indian lands as defined by the Indian Gaming Regulatory Act of 1988.

77. Upon information and belief, the comprehensive review comes in response to Federal Defendants' internal criticisms. In a report, the Interior Department's Inspector General found at least 10 instances of tribes operating casinos on land that was taken into trust without following the IGRA process.

78. Plaintiff made numerous complaints and submissions to the Federal Defendants individually and as a member and officer of a group known as Upstate Citizens for Equality.

79. On or about July 29, 2005 Plaintiff sent an e-mail to Penny Coleman, Acting General Counsel for Defendant National Indian Gaming Commission. Attached hereto and marked as Exhibit "G" is a true copy of this e-mail.

80. By e-mail dated August 1, 2005 in which Penny Coleman responded: "Thank you for your email which sets forth your views on the status of the Seneca Nation lands. We will take a look at this issue as we progress on our Indian lands system."

81. On or about August 14, 2005 plaintiff received a response to his FOIA request for "all records pertaining to all decisions, determinations, or rulings that gaming on lands acquired after October 17, 1988 is permitted for the land occupied by the Turning Stone Casino and Resort and the Seneca Niagara Casino along with any supporting documents submitted" from the Records Access Officer of Defendant National Indian Gaming

Commission. Attached hereto and marked as Exhibit "H" is a true copy of this response.

82. On or about August 31, 2005, plaintiff received a response to his letter dated July 7, 2005 to the Defendant Department of Interior. Attached hereto and marked as Exhibit "I" is a true copy of this response.

83. Upon information and belief, on or about October 3, 2005, the SNI requested the Secretary of the Interior to have the Buffalo Site placed into restricted fee status pursuant to Section 8(c) of the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774f(c).

84. On or about October 19, 2005, plaintiff submitted through the Department of Interior's website via the Defendant's comment form located at http://www.doi.gov/contact.html. A copy of the acknowledgement receipt is attached hereto and marked as Exhibit "J"

85. On or about August 12, 2006, the SNI submitted an amended Class III Gaming Ordinance to the National Indian Gaming Commission for approval. The gaming ordinance was accompanied by a copy of the Compact. By letter of November 6, 2006, to the SNI President, the Chairman of the National Indian Gaming Commission approved the SNI Class III Gaming Ordinance.

86. By order and judgment of the United States District Court for the Western District of New York dated January 12, 2007 the Decision of the Defendants Hogen and NIGC dated November 26, 2002 was vacated, in part, and remanded to Defendants.

87. On or about June 9, 2007, the SNI submitted an amended Class III Gaming Ordinance to the National Indian Gaming Commission for approval. By letter dated July 2, 2007, to the SNI President, the Chairman of the National Indian Gaming Commission approved the amended SNI Class III Gaming Ordinance.

88. By order and judgment of the United States District Court for the Western District of New York dated July 8, 2008 the Decision of the Defendants Hogen and NIGC dated June 9, 2007 was vacated again as it relates to the Buffalo Site and remanded to Defendants.

89. By Order dated August 26, 2008 Defendants Hogen and NIGC were directed by the United States District Court for the Western District of New York to issue a Notice of Violation to the Seneca Nation of Indians related to the operation of the Seneca Buffalo Creek Casino.

90. A Notice of Violation dated September 3, 2008, was issued by the Defendants Hogen and NIGC.

91. On or about October 22, 2008, the SNI submitted an amended Class III Gaming Ordinance to the National Indian Gaming Commission for approval.

92. On or about January 14, 2009, Defendant NIGC through Defendant Hogen entered into an agreement with Defendant DOI acting through Solicitor Bernhardt that requires the concurrence of the NIGC and DOI on any Indian lands determination.

93. By letter dated January 20, 2009, to the SNI President, the Chairman of the National Indian Gaming Commission approved the amended SNI Class III Gaming Ordinance.

94. Upon information and belief the January 20, 2009, makes an Indian lands determination without the concurrence required by the January 14, 2009 agreement.

95. The Defendants have and are acting contrary to constitutional right, power, privilege, or immunity and/or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right and/or without observance of procedure required by law and/or their actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law.

96. Plaintiff has no adequate remedy at law to eliminate the threat of increased or enhanced risk of personal and/or environmental harm and restore his ability to hold his state leaders accountable for their actions in excess of their authority and preserve his right to vote on any change to the New York State Constitution as it relates to commercialized gambling.

AS AND FOR THE FIRST CAUSE OF ACTION

97. Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1 through 93 above.

98. The Federal Defendants acted and continue to act contrary to constitutional right, power, privilege, or immunity in approving the Compact and gaming oridinances.

99. The State Defendants acted and continue to act contrary to constitutional right, power, privilege, or immunity in entering into and binding the State of New York to a compact under the Indian Gaming Regulatory Act.

100. Defendants Paterson, Sabini, Snyder, Hansberry, and the Seneca Gaming Corporation are acting in excess of their authority and in violation of the Indian Gaming Regulatory Act by condoning, allowing, permitting or otherwise furthering commercialized gambling pursuant to tribal-state compacts that are void and not in effect because the tribal-state compact provisions of the IGRA is unconstitutional.

101. The Bill of Rights of the New York Constitution prohibits commercialized gambling in the State of New York and directs that the state legislature ". . .shall pass appropriate laws to effectuate the purposes of this subdivision, ensure that such games are rigidly regulated to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and the diversion of funds from the purposes authorized hereunder. . ." (N.Y. Const. Art. 1 § 9(2))

102. Therefore, the question as to whether or not the State of New York may permit commercialized gambling is reserved to the people of the State of New York and is to be decided by the same procedures required to amend the State Constitution.

103. The people of the State of New York have exercised their right to determine the State of New York's policy on gambling, which was first banned in the 1821 Constitution, a number of times since 1938.

104. New York citizens who were members of the Seneca Nation of Indians were treated differently from New York citizens who, like plaintiff, are not members.

105. The State of New York through its then Attorney General Dennis Vacco submitted an amicus brief along with the attorney generals of several other States to the United States Supreme Court in the case of Seminole Tribe v. Florida that argued that the Indian Gaming Regulatory Act violated the Tenth Amendment of the United States Constitution.

106. In 2005 the New York Court of Appeals held in Dalton v. Pataki that New York had to enter into a tribal-state gaming compact due to the federal pre-emption of N.Y. Const. Art. 1 § 9 by the Indian Gaming Regulatory Act.

107. That subsequent to the New York Court of Appeals decision in Dalton v. Pataki at least one federal court has held that the regulations in 25 CFR Part 291 are invalid and constituted an unreasonable interpretation of IGRA. These now invalid regulations were relied on by the New York Court of Appeals in reaching its decision in Dalton v. Pataki.

108. In enacting the Indian Gaming Regulatory Act, Congress exceeded its authority under the Indian Commerce Clause as limited by the 10th Amendment of the United States Constitution in that it commandeers state officers and the state legislature to carry out and implement federal policy regarding the economic development of Indian nations

and tribes by compelling the State of New York to enter into agreements that are prohibited by state law and regulate gambling conducted pursuant to those agreements by depriving Plaintiff and the people of the State of New York of their right to exercise powers reserved to them and the act is therefore unconstitutional and exceeds Congress's authority under the Indian Commerce Clause of the Constitution.

109. Due to the aforementioned Plaintiff was, and is being, deprived of his right to a public debate and to vote on this issue that would alter New York's public policy against commercialized gambling in the manner and as required by the New York State Constitution and his ability to hold his elected officials accountable for their respective acts and omissions by the procedures employed by the defendants in permitting, allowing, condoning and authorizing commercialized gambling or his right to vote was diminished or diluted.

AS AND FOR THE SECOND CAUSE OF ACTION

110. Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1 through 96 above.

111. If the Indian Gaming Regulatory Act is held to be constitutional the Compact is invalid because it does not meet the requirement that a tribal-state compact can only be entered into where located in a State that permits such gaming for any purpose by any person, organization, or entity (25 U.S.C. § 2710(d)(1)(B)).

112. Defendants Paterson, Sabini, Snyder, Hansberry, and the Seneca Gaming Corporation are acting in excess of their authority and in violation of the Indian Gaming Regulatory Act by condoning, allowing, permitting or otherwise furthering commercialized gambling pursuant to tribal-state compacts that are void and not in effect as required by as required by 25 U.S.C. § 2710(d)(1)(C) because the State Defendants did not have the authority under state law to enter into them.

113. The Governor of the State of New York and the New York State Legislature lack the authority absent an amendment to the New York State Constitution to enter into and bind the State of New York to a tribal-state compact with any Indian nation or tribe.

114. Commercialized gambling is prohibited in the State of New York.

115. It is Defendant Department of Interior's interpretation that IGRA makes it unlawful for Tribes to operate particular Class III games that State law completely and affirmatively prohibits. (See Class III Gaming Procedures, 63 Fed. Reg. 3289, 3293 (Jan. 22, 1998) (Proposed Rules))

116. The tribal-state compact between the State of New York and the SNI and any other Indian nation or tribe is invalid and in further violation of the Indian Gaming Regulatory Act in that it provides for games of chance that are prohibited in the State of New York which includes, but is not limited to, slot machines that are illegal in the State of New York and not permitted for any purpose by any person, organization, or entity.

AS AND FOR THE THIRD CAUSE OF ACTION

117. Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1 through 113 above.

118. Defendants Paterson, Sabini, Snyder, Hansberry, and the Seneca Gaming Corporation are acting in excess of their authority and in violation of the Indian Gaming Regulatory Act by condoning, allowing, permitting or otherwise furthering commercialized gambling pursuant to tribal-state compacts that are void and not in effect as required by as required by 25 U.S.C. § 2710(d)(1)(C) because the State Defendants did not have the authority under state law to enter into them.

119. Part B of Chapter 383 of the Laws of 2001 is a private and/or local bill.

120. Part B of Chapter 383 of the Laws of 2001 is a special law.

121. Executive Law § 12 as enacted purports to delegate to the Governor the authority to negotiate and enter into a tribal-state compact under the Indian Gaming Regulatory Act.

122. On or about the 10th day of September, 2002 a compact was executed by Governor Pataki and the President of the Seneca Nation of Indians that purports to be a compact under the Indian Gaming Regulatory Act that will permit Class III gaming at three locations in the State of New York.

123. By the terms of this compact the State is required to expend funds and dispose of state property to assist in the acquisition of property for the Seneca Nation of Indians.

124. The compact also requires that the State of New York reach agreements with the host municipalities to compensate them for the increase in expenses they will incur as a result of locating a Class III gaming facility therein.

125. The compact contains a provision where the fee title to the Niagara Falls Convention Center and its land will be transferred to the Seneca Nation for $1.00. The Nation will then lease the convention center back to the state for $1.00 a year for 21 years. The State then sub-leases the convention center to the Seneca Gaming Corporation for $1.00 a year for 21 years. At the end of 21 years the Seneca Nation will pay the State the balance of the general obligation bonds pledged in connection with the convention center as of July 1, 2002.

126. The compact also provides that a Casino will be located within the County of Erie, New York.

127. The compact also requires the State to use its powers of eminent domain to assist in acquiring property for the Seneca Nation of Indians to locate the subject gaming casinos.

128. The compact also requires the State to give to the Seneca Nation of Indians exclusive rights to install and operate gaming devices including slot machines within a defined

geographic area. That area is defined as "(i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York, (ii) to the north, the border between New York and Canada, (iii) to the south, the Pennsylvania border with New York, (iv) to the west the border between New York and Canada and the border between Pennsylvania and New York."

129. In 1993 New York State Racing and Wagering Board was purportedly given authority to regulate Class III Indian gaming in the State.

130. According to the New York State Racing and Wagering Board, it "maintains a constant twenty-four hour presence within the gaming facilities of the three Class III facilities to maintain the integrity of all activities conducted in regard to Class III gaming, and to insure the fair and honest operation of such gaming activities. Additionally, the State conducts background investigations on all employees of the casino and enterprises who conduct gaming related business with the casino to ensure their suitability."

131. The compact was not lawfully authorized or ratified by the Legislature of the State of New York and therefore any compact entered into with any Indian nation or tribe pursuant to it is not in effect under the Indian Gaming Regulatory Act.

132. Any compact entered into by the State of New York pursuant to Part B of Chapter 383 of the Laws of 2001 is not in effect under the Indian Gaming Regulatory Act in that the State Legislature exceeded its power by enacting this special law in violation of the Home Rule provisions of Article IX of the New York State Constitution and the laws of the State of New York.

133. Any compact entered into by the State of New York pursuant to Part B of Chapter 383 of the Laws of 2001 is not in effect under the Indian Gaming Regulatory Act in that the State Legislature exceeded its power as limited by Article III § 15 of the State Constitution which provides "No private or local bill, which may be passed by the

legislature, shall embrace more than one subject, and that shall be expressed in the title."

134. Any compact entered into by the State of New York pursuant to Part B of Chapter 383 of the Laws of 2001 is not in effect under the Indian Gaming Regulatory Act in that the State Legislature exceeded its power as limited by Article III § 17 of the State Constitution which prohibits the legislature from passing any private or local bill "Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever."

135. The compact entered into by the State of New York with, inter alia, the Seneca Nation of Indians pursuant to Part B of Chapter 383 of the Laws of 2001 is not in effect under the Indian Gaming Regulatory Act in that it loans the State's money or credit to or in aid of any individual, or public or private corporation or association, or private undertaking in violation of Article VII § 8 of the State Constitution.

136. If the Court finds that the Indian Gaming Regulatory Act is constitutional and Article I § 9 of the New York Constitution is not pre-empted by federal law then the Compact is not in effect under the Indian Gaming Regulatory Act in that it was entered into in violation of the State Constitutional prohibition on commercial gambling contained in Article I § 9 of the New York Constitution.

137. The state officials who authorized and entered into this tribal-state compact, and all other such compacts, acted ultra vires and in excess of their State Constitutional authority and the compact is not in effect as required by 25 U.S.C. § 2710(d)(1)(C).

AS AND FOR THE FOURTH CAUSE OF ACTION

138. Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1 through 134 above.

139. Defendants Hogen and NIGC have failed to consider or address whether or not, and if so to what extent, commercialized gambling is permitted in the State of New York prior to making any of the final agency actions approving a gaming ordinance under IGRA for the Seneca Nation of Indians and its subsequent approval of the amendments to the Seneca Gaming Ordinance.

140. The lands acquired under the Seneca Nation Settlement Act of 1990 are not gaming eligible under any of the exceptions set forth in 25 U.S.C. § 2719(b)(1)(B) and must therefore may only be determined gaming eligible pursuant to a two-part discretionary determination and the concurrence of Defendant Paterson under 25 U.S.C. § 2719(b)(1)(A).

141. Defendants Hogen and NIGC failed to make an appropriate Indian lands determination prior to making any of the final agency actions approving a gaming ordinance under IGRA for the Seneca Nation of Indians and its subsequent approval of the amendments to the Seneca Gaming Ordinance.

142. Defendants Hogen and NIGC issued the subject gaming ordinance and its amendments in violation of the Memorandum of Agreement between Defendant NIGC and Defendant DOI in effect at the time of the decision.

143. Upon information and belief the aforementioned approvals of the SNI's class III gaming ordinances were not published by Defendant NIGC in the Federal Register and gaming may not commence pursuant to said gaming ordinances until the ordinance together with its order of approval are so published as required by 25 § 2710(d)(1)(C), (2)(B), and (C); 25 CFR 522.8.

144. Based on the above Defendants Hogen and NIGC approved the Seneca Gaming Ordinance and its amendments without observance of procedure required by law and/or

their actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law.

AS AND FOR THE FIFTH CAUSE OF ACTION

145. Plaintiff re-alleges and incorporates herein the allegations in paragraphs 1 through 141 above.

146. The Federal Defendants are charged with the duty to promulgate and implement the United States trust responsibility towards Indian Nations and tribes and their members which include when and how lands acquired by the various Indian nations and tribes will be taken into trust or restricted fee status and the duty to make the necessary determinations relative to gaming on Indian lands and, if permitted, the monitoring and regulation of the on-going conduct of such gaming.

147. Federal Defendants are charged to carry out this duty consistent with the Constitution and Laws of the United States which includes, but is not limited to, the duty to carry out its duties according to due process of law.

148. The failure of the Federal Defendants to adhere to what regulations they have promulgated and their failure to promulgate and implement regulations setting forth their longstanding policies that are necessary to carry out their duties has resulted in ad hoc and irrational, arbitrary and capricious decisions in determining land status and the applicability of the provisions of the IGRA.

149. As testified to by Earl E. Devaney, the Inspector General for the Department of the Interior before the U.S. Senate Committee on Indian Affairs on April 27, 2005 "We determined that neither the BIA nor NIGC has a systematic process for identifying converted lands or for determining whether the IGRA exemptions apply. Therefore, unless a tribe abides by the rules and applies for approval, conversion of trust lands to gaming purposes goes essentially unchecked. Neither the Department nor NIGC has a

way to ensure that Indian gaming is being conducted only on approved lands." Attached hereto and marked as Exhibit "L" is a true copy of this testimony.

150. As testified by Penny Coleman, Acting General Counsel of the National Indian Gaming Commission before the U.S. Senate Committee on Indian Affairs on July 28, 2005, "The Commission and the Department have been criticized by the Department's Office of Inspector General for failing to decide the Indian lands questions before a facility opens and for failing to have a systematic approach to making such decisions. We share the Inspector General's concern on this. Good government requires that regulators know the extent of their jurisdiction. Furthermore, if we decide that a tribe should not have opened a facility because the lands did not qualify for gaming under the Act, extensive litigation is guaranteed and, if the Commission is correct, the tribe will have incurred millions of dollars in debt with few options for repaying the debt."

151. On or about February 1, 2006 a hearing was held before the U.S. Senate Committee on Indian Affairs at which George T. Skibine, the Bureau of Indian Affairs official in charge of gaming, testified that he has circulated proposed regulations to cure the aforementioned deficiencies. After further questioning by the Committee, Senator McCain, the Chairman of the Committee, stated to Mr. Skibine "I'm a little dispirited when you, sort of as an aside, said, 'Well, we haven't begun a consultation with the Indian tribes over proposed regulations,'. . . That means that we have a long way to go." Senator McCain further stated "I don't see how we can effectively regulate Indian gaming, and certainly exercise Congressional oversight, unless there's regulations to implement the law we passed. . ."

152. Senator Dorgan, Vice-Chairman of the Senate Committee on Indian Affairs at the February 1, 2006 hearing stated "This is a controversial and difficult issue and I think regulations are necessary, uniform interpretations are necessary. . ."

153. Mr. Skibine testified at the February 1, 2006 hearing before the Senate Committee on Indian Affairs "As we do the consultation, we have not as this point figured out exactly how we are going to proceed . . . At this point we haven't come up with a plan yet, except that we will do it, for sure."

154. At this Febraury 1, 2006 hearing Sen. John McCain and Sen. Byron Dorgan expressed frustration with the slow-moving pace. They said it was unacceptable that the rules aren't in place 17 years after the passage of the Indian Gaming Regulatory Act.

155. Additionally the Defendants' own internal criticism prompted a review of all 404 casinos to make sure they are operating legally.

156. These systemic issues have resulted in inconsistent, arbitrary and capricious decisions such is the case at bar by failing to follow a procedure which satisfies elementary standards of fairness and reasonableness essential to the due conduct of the proceeding which Congress has authorized.

157. These systemic issues have resulted in the Federal Defendants approving gaming ordinances and tribal-state compacts prior to a proper determination as to whether gaming is permitted under 25 U.S.C. § 2710(d)(1)(C) or § 2710(d)(1)(b) and/or prior to a proper determination as to whether or not gaming on land acquired, or to be acquired, is permitted under 25 U.S.C. § 2719.

158. Just in this state the Federal Defendants have allowed the Turning Stone Casino to continue to operate absent a valid tribal-state compact on land acquired after October 17, 1988 and not currently held in trust or restricted fee status.

159. In a letter dated June 4, 1993 the United States Department of the Interior advised the Oneidas that the compact between the Oneidas and New York was approved and advised the OIN that the "compact does not specifically refer to the site where we understand the Nation has built a major new facility in anticipation of being able to

conduct gaming in the future. Since the compact tracks the "Indian lands" definition in IGRA, we need not decide and take no position with regard to whether this new facility is on "Indian land" as that term is used in IGRA"

160. In a July 13, 1993 article that appeared in The Buffalo News entitled "LAND-STATUS ISSUE PUTS FUTURE OF ONEIDAS' CASINO IN QUESTION" by Associated Press reporter William Kates, Michael Cox, then general counsel of the National Indian Gaming Commission stated in regards to the status of the land where the Turning Stone Casino is situated "It's a matter that needs to be resolved because it has interesting ramifications. . . It could open a whole new way for Indian tribes to get into gaming and have a major impact on where their gaming operations are located." Mr. Cox further stated that "It is an issue we are going to look into. . . We can't just not decide it." In regards to questions relating to the NIGC possibly closing the Turning Stone Casino Mr. Cox stated "We are not interested in testing our authority."

161. The New York Court of Appeals and the U.S. Supreme Court have declined to review a decision of the Appellate Division, Fourth Department of the New York Supreme Court affirming a trial court's ruling that the compact under which the Oneida Indian Nation of New York operates the Turning Stone Casino as being illegal and unconstitutional and their petition for certiorari to the United States Supreme Court has been denied.

162. Plaintiff complained of the lack of enforcement against this illegal gambling at Turning Stone by e-mail on or about May 4, 2006. In response to this complaint Penny Coleman as Acting General Counsel of Defendant NIGC by letter dated July 14, 2006 stated "We appreciate you concern regarding gaming at Turning Stone in light of the State court ruling. However, whether we choose to take enforcement action is part of an internal decision-making process, which, at this time, is ongoing. We assure you that we are giving this issue careful consideration and reviewing all of our options."

163. Despite these rulings of the New York Courts and complaints of others including plaintiff the Federal Defendants has failed to take any action on this obviously illegal gambling.

164. Earl Devaney, the Inspector General for the United States Department of the Interior testified before the House Government Reform subcommittee on Energy and Resources in September 2006. He testified that "Simply stated, short of a crime, anything goes at the highest levels of the Department of the Interior. Ethics failures on the part of senior department officials -- in the form of appearances of impropriety, favoritism and bias -- have been routinely dismissed with a promise 'not to do it again.' . . . Numerous OIG reports, which have chronicled such things as complex efforts to hide the true nature of agreements with outside parties; intricate deviations from statutory, regulatory and policy requirements to reach a predetermined end; palpable procurement irregularities; massive project collapses; bonuses awarded to the very people whose programs fail; and indefensible failures to correct deplorable conditions in Indian Country, have been met with vehement challenges to the quality of our audits, evaluations and investigations. . . Typically, the department has disputed a number of negligible details contained in our reports, losing sight of -- or, perhaps intentionally eclipsing -- the greater issues, tainting the whole of any given report with trifling details."

165. By letter dated March 15, 2007 the Federal Defendants notified the State of New York and the Oneida Indian Nation of New York that they were going to reconsider the June 4, 1993 approval of the tribal-state compact between them.

166. By letter dated June 13, 2007 the Federal Defendants concluded their reconsideration and stated "IGRA provides no process to modify or revoke an approval after expiration of the 45 day review period."

167. Despite the Federal Defendants assurances to Congress and repeated representations to the plaintiff and the public that they have launched a full-scale review of every tribal casino to ensure that they are operating within the law the Federal Defendants now conclude that such review is not provided for under IGRA.

168. In addition to the Federal Defendants complete refusal to carry out their statutory duty in this case they have also failed to carry out their duty in other cases, and at times, took deliberate actions to bypass court rulings.

169. The Florida State Supreme Court has ruled that certain Class III games authorized in the tribal-state compact between the State of Florida and the Seminole Tribe of Florida are not authorized under state and law and to the extent that the tribal-state compact permits these games it is void. However, to this day Defendants have not issued a notice of violation for this substantial violation of the IGRA.

170. The Plaintiffs in Citizens Against Casino Gambling in Erie County, et al v. Hogen et al., had to make a motion to compel the Federal Defendants to carry out their statutory duty in light of the prior judgments issued in that case and directed Defendants to issue a notice of violation. To date the Federal Defendants did nothing in furtherance of that notice of violation which compelled the Plaintiffs in that case to make yet another motion to compel the Federal Defendants to act.

171. Additionally, although the Court only struck down the portion of the Seneca Gaming Ordinance as it applied to the Buffalo Site the Federal Defendants took absolutely no action against the Seneca Niagara Casino in Niagara Falls, New York that this court ruling as a matter of law also affected and was also in substantial violation of IGRA.

172. Then in an apparent attempt to circumvent the holding in that case based on statutory construction that the prohibition of 25 U.S.C. § 2719 applies to land held in restricted fee status as well as trust land that was acquired after October 17, 1988, the Federal

Defendants promulgated new regulations to re-define their long-standing definitions and policy as it applies to settlement of a land claim exception to § 2719 and reversing their long standing policy that § 2719 applies to land held in restricted fee status.

173. These systemic issues have resulted in the Federal Defendants approving gaming ordinances and tribal-state compacts prior to a proper determination as to whether gaming is permitted under 25 U.S.C. § 2710(d)(1)(C) or § 2710(d)(1)(b) and/or prior to a proper determination as to whether or not gaming on land acquired, or to be acquired, is permitted under 25 U.S.C. § 2719.

174. These systemic issues have also resulted in the Federal Defendants allowing, condoning and permitting Class III gaming on lands acquired after October 17, 1988 and do not fall into any of the exceptions in 25 U.S.C. § 2719(b)(1)(B) and absent a two-part determination under 25 U.S.C. § 2719(b)(1)(A).

175. 25 U.S.C. § 2716(b) provides that "The Commission ***shall***, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials." (emphasis added)

176. Upon information and belief, Defendant NIGC, although in receipt of information that indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, have not provided such information to the appropriate law enforcement officials.

177. 25 U.S.C. § 2716(c) provides that "The Attorney General ***shall*** investigate activities associated with gaming authorized by this Act which may be a violation of Federal law." (emphasis added)

178. Upon information and belief, Defendant United States' Attorney General, although in receipt of information that indicates violations of Federal law has not investigated the activities associated with such gaming authorized by the Indian Gaming Regulatory Act.

179. Despite the aforementioned rulings, statutes and complaints from plaintiffs and others the Federal Defendants have failed to take any action on blatant and obviously illegal gambling in violation of the IGRA.

180. Defendants Hogen and the National Indian Gaming Commission have apparently reduced their duty to review and approve tribal gaming ordinances to a perfunctory approval with no real or hard look at the proposed ordinances to determine if it in fact complies with the IGRA including boiler plate language which merely states that the gaming must not be inconsistent with the provisions of the IGRA which is the very thing it is suppose to determine.

181. Additionally, Defendant NIGC has become the advocate of Indian Gaming rather than the regulator of Indian Gaming in contravention of the Congressional intent for its creation as set forth in IGRA.

182. It appears that the Federal Defendants despite being given guidelines for them to follow in exercising their enforcement powers under the IGRA have failed to follow them and/or they have conspicuously and expressly adopted a general policy that is so extreme as to amount to an abdication of their statutory responsibilities.

183. The Federal Defendants have failed to adhere to their own regulations and policies, make regular inspections, or take vigorous inspections in order to carry out their statutorily mandated enforcement duties under the Indian Gaming Regulatory Act of 1988 and the United States' trust obligation toward the Indian nations and tribes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court issue an Order and Judgment:

1. Declaring that the Seneca Gaming Corporation does not enjoy the protections of the sovereign immunity of the Seneca Nation of Indians for their commercial activities.

2. Declaring the Indian Gaming Regulatory Act as unconstitutional and in violation of the 10th Amendment of the United States Constitution.
3. Declaring Congress exceeded its authority under the United States Constitution in enacting the Indian Gaming Regulatory Act.
4. Declaring that the Compact between the Seneca Nation of Indians and the State of New York violates, in whole or in part, the Indian Gaming Regulatory Act and to the extent that it is in violation of the act the Compact is not approved or in effect under the Indian Gaming Regulatory Act.
5. Declaring that Article 1 § 9 of the New York Constitution is not preempted by the Indian Gaming Regulatory Act.
6. Declaring all tribal-state compacts entered into by the State of New York with any Indian nation or tribe as not in effect under the Indian Gaming Regulatory Act.
7. Declaring all tribal-state compacts entered into by the State of New York with any Indian nation or tribe pursuant to N.Y Executive Law § 12 as not in effect under the Indian Gaming Regulatory Act.
8. Declaring that a tribal-state compact entered into in violation of state law is not in effect under the Indian Gaming Regulatory Act.
9. Declaring that any lands acquired pursuant to the Seneca Nation Settlement Act of 1990 does not fall within any of the exceptions to the prohibition against gambling on land acquired after October 17, 1988 contained in 25 U.S.C. § 2719(b)(1)(B).
10. Declaring that the Secretary's decision dated November 12, 2002 not to disapprove the Compact is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right and contrary to the IGRA and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

11. Declaring that the Secretary's decision dated November 12, 2002 to allow the Compact to be considered approved is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right and contrary to the IGRA, and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

12. Declaring that the Commissioner of the Nation Indian Gaming Commission's decisions dated November 26, 2002, May 20, 2004, November 6, 2006, July 2, 2007 and/or January 20, 2009 to approve the Seneca Nation's gaming ordinance and its subsequent amendments was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right and contrary to the IGRA, and is arbitrary, capricious, an abuse of discretion, and not in accordance with law.

13. Setting aside the decisions of the Secretary of the Interior dated November 12, 2002, purporting to allow the Compact to be considered approved.

14. Setting aside the decisions of the Chairman of the National Indian Gaming Commission, approving the Seneca Nation Class III Gaming Ordinance and approving its amended gaming ordinances dated November 26, 2002, May 20, 2004, November 6, 2006, July 2, 2007 and/or January 20, 2009.

15. Enjoining the Federal Defendants from approving or considering as approved any tribal-state compact or any amendment to a tribal-state compact between the State of New York and any Indian nation or tribe.

16. Enjoining the Federal Defendants to review each gaming facility operated by an Indian nation or tribe and those in privity with them to determine whether or not it is situated on land that is gaming eligible under 25 U.S.C. § 2719.

17. Enjoining the Federal Defendants to take, or refer for, enforcement action against any Indian nation or tribe and those in privity with them in the State of New York under their

respective jurisdictions that is operating under a tribal-state compact that is not in effect under the Indian Gaming Regulatory Act and is engaged in Class III gaming.

18. Enjoining the Federal Defendants to take, or refer for, enforcement action against any Indian nation or tribe and those in privity with them that is operating a gaming facility on land that is not gaming eligible under 25 U.S.C. § 2719.

19. Awarding Plaintiffs attorney's fees, expert witness fees and costs in this action pursuant to the Equal Access to Justice Act.

20. Granting such other and further relief that the Court deems proper.

Dated March 13, 2009
Buffalo, New York

Daniel T. Warren
Plaintiff, Pro Se
836 Indian Church Road
West Seneca, New York 14224-1235
716-570-6070

VERIFICATION

I Daniel T. Warren, am the Plaintiff in the within action. I declare and affirm under the penalty of perjury that I have read the foregoing complaint and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Executed on: March 13, 2009 in Buffalo, New York

Daniel T. Warren

Exhibit "A"

MEASURING INDUSTRY EXTERNALITIES: THE CURIOUS CASE OF CASINOS AND CRIME

Earl L. Grinols,* David B. Mustard**

March 2001

Abstract

The philosophy of externalities and corrective policy is much better developed theoretically than it is in application. It falters at the roadblock of inability to measure the size of externalities. This paper exploits the connection between casinos, an industry that did not exist outside Nevada prior to 1978, and crime using county-level data for the US between 1977 and 1996, a period spanning the introduction of casinos to states other than Nevada. We articulate reasons why casinos may both decrease and increase crime. We show that casinos increased crime after a lag of 3 to 4 years, consistent with the theoretical predictions of the role of problem and pathological gamblers. Furthermore, by studying the crime rates in counties that border casino host counties we show that the data suggest casinos create crime, and not merely move it from one area to another: Neighbor county data indicate that casino crime spills over into border areas rather than is moved from them. Last, we explain why other studies have failed to identify a strong link between casinos and increased crime rates. The data indicate that 8 percent of crime observed in casino counties in 1996 was attributable to casinos. The average annual cost of increased crime due to casinos was $65 per adult per year.

JEL Classification Numbers: K0, K2, H2

Key Words: Casinos, Index I Crime, Externalities, Social Costs, Pigouvian Taxes

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* Department of Economics, University of Illinois, 1206 S. 6th Street, Champaign, Illinois 61820. E-mail: grinols@uiuc.edu

** Department of Economics, Terry College of Business, University of Georgia, 528 Brooks Hall, Athens, Georgia 30602. E-mail: mustard@terry.uga.edu. We thank workshop participants at the American Law and Economics Association and American Economics Association Annual Meetings and at the Universities of Buffalo, Georgia, Illinois and Rochester for their helpful comments.

MEASURING INDUSTRY EXTERNALITIES: THE CURIOUS CASE OF CASINOS AND CRIME

The theory of externalities and corrective policy developed in the last one third century contains an impressive array of tools and techniques for improving social welfare in the presence of activity spillovers. Progress in applications has been much less pervasive than the advances in theoretical understanding, however. While the Clean Air Act allows trading in pollution rights, there is ongoing discussion of the taxation of carbon fuels and greenhouse gases, and in recent years there has been a growing campaign surrounding the recovery of social costs generated by industries whose products are believed to generate harmful externalities exemplified by lawsuits against the tobacco industry, in many other cases the attempt to implement rational mechanisms has foundered on the shoals of the inability to quantify the externality to be controlled or moderated. Application of Pigouvian corrective taxes, for example, requires information on the size of the externalities. Inability to implement quantifiable objectives is tantamount to failure to understand the most critical feature of the corrective process.

Occasionally, however, social science encounters serendipitous events, or clouds with silver linings, in the form of social experiments ready for testing. The casino industry is a case in point. Prior to 1978, there were no casinos in the United States outside of Nevada. Mainly since 1990, casinos have expanded to the point where the vast majority of Americans are now within relatively easy access of one. But, casino gambling is not just another entertainment. On a national basis, research suggests that it generates externality costs greater than $37 billion annually, making casino gambling one of a handful of the most costly social problems. Crime is one of the biggest components of these social costs. Crime is of great interest to the average citizen and crime statistics are widely kept, hence the connection between casinos and crime is an ideal object of empirical study. Unlike alcohol or illegal drugs, whose effects are confounded with many other contributing factors, the absence of casinos in most of the country until the recent past means that statistical before and after comparisons can be made to measure the impact of casinos on crime.

There are two further reasons why determining whether there is a link between casinos and crime, and how big, is particularly valuable. First, the casino industry has grown extremely rapidly in just the last decade and in that time has become one of the most controversial and influential industries. Commercial casino revenues increased 186 percent from $8.7 billion in 1990 to $24.9 billion in 1998.[1] Including Class III American Indian casinos,[2] 1998 revenues totaled $31.8 billion, or $163 per adult aged 20 or over. Casino industry revenues are now 71 percent as large as the cigarette market, while all forms of gambling are 30

[1]Gambling revenue is the net amount of money that the gambling operator extracts from patrons. It equals the "handle" (gross amount wagered—which may reflect the same chip being bet many times before it is ultimately retained or lost) less payouts, prizes, or winnings returned to players. For example, if players place wagers totaling $100,000 on outcomes of a roulette wheel over the course of an evening and $88,000 is returned to them as winnings (some roulette slots are reserved for the house), then operator revenue is $12,000.

[2]According to the Indian Gaming Regulatory Act of 1988, class I gambling consists of "social games solely for prizes of minimal value." Included in Class I gambling are traditional Indian games identified with tribal ceremonies and celebrations. Class II gambling includes bingo and "games similar to bingo." Class III gambling includes "all

percent bigger.[3] From 1982 to 1999 GDP increased 185 percent, while casino revenues increased more than 660 percent. This rapid casino expansion generated extensive debate about the impact of casinos on many social, economic, and political issues.[4] The casino industry has also become a major lobbying presence. For example, between 1992 and 1997, $100 million was paid in lobbying fees and donations to state legislators.[5] These concerns were sufficiently pronounced that the U.S. Congress established the National Gambling Impact Study Commission in 1996 to exhaustively study casinos. Its final report called for additional research and a moratorium on further expansion.

Research on the connections between casinos and crime to date has been inconclusive for a number of reasons that are detailed in Section I of the paper. Using a more comprehensive data set than past studies, Section I reviews the raw data on crime in counties with and without casinos. The evidence seems to point to a divergence in crime rates that arise after the introduction of casinos. Before adjustment or statistical corrections, it suggests that 11.7 percent of observed crime in casino counties is due to the presence of casinos. Other evidence seems to point in the same direction. For example, counties with American Indian casinos show a rise in crime rates across a range of crimes that coincides with the period after casino introduction. For the same number of years before casinos there is no similar change. In Florida, casino counties began the sample period with lower crime rates that the rest of the state, but end it with higher. Perhaps the strongest evidence, however, is the behavior of crime rates for casino counties when the data is grouped on year of casino introduction. Crime indexes that were flat for four years prior to casino opening take a small dip during the year of opening, but begin to rise several years after. The rest of the paper deals with examining this evidence for other contributory factors and documenting the theoretical and empirical connections between casinos and crime. After describing the connection between casinos and crime in the raw data in section I we critique the casinos and crime research. In section II we elaborate the theoretical links between casinos and crime before explaining our estimation strategy in section III. Section IV discusses our basic empirical results and section V extends the results to border counties. We find that crime begins to rise in casino counties with a lag of three years. Crime in border counties follows a similar pattern but attenuated to approximately half the level. This suggests that casinos are not just shifting crime from neighboring regions, but are creating crime. In section VI we use the estimates to formally calculate the crime-related social costs in casino counties. Our estimates place these costs at approximately $63 dollars per adult per year. Section VII summarizes and evaluates our research and suggests several fruitful avenues for further research.

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forms of gaming that are not Class I gaming or Class II gaming" such as blackjack, slot machines, roulette, and other casino-style games.

[3]Cigarette sales were $45 billion in 1997. Gambling revenues were $58.4 billion. See *International Gaming and Wagering Business*, August 2000, p. 15.

[4]Kindt (1994), Grinols (1996), Henriksson (1996), and Grinols and Omorov (1996) discussed a number of these.

[5]*The Wager*, 2, 39, 1997.

I. The Casino-Crime Context: What Do We Know?

Between 1977 and 1996, the years covered by our sample, the number of states with some form of casino gambling rose from one to 28.[6] The number of counties with casinos grew from 14 (all in Nevada) to nearly 170. At the end of the period, twenty-one states permitted casinos on Indian reservations. The Indian Gaming Regulatory Act of 1988 increased the number of Indian casinos by mandating that states allow American Indian gambling on trust lands if the state sanctioned the same gambling elsewhere. The semi-sovereign status of Indian tribes and their management by the Federal Bureau of Indian Affairs gave them greater leverage in their dealings with the states.

Table 1 presents summary crime, income, and population statistics for casino and noncasino counties (counties with no casino in any year of the sample). Casino counties had higher population, land area and income. Crime rates are also higher for these larger counties, as one would expect.

Figure 1 shows the aggregate relationship between the number of counties with casinos (left scale) and the crime rate (right scale). During the period 1977 to 1990, when the number of casinos was relatively constant, the crime rate fluctuated. However, we see that during the period between 1990 and 1996 when the number of counties with casinos increased rapidly, the crime rate dropped substantially. This contemporaneous casino growth and crime reduction is an important feature of the data. It has been used by some to suggest that casinos reduced crime. For example, Margolis (1997) stated, "crime rates in Baton Rouge, LA have decreased every year since casino gaming was introduced." However, such conclusions are not justified because many regions in the country experienced falling crime rates after 1991. Therefore, it is more appropriate to compare the magnitude of the decreases between casino and noncasino counties.

A. Evidence from National Data

1. Relative Crime Rates in the Post-Casino Period

Figure 2 contrasts the crime rate for casino and non-casino counties during the years 1991-96. The data are indexed so that 1991 = 100. Because data for Florida are missing in 1988 and 1996, Florida is not included.[7]

[6]One must carefully distinguish the date casinos began operating from other dates. Nevada (1931) legalized commercial casino gambling prior to the start of our sample, but in other states there were sometimes lags between the legislation authorizing casinos and the opening of operations. Within a state, different counties acquired casinos at different times. Also, bingo halls operated by American Indians converted to Class III gambling during our sample. We use the date Class III gambling operations first began in the county. The following states began some form of casinos gaming during our sample: Arizona (1992), Connecticut (1993), Colorado (1991), Delaware (1995), Florida (1982), Georgia (1995), Idaho (1993), Illinois (1991), Indiana (1995), Iowa (1991), Kansas (1996), Louisiana (1993), Michigan (1993), Minnesota (1991), Mississippi (1992), Missouri (1994), Nebraska (1993), New Jersey (1978), New Mexico (1990), New York (1993), North Carolina (1995), North Dakota (1993), Oregon (1993), South Dakota (1989), Texas (1993), Washington (1992), Wisconsin (1991) and West Virginia (1994).

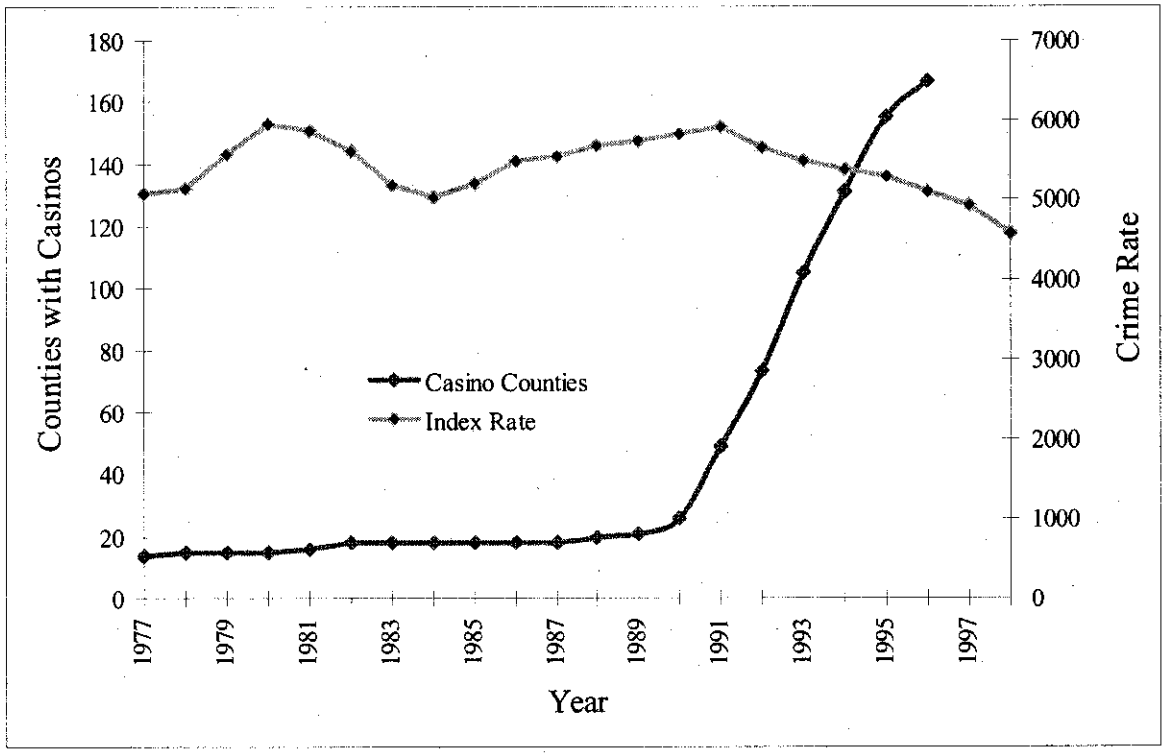
[7]The state legislature changed the Florida crime reporting process from summary-based to incident-based on Jan 1, 1988. In 1995 Florida switched back to summary-based reporting. In the transition years, data are missing.

Table 1: Demographic and Crime Data: Casino vs Noncasino Counties.

Variable	Mean	Std. Dev.	Sample Size	Mean	Std. Dev.	Sample Size
	CASINO COUNTIES			NONCASINO COUNTIES		
Population	148,319	293,792	3,313	73,310	252,150	59,273
Population Density (pop. per sq. mile)	208	501	3,313	217	1,459	59,265
Area (Square Miles)	2,060	3,132	3,313	1,010	2,880	59,280
Per capita Personal Income	$11,407	$2,657	3,313	$10,805	$2,619	59,260
Per capita Unemployment Ins.	$79	$55	3,313	$64	$51	59,244
Per capita Retirement Compensation	$10,787	$6,545	3,313	$9,833	$6,244	59,248
Aggravated Assault Rate	259	276	3,072	188	245	54,724
Rape Rate	29	27	3,009	20	32	54,055
Murder Rate	6	9	3,081	6	10	54,801
Larceny Rate	2,537	1,428	3,081	1,741	1,939	54,795
Burglary Rate	1,063	668	3,081	771	1,109	54,792
Robbery Rate	82	135	3,081	44	143	54,796
Auto Theft Rate	267	263	3,081	167	277	54,800

Note: Crime rates are annual number of incidents per 100,000 population.
Income figures are price-adjusted to 1982-84 $.

Figure 1: Index Crime Rate and Number of Counties with Casinos: U.S. 1977-1998

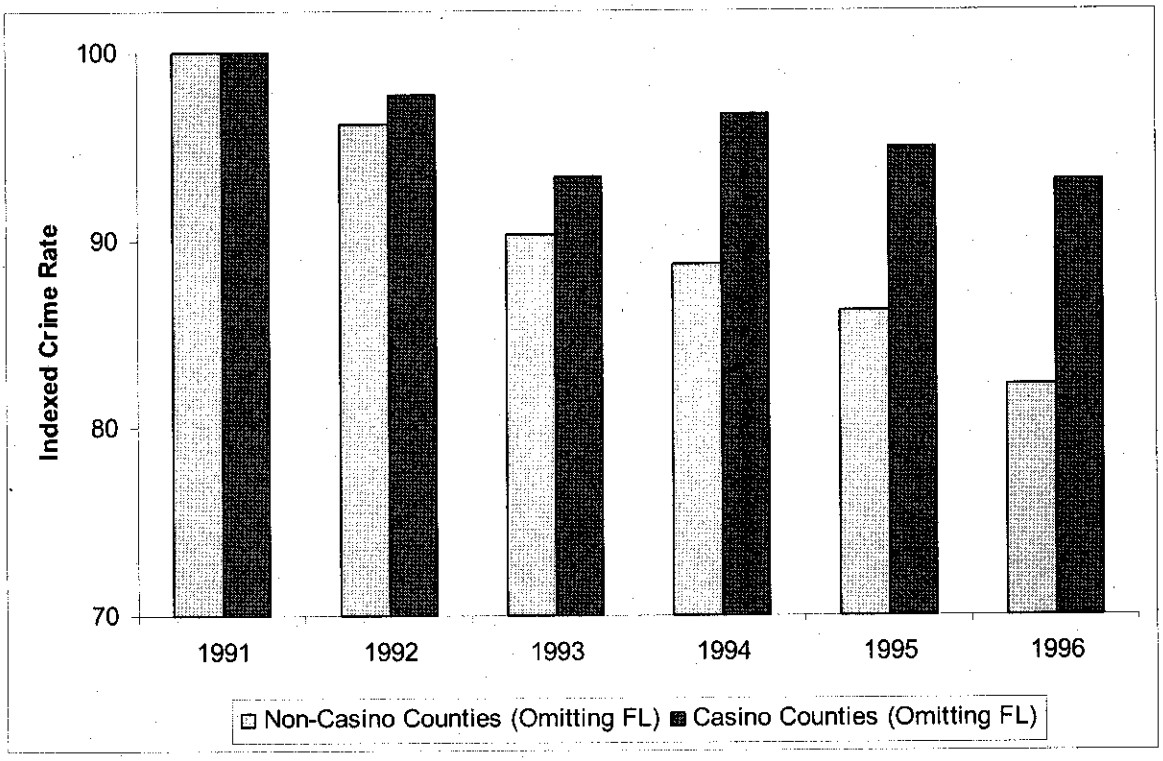


While crime dropped in both sets of counties, there was a widening divergence in the extent of the decline after 1991. If crime rates in casino counties had dropped in proportion to the drop in non-casino counties, crime in casino counties in 1996 would have been 11.7 percent lower. Far from suggesting that casinos lowered crime, falling crime rates in casino counties when compared to dropping crime rates everywhere, suggest that casinos may have been responsible for as much as 11.7 percent of the observed crime in such counties.

2. Florida

In addition to the need to consider Florida separately because of gaps in its data for two years of the sample, it is of interest in its own right because it is a large state and was the first state after New Jersey to acquire casinos. Florida's first "boat-to-nowhere" casino began operation in 1982. Other counties acquired casinos in 1988, and the early 1990s. Florida casino counties experienced greater rates of crime increase than the state's noncasino counties. Figure 3 highlights this differential for each of the crimes indexed so that 1982 = 100. The lower connected line forms a margin for 1977 showing the relative crime rate across all seven

Figure 2: Indexed Crimes: Casino County vs Noncasino County Crime Rates

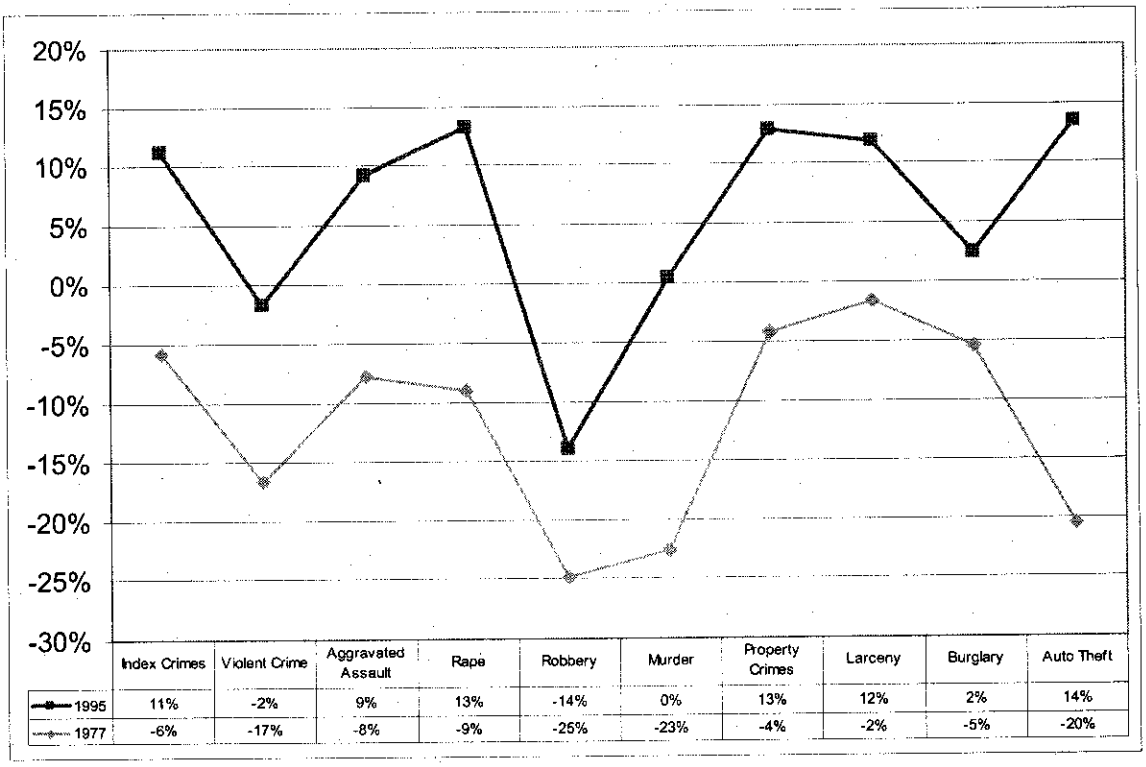


crime categories. The higher line shows that the 1995 margin rose. For example, the crime index in 1977 was 6 percent lower in casino than noncasino counties (this is the left-most Index Crime observation point on the lower margin). By 1995, however, it was 11 percent *higher* (the Index Crime observation on the higher margin). For every crime except robbery, casino counties had lower crime rates in 1977, and higher crime rates in 1995. The robbery rate in casino counties in 1977 was 25 percent lower than in noncasino counties; by 1995 it was only 14 percent lower.

3. American Indian Casinos

A similar pattern applies to American Indian casinos. Many states have American Indian casinos governed by state compacts negotiated under the Indian Gaming Regulatory Act of 1988. Most compacts were signed, and Indian casinos opened, after 1992. In some states (Connecticut, Minnesota, and Wisconsin are examples) Indian casinos are the sole type of casino. Figure 4 computes crime rates in Indian compact counties as a percent of the equivalent crime rate in noncompact counties for 1987 (the year before the Indian Gaming Regulatory Act was passed), in 1992 and 1996. Crime rates between 1987 and 1992, when casinos were just

Figure 3: Casino County Crime Rates as Percent Deviation from Noncasino County Rates: Florida 1977 and 1995.



	Index Crimes	Violent Crime	Aggravated Assault	Rape	Robbery	Murder	Property Crimes	Larceny	Burglary	Auto Theft
1995	11%	-2%	9%	13%	-14%	0%	13%	12%	2%	14%
1977	-6%	-17%	-8%	-9%	-25%	-23%	-4%	-2%	-5%	-20%

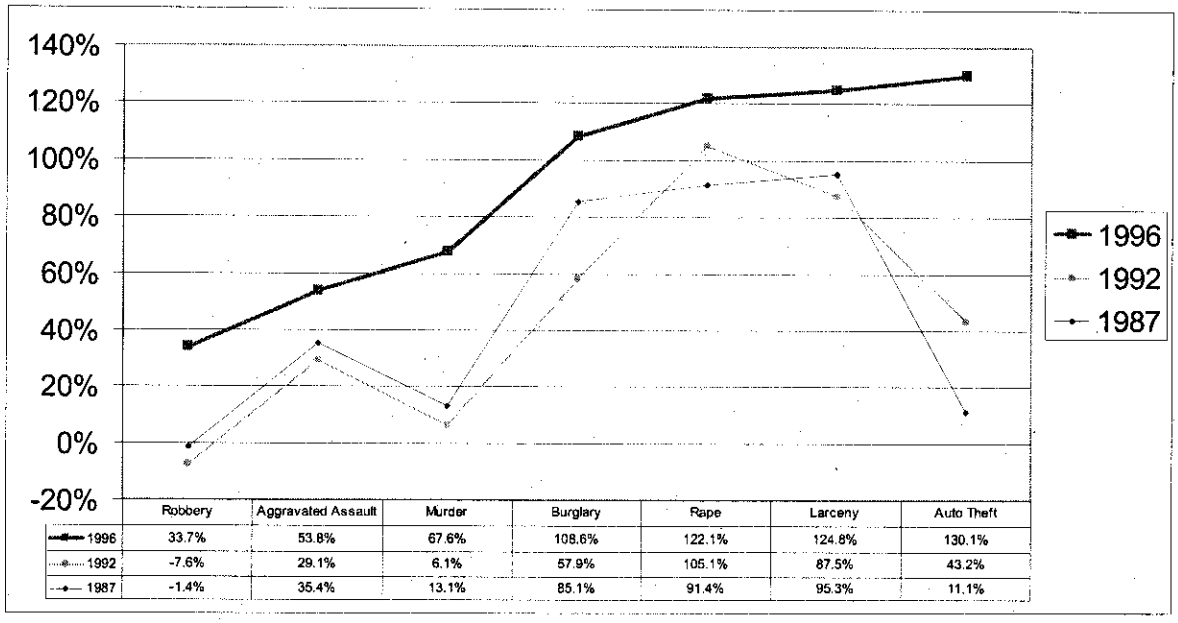
beginning or had not yet been introduced, changed little relative to other counties, but between 1992 and 1996, the period of greatest increase in compact casinos, crime in compact counties rose noticeably in all categories.

4. Evidence from Year of Opening

Figure 5 presents the casino county data centered on the year of opening, where we set the average crime rate for the four years prior to casino opening to 100. Crime rates were very stable prior to opening, slightly lower in the year of casino introduction, returned to approximately average levels for the next three years and increased thereafter. By the fifth to seventh year after introduction, aggravated assaults were 50 to 95 percent higher, robbery was 71 to 119 percent higher, larceny was 9 to 41 percent higher, and auto theft and burglary also showed increases. Only rape was approximately unchanged at 7 percent lower to 12 percent higher.

When grouped around the year of opening the data suggest a connection between casinos and higher

Figure 4: Indian Compact County Crime Rates as Percent Deviation from Noncompact County Rates.



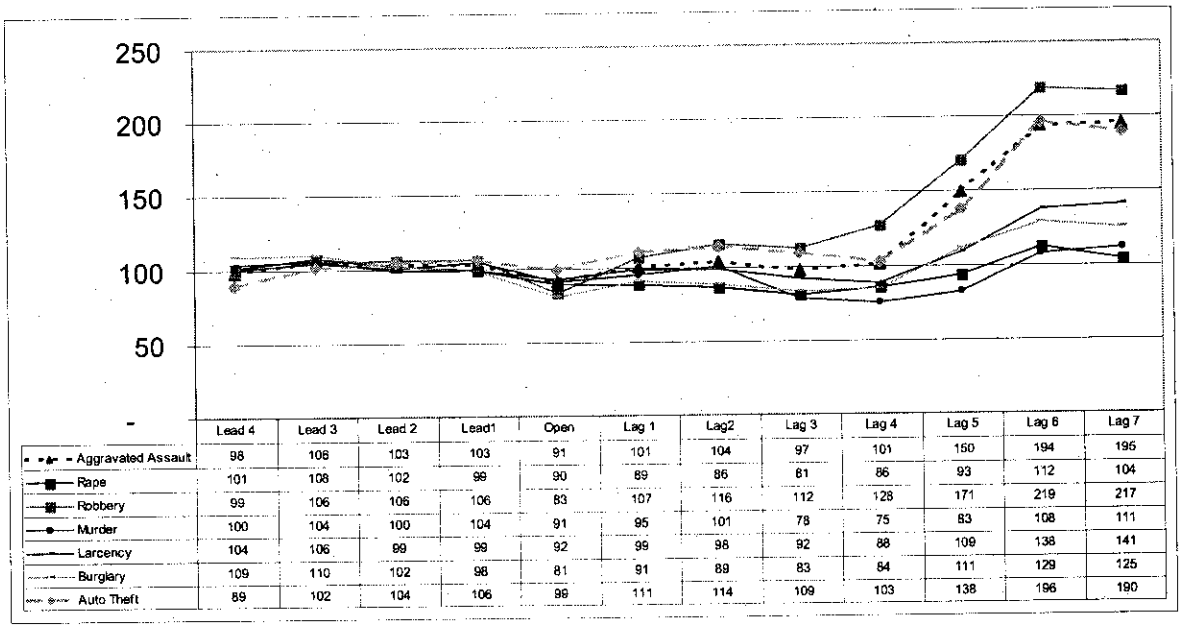
	Robbery	Aggravated Assault	Murder	Burglary	Rape	Larceny	Auto Theft
1996	33.7%	53.8%	67.6%	108.6%	122.1%	124.8%	130.1%
1992	-7.6%	29.1%	6.1%	57.9%	105.1%	87.5%	43.2%
1987	-1.4%	35.4%	13.1%	85.1%	91.4%	95.3%	11.1%

crime rates and the need to estimate lead and lag structures to correctly capture and identify the relevant time dependencies. The lead structure will show that crime rates in casino and non-casino counties were not different prior to the casino opening dates.

B. Existing Studies: A Critique

In spite of much public attention devoted to casinos and the many important questions surrounding this dynamic sector, there is a paucity of convincing research on the casino-crime link. Economists, virtually silent about the issue, are just beginning to research this new area. Studies from other disciplines, which typically compare crime rates of different cities or regions in a given year, exhibit many fundamental weaknesses. For example, no study examined the intertemporal effect of casinos on crime, which we argue is essential to understanding the relationship. In addition, nearly every study used small samples, most frequently focused on Las Vegas, Atlantic City or Reno. Many of these studies reach conflicting conclusions. Albanese (1985, 1999) examined areas around Atlantic City, arguing that New Jersey's Crime Casino Act (1977) minimized the increase in crime, and later studied only nine large casino markets. Lee and Chelius (1989) concluded that the New Jersey Casino Control Commission kept Atlantic City casino ownership and management free from organized crime. In contrast, organized crime played a large role in the casino labor unions. Friedman, Hakim and Weinblatt (1989) studied 64 localities near Atlantic City with populations over 1000. They found

Figure 5: Crime Rates Before and After Casino Opening - All Casino Counties Except Florida



	Lead 4	Lead 3	Lead 2	Lead1	Open	Lag 1	Lag2	Lag 3	Lag 4	Lag 5	Lag 6	Lag 7
Aggravated Assault	98	106	103	103	91	101	104	97	101	150	194	195
Rape	101	108	102	99	90	89	86	81	86	93	112	104
Robbery	99	106	106	106	83	107	116	112	128	171	219	217
Murder	100	104	100	104	91	95	101	78	75	83	108	111
Larcency	104	106	99	99	92	99	98	92	88	109	138	141
Burglary	109	110	102	98	81	91	89	83	84	111	129	125
Auto Theft	89	102	104	106	99	111	114	109	103	138	196	190

that casinos increased violent crimes, burglary and auto theft. Buck, Hakim and Spiegel (1991) also reported that Atlantic City gambling increased crime rates. Chiricos (1994), in contrast, reported that the cities with legalized gambling (Atlantic City, Las Vegas, and Reno) had lower crime rates than selected Florida tourist cities if one included visitors in the population base. Thompson, Gazel, and Rickman (1996a) studied statewide county-level panel data from Wisconsin and found that casino gambling significantly increased crime rates in counties with casinos and those with casinos in two adjacent counties.

Although some of the studies also made conclusions about crime rates, they examined arrests, and did not mention that one cannot use arrest rates to infer anything definitive about crime rates. Using arrest data, Albanese (1999) concluded that casinos did not increase embezzlement, fraud and forgery crime rates. Hsing (1996) used a cross-section of 48 states and identified higher illegal drug arrests in states that permit gambling.

A fourth criticism is that most studies are subject to substantial omitted variable bias because they rarely controlled for variables that affect crime. Margolis (1997), Florida Department of Law Enforcement (1994), and Florida Sheriffs Association (1994) included no control variables.

Last, many studies were agenda-driven, conducted or funded by either pro-gambling or law enforcement organizations. Nelson, Erickson and Langan (1996), Margolis (1997) and Albanese (1999) were funded by explicitly pro-gambling groups. Not unexpectedly, they concluded that gambling had no impact on crime.[8]

[8]See Wheeler (1999) for an interesting discussion of research funded by the gambling industry.

Margolis (1997) focused on Las Vegas, Atlantic City, Reno, and Deadwood, SD. The Florida Department of Law Enforcement (1994) and Florida Sheriffs Association (1994), who both opposed casinos, concluded that crime and drunk driving increased in Atlantic City and Gulfport, Mississippi, as a result of casinos.

In summarizing the existing body of literature, the GAO and National Gambling Impact Study Commission (NGISC) concluded that no definitive conclusions can yet be made about the casino-crime link because of the absence of quality research. According to the GAO, "In general, existing data were not sufficient to quantify or define the relationship between gambling and crime... although numerous studies have explored the relationship between gambling and crime, the reliability of many of these studies is questionable." (GAO, 2000, p. 35.)

II. Theory

Previous studies focused on the empirical question of whether there is a connection between casinos and crime but neglected precise discussions of how casinos theoretically could affect crime. We present two reasons why crime could decrease and four reasons why crime could increase. We then discuss their different impacts over time, an essential, but previously ignored issue.

A. Theoretical Connections between Casinos and Crime

Casinos may reduce crime directly by improving legal earning opportunities or indirectly through economic development effects.

1. Wage Effects: Grogger (1997) argued that increases in wages reduce crime, and Gould, Mustard and Weinberg (1998) showed that increases in employment and wages of low-skilled individuals reduce crime. Therefore, if casinos provide greater labor market opportunities to low-skilled workers, they should lower crime.

2. Economic Development: Casinos may also reduce crime indirectly through economic development. In the Midwest, for example, legislation decriminalizing casino gambling cited economic development as its rationale. Decaying waterfronts and derelict sections of town that once harbored crime may be less amenable to it when renovation occurs, streetlights appear, and resident presence increases. The streets near Las Vegas casinos, even at night, are often cited as some of the safest.

Conversely, casinos may increase crime through direct and indirect channels.

1. Economic Development: Casinos may raise crime by harming economic development, the opposite of the indirect effect discussed above. While some commend casinos for bringing development, others criticize them for draining the local economy, attracting unsavory clients, and for outgrowths like prostitution and illegal gambling-related activities.

2. Increased Payoff to Crime: Second, casinos may increase crime by lowering the information costs and increasing the potential benefits of illegal activity. Because casinos attract gamblers and money, there is an increased payoff to crime from a higher concentration of cash and potential victims. A 1996 Kansas

City case is illustrative in which a local restaurant owner was followed home, robbed, and murdered in his garage after winning $3,000 at a casino.[9] Similar stories exist in other locations with casinos.

3. Problem and Pathological Gambling: Crime may increase through problem and pathological gamblers. Pathological gambling is a recognized impulse control disorder of the Diagnostic and Statistical Manual (DSM-IV) of the American Psychiatric Association. Pathological gamblers (often referred to as "addicted" or "compulsive" gamblers) are identified by repeated failures to resist the urge to gamble, reliance on others to relieve the desperate financial situations caused by gambling, the commission of illegal acts to finance gambling, and the loss of control over their personal lives and employment. Problem gamblers have similar problems, but to a lesser degree. The latent propensity to pathology becomes overt when the opportunity to gamble is provided and sufficient time has elapsed for the problem to manifest. Lesieur (1998) estimated that pathological gamblers are one or two percent of the population and problem gamblers are another two to three percent. A well-cited Maryland study found that 62 percent of the Gamblers Anonymous group studied committed illegal acts as a result of their gambling.[10] 80 percent had committed civil offenses and 23 percent were charged with criminal offenses. A similar survey of nearly 400 members of Gambler's Anonymous showed that 57 percent admitted stealing to finance their gambling. On average they stole $135,000, for a total of over $30 million.[11]

4. Visitor Criminality: Crime may rise because casinos attract visitors who are both more prone to commit and be victims of crime. For example, Chesney-Lind and Lind (1986) suggest that one of the reasons tourist areas often haver more crime is that tourists themselves are the targets of crime. However, visitors *per se* do not necessarily increase crime. In the following section we show that visitors to national parks do not increase crime. Therefore, if casino visitors induce crime, it is because they are systematically different than national park visitors or visitors to other attractions.[12] Also, more problem and pathological gamblers will visit casinos than other attractions. One anecdotal example of the different clientele casinos attract is the large increases in pawnshops that occur when casinos open. Other tourist areas do not experience similar increases.

These mechanisms should have different impacts across crimes. Improvements in the legal sector, for example, reduce property crime more than violent crime (Gould, Mustard and Weinberg, 1998). If casinos

[9]Reno, 1997.

[10]See Maryland Department of Health and Mental Hygiene (1990).

[11]Henry Lesieur from the Institute of Problem Gambling, in testimony before the National Gambling Impact Study Commission, Atlantic City, New Jersey (January 22, 1998).

[12]The three largest single tourist attractions in the Unites States in 1994 were the Mall of America (Bloomington, MN), Disney World (Orlando, Florida), and Branson, Missouri (country and western music) receiving 38 million, 34 million, and 5.6 million visitors, respectively. For comparison, Hawaii received approximately 6 million and Las Vegas received 30.3 million visitors in 1994. Visitors per resident were 1,345 for Branson, 436 for Bloomington, MN, 188 for Orlando, and 40 for Las Vegas. Even combining visitors with residents to calculate diluted crime rates, the crime rate per 100,000 visitors plus residents was 187.3 for Las Vegas, 64 for Orlando, 16.4 for Branson, and 11.9 for Bloomington. Thus Bloomington which recieved 7.7 million more visitors than Las Vegas had a crime rate per visitor plus resident less than $\frac{1}{15}$th of the rate for Las Vegas.

act as magnets for unsavory development then all types of crime may increase. Pathological gamblers will generally commit crime to generate money to pay off debts or gamble.[13] Therefore, they would be more likely to commit crimes that generate revenue, like robbery, burglary, larceny and auto theft. Furthermore, if casinos increase criminal activity by problem and pathological gamblers, this increase could be compounded by spillover effects on others (Glaeser, Sacerdote, and Scheinkman, 1996).

The theory also predicts that the effects of casinos will change over time. Reduction of crime through improvements in labor market opportunities will be observed prior to the casino opening. Because casinos take time to build, and low-skilled people may be hired before casino openings, crime reductions could precede the openings. Both the positive and negative economic development theories imply that a casino will have an impact after opening. Over time, the development effects will grow, whether positive or negative. The nonresident effect should appear with the casino's opening, but may also expand with time as more nonresidents are attracted. Effects operating through problem and pathological gamblers will not be felt for the first few years. Enough time must elapse for a gambling habit to develop and the full extent of gambling pathology to be reached. Because crime data are reported annually and casinos could open in a given year as late as December, there may not be a discernible effect on crime rates until several years after they open.

III. Estimation Strategy

Our strategy is to address the identified research gap by rectifying a number of research limitations. First, we conduct the most exhaustive investigation to date, utilizing a comprehensive county-level crime data set that includes every U.S. county. This eliminates sampling concerns. Second, we analyze crime effects over time by exploiting the time-series nature of our data, which cover 1977 through 1996. Third, we do not focus on one or two crimes, but examine all seven FBI Index I Offenses (aggravated assault, rape, murder, robbery, larceny, burglary, and auto theft). The first four offenses are classified as violent crimes and the last three as property crimes. Fourth, we are the first to explicitly articulate a comprehensive theory about how casinos could increase and decrease crime.[14] Last, we use the most exhaustive set of control variables, most of which are commonly excluded from other studies. If casinos are correlated with these excluded variables, then previous estimates will suffer omitted variable bias. We conclude that casinos increase crime in their host counties and that crime spills over into neighboring counties to increase crime in border areas.

A. Direct and Indirect Effects

Casinos can affect crime rates directly through effects on the resident local population and indirectly by increasing the number of casino visitors. The total impact includes both direct and indirect effects, as explained in equations (1) and (2), where crime (C_{it}) in county i in year t is a function of the presence of a

[13]Continued gambling is often perceived as a way to win back needed money. "Chasing" one's losses is a characteristic of pathological gamblers.

[14]Miller and Schwartz (1998) explained in detail how the literature has generally neglected discussing the theoretical links between casinos and crime.

casino, the number of casino visitors (V) to the county, and other variables that affect crime (summarized in the term *Other*) where a, b, c, and d are unknown coefficients.

$$C_{it} = aCasino_{it} + bV_{it} + Other_{it} \quad (1)$$

$$V_{it} = cAttractions_i + dCasino_{it} \quad (2)$$

Casino visitors in equation (2) depend both on the visitor attractiveness of the county (*Attractions*) and the presence of the casino. Coefficient a measures the direct effect of the casino on crime. The indirect effect via casino visitors is measured through coefficients b and d. Substituting from (2) into (1) gives

$$C_{it} = \beta_i + \delta Casino_{it} + Other_{it} \quad (3)$$

where $\delta = a + bd$, and $\beta_i = bc\,Attractions_i$. The total effect of the casino on crime, δ, in equation (3), includes the effects on both the local population and casino visitors. Estimating a in (1) would give only a partial effect because it would not take into account the visitor effect.[15] The key to our being able to estimate the full effect is having time series data. Because many studies of the casino-crime relationship used cross-sectional data, they were limited to estimating only a partial effect.

B. Visitors

Estimating direct and indirect effects is important. At the same time, it is also important to avoid a related misperception. The observation is sometimes made, "X is associated with crime increases because X increases tourism and tourists cause crime." From there the inferential leap is made that any attraction that attracts the same number of visitors will have the same crime effects. This perception is false. Apart from begging the empirical question of whether it is uniformly true that tourists cause crime, this conclusion comes perilously close to ignoring the equally important fact that visitors are not generic. Systematically different types of visitors may have systematically different effects on crime even if the impact for all types of visitors is positive. The presence of a casino in (3) proxies for direct effects on crime that may exist and for an increased number of casino visitors. It does not necessarily follow that the same number of visitors for another purpose would lead to the same crime outcomes. Visitors for other purposes appear in the variable $Other_{it}$, which we now address.

Time series visitor data do not exist at the county level and certainly do not distinguish visitors for different purposes. Running regression (3) without such information, therefore, risks a potential omitted variable bias. In defense, no other crime studies have been run with these data either, but more importantly, in the case of casinos, the omitted variables are almost certainly uncorrelated with the entry of a casino.

[15] Ideally we would like to know both a and b to decompose the total effect into the portions generated by visitors and by locals. Because of data constraints, we estimate the total effect d but not a and b separately. Casino visitor data do not exist at the county level. Both a and b might be estimated using other variables to proxy for the number of casino visitors, but there are no annual, time-series data at the county level.

Fortunately, there is at least one type of tourist for which data *are* available that we can use to test the hypothesis of being uncorrelated and having an effect on crime different from the effect that casinos have. For this we obtained National Park Service time series data from 1978 to 1998 on all visitors to national parks, monuments, historic sites, recreation areas and so on. Scores of these parks and attractions, scattered all across the country, receive millions of visitors annually—some as many as 14 million. They are in counties both with sparse population and in counties with large cities. If vacationing families cause crime to the same extent as other visitors, then these counties should have crime rates to match. In the majority of cases the correlation between park visitors and the casino variables used in the study were well below 1 percent and in no case was the correlation above 1.7 percent. This is consistent with the view that omitted variable bias is likely to be small or zero. Although it always preferable to include such variables when possible, we are confident that in the case of casinos the procedure employed by (3) of, in effect, treating data on other visitors as part of the constant term and the error term is not a problem for the coefficients of interest.[16]

A second analytical issue is whether to use "diluted" or "undiluted" crime rates. That is, should the number of crimes be divided by population—the conventional way to generate the crime rate (undiluted)—or be divided by population *plus* visitors (diluted)? There are four possibilities for research depending on whether one considers total or partial effects, and studies diluted or undiluted crime rates. Some have argued for one combination or another without realizing that the choice is not methodological, but depends on what questions the researcher wants to answer. A frequently mentioned invalid claim is that to determine the change in probability that a resident would be the victim of a crime, the diluted crime rate should be used. However, knowing what happens to the diluted crime rate does not give the needed information and could even move in the wrong direction. Let s_1 be the share of the resident population P victimized by residents, and let s_2 be the share of the resident population victimized by visitors V. Similarly, let σ_1 be the share of visitors victimized by residents, and σ_2 the share of visitors victimized by visitors. Then the crime rate is $s_1 + s_2 + (\sigma_1 + \sigma_2)\frac{V}{P}$; the diluted crime rate is $(s_1 + s_2)w_P + (\sigma_1 + \sigma_2)w_V$ where w_P and w_V are the share of visitors plus residents made up by residents and visitors, respectively; and the probability of a resident being a crime victim is $s_1 + s_2$. For example, assume that residents do not victimize visitors ($\sigma_1 = 0$), $P = V$, and $(s_2 + \sigma_2)$ is smaller than s_1. Without visitors the probability of a resident being victimized is s_1. With visitors it rises to $s_1 + s_2$. The diluted crime rate without visitors is s_1. With visitors it falls

[16]When visitors to National Park Service sites were included, the regressions (3) showed that an additional one million park visitors annually were associated with 1.4, 0.34, 14.8, 0.64, 5.5, and 1.73 fewer crime incidents per 100,000 population for aggravated assault, rape, robbery, murder, burglary, and auto theft, respectively. The coefficients for rape and murder were significant at the 5 percent level and the coefficient for robbery was significant at the 1 percent level. The estimated effect of an additional million visitors was 13 additional larcenies per 100,000 population, but this coefficient was statistically insignificant. Since we do not have casino visitor data to estimate coefficient b in (1) we cannot directly compare casino visitors' and park visitors' effects on crime rates. However, the size of the effect found for park visitors was many times smaller than the total crime effect found for casinos (coefficient δ) and reported in section IV. Depending on the crime, the effect of a casino on crime rates five years after entering a county was 7 to 170 times larger except for the crime of murder. Neither casinos nor park visitors appear to have an important effect on murder rates. Their coefficients were of comparable magnitude.

to $(s_1 + s_2 + \sigma_2)/2$. Thus in this case the diluted crime rate *falls* while the probability of a resident being victimized *rises*.

In this study we are interested in the costs in the host county associated with a change in crime from whatever source. We are therefore interested in the total effect of casinos on crime using the undiluted crime rate based on equation (3).

C. Separating Casino Effects from Other Effects and Timing

The version of equation (3) we estimated was

$$C_{it} = \alpha + \beta_i + \gamma_t + \delta L_{it} + \theta A_{it} + \varepsilon_{it} \tag{4}$$

where C_{it} is the crime rate (offenses per 100,000 people) of county i in year t, α is a constant, and β_i is the county-level fixed effect that controls for unobserved characteristics across counties. The time fixed effect, γ_t, controls for national crime rate trends. L_{it} is a 12×1 vector of the casino opening dummy. It includies 4 leads and 7 lags of the opening variable, and captures the intertemporal effects outlined earlier.

A_{it} is a vector of control variables. It includes population density, the percent of the population that was male, percent that was black, percent that was white, and the percent between the ages of 10-19, 20-29, 30-39, 40-49, 50-64, and over 65.[17] Economic variables in A_{it} are real per capita personal income,[18] real per capita unemployment insurance payments, real per capita retirement compensation per old person, and real per capita income maintenance payments. A_{it} also includes a dummy variable indicating whether the county honored a "shall issue" right giving citizens the authority to carry a concealed firearm upon request, and two years of leads and four years of lags on the shall issue dummy. A_{it} contains 22 explanatory variables. ε_{it} is the regression error. Including leads and lags, the regression has 54 explanatory variables. This was expanded to 66 when analyzing the effects of casinos on adjacent counties. Excluding observations with missing data reduced the sample size in most regressions from 63,300 $(3,165 \times 20)$ to about 58,000, leaving more than adequate degrees of freedom for estimation.

The effect of a casino on crime depends on δ. A positive coefficient δ indicates that the introduction of casinos increased crime and a negative coefficient indicates that it reduced crime. We independently estimated each lead and lag of the casino opening year without cross restrictions to give separate estimates of the timing of changes. We weighted observations in the regression by county population.

[17] The remaining groups were Hispanics and those between 0 and 9 years.

[18] This and all other income figures were adjusted to 1982-84 $ base.

D. Data Preparation

1. Crime Statistics and Control Variables

The sample covered 3,165 U.S. counties from 1977-96. The Federal Bureau of Investigation's Uniform Crime Report[19] provided the number of arrests and offenses for the 7 FBI Index I offenses.[20] With the exception of Alaska, the county jurisdictions usually remained unchanged over our sample period. We used U.S. Census Bureau data for the demographic characteristics that might affect the crime rate. These controls include population density per square mile, total county population, and population distributions by race, age and sex. Income, unemployment, income maintenance transfers, and retirement data were obtained from the Regional Economic Information System, a component of the Bureau of Commerce. Appendix II provides more information about the data.

2. Casino Locations

The natural operating measure for casinos is gross revenue or profits. Unfortunately, such panel data do not exist—American Indian casinos are not required to report revenues. We therefore used the year a county first had an operating Class III gambling establishment, including riverboat casinos, American Indian casinos, land-based casinos, and in the case of Florida and Georgia, "boats to nowhere"—cruises that travel outside U.S. boundary waters to gamble, and that contain primarily U.S. participants. Not all forms of gambling qualify as a casino. For example, Montana has thousands of small gambling outlets that offer keno or video poker, many of which are in gas stations along the highway. Also, California has many card houses, some of which are illegal. These establishments are distinct from casinos in size and type of play.

We first contacted state gaming authorities. In cases like Washington, this was an expeditious way to ascertain the first year a casino opened. However, even the central gaming authorities and Indian affairs committees often lacked information on Indian casinos. In most states, therefore, we called each casino to obtain its opening date or first date of Class III gambling if it had previously been a bingo hall, etc. We also used lists from the Casino City website, www.casinocity.com, which lists casinos in every state. This list was verified against the annually-produced *Executive's Guide to North American Casinos.*

IV. Results

Table 2 reports the results for the coefficients of interest: four years of leads, the opening, and seven years of lags of the casino opening variable.[21] t-statistics are shown below the estimated coefficients. All coefficients

[19]U.S. Department of Justice, Federal Bureau of Investigation. *Uniform Crime Reports: County-level Detailed Arrest and Offenses Data, 1977-1996.* Washington, D.C.: U.S. Department of Justice, Federal Bureau of Investigation. Ann Arbor, MI: Inter-university Consortium for Political and Social Research (distributor).

[20]See Appendix I for the definitions of the crimes.

[21]The results for the 588 other coefficients and t-statistics for the seven crime regressions are not included in the interest of space, and because they are used as controls and we are primarily interested in the casino-related variables.

refer to changes per 100,000 people. For example, the coefficient of Lag 4 in the column labeled "Aggravated Assault" is 50.29 and indicates that the aggravated assault rate was higher by 50.29 offenses per 100,000 population four years after a casino opened in the county. The number of observations for each regression varied from 57,029 to 57,847. R^2 was between .70 and .89.

The reported regressions exclude measures of law enforcement activity such as conviction rates, sentence lengths, arrest rates, annual police employment and law enforcement expenditures for two reasons. First, including them would have significantly limited the number of counties with available data. Conviction rates and sentence lengths are available for only four states (Mustard 2000), and annual police employment is unavailable at the county-level. The trade-off was one of reduced efficiency from loss of data versus omitted variable bias that would lead us to understate the true impact of casinos on crime.

Using the arrest rate is problematic because it is undefined when there are 0 offenses for a given crime type.[22] Many small counties in our sample record no offenses even for property crimes for a given year, and large counties frequently have no offenses for murder and rape. Therefore, including the arrest rate eliminated many observations, reducing our sample by over 30,000 observations for some offenses.

Second, and more important, by excluding these variables the reported regressions understate the true impact of casinos on crime. The Table 2 regressions with the arrest rate included displayed increased post-opening casino coefficients.[23] This is consistent with information from law enforcement officials who reported that enforcement expenditures increased substantially when casinos opened, and provides support for the evidence that omitting these variables understates the crime effect. Stephen Silvern (FBI in Atlantic City) documented that expenditures for the Atlantic City Police Department and Prosecutor's Office grew much more rapidly in the late 70s and early 80s than similar expenditures in the rest of the state and nation (Gaming Conference 1999). The Director of the Indiana Gambling Commission reported that Indiana hired an additional 120 state troopers when the casinos opened in 1995.[24] Allocations for police services also rose substantially in New Orleans upon introduction of casinos.[25] Law enforcement officials strongly emphasize that to maintain public safety it is necessary to increase spending on enforcement resources when casinos open. Because we are unable to accurately measure these additional resources that reduce crime, the estimates without law enforcement variables understate the effect of casinos on crime and form a lower bound on the impact.

The full regression output is available from the authors on request.

[22]See Lott and Mustard (1997) and Levitt (1998) for more detailed discussions of problems with arrest rates.

[23]We do not present the coefficients in a table because the results are qualitatively similar to the Table 2.

[24]John Thar, Director of the Indiana Gambling Commission, report at Gaming Conference 1999.

[25]Lt. Joseph P. Lopinto, Jr., Commander of the Gambling Section of the New Orleans Police Department reported that his department has been significantly resource constrained since the opening of New Orleans' casinos and the resulting increase in demand for police services. Gaming Conference 1999.

Table 2: Crime Rate Regressions - Casino Leads and Lags.
(Coefficient units are additional crime incidents annually per 100,000 population.)

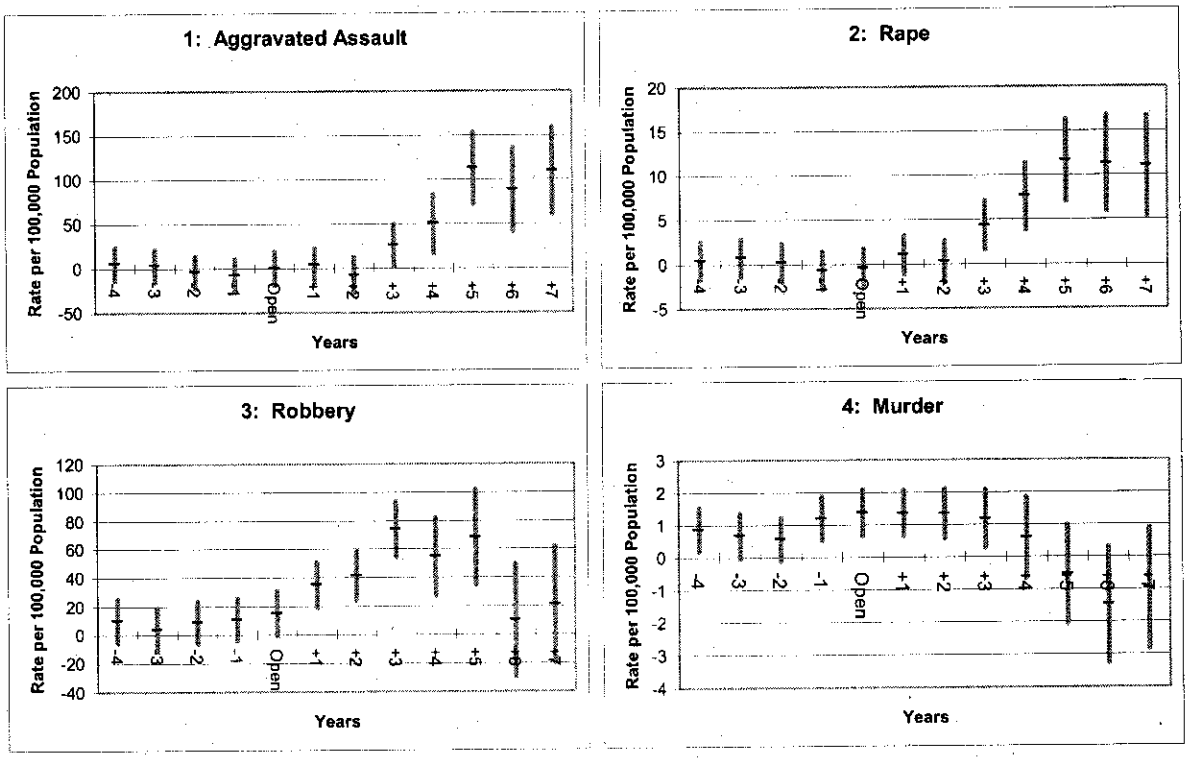
	Aggravated Assault	Rape	Murder	Larceny	Burglary	Robbery	Auto Theft
Lead 4	5.44	0.42	0.87	243.89	36.68	9.91	26.40
	(0.758)	(0.500)	(3.225)	(6.113)	(1.399)	(1.672)	(2.222)
Lead 3	3.14	0.76	0.68	200.61	34.09	3.79	74.62
	(0.438)	(0.902)	(2.506)	(5.031)	(1.301)	(0.640)	(6.286)
Lead 2	−4.32	0.21	0.57	89.83	19.43	8.67	117.84
	(−0.602)	(0.251)	(2.098)	(2.250)	(0.741)	(1.462)	(9.916)
Lead 1	−8.02	−0.72	1.20	88.05	−0.54	10.51	137.59
	(−1.132)	(−0.865)	(4.513)	(2.236)	(−0.021)	(1.796)	(11.735)
Open	0.25	−0.46	1.38	172.08	−17.60	14.94	177.33
	(0.033)	(−0.529)	(4.901)	(4.138)	(−0.644)	(2.418)	(14.323)
Lag 1	3.75	1.06	1.36	235.81	40.84	34.96	210.29
	(0.505)	(1.240)	(4.876)	(5.719)	(1.508)	(5.706)	(17.131)
Lag 2	−7.86	0.29	1.34	67.04	−41.24	41.18	189.68
	(− 0.988)	(0.316)	(4.486)	(1.516)	(−1.42)	(6.266)	(14.407)
Lag 3	25.81	4.30	1.18	99.52	−31.12	74.06	242.09
	(2.758)	(4.044)	(3.362)	(1.914)	(−0.911)	(9.586)	(15.641)
Lag 4	50.29	7.61	0.59	289.82	83.67	54.65	198.85
	(3.881)	(5.179)	(1.216)	(4.030)	(1.771)	(5.113)	(9.287)
Lag 5	112.55	11.64	−0.54	771.74	356.68	68.07	331.08
	(7.132)	(6.470)	(−0.909)	(8.775)	(6.173)	(5.208)	(12.645)
Lag 6	88.28	11.26	−1.47	777.38	201.59	9.99	359.71
	(4.790)	(5.364)	(−2.117)	(7.568)	(2.988)	(0.655)	(11.763)
Lag 7	109.50	10.98	−0.98	1092.90	226.56	20.91	377.81
	(5.704)	(5.021)	(−1.351)	(10.214)	(3.223)	(1.315)	(11.861)
N	57761	57029	57847	57841	57838	57842	57846
F	364.9	121	83.01	138.34	352.27	132.76	327.45
Prob > F	0.0	0.0	0.0	0.0	0.0	0.0	0.0
R-squared	0.825	0.741	0.762	0.800	0.697	0.891	0.851

A. Violent Crime

Figure 6 displays the information for violent crime from Table 2. The horizontal axis plots the casino opening leads and lags and the vertical axis plots the coefficient estimates. Figure 6.1, for example, shows the effect of casino opening on aggravated assaults for the four years before and seven years after opening. The plotted vertical lines show the 99 percent confidence intervals, the range within which the regression indicates the true coefficient should lie with 99 percent probability.

For aggravated assault, the coefficients for all four years of leads, the year of opening, and the first two years after the casino opening are not significantly different from zero. However, coefficients for the third and subsequent year after opening are significantly above zero, and the trend rises. By the third and subsequent year casinos are a statistically significant contributor to increased assault rates. The estimated high occurs

Figure 6: Casino Effects - Violent Crime



in the fifth year after opening, when the aggravated assault rate is 112 assaults higher per year.[26]

Although the point estimates for years 3 through 7 after opening are each statistically significant at better than the 1 percent level, the number of counties with casinos open three to seven years is 91, 59, 35, 12, and 7, respectively. Because the number of counties whose casinos opened 6 and 7 years before is small, we treat the estimates for the sixth and seventh year lags cautiously.

The problem of small number of observations should not be confused with the problem of poor observations from which we do not think the sample suffers for several reasons. First, counties that introduced casinos during the sample period and that remained open 7 or more years is geographically diverse, including Florida, Nevada, New Jersey, and South Dakota. Second, the dates of openings are temporally diverse, the earliest occurring in 1978, and others ranging up to eleven years later. During this time, national crime rates both rose and fell (see Figure 1). Third, there is no pattern to the crime rates in the diverse sampling of counties: 4 counties had a declining crime rate before casino introduction, 3 had rising, and the crime rates

[26]The estimated pattern of crime increase is unlike the typical pattern of visitor increases after casino opening. Grinols and Omorov (1996) showed the number of visitors to Illinois casinos typically rises immediately after opening and reaches equilibrium levels after six months or fewer.

after the introduction of casinos—covering as they did different regions and different eras of time—did not fit any pattern. Fourth, the pattern observed in Figure 6 was robust to removing the observations of each state. Fifth, the regression itself controlled for a large number of demographic, income, and other variables that varied across the different counties and different time periods.

Figure 6.2 for rape shows a pattern similar to aggravated assault. Coefficients are not significantly different from 0 prior to the opening. However, they are positive and significant in the third year after the casino opened, and rise thereafter. A county that introduces a casino might expect a negligible impact in the first two years after opening, but a higher rape rate by 8 to 12 incidents per 100,000 population in the fourth and fifth years after opening. The pattern for robbery (Figure 6.3) is similar to aggravated assault and rape with two exceptions. First, the increase in robbery began immediately. Second, the estimated coefficients for the sixth and seventh years after the casino opened cannot be distinguished from zero. One potential explanation is that the effect of casinos on robbery dies out in the sixth and seventh years after opening. Another is that the sample does not have enough observations with casinos opening six or seven years previously to distinguish an effect for this type of crime.

As expected, the impact of casinos on murder is the smallest of all offenses. Figure 6.4 shows there are significant coefficients only for the year before opening through the third year after opening, and implies about 1.3 additional murders for casino counties. However, casino counties have slightly higher murder rates (by about 0.7) before opening, and the change from before to after is not statistically significant. Gambling-related murders and deaths are frequently high profile cases. They include cases such as the disgruntled gambler who killed a casino teller when he tried to retrieve his gambling losses, a spouse who fought over the other's gambling losses and was murdered, a parent's gambling leading to the death of a child and similar tales.[27] However, such murders are not frequent and systematic enough to merit a strong assertion about the impact of casinos on murder. Because murder is the least frequently committed crime and most counties have zero murders, murder rates typically have high variance, which makes it difficult to conclusively identify effects.

B. Property Crime

Figure 7 displays the Table 2 coefficients for property crimes, which are committed far more frequently than violent crimes. Figure 7.1 displays a pattern similar to rape, robbery and aggravated assault (Figures 6.1, 6.2, and 6.3)—relatively little impact until the fourth year when crime rates increase consistently. The larceny coefficients increase from 67 in the second year after opening to over 1000 by the seventh year. This

[27] See Jeffry Bloomberg, Prepared Statement, Hearing Before the Committee on Small Business, House of Representatives, 103rd Congress, Second Session, 21 September 1994, Serial No. 103-104, Washington, D.C.: USGPO, p. 47. Accounts of the more spectacular gambling-related murders and deaths (most often suicides) often appear in the press. *USA Weekend*, February 10-12, 1995, p. 20, for example, describes a man killing his wife and beating up his daughter in a fight over his gambling away thousands of dollars. The Associated Press September 3, 1997, reported on the 10-day-old infant who died of dehydration after being left in a warm car for about seven hours while her mother played video poker in South Carolina.

rising impact indicates that the negative effects of the casino-crime link outweigh positive impacts over time, and is consistent with the negative development argument that it takes a while for gamblers to exhaust personal resources before resorting to larcenous crime. An alternative explanation of the delayed impact is that casinos have an immediate impact on crime, but that impact is netted out by a large increase in police resources, which are typically significantly increased when casinos open, but do not maintain the same rate of growth over time. The slightly more immediate impact of casinos on violent crime observed in Figure 6 may be explained in terms of *imported* criminals. It may take less time to habituate to a new casino's location than for people to exhaust their resources.

Figure 7: Casino Effects - Property Crime

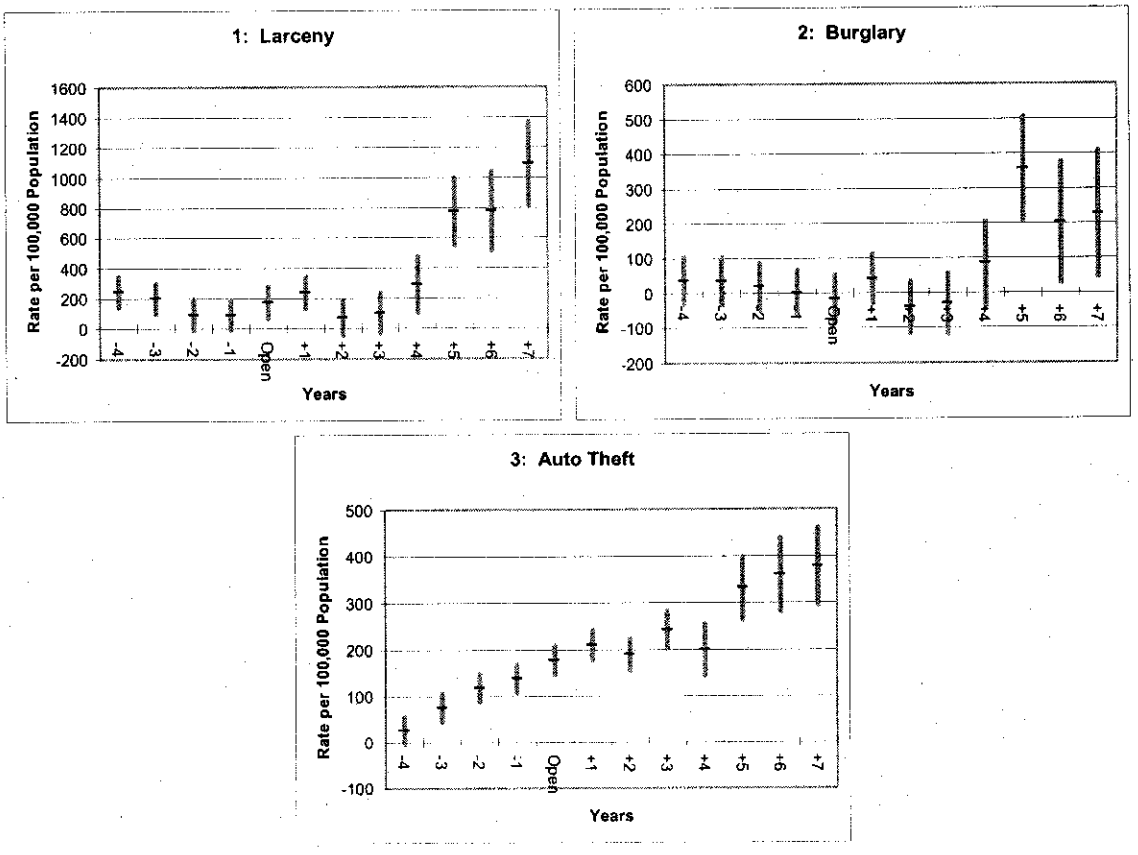
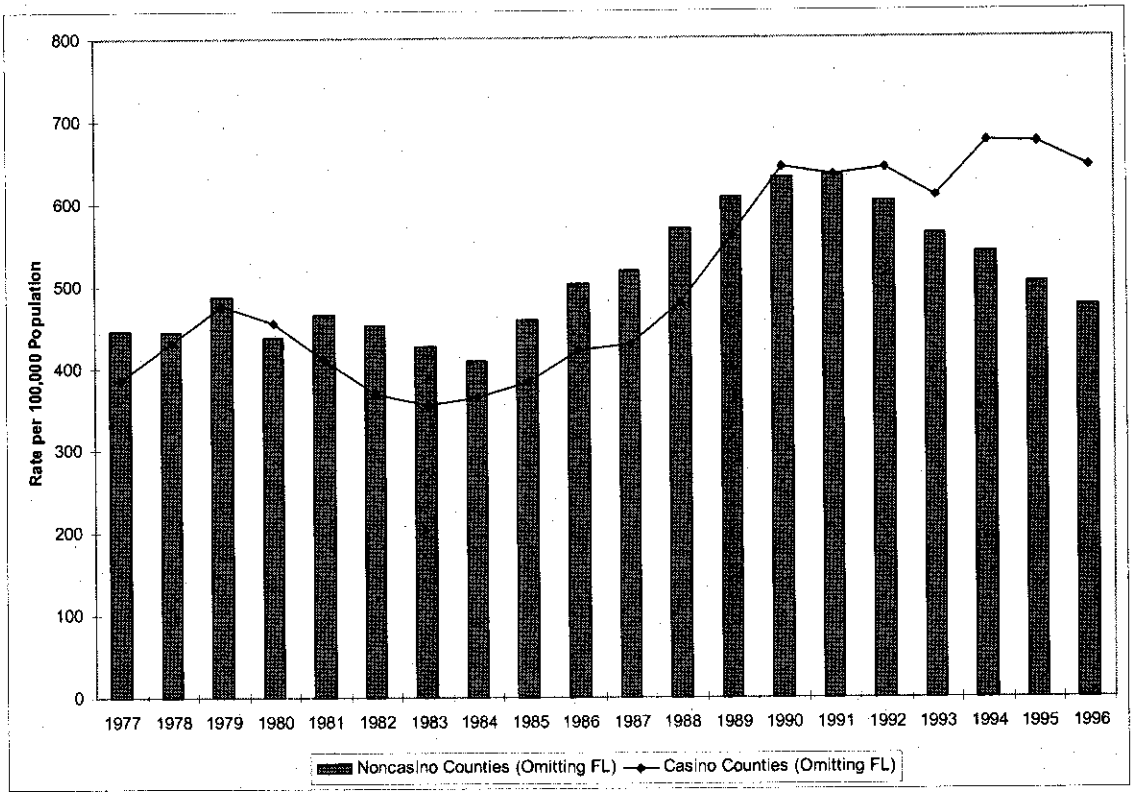


Figure 7.2 for burglary is very similar to larceny, robbery, assault and rape. Burglary shows no noticeable impact of casinos until the fourth year after casino opening. The five, six and seven year lag estimates are significant at between 200 and 400 additional offenses, again indicating that the negative effects of casinos dominate the positive effects over time.

Figure 7.3 for auto theft presents a different picture. It is the only crime that showed a rising trend before casino opening, which continued unabated through the seventh year after opening. Figure 8 shows that casino counties did not experience the same decreases in auto thefts that noncasino counties experienced after 1991, when the number of casinos increased rapidly.[28] Thus, one reason for the auto theft results is that casinos play a role in causing auto thefts not to fall as fast as they did in noncasino counties.

Figure 8: Auto Theft Crime Rates: Casino vs. Noncasino Counties



A second factor may be that we were unable to control for Lojack, an electronic tracking system that allows police to quickly locate and recover stolen autos. Ayres and Levitt (1998) found that Lojack accounted for a significant reduction in auto thefts in the 1990s. Because cities that implemented Lojack generally do not have casinos, we may overstate the effect of casinos on auto theft.[29] It is also possible that Lojack's use

[28] Note that a similar divergence in Florida started in 1984 and grew after that, consistent with Florida casino openings. The first Florida casinos opened in two counties in 1982, two more opened in 1988, and the rest opened between 1990 and 1995.

[29] Ayres and Levitt (1998) showed that Lojack had little effect on other offenses, so our results for the other crimes will not be affected.

is not yet sufficiently widespread to greatly affect our estimates.

To summarize our empirical results, the casino opening lead variables indicate that casino and noncasino counties have similar crime patterns prior to the opening of casinos. Casinos are not more likely to be placed in areas that have systematically different crime environments than other regions. After casinos open the crime trends differ: casino-county crime rates increase relative to the noncasino-county rates. The differences typically begin a few years after casino opening and increase over time. These characteristics are consistent with the predicted effects outlined in the theory. For example, we know that problem and pathological gamblers generate crime and, according to clinical research, take about two or three years to exhaust alternative resources before they commit crime. Furthermore, the most significant effects are for offenses where obtaining financial resources is the primary motivation of the crime. Not unexpectedly, the only crime that shows no effect is murder, which has the least clear relationship to casino gambling. Studies that did not have large data sets, a sufficient number of years of observations after casino opening, and that did not allow for the impact to change over time have missed these effects.

The evidence presented thus far suggests that casinos increased crime, but provides no information about whether casinos created crime or redistributed it from one area to another. We address this question next.

V. Do Casinos Create Crime or Attract It from Elsewhere?

The previous section provided strong evidence that the introduction of casinos is associated with an increase in crime rates in the host county beginning approximately three years subsequent to introduction. Grouping crime into property and violent categories, the estimates suggest that after six years, 8 percent of property crime and 10 percent of violent crime in casino counties is due to casinos.[30]

But do casinos create crime, or merely move it from other locations? In this section, we address this question by examining the crime rates of counties that border casino-counties. When casinos open, crime rates in neighboring counties could either decrease, remain the same, or increase. The first possibility supports the idea that casinos move crime from adjacent counties but do not create new crime. In the second case adjacent counties experience no change in crime, which indicates that total crime rises and that casinos create crime. The last possibility is that both host and neighbor counties experience increased crime rates, which indicates that casinos create crime that spills over into neighboring areas.

To implement a test strategy, we defined a set of neighbor lead, opening and lag variables, similar to the original set used in Table 2 for the host county. The "neighbor opening" variable took a value of 1 if a casino opened in an adjacent county in a given year. These twelve new variables increase the number of regressors to 66. The adjacent counties are the relevant unit of measurement for this purpose, because the vast majority of casino patrons come from the local region surrounding the casino. For example, in Illinois over 92 percent of casino customers come from within 75 miles.[31] Therefore, a substantial majority of the visitor movement will be accounted for with the adjacent county technique. A few casinos, most of which

[30]Section VI. explains the computation of these numbers.

[31]Gazel and Thompson, 1996.

Table 3: Crime Rate Regressions - Casino Neighbor Leads and Lags

	Aggravated Assault	Rape	Murder	Larceny	Burglary	Robbery	Auto Theft
Lead 4	12.59	1.29	-0.07	96.84	-0.66	17.04	1.20
	(3.171)	(2.544)	(-0.490)	(4.382)	(-0.045)	(5.191)	(0.183)
Lead 3	4.80	0.13	-0.05	20.81	-13.92	11.27	-18.73
	(1.217)	(0.256)	(-0.366)	(0.948)	(-0.965)	(3.457)	(-2.870)
Lead 2	19.73	1.00	0.60	71.44	25.63	36.97	8.75
	(5.007)	(2.059)	(4.079)	(3.257)	(1.777)	(11.349)	(1.341)
Lead 1	10.71	0.82	0.60	5.66	10.63	21.51	15.89
	(2.745)	(1.711)	(4.061)	(0.261)	(0.744)	(6.666)	(2.459)
Open	1.40	0.69	0.88	6.82	3.87	4.14	9.37
	(0.355)	(1.442)	(5.926)	(0.310)	(0.267)	(1.267)	(1.430)
Lag 1	4.27	-0.35	0.89	29.63	5.57	12.08	32.95
	(1.027)	(-0.719)	(5.658)	(1.280)	(0.366)	(3.513)	(4.785)
Lag 2	-20.48	-2.56	0.57	-173.26	-70.49	-4.90	-21.59
	(-4.467)	(-4.824)	(3.316)	(-6.790)	(-4.200)	(-1.292)	(-2.844)
Lag 3	13.40	1.08	0.67	-47.63	7.40	6.03	9.86
	(2.566)	(1.765)	(3.403)	(-1.638)	(0.387)	(1.397)	(1.141)
Lag 4	14.74	1.23	0.75	-44.91	42.04	14.42	31.14
	(2.424)	(1.761)	(3.269)	(-1.326)	(1.888)	(2.867)	(3.091)
Lag 5	19.79	5.02	0.37	271.67	140.78	32.73	132.77
	(2.418)	(5.382)	(1.203)	(5.963)	(4.698)	(4.837)	(9.796)
Lag 6	63.08	6.49	0.47	472.50	71.73	34.60	233.09
	(4.981)	(4.493)	(0.981)	(6.699)	(1.546)	(3.303)	(11.109)
Lag 7	41.44	0.57	-0.99	223.20	168.21	48.44	89.83
	(3.547)	(0.430)	(-2.262)	(3.430)	(3.931)	(5.012)	(4.641)
N	57761	57029	57847	57841	57838	57842	57846
F(65,*)	299.7	100.3	70.1	116.1	288.6	112.6	272.5
Prob > F	0.0	0.0	0.0	0.0	0.0	0.0	0.0
R-squared	0.826	0.742	0.763	0.801	0.697	0.892	0.852

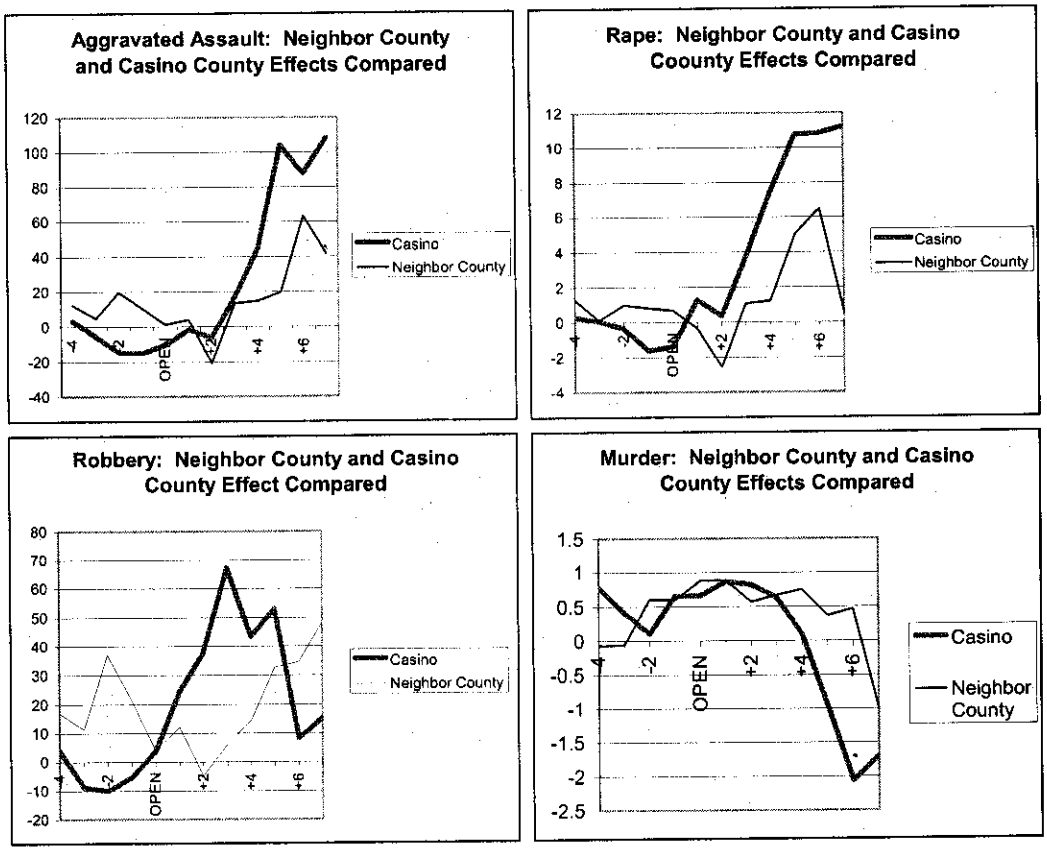
are in Nevada, draw their customers from outside their immediate area. However, our estimates do not rely on these casinos to identify the effects, because these casinos opened prior to 1977.

Table 3 shows the estimated effect of casinos on crime rates in neighboring counties. When the neighbor variables were included the host county crime coefficients were virtually unchanged, both in terms of point estimates and statistical significance. The correlation of the host county lead and lag coefficients of casino opening between the two regressions was higher than .99 for aggravated assault, rape, larceny, burglary, and auto theft, and was .985 for murder and .979 for robbery.

The pattern of crime increases in counties adjacent to casino counties showed no evidence of compensating reductions in crime and therefore no evidence of crime shifting. For years before the opening of casinos, there is virtually no impact of the casino on crime rates in neighboring counties. Generally, the overal pattern of crime rate influences is similar to the pattern in the host county, with crime increases beginning after three years of casino introduction, but attenuated relative to the host county effect. For example, Figure 9 shows the coefficients for neighboring counties for aggravated assault (thin line) compared to the host county coefficients (heavy line). The crime rate for aggravated assaults in counties neighboring casino host

counties is insignificantly different from zero for five out of the first seven years of the sample (four years before casino opening up to two years after opening), but thereafter all of the coefficients are statistically significant and positive. Comparison to the heavier line showing the host county coefficients reveals that in both the host county and neighboring counties there is little impact of the casino until approximately the third year after opening. From that point the crime rate begins to rise, with the crime rate in neighboring counties rising less than in the host county. The pattern in Figure 9 is consistent with a spillover effect for aggravated assault.

Figure 9: Neighbor County Effects: Violent Crime Rates on Vertical Axis

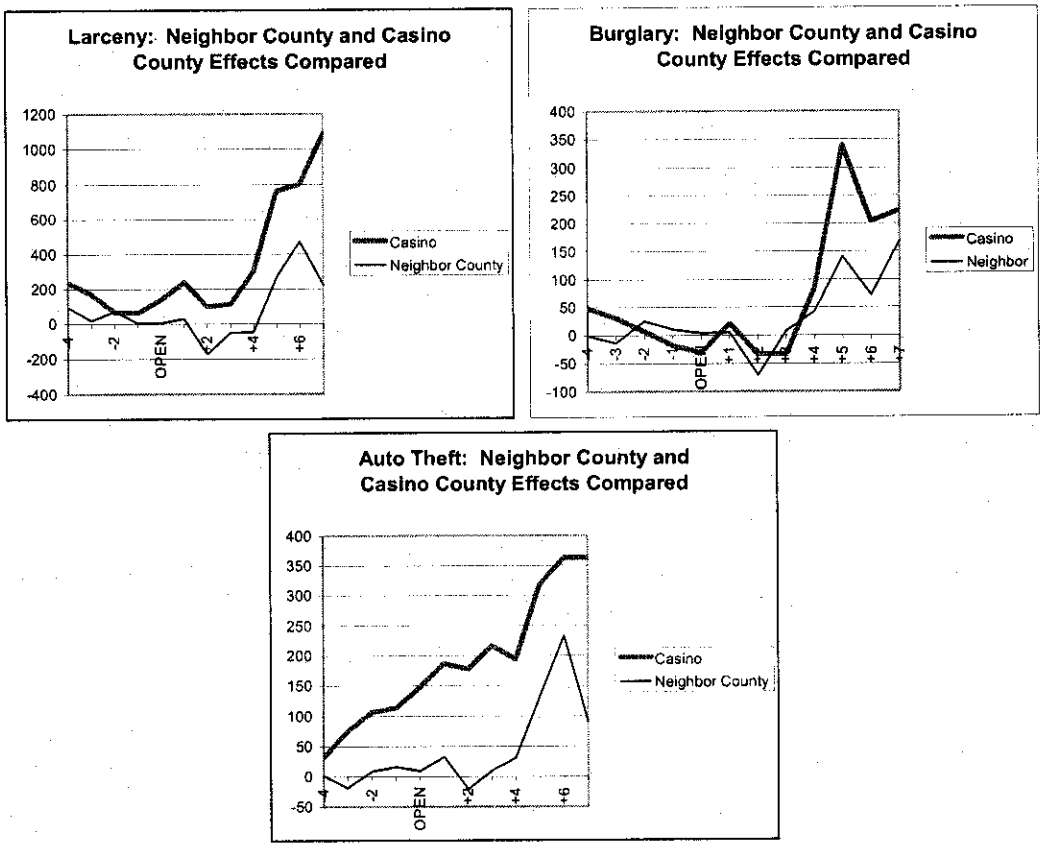


Rape exhibits a similar pattern. Robbery rates fell in neighboring counties before the opening of casinos. However, starting in the second year after opening robbery rates increased substantially. The U-shaped pattern for the neighboring county crime rate with the base two years after casino opening is a strong indicator that casinos openings lead to robbery spillover effects in neighboring counties.

Murder rates in the neighboring county are not discernably different after the introduction of a casino.

The lack of a pattern attributable to the opening of casinos agrees with the host county effects described in the previous section. Figure 10 plots the host county and neighbor county coefficients for property crime. The pattern of increased crime in neighboring counties beginning three or four years after introduction of casinos is apparent for larceny and burglary. As before, the effect in neighboring counties is smaller than in the host county.

Figure 10: Neighbor County Effects: Property Crime Rates



In our discussion of host county auto theft rates we speculated as to why the host county estimated coefficients presented a different pattern of continually growing crime. This pattern of host county coefficients did not appear to be closely related to the introduction of casinos. However, auto theft for neighbor counties displays the pattern of crime increases observed for other crimes. There is a discernably different crime rate three or more years after the opening of the neighboring casino, but not in the years before. The neighbor county effect suggests spillover of auto theft crimes due to the casino, even though host county effects are primarily driven by non-casino factors.

Taking all crimes into account, the data contain no evidence of compensating reductions in the crime rate of neighboring counties when crime rises in casino counties. The evidence more strongly supports spillover effects for all crimes but murder when casinos are introduced. The spillover effects are on the order of half the size of the casino host county effect. Therefore, we would conclude that casinos create crime, rather than attract it from elsewhere.

VI. Cost Implications

The Table 2 coefficients allow us to estimate the fraction of observed crime due to casinos. In this section we combine these estimates with information about the cost of each crime to estimate social costs.

A. Share of Observed Crime Due to Casinos

Summing the estimated number of crimes attributable to casinos (for each county accounting for how many years the casino was in operation) and dividing by the casino counties' total population for each year measures the contribution of casinos to observed crime. Very little crime was due to casinos until the 1990s. Thereafter a growing percentage of observed crime was attributable to casinos. In 1996, the last year of our sample, casinos accounted for 10.3 percent of violent crime, and 7.7 percent of property crime in casino counties. Estimates of the share of crime attributable to casinos in the same year for individual crimes ranged between 3 and 30 percent. Auto theft was the highest, followed by robbery at 20 percent. The values for the rest of the offenses were between 3-10 percent.

B. Costs of Casino-Induced Crime

Recent studies have estimated the social costs of index crimes. We use total cost per victimization figures adjusted to 1998 dollars using the CPU-U to calculate the total cost of the crimes committed in casino counties that are attributable to the casino presence according to the coefficients in Table 2.[32] We also compute the crime cost for casino counties on a per adult basis. Both results are shown in Figure 11.

Figure 11 shows that total costs were relatively low over most of the 1980s, rising significantly only after 1988. By the end of the period, total costs for the 167 casino counties reached $1.3 billion per year in 1995 and 1996.[33] On a per adult per year basis, the costs were $1.10 or below until 1984, between $5 and $9 through 1988, $33 in 1990, $65 in 1995, and $63 in 1996, the last year of our sample.

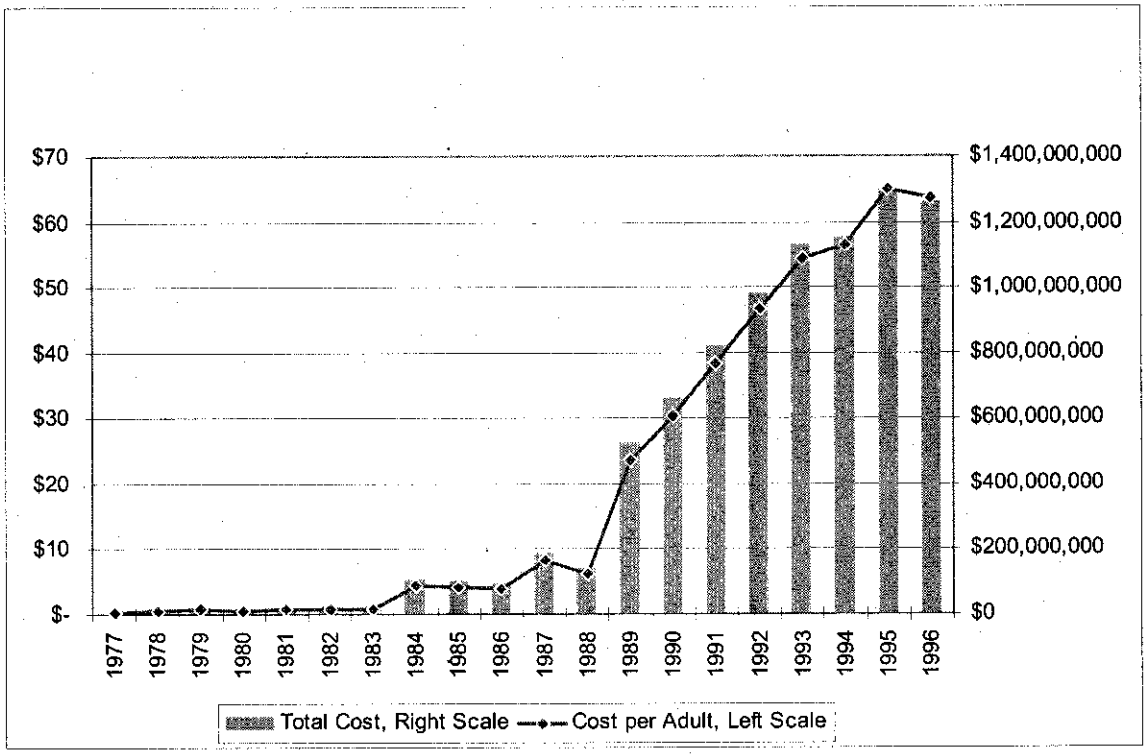
We can compare these cost estimates with others that relied on different methodology. Social costs of casinos have commonly been estimated in terms of the average cost imposed on society by a representative problem and pathological (P&P) gambler[34] multiplied by their number. In the most recent comprehensive

[32]See Miller, Cohen, and Wiersema, 1996, column 4 of Table 9, p. 24.

[33]The precise figures were $1.302 billion in 1995 and $1.275 billion in 1996.

[34]Some studies group problem and pathological gamblers, some treat them separately. Costs are computed by learning the behavior of P&Ps through direct questionnaires and surveys.

Figure 11: Casino Crime Costs: 1977-1996



study of this type of which we are aware, Thompson, Gazel, and Rickman (1996b) found that total social costs were $135 per adult in 1996 dollars, of which $57 (42 %) were due to police and judicial-related costs and thefts.[35] Thompson, *et al.* reported that they intentionally "projected numbers believed to be very conservative," and that the crime costs in their sample (Wisconsin) were probably lower than similar costs in other locations. For all of these reasons, and taking into account the different samples and methodology, their estimate is remarkably close to the direct costs estimated here for 1995-96 of $65 and $63. Applying the Thompson, *et al* proportions to our data, total social costs in those years would be $156 and $151 per adult.

[35]The social-cost impact of casino-related serious problem gamblers was $138,453,113. Dividing this by the number of adults over 20 in the counties with casinos gives the per adult figure in the text. The proportion of costs due to police, theft, and judicial-related costs is determined from their tables A-2 and A-5.

C. Pigouvian Taxes

What are the policy implications of casino-induced crime? Standard Pigouvian corrective theory for an industry with externalities is that it should be taxed by an amount equal to the costs that it imposes on society. By internalizing the externalities, corrective taxes would cause casinos to adjust their operations or go out of business. Only those that could pass a cost-benefit test by compensating society for the damage they cause would continue to operate. Relative to the revenues for a representative casino of about $230 per adult each year from nearby residents, Pigouvian corrective taxes for the seven index I crimes would represent 25-30 percent of revenues. If other social costs are ultimately identified, required taxes would be higher.

An alternative to Pigouvian taxes depends on whether gambling can be offered in a manner that does not lead to externalities. For example, can gambling be provided in a manner that does not generate problem and pathological gamblers, and thereby lead to fewer crimes? If so, it may be less costly to society to implement than the response based on Pigouvian taxes.

VII. Conclusions

Our analysis of the relationship between casinos and crime is the most exhaustive ever undertaken in terms of the number of regions examined, the years covered and the control variables used. Using data from every U.S. county from 1977 to 1996 and controlling for over 50 variables to examine the impact of casinos on the seven FBI Index I crimes (murder, rape, robbery, aggravated assault, burglary, larceny and auto theft), we concluded that casinos increased all crimes except murder, the crime with the least obvious connection to casinos. Most offenses showed that the impact of casinos on crime increased over time and began about three years after casino introduction. This pattern is consistent with the theories that problem and pathological gamblers commit crime as they deplete their resources, that nonresidents who visit casinos may both commit and be victims of crime, and that casinos lower information costs of crime and increase the potential benefits of illegal activity. These effects outweigh the potentially positive effects on crime that casinos may have through offering improved labor market opportunities.

According to our estimates, between 3 and 30 percent of the different crimes in casino counties can be attributed to casinos. This translates into a social crime cost associated with casinos of $65 per adult in 1995 and $63 per adult in 1996. These figures do not include other social costs related to casinos such as crime in neighboring counties, direct regulatory costs, costs related to employment and lost productivity, social service and welfare costs. Overall, 8 percent of property crime and 10 percent of violent crime in counties with casinos was due to the presence of the casino. Although robbery, the offense that exhibited the largest increase, is classified as a violent crime, it is more appropriately classified as a property crime in that its motivation is financial.

We also investigated whether the crime in casino counties is attracted (moved) from other regions or is created. Counties that neighbor casino counties generally experienced crime increases whose pattern matched the pattern in casino counties, but smaller. This indicates that crime spilled over from casino counties into

neighbor counties, rather than shifting crime from one area to another.

In future research we hope to refine this study. Questions include whether different types of casinos have different impacts on crime. For example, do riverboat casinos affect crime in the same manner as land-based casinos or casinos based on Indian Reservations? Is there a difference based on geographic areas? Do casinos in rural areas affect crime in the same way as those in more highly populated areas? We will also try to decompose the total effect into the fraction due to local residents and visitors. We will also extend the data set as new data become available.

APPENDIX I

Definitions of FBI Part I Index Crimes[36]

The FBI Uniform Crime Report Part I offenses as follows:

I. Violent Crime–includes murder, rape, robbery and aggravated assault.

A. Murder and Non-negligent Homicide is the willful (non-negligent) killing of one human being by another and is based on police investigations, rather than the evaluations of a medical examiner or judicial body. Deaths caused by negligence, attempts to kill, assaults to kill, suicides, accidental deaths, and justifiable homicides are excluded from this category. Justifiable homicides are limited to the killing of a felon by a law enforcement officer in the line of duty and the killing of a felon by a private citizen.

B. Forcible Rape is the carnal knowledge of a female forcibly and against her will. Included are rapes by force and attempts or assaults to rape. Statutory offenses (where no force was used and the victim is under age of consent) are excluded.

C. Robbery is the stealing, taking or attempting to take anything of value from the care, custody or control of a person or persons by force, threat of force or violence and/or by putting the victim in fear. Robbery includes attempted robbery. Robbery is divided into seven subclassifications: street and highway (which accounted for 52 percent of all robberies in 1992), commercial house (11.9 percent), residence (10.1 percent), convenience store (5.3 percent), gas or service station (2.5 percent), bank (1.7 percent) and miscellaneous (13.1 percent).

D. Aggravated Assault is the unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. It includes assault with intent to kill. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Simple assaults are excluded.

[36]The definitions are taken from *Crime in the United States: 1993* (U.S. Department of Justice, Federal Bureau of Investigation), Appendix H, 380-381. The statistics quoted for 1992 are taken from *Crime in the United States: 1992, Section One.*

II. Property Crime includes burglary, larceny and auto theft.

A. Burglary is the unlawful entry of a structure to commit a felony or a theft. It includes attempted forcible entry, attempted burglary and burglary followed by larceny.

B. Larceny (except motor vehicle theft) is the unlawful taking, carrying, leading or riding away of property or articles of value from the possession or constructive possession of another. Larceny is not committed by force, violence or fraud. Attempted larcenies are included. Embezzlement, "con" games, forgery, worthless checks, etc., are excluded. Larceny is subdivided into a number of smaller classifications: items taken from motor vehicles (22.6 percent of all larcenies in 1992), shoplifting (15.8 percent), taking of motor vehicle accessories (14.0 percent), taking from buildings (14.0 percent), bicycle theft (5.9 percent), pocket picking (1.0 percent), purse snatching (0.9 percent), taking from coin operated vending machines (0.9 percent), and all others (24.8 percent).

C. Motor vehicle theft is the theft or attempted theft of a motor vehicle. A motor vehicle is self-propelled and runs on the surface and not on rails. Motor vehicle theft includes all cases where vehicles are driven away and abandoned, but excludes vehicles taken for temporary use and returned by the taker. Specifically excluded from this category are motorboats, construction equipment, airplanes and farming equipment.

APPENDIX II

Explanation of County level Data

The number of arrests and offenses for each crime in every U.S. county from 1977-1996 was obtained from the Federal Bureau of Investigation's Uniform Crime Report County-level Data. When the UCR data had an observation with a FIPS code that did not match any county listed in the codebooks, that observation was deleted.

One significant problem with the offense data has occurred since 1985. When ICPSR compiles the FBI data, it cannot distinguish between legitimate values of 0 and values of 0 that should have been coded missing.[37] If an individual offense or arrest category had a value of 0 and that county had non-zero values for other crime categories, we used the raw data. This rule was followed because the FBI and ICPSR indicated that law enforcement agencies normally report the data for all crimes and do not selectively send data for some types of crimes and not for others. If the number of offenses and arrests was 0 for all categories in a given county in a given year, then that county was assigned missing values for all offense and arrest rates.

State populations were taken from the Statistical Abstract of the United States. The county population, age, sex and race data for all years except 1990 and 1992 were obtained from the U.S. Department of Commerce, a division of the Bureau of the Census. All population measures estimate the July 1 population for the respective years.[38] The age distributions of large military installations, colleges, and institutions

[37]Ken Candell of the FBI and Chris Dunn of ICPSR have provided much assistance with these problems.

[38]For further descriptions of the procedures for calculating intercensus estimates of population, see ICPSR (8384): "Intercensal Estimates of the Population of Counties by Age, Sex and Race (United States): 1970-1980." U.S.

were estimated by a separate procedure. The counties for which special adjustments were made are listed in the report.[39] The 1990 and 1992 estimates were not available from the Census Bureau. The 1990 data were estimated by taking an average of the 1989 and 1991 data. The 1992 data were estimated by multiplying the 1991 populations by each county's 1990-1991 growth rate. The Bureau of the Census provided the data on land area in square miles.[40]

Data on income, unemployment, income maintenance and retirement were obtained from the Regional Economic Information System, a component of the Bureau of Commerce. Income maintenance includes Supplemental Security Insurance (SSI), Aid to Families with Dependent Children (AFDC), food stamps, and other income maintenance (which includes general assistance, emergency assistance, refugee assistance, foster home care payments, earned income tax credits, and energy assistance). Unemployment insurance benefits include state unemployment insurance compensation, Unemployment Compensation for Federal Civilian Employees (UCFE), Unemployment for Railroad Employees, and Unemployment for Veterans (UCX), and other unemployment compensation (which consists of trade readjustment allowance payments, Redwood Park benefit payments, public service employment benefit payments, and transitional benefit payments). Retirement payments included old age survivor and disability payments, railroad retirement and disability payments, federal civilian employee retirement payments, military retirement payments, state and local government employee retirement payments, federal and state workers' compensation payments, and other forms of government disability insurance and retirement pay.

Department of Commerce, Bureau of the Census. Winter 1985. ICPSR, Ann Arbor, MI 48106. Also, see "Intercensal Estimates of the Population of Counties by Age, Sex and Race: 1970-1980 Tape Technical Documentation." U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 103, "Methodology for Experimental Estimates of the Population of Counties by Age and Sex: July 1, 1975." U.S. Bureau of the Census, Census of Population, 1980: "County Population by Age, Sex, Race and Spanish Origin" (Preliminary OMB-Consistent Modified Race).

[39]U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 103, "Methodology for Experimental Estimates of the Population of Counties by Age and Sex: July 1, 1975." U.S. Bureau of the Census, Census of Population, 1980: "County Population by Age, Sex, Race and Spanish Origin" (Preliminary OMB-Consistent Modified Race), pp. 19-23.

[40]Land area includes intermittent water and glaciers that appear on census maps and in the TIGER file as hydrographic features. It excludes all inland, coastal, Great Lakes and territorial water. Inland water consists of any lake, reservoir, pond or similar body of water that is recorded in the Census Bureau's geographic data base. It also includes any river, creek, canal, stream or similar feature that is recorded in the data base as a two-dimensional feature (rather than a straight line). Rivers and bays that empty into these bodies of water are treated as inland water from the point beyond which they are narrower than one nautical mile across. Coastal and territorial waters include portions of the oceans and related large embayments, such as the Chesapeake Bay and Puget Sound, the Gulf of Mexico and the Caribbean Sea, that belong to the United States and its possessions.

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Exhibit "B"

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

JULY 04

NIJ

Research for Practice

Gambling and Crime Among Arrestees: Exploring the Link

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street N.W.
Washington, DC 20531

John Ashcroft
Attorney General

Deborah J. Daniels
Assistant Attorney General

Sarah V. Hart
Director, National Institute of Justice

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JULY 04

Gambling and Crime Among Arrestees: Exploring the Link

This Research for Practice is based on a final report submitted to the National Institute of Justice, *Pathological Gambling in Arrestee Populations* (NCJ 196677) by Richard C. McCorkle. The final report is available electronically from the National Criminal Justice Reference Service Web site, at http://www.ncjrs.org/pdffiles1/nij/grants/196677.pdf.

Findings and conclusions of the research reported here are those of the author and do not reflect the official position or policies of the U.S. Department of Justice.

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NCJ 203197

ABOUT THIS REPORT

Is there a connection between problem gambling and crime? Do compulsive or pathological gamblers resort to criminal activity to pay their debts and finance their bets? To examine the link between problem gambling and crime, researchers interviewed arrestees in Las Vegas and Des Moines to probe their gambling behavior and its relationship to their crimes.

What did the researchers find?

Using the Arrestee Drug Abuse Monitoring (ADAM) Program as a survey vehicle, researchers found significantly more problem gambling among arrestees than in the general population. The arrestees who were interviewed had high levels of criminal activity related to pathological gambling.

- The percentage of problem or pathological gamblers among the arrestees was three to five times higher than in the general population.
- Nearly one-third of arrestees identified as pathological gamblers admitted having committed robbery in the previous year. Approximately 13 percent had assaulted someone for money. Pathological gamblers were much more likely to have sold drugs than other arrestees.

Limitations of the study

The study was conducted among arrestees in only two U.S. cities—Las Vegas and Des Moines. Las Vegas likely has the highest level of residents and visitors who gamble of any major U.S. city. Des Moines was chosen to represent a midsize U.S. city that had more typical levels of gambling.

Who should read this study?

Corrections administrators, drug and gambling treatment providers, State-level government policymakers.

Richard C. McCorkle

Gambling and Crime Among Arrestees: Exploring the Link

The spread of legalized gambling in the United States over the past 15 years has sparked considerable political controversy, public debate, and research (see "How Big Is Gambling?"). Many policymakers are concerned that widespread gambling, especially what social scientists call compulsive or pathological gambling, will lead to increased crime, drug and alcohol use, and other social or psychological problems. They worry that gambling and its consequences will destroy individual lives, wreck families, and weaken societal institutions. Another concern is that many compulsive or pathological gamblers will turn to drug sales or other crimes to finance their habit and pay their debts.

Unfortunately, what little we know about the social and psychological effects of gambling is derived from studies of treatment populations or the general public. To understand the relationship between gambling and crime, more needs to be known about the gambling habits of people who have been arrested and jailed or sentenced to prison. Their gambling and criminal problems may well be more chronic and severe than those of other subpopulations. And we know little about the nature and consequences of their gambling activities, or the extent to which their gambling is related to the crimes for which they have been jailed.

Exploring the connection

To better understand and deal with the relationship between gambling and criminal activity, researchers sought to answer several questions about the arrestee subpopulation:

- How many arrestees are compulsive or pathological gamblers and how many pathological gamblers are arrested for felony and misdemeanor offenses?
- Do compulsive or pathological gamblers fit any age, gender, marital status, or other profile?

About the Author

Dr. Richard C. McCorkle is associate professor at the University of Nevada, Las Vegas, and chair of the criminal justice department. He was the director of the Las Vegas Arrestee Drug Abuse Monitoring (ADAM) Program.

- How does the criminal activity of compulsive or pathological gamblers compare with that of less serious gamblers or nongamblers?
- What proportion of crimes committed by compulsive or pathological gamblers is linked to their gambling activities?
- What proportion of compulsive or pathological gamblers uses alcohol, illegal drugs, or other substances to excess? How does that affect the nature and extent of their gambling, as well as their criminal activity?

This Research for Practice is based on a study that addressed those questions. Researchers interviewed arrestees in jail in two U.S. cities—Las Vegas, Nevada, and Des Moines, Iowa. They initially contacted 3,332 arrestees. Completed interviews and urine samples were provided by 2,307 (69 percent) of those contacted. Ninety percent of those who were interviewed and provided urine samples also answered questions that probed their gambling behavior and its relationship to their crimes. The interviews for this study were conducted between fall 1999 and winter 2001.

Las Vegas was chosen because it probably has more residents and visitors who gamble than any other major metropolitan area in the United States. If a relationship exists between gambling and crime and/or drug and alcohol use, it should be clearly recognizable in Las Vegas. Des Moines, on the other hand, represents a more typical midsize U.S. city. Both Las Vegas and Des Moines participate in the Arrestee Drug Abuse Monitoring (ADAM) Program, which was operating in 35 U.S. cities when the research was conducted. ADAM collects data that allow researchers to develop national and local profiles of drug use among people who have been arrested and jailed for whatever reason.

Classifying gambling types

For the purpose of this study, the arrestees who were interviewed were divided into five types based on their answers to a series of questions designed to determine the nature and extent of

their gambling: nongamblers and low-risk, at-risk, problem, and compulsive or pathological gamblers. Gamblers are classified by types based on a set of 10 criteria developed by the American Psychiatric Association (APA) and published in APA's *Diagnostic and Statistical Manual (DSM–IV)*. These criteria are preoccupation (e.g., reliving past gambling experiences or planning future ventures), tolerance (needing to wager more money to generate the same "buzz"), lying, withdrawal (restless or irritable when attempting to cut down or stop gambling), escape, chasing (returning to get even for a previous day's losses), loss of control, illegal acts, risked relationships, and bailout (relying on others to provide money to relieve a desperate financial situation caused by gambling). Gamblers must meet at least five of these criteria to be classified as pathological.

The overwhelming majority of Americans fall into the nongambler or low-risk groups. Most either do not gamble at all or do not gamble seriously enough to have social, legal, or economic problems as a result of their gambling. In general, low-risk gamblers are those who meet few if any of APA's criteria. They tend to gamble for social or recreational purposes, usually betting such small amounts that they rarely suffer significant losses. Thus, they have little or no reason to turn to crime to finance their gambling.

Defining problem gambling. Compulsive or pathological gamblers, the subject of this study, are those who sooner or later suffer heavy losses (often $100 or more at a

How Big Is Gambling?

There is no doubt about gambling's reach today. What once appeared to be largely confined to casinos, the quiet off-track bookie, bingo halls, and the occasional Friday night poker game has become a national pastime. By 1993, more than half of all Americans reported having gambled in a casino at least once. By 1996, Americans were wagering $47.6 billion a year—more money than movies, sporting events, theme parks, cruise ships, and the recording business generated combined. By 1997, nearly 500 gambling sites were on the Internet.

The number of States with legalized gambling has mushroomed. In 1978, only two States—Nevada and New Jersey—had casinos. That number grew to 27 by 1998. Twenty-three States now have Indian-owned casinos on tribal reservations within their boundaries. Seven States now permit betting on riverboat casinos. Additionally, State-run lotteries operate in 37 States and the District of Columbia. In fact, only Hawaii and Utah have no form of legalized gambling. As States and localities seek solutions to burgeoning budget deficits, legalized gambling may become even more pervasive.

time), borrow or steal money or write bad checks to pay gambling debts, avoid or cannot pay their nongambling bills, and lie to their families, friends, and therapists about the extent of their gambling. Not only do they lie, but compulsive or pathological gamblers often rely on others to bail them out of their gambling debts. They have risked and sometimes lost friendships, marriages, jobs, and careers because of gambling. They may have tried to curtail or stop their gambling, but failed. Although the numbers have differed over the years as research methodologies and definitions have changed, the most recent studies show that about 2.5 million Americans are pathological gamblers. Another 3 million Americans are problem gamblers. The lifetime prevalence rate for pathological and problem gambling is estimated as 1.2 percent and 1.5 percent, respectively.

Challenging stereotypes. Compulsive gamblers are often perceived by the public as largely middle-class men whose gambling habits lead them to steal from their families, friends, and/or employers to finance their activities. They are seen as unfortunate individuals who commit such white-collar crimes as larceny, theft, embezzlement, and fraud when their gambling losses become too great to pay through their regular sources of income. Although many compulsive or pathological gamblers fit this image, surveys of the general population paint a somewhat different picture. In fact, general surveys show that pathological gamblers are most likely to be nonwhite males, who are young, less well educated, and unmarried.

Again, although many arrestees who are compulsive or pathological gamblers fit the two images described above, the study found some differences. Unlike the general population, women arrestees are as likely to have gambling problems as men. Marital status and educational attainment also seem to make little or no difference. Arrestees start gambling at a later age than pathological gamblers in the general population, especially men. Male pathological gamblers typically begin gambling as teenagers and then slowly, often over a decade or more, develop a serious gambling habit. Women who become

compulsive or pathological gamblers generally begin gambling later than men, usually in their 20s. Once they become serious gamblers, however, women develop a dependency quickly, typically within 5 years. Both men and women arrestees who are compulsive or pathological gamblers tend to be from lower social and economic classes than those identified in general surveys, more often exhibit sociopathic traits, and frequently start as criminals and only later become gamblers.

Odds are there's a link

As noted earlier, compulsive or pathological gamblers represent only a small percentage of the general population. Yet those who meet APA's definition for pathological gambling accounted for slightly more than 1 in 10 arrestees surveyed in Las Vegas and about 1 in 25 in Des Moines. Together, 14.5 percent of arrestees in Las Vegas and 9.2 percent of those in Des Moines were either problem or pathological gamblers—three to five times the percentage in the general population.

Perhaps more telling, more than one-third of the compulsive or pathological gamblers arrested (34.6 percent in Las Vegas and 37.5 percent in Des Moines) had been arrested on at least one felony count. Surprisingly, though, pathological gamblers were no more likely to be arrested for property or other white-collar crimes (larceny, theft, embezzlement, and fraud) than nongamblers and low-risk and at-risk gamblers. Nor were they more likely to be arrested on drug charges, including selling illegal drugs. Rather, they were most likely to be arrested for such offenses as probation or parole violations, liquor law violations, trespassing, and other public order offenses.

Link to robbery, assault. Still, more than 30 percent of pathological gamblers who had been arrested in Las Vegas and Des Moines reported having committed a robbery within the past year, nearly double the percentage for low-risk gamblers. Nearly one-third admitted that they had committed the robbery to pay for gambling or to pay gambling debts. In addition, about 13 percent said they had assaulted someone

to get money; one in four assaults reported by pathological gamblers was directly or indirectly related to gambling. By comparison, low-risk, at-risk, or problem gamblers reported committing gambling-related robberies infrequently.

Drug dealing. Although they were no more likely to have been arrested on drug charges, compulsive or pathological gamblers were significantly more likely to have sold drugs than arrestees who fit the other gambling types. More than one-third of pathological gamblers said they had sold drugs, compared to 19.2 percent of problem gamblers, 20.2 percent of at-risk gamblers, and 16.1 percent of low-risk gamblers. The differences in those numbers were even greater among gamblers who reported having sold drugs specifically to fund their gambling or pay gambling debts. One in five pathological gamblers who had been arrested admitted having sold drugs to finance their gambling, compared to 4 percent among problem gamblers and less than 2 percent among at-risk gamblers.

Using speed. Not surprisingly, a significant proportion of compulsive or pathological gamblers tested positive for one or more illegal drugs. Arrestees' urine samples were screened for hallucinogens such as marijuana, opiates such as heroin, cocaine, and methamphetamine ("speed"). Overall, 60 percent of arrestees interviewed in Las Vegas and 56 percent of those in Des Moines had at least one illegal drug in their urine samples. But pathological gamblers were no likelier to test positive for drugs than were other gambler types. Nor were there any significant differences in which drugs were found, with one exception. Pathological gamblers were more likely to test positive for methamphetamine, a drug taken as an "upper" to keep users alert and awake during hours- or even days-long gambling binges. Beyond drugs, nearly two-thirds of the pathological gamblers reported that they drank alcohol to the point of dependence. In fact, only 3.3 percent of all arrestees interviewed for this study who were pathological gamblers reported no drug or alcohol problems.

Again, not surprisingly, the study found a relationship between pathological gambling and crime and/or drug

and alcohol use. More than 43 percent of those interviewed who acknowledged pathological gambling and substance use also said they had committed an assault during the previous year. Nearly 40 percent had committed more than one theft in the past year, four times the number of arrestees without either a gambling or a substance use problem. Approximately 38 percent of arrestees with both gambling and substance use problems reported having sold drugs, nearly eight times the number of those with no gambling or substance use problem.

Pathological gamblers reported that, on average, they committed their first crime around age 21, developed an alcohol problem by about 23 or 24, and began to have gambling problems in their mid- to late 20s. Gambling began after the onset of criminal and substance problems, not before. Nonpathological gamblers who said they had similar substance use problems and criminal activity reported a similar average age of onset for each of those problems. Men who were pathological gamblers were more likely to have committed a serious crime at an earlier age than women who were pathological gamblers. Also, only 13 percent of pathological gamblers who admitted having a gambling problem said they sought treatment. And only 10 percent said they attended Gamblers Anonymous or similar meetings.

Policy implications

A number of conclusions and policy recommendations can be drawn from the study findings. Arrestees who report that they are or can be defined by their responses to interviews or questionnaires as compulsive or pathological gamblers are drawn disproportionately from the social and economic fringes of society. As legalized gambling spreads to States and localities that do not now permit gambling or have it only on a small scale, these jurisdictions must prepare to deal with the social ills engendered by problem gambling.

Criminals and those who use alcohol and illegal drugs to excess appear to be at greater risk for becoming compulsive or pathological gamblers. Few are likely to receive or seek treatment for

their addictions. Gambling, especially when accompanied by substance use, is a prime motivation for many but not all of their crimes.

States and localities may identify individuals with a gambling problem by using existing psychological tests (or abbreviated versions of such tests suitable to intake interviews) to screen arrestees. Today, however, few States or localities have screening programs in detention centers, jails, or prisons. Arrestees are often booked and released shortly thereafter. If at least some arrestees with a real or potential gambling problem can be identified, they can be offered treatment. Early treatment might help reduce the number who become repeat offenders.

States and localities also may want to develop treatment programs in detention centers, jails, and/or prisons. Such programs might include group therapy sessions similar to those offered by Gamblers Anonymous. Such sessions could be incorporated into existing programs for illegal drug or alcohol use. To reduce the chances of relapses once prisoners are released, States and localities may develop referral systems that offer former arrestees and inmates the names of agencies and programs that offer continued treatment and support.

Finally, being behind bars is likely to worsen the gambling habits of many compulsive or pathological gamblers. Although it is officially banned, gambling is difficult to control in prisons and jails. It is a diversion from the monotony of jail. As a result, jailed arrestees and prison inmates may accrue significant gambling debts behind bars that can only be paid off by committing further crimes after their release. Authorities could provide increased attention to gambling behaviors in detention centers, jails, and prisons.

The National Institute of Justice is the research, development, and evaluation agency of the U.S. Department of Justice. NIJ provides objective, independent, evidence-based knowledge and tools to enhance the administration of justice and public safety.

NIJ is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

EXHIBIT "C"

THE SECRETARY OF THE INTERIOR

WASHINGTON

NOV 12 2002

The Honorable Cyrus Schindler
Nation President
Seneca Nation of Indians
Route 438
Irving, New York 14081

Dear President Schindler:

We have completed our review of the Tribal-State Gaming Compact (Compact) for the conduct of Class III gaming activities between the Seneca Nation of Indians (Nation) and the State of New York (State), executed on August 18, 2002, and received by the Department on September 10, 2002. Generally, the Compact authorizes the Tribe to conduct Class III gaming at three sites: an identified area within the City of Niagara Falls, or an alternative site within the County of Niagara; an unidentified area within the County of Erie or the City of Buffalo; and an on-reservation site. The Compact requires that the Tribe pay the State a percentage of the Tribe's gaming revenue in exchange for several benefits including an exclusive 10,500 square-mile area in Western New York and start-up benefits, provided by the State. The Tribe agrees to purchase the gaming sites with funds from the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774 (Settlement Act) reserving five million dollars for housing adjacent to the gaming sites.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary may approve or disapprove the Compact within forty-five days of its submission. If the Secretary does not approve or disapprove the Compact within forty-five days, IGRA states that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." Under IGRA the Department must determine whether the Compact violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians.

As part of the Department's review of the Compact, on September 30, 2002, we sent a letter to the parties seeking clarification of various provisions of the Compact. The responses we received from the State and the Nation have resolved most of our questions, as well as resolving some additional issues raised by non-compacting parties. We have also held several meetings and conference calls with the parties to discuss the Compact and our concerns.

I have decided to allow this Compact to take effect without Secretarial action. I use this approach reluctantly. In enacting IGRA, Congress provided limited reasons for Secretarial approval or disapproval. However, because I want to express my views on important policy

concerns regarding the Compact, concerns that fall outside of the limited reasons in IGRA for Secretarial disapproval, I must avail myself of the opportunity to do so. I believe the State and Nation negotiated in good faith, however, I could not affirmatively approve the Compact because of the effect it is likely to have on future compacts.[1]

General Observations

Since taking office, I have had the opportunity to review and decide a number of Indian gaming-related matters. I do not have the luxury of reviewing any compact without considering the trends that will emerge with each successive compact. As I have reviewed this and previous compacts, my concerns regarding IGRA and the interplay with other aspects of Indian policy have become sufficient to warrant this explanation.

I fully support Indian gaming as envisioned by the drafters of IGRA – that Indian tribes should have the full economic opportunity of gaming within the boundaries of reservations existing at the time of IGRA's passage. But I am also mindful that when tribes seek to game on off-reservation land, the State has a greater governmental interest in regulating tribal off-reservation gaming activities. Tribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing Indian lands. It is understandable that tribes who are geographically isolated may desire to look beyond the boundaries of their reservation to take advantage of the economic opportunities of Indian gaming. However, I believe that IGRA does not envision that off-reservation gaming would become pervasive.

Even with this concern in mind, I have concluded that this Compact appropriately permits gaming on the subject lands because Congress has expressly provided for the Nation to acquire certain lands pursuant to the Settlement Act. I am nevertheless concerned that elements of this Compact may be used by future parties to proliferate off-reservation gaming development on lands not identified as part of a Congressional settlement but instead on lands selected solely based on economic potential, wholly devoid of any other legitimate connection. Thus, to the extent that other states and tribes model future compacts after this one, and seek to have the United States take land into trust for these gaming ventures, they should understand that my

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[1] It seems to me that the Department and compacting parties could work more closely on an informal basis to improve the compact development and review process. While I do not want to intrude into the parties' arms-length negotiations, I am concerned that the Department receives a compact that is a fait accompli without much opportunity for the Department to express its policy views, except as part of the 45-day review process. Thus, as the process currently works, compacting parties have only the guidance of previous compacts as a starting point for the parameters of their negotiations. I believe that the process would be enhanced if both parties availed themselves of the Department's informal guidance prior to the delivery of their finalized compact to my desk for review. At times, parties have been able to make changes during the 45-day review process, however, the parties here informed the Department that it would be impossible to make changes to this Compact within the review period. Departmental input, prior to the compact being submitted, might have been extremely helpful here.

views regarding land acquired through a Congressional settlement are somewhat different from my views when a tribe is seeking a discretionary off-reservation trust acquisition or a two-part determination under IGRA. While I do not intend to signal an absolute bar on off-reservation gaming, I am extremely concerned that the principles underlying the enactment of IGRA are being stretched in ways Congress never imagined when enacting IGRA.

Revenue Sharing and Geographic Exclusivity

Section 12(a) of the Compact grants the Nation the exclusive right to operate specifically defined gaming devices within a 10,500 square-mile, geographic area in Western New York.[2] In exchange for this geographic exclusivity right, Section 12 requires the Nation to make graduated revenue-sharing payments to the State (from 18% to 25% of net drop, less a local share) over the course of the 14-year duration of the Compact. If the State violates the exclusivity provision in Section 12(a)(1), the payment to the State ceases as to the particular category of gaming device for which exclusivity no longer exists. If the State violates the exclusivity provision in Section 12(a)(2), the payment to the State ceases altogether.[3]

The Department has sharply limited the circumstances under which Indian tribes can make direct payments to a state for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a state only when the state has agreed to provide the tribe with substantial exclusivity for Indian gaming, *i.e.*, where a compact provides a tribe with substantial economic benefits in the form of a right to conduct Class III gaming activities that are on more favorable terms than any rights of non-Indians to conduct similar gaming activities in the state. The payment to the state must be appropriate in light of the exclusivity right conferred on the tribe.

The Nation and the State have advanced arguments that the geographic exclusivity defined in Section 12(a)(1) of the Compact is substantial and meaningful, pointing out that this zone of exclusivity is a 10,500 square-mile area in Western New York that, based on professional analysis of the market from which the Nation's gaming facility would draw, includes primary (up to 50 miles), secondary (51-99 miles), and tertiary (100-150 miles) customer markets for any

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[2] Section 12(a)(1) of the Compact provides the following description of the geographic area: "(i)to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (ii) to the north, the border between New York and Canada; (iii) to the south, the Pennsylvania border with New York; (iv) to the west, the border between Pennsylvania and New York."

[3] The Department asked if the Nation's exclusive right to operate slot machines within the zone of exclusivity was lost and the Nation therefore ceased making revenue payments, whether it would violate the provision of New York law permitting the possession of slot machines only pursuant to a gaming compact where the State receives a negotiated percentage of the net drop. The State has argued that by negotiating this Compact with the Nation that includes the receipt of a negotiated percentage of the net drop, it has met its obligation under the law, even if revenue payments decline to zero. We concur with the State's interpretation of the meaning of its law and conclude that the State has met its legal obligation.

established Buffalo and Niagara Falls gaming facility. According to the economic analysis provided by the Nation, the total revenues currently anticipated from the gaming operations over the term of the Compact, exceed five billion dollars, of which the State would receive less than one billion dollars, and a portion of those State funds would go to local governments. The Nation estimates its anticipated return after all expenses to significantly exceed two billion dollars over the fourteen-year term of the Compact.

The Nation argues that exclusivity in a gaming market of this size is extremely valuable and justifies on its own the average seventeen percent revenue share that the State will receive under the Compact after the local payment. However, the Nation and the State argue that the State is also providing the Nation with other substantial benefits in exchange for the revenue share. Section 11 of the Compact commits the State to transfer the Niagara Falls Convention Center for the sum of one dollar, which will enable the Nation to realize substantial savings, approximately forty million dollars, on otherwise significant development and start-up costs. Other forms of State assistance that the Nation bargained for and obtained are the State's agreement to use its sovereign power of eminent domain to acquire other parcels of land required for the project. Finally, Section 11 of the Compact secures for the Nation the opportunity to operate two off-reservation gaming facilities within the populous and well-visited geographic markets of Buffalo and Niagara Falls.

While I believe that the Nation is receiving a substantial economic benefit that justifies the revenue sharing, I am very troubled that the parties have chosen to exclude other tribes within the area of geographic exclusivity. The Compact creates two areas of exclusivity – one the entire Western portion of New York and another a twenty-five-mile radius of any gaming facility authorized under this Compact. Those provisions support my conclusion that the revenue sharing is justified. However, the drafters of this Compact have excluded Indian gaming from most of the area of exclusivity. The choice to specifically deny other tribes gaming opportunities is the primary reason I have chosen not to affirmatively approve this Compact.

It is worth noting, however, that the Compact does create an exception for two non-compacting tribes, the Tuscarora Indian Nation and the Tonawanda Band of Seneca Indians, in both of these areas of exclusivity. Without violating the terms of the Compact, the State may negotiate with these Tribes to establish a gaming facility either on federally-recognized Indian lands existing on the effective date of this Compact or outside of the twenty-five-mile radius within Western New York.

The Tonawanda Band and the Tuscarora Nation have notified us that they strongly object to approval of the Compact because, in their view, it violates the trust obligation of the United States to the two Nations by including provisions that explicitly restrict the economic opportunities that would otherwise be available to them under federal law, without their consent. There is no question that in approving the Compact, the Department would essentially ratify an agreement that has the effect of restricting the economic opportunities of the Tonawanda Band and the Tuscarora Nation because the State has a strong incentive not to permit these two Nations

to conduct gaming off-reservation within the twenty-five mile (exclusivity) radius, to avoid losing revenue-sharing payments to which it is otherwise entitled from the Nation.

I have reviewed whether this provision violates our trust obligation to Indians, and I conclude that it does not. Under the terms of the Compact, the State does not violate the exclusivity provision of the Compact if the Tonawanda Band and the Tuscarora Nation game on existing federally-recognized Indian lands. Thus, there is no disincentive to the State to negotiate for on-reservation gaming activities. The remaining question is, therefore, whether any tribe enjoys a legal right to off-reservation gaming under IGRA. I believe that Congress in enacting IGRA, struck a delicate balance between State and tribal interests that did not create an absolute right to off-reservation gaming.

Even though this provision does not violate my trust obligation to Indians, I am still troubled that parties in future compacts may pit tribe against tribe. While I believe that it was unintentional here, especially because both the Tonawanda Band and the Tuscarora Nation are regarded as traditionally opposed to gaming, I do not welcome the prospect of future compacts pitting tribes against one another. While I understand that the State is required to negotiate in good-faith with all Indian tribes and it has assured us that it understands its obligation under law, I still find a provision excluding other Indian gaming anathema to basic notions of fairness in competition and, if pushed to its extreme by future compacts, inconsistent with the goals of IGRA.[4]

To summarize, this Compact provides for substantial geographic exclusivity coupled with other valuable consideration. It is for this reason that I believe this revenue-sharing arrangement is consistent with IGRA.

Lands Acquired through the Seneca Nation Settlement Act

Subsections 11(b)(4) and (c) of the Compact provide for the use of settlement funds derived from the Seneca Nation Settlement Act of 1990, 25 U.S.C. § 1774 (Settlement Act) to "acquire the parcels in the City of Niagara Falls and the City of Buffalo" for the purpose of gaming. Under the terms of the Settlement Act, the Nation may use settlement funds to acquire "land within the aboriginal area in State or situated within or near proximity to former reservations lands." The Settlement Act also provides that unless the Secretary determines that lands acquired pursuant to the Act should not be subject to 25 U.S.C. § 177, such lands shall be held in "restricted fee" as opposed to being held in trust by the United States.

In reviewing whether the proposed gaming parcels meet the Settlement Act's requirement that the lands are "situated within or near proximity to former reservations lands," the Nation has

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[4/] Moreover, notwithstanding this or any other provision of this Compact, the Department will continue to entertain any Section 20 two-part determination applications submitted by an Indian tribe within the State of New York pursuant to IGRA.

provided sufficient documentation demonstrating that the exterior boundaries of the Nation's former Buffalo Creek Reservation overlap a portion of the present day boundary of the City of Buffalo and is within fourteen miles of the City of Niagara Falls exterior boundary. Moreover, the exterior boundary of the Nation's former Tonawanda Reservation is within fourteen miles of the City of Buffalo and within twenty-two miles of the City of Niagara Falls. While the Settlement Act does not define "within or near proximity" and there is no legislative history for guidance, it is our opinion that the two cities of Niagara Falls and Buffalo are "situated within or near proximity to" the Nation's former Buffalo Creek and Tonawanda reservations for purposes of the Settlement Act.

I want to emphasize, however, that the analysis regarding off-reservation land as part of a Congressionally-approved settlement greatly differs from the analysis the Department engages in when the issue is simply a trust acquisition for off-reservation gaming. Here, Congress tied the acquisition of lands through the Settlement Act to lands in "near proximity" to the Nation's former reservation. This decision rests squarely on a Congressionally-approved settlement of a land claim. Consequently, my analysis of "within or near proximity" should be understood as limited to the interpretation of the Settlement Act alone.

Indian Lands under IGRA

IGRA permits a tribe to conduct gaming activities on Indian lands if the tribe has jurisdiction over those lands, and only if the tribe uses that jurisdiction to exercise governmental power over the lands. There is no question that the Settlement Act requires the parcels to be placed in "restricted fee" status. As such, these parcels will come within the definition of "Indian lands" in IGRA if the Nation exercises governmental power over them. The Department assumes that the Nation will exercise governmental powers over these lands when they are acquired in restricted fee. It is our opinion that the Nation will have jurisdiction over these parcels because they meet the definition of "Indian country" under 18 U.S.C. § 1151. Historically, Indian country is land that, generally speaking, is subject to the primary jurisdiction of the Federal Government and the tribe inhabiting it. As interpreted by the courts, Indian country includes lands which have been set aside by the Federal Government for the use of Indians and subject to federal superintendence. In this regard, it is clear that lands placed in restricted status under the Settlement Act are set aside for the use of the Nation, and that such restricted status contemplated federal superintendence over these lands. Finally, the Settlement Act authorizes lands held in restricted status to expand the Nations' reservation boundaries, or become part of the Nation's reservation. Accordingly, we believe that the Settlement Act contemplates that lands placed in restricted status be held in the same legal manner as existing Nation's lands are held and thus, subject to the Nation's jurisdiction.

Application of Section 20 of IGRA

Section 20 of IGRA, 25 U.S.C. § 2719 contains a general prohibition on gaming on lands acquired in trust by the Secretary for the benefit of an Indian tribe after October 17, 1988, unless

one of several statutory exceptions is applicable to the land. Under the Compact, the Nation plans to use the provisions of the Settlement Act to acquire the land in restricted fee, rather than in trust. The Department has examined whether Section 20 of IGRA applies to the Compact. We have reviewed whether Congress intended, by using the words "in trust" in Section 20 of IGRA, to completely prohibit gaming on lands acquired in restricted fee status by an Indian tribe after October 17, 1988. I cannot conclude that Congress intended to limit the restriction to gaming on after-acquired land to only *per se* trust acquisitions. The Settlement Act clearly contemplates the acquisition of Indian lands which would otherwise constitute after-acquired lands. To conclude otherwise would arguably create unintended exceptions to the Section 20 prohibitions and undermine the regulatory regime prescribed by IGRA. I believe that lands held in restricted fee status pursuant to an Act of Congress such as is presented within this Compact must be subject to the requirements of Section 20 of IGRA.

The legislative history to the Settlement Act makes clear that one of its purposes was to settle some of the Nation's land claim issues. Thus, the Nation's parcels to be acquired pursuant to the Compact and the Settlement Act will be exempt from the prohibition on gaming contained in Section 20 because they are lands acquired as part of the settlement of a land claim, and thus fall within the exception in 25 U.S.C. § 2719(b)(1)(B)(i).

Use of Remaining Settlement Act Funds for Housing

Section 11(c) of the Compact provides for the "acquisition of parcels to meet the housing needs of the Nation's members." IGRA provides that a gaming compact will govern gaming activities on Indian lands of the Indian tribe and "may include provisions relating to . . . any other subjects that are directly related to the operation of gaming activities." It has been the policy of the Department that a Class III gaming compact can only include provisions that are "directly related" to the operation of gaming activities, and cannot include provisions that are not germane to gaming activities. The Department has taken this position because it represents a common sense approach to the interpretation of IGRA.

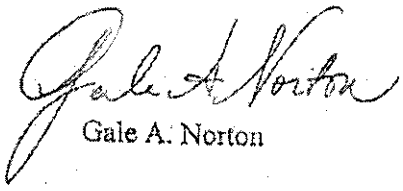
In response to our inquiry, the Nation has advised us that land acquired for housing under Section 11(c) of the Compact is directly related to the operation of gaming activities because the primary purpose in acquiring such parcels is to provide housing for tribal members next to the Nation's gaming facilities. However, because Section 11(c) of the Compact does not require any relation to the gaming activities, we believe that the Nation's argument that this provision is directly related to gaming is tenuous and strains the directly related criterion required by IGRA.

Conclusion

In conclusion, while I believe that the Nation and the State worked hard to negotiate a Compact that met the parties' immediate needs, I believe the policy considerations outlined above counsel against an affirmative-approval. Since I did not approve or disapprove the Compact within 45 days, the Compact is considered to have been approved, "but only to the

extent the compact is consistent with the provisions of [IGRA]." The Compact takes effect when notice is published in the *Federal Register* pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 22710(d)(3)(B).

Sincerely,



Gale A. Norton

Identical letter sent to:
The Honorable George E. Pataki

EXHIBIT "D"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming Management
MS 4543-MIB

NOV 29 2002

Memorandum

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affairs Terrance L. Virden
George T. Skibine

From: Director, Office of Indian Gaming Management

Subject: Request of the Seneca Nation of Indians of New York for 12.8 Acres of Land into Restricted Fee Status

I. INTRODUCTION

On October 29; 2002, the Seneca Nation of Indians of New York (Nation) submitted to the Secretary of the Department of the Interior (Secretary), a request to acquire in restricted fee 12.8 acres of land pursuant to the Seneca Nation Land Claims Settlement Act of 1990 (SNLCSA), 25 U.S.C. § 1774 et. seq. The 12.8 acres, referred to as the Niagara Falls Convention and Civic Center (NFCCC) property are located at 305 4th Street within the City of Niagara Falls, Niagara County, New York and will be used to operate a Cass III gaming facility. The Constitution of the Nation was adopted in 1848, as amended *(Tab 2)* and effective as of November 9, 1993.

The Nation is a federally recognized Indian tribe and resides on three Reservations: The Allegany, Cattaraugus and Oil Springs Reservations which were established by the Treaty of November 11, 1794, 7 Stat. 44. The lands comprising the Reservations lie within the Nation's aboriginal territory and are held by the Nation in restricted fee.

The Nation's request and supporting documentation were submitted in accordance with a July 19, 1990 Secretarial Directive, which requires that all acquisitions for gaming be approved or disapproved by the Assistant Secretary - Indian Affairs. The documents were referred to the Office of Indian Gaming Management (OIGM). The OIGM has completed its review of the request and the supporting documentation. The findings, analysis, and recommendations of the OIGM are set forth in this memorandum for your review and final consideration.

This memorandum documents the findings of the transaction's compliance with the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA), and the SNLCSA.

II. AUTHORITY

In 1990, Congress enacted the SNLCSA which provides the Nation with fair compensation for use of its land and for the impact on the Nation from prior lease arrangements in the City of Salamanca, New York. The funds appropriated under the SNLCSA are available for the Nation to acquire additional land which could be placed into restricted fee status by the Secretary. Specifically, the land acquisition provision of the SNLCSA, 25 U.S.C. 1774f(c) provides:

> Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Nation with funds appropriated pursuant to this subchapter. State and local governments shall have a period of 30 days after notification by the Secretary or the Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions. Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provision of section 2116 of the Revised Statutes (25 U.S.C. § 177), such lands shall be subject to the provisions of that section and shall be held in restricted fee status by the Nation. Based on the proximity of the land acquired to the Seneca Nation's reservations, land acquired may become a part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Springs Reservation in accordance with the procedures established by the Secretary for this purpose.

The land acquisition provision of the SNLCSA defines the criteria that govern the acquisition and placement of land into restricted fee for the benefit of the Nation. Under the land acquisition provision of the SNLCSA, only three conditions mut be met for the land to be eligible for placement in restricted fee status:

1) the land must be situated within or near proximity to former reservation land;

2) the land must be purchased with funds appropriated under the SNLCSA; and

3) the State and local governments must be given notice of the acquisition or of the Nation's intent to acquire the land, and 30 days within which "to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions."

The Secretary has 30 days after the expiration of the comment period within which she may decide that the land should not be subject to restrictions against alienation under 25 U.S.C. § 177.

In a letter dated November 12, 2002, to the President of the Nation and to the Governor of the State of New York, the Secretary determined that the proposed parcels meet the SNLCSA's requirement that the lands are "situated within or near proximity to former reservation lands" because the Nation provided sufficient documentation demonstrating that the exterior boundaries of the Nation's former Buffalo Creek Reservation overlap a portion of the present day boundary of the City of Buffalo and are within twenty-two miles of the City of Niagara Falls.

The Nation's request documents that the NFCCC was purchased by the Nation using SNLCSA funds. *See* Council Resolution No. CN:R-09-21-02-28, dated September 21, 2002 *(Tab 19)*, and Affidavit of Nation Comptroller Karen S. Watt *(Tab 21)*.

III. PROPERTY TO BE ACQUIRED

The property consists of 12.8 acres in Niagara Falls, Niagara County, New York. The legal description *(Tab 11)* of the property is as follows:

Parcel I:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County Niagara and State of New York, part of 43 Mile Reserve, more particularly described as follows:

BEGINNING at a point in the center line of Falls Street produced easterly, said point being eight-three (83) fee west of the intersection of the center line of Falls Street so produced and the center line of Fourth Street, said distance measured along the center line of Falls Street produced; running thence northerly at right angles to the center line of Falls Street, a distance of three hundred seventy-five (375) feet to a point; thence easterly , a distance of two hundred nine (209) feet to a point; thence northerly, a distance of forty-five (45) feet to a point; thence easterly, a distance of sixty-three (63) feet to a point; thence southerly, a distance of thirty (30) feet to a point; thence easterly, a distance of one hundred twenty-six (126) feet to a point; thence southerly, a distance of twenty-six (26) feet to a point; thence easterly, a distance of one hundred forty-six (146) feat to a point; thence southerly along a line, said line lying perpendicular to the aforementioned center line of Falls Street produced, a distance of seven hundred twenty-nine (729) feet to a point; thence westerly, a distance of eighty-three(83) feet to a point; thence southerly, a distance of thirty-three (33) feet to a point; thence westerly, a distance of sixty-three (63) feet to a point; thence northerly, a distance to twenty (20) feet to a point; thence westerly, a distance of two hundred thirty-eight (238) feet to a point; thence northerly, a distance of four (4) feet to a point; thence westerly, a distance of one hundred sixty (160) feet to a point; thence northerly, a distance of three hundred seventy-four (374) feet to a point or place of beginning.

PARCEL II:

ALL THAT TRACT OR PARCEL OR LAND, situate in the City of Niagara Falls, County of

Niagara and State of New York more particularly described as follows:

COMMENCING at a point formed by the intersection of the center line of Fourth Street and the center line of Falls Street extended; thence westerly along the center line of Falls Street extended a distance of 83.00 feet to the point of beginning; thence southerly on a defection of 90° to the left, a distance of 325.00 feet to a point on the northerly boundary of proposed road south; thence westerly at an interior angle of 90° and along the northerly boundary of proposed road south, a distance of 232.87 feet to a point on the easterly boundary of existing Third Street; thence northerly at an interior angle of 89° 38'24" and along the easterly boundary of existing Third Street, a distance of 650.01 feet to a point on the southerly boundary of proposed road north; thence easterly at an interior angle of 90° 21'36" and along the southerly boundary of proposed road north, a distance of 228.79 feet to a point; thence southerly at an interior angle of 90°, a distance of 325.00feet to the point of beginning.

IV. TITLE TO THE PROPERTY

The First American Title Insurance Company of New York prepared a Commitment for Title Insurance, Title No. 905-NI-172,094, Amendment 2 *(Tab 11)*. Subject to the recommendations made by the Pittsburgh Field Solicitor's office, this transaction satisfies the standards.

V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

The Nation and the State of New York entered into a Class III gaming compact which is considered to have been approved on October 25, 2002, pursuant to 25 U.S.C. § 2710(d)(8)(C). The Compact will take effect when notice that it is considered to have been approved is published in the *Federal Register*.

Section 20 of IGRA, 25 U.S.C. § 2719 contains a general prohibition on gaming on land acquired in trust by the Secretary for the benefit of an Indian tribe after October 17, 1988, unless one of the several statutory exceptions is applicable to the land. By letter dated November 12, 2002, to the President of the Nation and to the Governor of the State of New York, the Secretary has concluded that lands held in restricted fee status pursuant to an Act of Congress, such as the SNLCSA, are subject to the requirements of Section 20 of IGRA. Further, the Secretary found that the legislative history of the SNLCSA makes clear that one of its purposes was to settle some of the Nation's land claim issues. Thus, the Nation's parcels to be acquired pursuant to the SNLCSA will be exempt from the prohibition on gaming contained in Section 20 because they are lands acquired as part of the settlement of a land claim, and thus fall within the exception in 25 U.S.C. § 2719(b)(1)(B)(i).

The Nation's Class II Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on September 16, 1994 and an amendment approved on June 21, 1995. A Class III Gaming Ordinance is currently pending with the NIGC.

VI. COMPLIANCE WITH CONSULTATION REQUIREMENTS OF THE SNLCSA

The land acquisition provision of the SNLCSA, 25 U.S.C. § 1774f(c) provides that the State and local governments must be notified of the Nations' request to place land into restricted fee status and are afforded an opportunity "to comment on the impact of the removal of such lands from real property tax rolls of state political subdivisions." On August 23, 2002 *(Tab 22)*, the Nation notified the State, City and County governments within whose jurisdiction such land is located of the Nation's intent to acquire the lands located with the City of Niagara Falls and provided them an opportunity to comment on the impact of the removal of such lands from real property tax rolls from State political subdivisions.

State of New York

The State of New York response dated September 20, 2002 *(Tab 13)*, requests the Secretary not to disapprove the proposed acquisition by the Seneca Nation. The October 11, 2002 *(Tab 18)*, letter from the State addresses questions submitted by the BIA regarding the compact between the Nation and the State of New York.

A letter dated September 24, 2002, from Senator George D. Maziarz of the State of New York supports and recommends approval of the tribal state compact and proposed acquisition of land in Niagara Falls *(Tab 24)*.

A letter dated September 23, 2002, from Francine DelMonte, Member of Assembly, State of New York, Albany supports the tribal state compact and recommends approval *(Tab26)*.

City of Niagara Falls

The October 8, 2002, response from the Mayor of Niagara Falls consents to the establishment of a casino by the Nation and will make every effort to facilitate the construction of the facility *(Tab 14)*.

A letter dated October 7, 2002, from the Chairman, Niagara Falls Coalition for Casino Gaming support the Nation's plans and that the proposed gaming facilities will provide the catalyst needed to boost the economy and tourism in western New York *(Tab 23)*.

A letter of support dated September 17, 2002, from Robert L. Newman, President & CEO of Niagara USA recommends approval of the tribal state compact and proposed acquisition of land in Niagara Falls *(Tab 30)*.

Town of Niagara

A letter of support dated September 18, 2002, from Suzanne Marie Fulle, President, Town of Niagara Business and Professional Association supports the tribal state compact and recommends quick approval *(Tab28)*.

A letter of support dated September 18, 2002, from Steven C. Richard, Supervisor, Town of Niagara urges approval of the tribal state compact and support the Seneca Nation's intent to acquire land in downtown Niagara Falls *(Tab 29)*.

Niagara County

A letter of support dated October 9, 2002, from the Chairman of the Niagara County Legislature requests approval of the tribal state compact to provide an economic boost to the area not only in revenue but tourism and employment *(Tab 15)*.

A letter of support dated September 20, 2002, from Clyde J., Johnston Jr., President, Niagara County Building and Construction Trades Council of WNY requests approval of the tribal state compact *(Tab 28)*.

VII. REVIEW OF ENVIRONMENTAL DOCUMENTATION

The Nation's request includes an Environmental Assessment (EA) prepared by URS Corporation, and dated October 21, 2002 *(Tab 32)*, to satisfy the requirements of the National Environmental Policy Act (NEPA). In a memorandum dated November 25, 2002, to the Regional Director, Eastern Region, OIGM provided its comments on the October 21, 2002, EA. In response to our comments, the Nation provided a revised EA, dated November 27, 2002. We have reviewed the revised EA, and are satisfied that it meets the concerns identified in our earlier comments. We have prepared a proposed Finding of No Significant Impact (FONSI) for your signature.

VIII. OTHER REQUIREMENTS

There are no other requirements. The regulations governing the acquisition of trust land for Indian tribes set forth in 25 CFR Part 151 do not apply to this request because the land is acquired by the Nation in restricted fee. Similarly, the requirements of 602 DM 2 (Hazardous Substances Determinations) are not applicable in this case because the United States is not acquiring title to the property.

IX. OIGM RECOMMENDATION

Our review indicates that the State of New York and appropriate local governments support the proposed acquisition of the NFCCC by the Nation in restricted fee, and have not indicated that the removal of the land from real property tax rolls of State political subdivisions would have any detrimental impacts. To the contrary, the comments received indicate that the conversion of the NFCCC into a Class III gaming facility will have beneficial effects on the economy of the region. All applicable federal requirements for the acquisition of the NFCCC in restricted fee status have been satisfied. This office recommends that you decline to make a finding that the identified parcel should not be subject to the provisions of 25 U.S.C. § 177, and that you issue the attached FONSI to satisfy the requirements of NEPA.

We have provided a signature line below to indicate whether you concur with our recommendation.

I concur X I do not concur _____

Dated:

Neal A. McCaleb
Assistant Secretary - Indian Affairs

Attachment

Finding of No Significant Impact

Proposed Seneca Nation of Indians Class III Gaming Facility at the Niagra Falls Convention and Civic Center Site in Niagra Falls, New York

AGENCY: Bureau of Indian Affairs (BIA)

ACTION: Finding of No Significant Impact (FONSI)

SUMMARY: The proposed federal action consists of the conveyance of land to the Seneca Nation of Indians (Seneca Nation) in restricted fee status. Based on the November 2002 Environmental Assessment (EA) for the Proposed Class III Gaming Facility at the Niagra Falls Convention and Civic Center (NFCCC) site located in the City of Niagra Falls, County of Niagra, New York, I have determined that implementation of the proposed federal action, placing the 12.8-acre NFCCC placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. § 1774f(c), will have no significant impact on the quality of the human environment. In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, an environmental impact statement will not be required.

FOR FURTHER INFORMATION PLEASE CONTACT:

George Skibine, Director
Office of Indian Gaming Management
Bureau of Indian Affairs
1849 C Street., NW
Mailstop 4543 MIB
Washington, DC 20240

BACKGROUND, LAWS, AND AGREEMENTS: Gaming is a unique opportunity for Indian tribes to improve the socio-economic conditions on Indian reservations and to enhance the living standards and quality of life for tribes and their members through increased employment and other related business opportunities for the tribe. This opportunity is afforded to the Seneca Nation (Nation) under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, and was sanctioned by the State of New York through a State/Tribe Gaming Compact signed by the Governor on October 25, 2002.

In 1990, Congress enacted the Seneca Nation Land Claims Settlement Act (Settlement Act), 25 U.S.C. §1774f(c), which provides the Nation with fair compensation for use of its land and for the impact on the Nation from prior lease arrangements in the City of Salamanca, New York. The funds appropriated under the Settlement Act are available for the Nation to acquire additional land which could be placed into restricted fee status by the Secretary. The property to be placed in restricted fee status consists of 12.8 acres in Niagara Falls, Niagara County, New York.

ENVIRONMENTAL IMPACTS: The determination that an environment impact statement will not be required is supported by the following findings:

1. Two alternative courses of action were developed and analyzed in the EA. EA Chapter 2, describes the No Action Alternative and the Preferred Alternative. Under the No Action Alternative, the property would not be conveyed to the Nation and would not be converted to a Class III gaming facility under the Nation's jurisdiction. The Preferred Alternative consists of placing the 12.8-acre NFCCC site in restricted fee status pursuant to the Settlement Act. The Preferred Alternative meets the need for action, as discussed in EA Section 1.2, and provides the best opportunity for increased employment of Nation members, for improvement of socio-economic condition of Nation members by providing revenue sources for tribal government functions, and for the promotion of the Nation's self sufficiency. EA Chapter 4, Environmental Consequences, discloses the environmental consequences of the No Action Alternative and the Preferred Alternative.

2. The Preferred Alternative does not have the potential to affect historic properties, nor does it contain any known significant archeological resources. *See* EA Sections 3.5 and 4.1.5. Further, the project is located in a dense, urban setting with no significant habitant for wildlife on site. There are no known threatened or endangered plant or animal species or critical habitats within the affected project area. *See* EA Section 3.4. EA Section 4.14 finds that there will be no adverse impact to the Peregrine Falcon.

3. EA Section 3.8 incorporates the findings of the October 2002 Traffic Impact Study, and Section 4.1.8 analyzes the impact from traffic associated with the Preferred Alternative. Use of the NFCCC site as a Class III gaming facility will not increase traffic volume on the existing roadway network beyond existing capacity. No additional roads or lanes will be required. The Preferred Alternative will not result in a significant deteriorate of levels of service at any key intersections near the project site. The lowest level of service for any of these intersections with the proposed traffic volume is "C" which is well within the acceptable range.

4. EA Section 4.1.3, Air Quality, analyzes the impact to air quality and finds that no significant impact is expected. Conversion of the NFCCC site into a gaming facility will not result in construction of new stationary sources of air emissions. Air emissions from mobile sources would not result in any significant changes in concentrations of criteria contaminants during peak traffic periods. No changes are planned to parking capacity or to surrounding roadways. The October 2002 Traffic Impact study found that there will be no major deterioration of intersection levels of services at key intersections near the NFCCC site. New York State Department of Transportation screening criteria for air quality analysis set forth in the Environmental Procedures Manual (NYSDOT 2002) require detailed analysis only when projected intersection levels of services deteriorate from "A" or "B" to a level of service "D" or less, which will not occur under the Preferred Alternative.

5. The proposed project is anticipated to bring substantial economic benefits to the Seneca Nation and to bolster tourism and revitalization in downtown Niagra Falls, as discussed in EA Section 4.1.6., including the creation of an estimated 2000 permanent new jobs as well as the employment of 1400 union workers during the construction process. Additionally, the Preferred Alternative will boost business and tourism opportunities within the surrounding communities with the potential of creating additional jobs to help revitalize the economically depressed areas within the Niagara Falls region of New York State. There is support for the Preferred Alternative from the State, County and City of Niagra Falls. The necessary infrastructure is already in place, and there is adequate capacity for sewer, water, and emergency services, as discussed in EA Section 4.1.9.

6. The cumulative effects of the proposed action combined with past and reasonably foreseeable future actions are not significant. These cumulative effects on the quality of the human environment are evaluated in EA Section 4.3. There will be no adverse cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socio-economic resources, or traffic resources from the Preferred Alternative.

7. Legally binding mitigation measures will not be required for the Preferred Alternative because no significant impacts to the human environment were identified during the preparation of the EA. *See* EA Chapter 5.0. To alleviate impacts from traffic associated with the Preferred Alternative, signal timing modifications and a minor upgrade to the existing signal equipment will be implemented at the intersection of John B. Daly Boulevard and Rainbow Boulevard, and Rainbow Boulevard and Third Street. These mitigation measures will improve the flow of left turn movements as well as the overall operation of both intersections.

Neal A. McCaleb
Assistant Secretary - Indian Affairs

NOV 2 9 2002
Date

EXHIBIT "E"

STATEMENT OF
AURENE MARTIN
ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON THE INDIAN GAMING REGULATORY ACT

JULY 9, 2003

Good morning, Mr. Chairman and members of the Committee. My name is Aurene Martin, Acting Assistant Secretary – Indian Affairs. I am pleased to be here today to discuss the role of the Department of the Interior in reviewing revenue-sharing provisions included in Class III tribal-state gaming compacts submitted to the Department for approval under Section 11(d) of the Indian Gaming Regulatory Act of 1988 (IGRA). I will also discuss the role of the Department in implementing Section 20 of IGRA dealing with acquiring trust land for gaming purposes. Accompanying me today is Mr. George Skibine, Director of the Bureau of Indian Affair's Office of Indian Gaming Management.

IGRA provides that Class III gaming activities are lawful on Indian lands only if they are, among other things, conducted in conformance with a tribal-state compact entered into by an Indian tribe and a state and approved by the Secretary. The Secretary may only disapprove a compact if the compact violates (1) any provision of IGRA; (2) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands; or (3) the trust obligations of the United States to Indians. Under this statutory scheme, the Secretary must approve or disapprove a compact within 44 days of its submission, or the compact is considered to have been approved, but only to the extent the compact is consistent with the provisions of IGRA. A compact takes effect when the Secretary publishes notice of its approval in the Federal Register.

Since IGRA was passed in 1988, nearly 15 years ago, the Department of the Interior has approved approximately 250 Class III gaming compacts between states and Indian tribes in 24 states. These compacts have enabled many Indian tribes to establish Class III gaming establishments. These establishments have helped reduce tribes reliance on Federal dollars and enabled them to implement a variety of tribal initiatives in furtherance of Congress' intent in IGRA "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." The Department supports lawful and regulated tribal gaming under IGRA because it has proved to be an effective tool for tribal economic development and self-sufficiency.

Section 11(d)(4) of IGRA specifically provides that the compacting provision of IGRA shall not be interpreted as conferring upon a state or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, and that no state may refuse to enter into compact negotiations based upon the lack of authority in such state or its political subdivisions to impose such a tax, fee, charge, or other assessment.

Section 11 of IGRA allows Indian tribes to initiate a lawsuit in Federal district court against a state arising from the failure of that state to enter into compact negotiations or to conduct such negotiations in good faith. In 1996, the U.S. Supreme Court ruled in *Seminole Tribe v. State of Florida*, that a state may assert an Eleventh Amendment immunity defense to avoid a lawsuit brought by a tribe

under IGRA alleging that the state did not negotiate in good faith.

In response to the *Seminole* decision, the Department published a rule that became effective in 1999, to enable Indian tribes to obtain Secretarial "procedures" for Class III gaming when a tribe has been unable to negotiate a compact with the state, and the state has raised an Eleventh Amendment immunity defense to a lawsuit initiated by the tribe in Federal court. Applications for Secretarial procedures are currently pending for Indian tribes in Florida and Nebraska, but a legal challenge to the Secretary's authority to promulgate this rule has been filed by the states of Florida and Alabama.

Another consequence of the Supreme Court's 1996 decision is that more states have sought to include revenue-sharing provisions in Class III gaming compacts, resulting in a discernable increase in such provisions in the past seven years. In general, the Department has attempted to apply the law to limit the circumstances under which Indian tribes can make direct payments to a state for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has only approved revenue-sharing payments that call for tribal payments when the state has agreed to provide valuable economic benefit of what the Department has termed "substantial exclusivity" for Indian gaming in exchange for the payment. As a consequence, if the Department affirmatively approves a proposed compact, it has an obligation to ensure that the benefit received by the state under the proposed compact is appropriate in light of the benefit conferred on the tribe. Accordingly, if a payment exceeds the benefit received by the tribe, it would violate IGRA because it would amount to an unlawful tax, fee, charge, or assessment. While there has been substantial disagreement over what constitutes a tax, fee, charge or assessment within this context, we believe that if the payments are made in exchange for the grant of a valuable economic benefit that the governor has discretion to provide, these payments do not fall within the category of prohibited taxes, fees, charges, or other assessments.

Since 1988, the Department has approved, or deemed approved revenue-sharing provisions between Indian tribes and the following States: Connecticut, New Mexico, Wisconsin, California, New York, and Arizona. In addition, four Michigan Indian tribes are making revenue-sharing payments to the State of Michigan under compacts that became effective by operation of law. Other Michigan tribes have made revenue-sharing payments to the State of Michigan under a court-approved consent decree, but these tribes stopped making the payments when Michigan authorized non-Indian casinos in Detroit.

I will now turn to a discussion of the issues presented by the implementation of section 20 of IGRA. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by section 5 of the Indian Reorganization Act of 1934 (IRA). Under these authorities, the Secretary applies her discretion after consideration of the criteria for trust acquisitions in our "151" regulations. (25 CFR Part 151). However, when the acquisition is intended for gaming, consideration of the requirements of section 20 also applies before the Tribe can engage in gaming on the trust parcel. Section 20 requires that if lands are acquired in trust after October 17, 1988 (the date IGRA took effect), they may not be used for gaming unless one of several statutory exceptions apply. One exception is lands acquired in trust within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988. However, there are additional exceptions for off-reservation trust lands. For instance, there is an exception for lands located within a tribe's last recognized reservation, if the tribe had no reservation on October 17, 1988. There is also an exception for trust lands of Oklahoma tribes. In addition, there are exceptions for lands taken into trust as part of either (1) the settlement of a land claim; (2) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (3) the restoration of

lands for an Indian tribe that is restored to Federal recognition by an act of Congress or by a judicial decree. Since 1988, the Secretary has approved approximately 20 applications that have qualified under the exceptions to section 20.

Finally, an Indian tribe may also conduct gaming activities on after-acquired trust land if it meets the requirements of section 20(b)(1)(A) of IGRA. Under section 20(b)(1)(A), gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of the tribe and its members, and not detrimental to the surrounding community but only if the Governor of the state in which the gaming activities are to occur concurs in the Secretary's determination. Since 1988, state governors have concurred in only three positive determinations for off-reservation gaming on trust lands: the Forest County Potawatomi gaming establishment in Milwaukee, Wisconsin; the Kalispel Tribe gaming establishment in Airway Heights, Washington; and the Keweenaw Bay Indian Community gaming establishment near Marquette, Michigan.

Since taking office, Secretary Norton has raised the question whether the law provides her with sufficient discretion to approve off-reservation Indian gaming acquisitions that are great distances from their reservations, so-called "far-flung lands." This is further framed by what appears to be the latest trend of states that are interested in the potential of revenue sharing with tribes encouraging tribes to focus on selecting gaming location on new lands based solely on market potential rather than exercising governmental jurisdiction on existing Indian lands. It is within the context of this emerging trend, that the Secretary has asked those of us who work on Indian gaming issues to review federal law with this concern in mind. While we have not yet concluded our work, we have spent substantial effort examining the overall statutory scheme that Congress has formulated in the area of Indian self-determination and economic development. This includes a careful examination of what Congress intended when it enacted Section 20 (b)(1)(A). Thus far, our preliminary review suggests that Congress sought to establish a unique balance of interests. The statute plainly delineates the discretion of the Secretary, limiting her focus to two statutory prongs. Also, by requiring that the Governor of the affected state concur in the Secretary's determination, the statute acknowledges that in a difference of opinion between a sovereign tribe and an affected state, the state prevails.

Further, at least on its face, section 20(b)(1)(A) does not contain any express limitation on the distance between the proposed gaming establishment and the tribe's reservation, nor is the presence of state boundaries between the proposed gaming establishment and the tribe's reservation a factor. Currently, there are eight section 20(b)(1)(A) applications pending with the Bureau of Indian Affairs for sites in New York, Wisconsin, Michigan, Louisiana, and California. Many more are rumored, including potential applications from tribes located in one state to establish gaming facilities in another state. However, we need to keep in mind there have been only three section 20(b)(1)(A) off-reservation approvals in the last 15 years. We are conducting our review of the law with this in mind. Yet, our review must also acknowledge that the role of the Secretary under section 20(b)(1)(A) is limited to making *objective* findings of fact regarding the best interests of the tribe and its members, and any detriment to the surrounding community. Therefore, while the trust acquisition regulations provides broad discretion, section 20(b)(1)(A) does not authorize the Secretary to consider other criteria in making her determination, thus limiting her decision-making discretion to that degree. We look forward to concluding our review for the Secretary and to sharing those results with you as appropriate.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

EXHIBIT "F"

Testimony of

Penny J. Coleman

General Counsel (Acting)

National Indian Gaming Commission

Before the

Senate Committee on Indian Affairs

July 27, 2005

Chairman McCain, Vice-Chairman Dorgan and members of the Committee: My name is Penny Coleman. I serve as the Acting General Counsel for the National Indian Gaming Commission. Thank you for allowing us to speak with you today. We appreciate the opportunity to testify today about the Commission's involvement in Indian lands questions.

Indian land is the foundation upon which Indian gaming is built. The Indian Gaming Regulatory Act ("IGRA") defines Indian lands; it requires that gaming take place on Indian lands; it limits the National Indian Gaming Commission's regulatory authority to gaming that takes place on Indian Lands; it establishes a prohibition against gaming on trust lands acquired after October 1988; and it exempts many lands from that general prohibition.

Thus, Indian lands are central to many of the Commission's functions. The Commission must determine whether gaming facilities are located on Indian lands in order to determine whether the IGRA permits gaming on those lands and permits the Commission to regulate it. If a facility is not located on Indian lands, the NIGC has no authority whatsoever over any gaming occurring there or any jurisdiction to stop the activity. The Commission is also required to decide whether a specific parcel is Indian lands when a management contract or a site-specific tribal ordinance has been submitted to the Commission for approval; such determinations are part of our final agency actions on management contracts and tribal ordinances.

The Office of General Counsel also issues advisory opinions on Indian lands. These opinions are often intended to advise tribes whether they should attempt to proceed with gaming on a given site. Sometimes our opinions confirm that a specific parcel is Indian lands. Sometimes they warn a tribe that we do not consider the gaming to be legal.

We share the responsibility for deciding Indian lands questions with the Department of the Interior. The Department makes decisions on lands when a tribe seeks to acquire land

into trust, seeks a trust-to-trust transfer for gaming, or seeks approval of a land lease or a tribal-state compact.

For many years, the Department of the Interior assumed the primary responsibility for making Indian lands determinations. However, as gaming expanded in recent years, the Commission's need to make such decisions became more and more pressing. The Commission thus began making these decisions on its own. Because of the shared responsibility with the Department, we entered in a Memorandum of Understanding that requires each agency to notify the other when Indian lands questions are pending and to provide advice and assistance on the Indian lands determinations.

This is not a small undertaking. Altogether, the Department's Office of the Solicitor and the Office of General Counsel have issued over 50 written opinions and the Commission has made decisions on over 40 management contracts.

Right now, the Commission has approximately 50 Indian lands determinations pending. Some of these will be simple decisions. The land will be held in trust and within the Tribe's reservations boundaries, and no lengthy analysis will be required.

Many Indian lands determinations, however, are complex and difficult. For example, IGRA exempts from the general prohibition of gaming on lands acquired after the date of its enactment when "lands are taken into trust as part of ... the restoration of lands for an Indian tribe that is restored to Federal recognition."

To establish that a tribe's lands fall within the restored land exception, a tribe must establish that it is a tribe restored to Federal recognition and that the parcel on which the gaming is being conducted is restored land.

For a tribe to be restored to federal recognition under the IGRA, it must have been previously recognized; it must have lost its recognized status; and it must be returned to a recognized status. This last can be straightforward, for, in most instances, it will or will not have been included by the Secretary of the Interior on her list of federally-recognized tribes. The first two elements, however, require much delving into our history. Beyond looking to 18th and 19th Century Treaties and laws, the specific political and ethnographic history of the tribe must be reviewed. Just gathering the relevant information requires a large, cooperative effort among the Tribe, various divisions within the Department of the Interior, and perhaps historians and research archives.

Beyond all of that, determining that lands are restored lands requires the casting of an even broader research net, for not all lands re-acquired by a Tribe are "restored" lands within the meaning of IGRA. Whether lands are restored lands requires a case-by-case determination.

We must look to the factual circumstances of the land acquisition. We must look at the location of the acquisition and consider such questions as whether it is close to the tribe's population base and important to the tribe throughout its history. We must look at the

temporal relationship of the acquisition to the tribal restoration (in other words, was this land acquired a year after the tribe was restored to recognition or 30 years later and after the tribe acquired 20 other parcels). All of this requires the Tribe to hire historians and ethnographers and also to produce voluminous historical documents and archaeological evidence, which, of course, can take time to assemble and submit, not to mention time for the NIGC to digest.

A number of our determinations have also resulted in litigation, which slows down our ability to make decisions even further, and to add to the complexity, Congress has the ability to, and occasionally does, legislate the status of lands belonging to individual tribes, and that can change the Indian lands analysis completely.

The Commission and the Department have been criticized by the Department's Office of Inspector General for failing to decide the Indian lands questions before a facility opens and for failing to have a systematic approach to making such decisions. We share the Inspector General's concern on this. Good government requires that regulators know the extent of their jurisdiction. Furthermore, if we decide that a tribe should not have opened a facility because the lands did not qualify for gaming under the Act, extensive litigation is guaranteed and, if the Commission is correct, the tribe will have incurred millions of dollars in debt with few options for repaying the debt.

We are, therefore, developing a system which is designed to track Indian lands determinations and to identify new problems quickly. Recently, we sent a team to the State of Oklahoma to obtain copies of deeds, maps and other documentation on some of the gaming sites. In California, we also hired a title company to conduct title searches on some sites. This information as well as other information we obtain will be used in establishing the central file system for the Indian lands documentation. We hope to convert this file system into an electronic system in the near future. We are also considering regulations that would require a tribe to establish that a gaming operation is on Indian lands before it licenses the facility.

We thank the Committee Members and staff and stand ready to assist you as you continue to review these Indian lands questions. If you have any questions, I would be happy to answer them.

EXHIBIT "G"

TESTIMONY
OF
GEORGE T SKIBINE
ACTING DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS
FOR POLICY AND ECONOMIC DEVELOPMENT
DEPARTMENT OF THE INTERIOR
AT THE OVERSIGHT HEARING
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON SECTION 20 OF THE INDIAN GAMING REGULATORY ACT

July 27, 2005

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary - Indian Affairs for Policy and Economic Development at the Department of the Interior. I am pleased to be here today to discuss the role of the Department in implementing the exceptions contained in Section 20(a)(1), 20(a)(2)(B), and 20(b)(1)(B) to the prohibition on gaming on trust lands acquired after October 17, 1988, contained in the Indian Gaming Regulatory Act of 1988 (IGRA).

Before discussing Section 20 of IGRA, I want to address a common misconception regarding this statutory provision: Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies her discretion after consideration of the criteria for trust acquisitions in our "151" regulations (25 CFR Part 151). However, when the acquisition is intended for gaming, consideration of the requirements of IGRA are simultaneously applied to the decision whether to take the land into trust. If the land has already been taken into trust, requirements of IGRA still must be met before a tribe can engage in gaming on the trust parcel.

In enacting Section 20, Congress struck a balance between tribal sovereignty and states' rights. Specifically, Section 20 provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

(1) The lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988 (Section 20(a)(1));

(2) The tribe has no reservation on October 17, 1988, and "the lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located" (Section 20(a)(2)(B));

(3) The "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition." (Section 20(b)(1)(B));

My testimony today will focus on the above exceptions. However, IGRA also has two additional exceptions: 1) for lands taken into trust in Oklahoma for Oklahoma tribes; and 2) an Indian tribe may also conduct gaming activities on after-acquired trust land if it meets the requirements of Section 20(b) of IGRA, the so-called "two-part determination" exception. Under Section 20(b)(1)(A),

(1) gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of the tribe and its members, and would not be detrimental to the surrounding community, but

(2) only if the Governor of the state in which the gaming activities are to occur concurs in the Secretary's determination.

Since 1988, the Secretary has approved 26 trust acquisitions for gaming that have qualified under the five Section 20 exceptions that are discussed in my testimony. I have attached to my testimony a number of charts that list the various tribes that have qualified under each of the five exceptions. The charts show that the Department has approved:

- seven gaming acquisitions under the exception in Section 20(a)(1) – four on-reservation acquisitions, two contiguous acquisitions, and one that contained land that was partly on-reservation, and partly contiguous to the reservation.

- four gaming acquisitions under the "settlement of a land claim" exception contained in Section 20(b)(1)(B)(i), although all four parcels are contiguous to each other and are all for the Seneca Tribe of New York.

- three gaming acquisitions for Indian tribes under the "initial reservation" exception contained in Section 20(b)(1)(B)(ii);

- twelve gaming acquisitions for Indian tribes under the "restored land for a restored tribe"

exception contained in Section 20(b)(1)(B)(iii); and

- no gaming acquisitions under the exception contained in Section 20(a)(2)(B), the "last recognized reservation" exception.

Finally, please keep in mind the fact that although the Department has approved a trust acquisition for an Indian tribe it does not necessarily mean that the land has actually been taken into trust. For instance, the existence of liens or other encumbrances, or litigation challenging the Secretary's decision may delay the proposed trust acquisition, often for years.

Currently, there are eleven proposed gaming acquisitions pending before the Department where the applicant tribe seeks an exception to the gaming prohibition under one of the three exceptions listed in Section 20(b)(1)(B) (settlement of a land claim, initial reservation of a tribe acknowledged by the Secretary under the Federal Acknowledgment process, or restoration of lands for a tribe that is restored to Federal recognition). There are no proposed trust acquisitions for gaming pending under either the on-reservation or contiguous to the reservation exception, nor are there any proposed acquisitions pending under the last recognized reservation exception of Section 20(a). We are also aware that there are a number of Indian tribes that are seeking "Indian lands" determinations from the National Indian Gaming Commission for parcels that have previously been taken into trust by the Department for non-gaming purposes.

The decision of whether land that is either already in trust, or that is proposed to be taken into trust for gaming, qualifies under any of the exceptions is made on a case-by-case basis. Through case-by-case adjudication, the Department has developed criteria to determine whether a parcel of land will qualify under one of the exceptions. For instance, to qualify under the "initial reservation" exception for newly-recognized tribes, the Department requires that the tribe have strong geographical, historical and cultural ties to the land.

To qualify under the "restoration of lands" exception, the tribe must have been previously recognized, terminated, and subsequently legislatively, judicially, or administratively restored. The land must be either available to a tribe as part of restoration legislation, or the tribe must establish a strong historical nexus as well as geographic proximity to the land. Furthermore, the restoration of the lands must occur within a reasonable period after the tribe is restored. The Department's definition of restored land has been guided by fairly recent federal court decisions in Michigan, California, and Oregon, and by "Indian lands" determinations issued by both the General Counsel of the National Indian Gaming Commission and the Office of the Solicitor within the Department of the Interior.

Negotiated settlements of Indian land claims brought under the Indian Trade and Intercourse Act (25 U.S.C. 177) require congressional legislation. Therefore, to qualify under the "settlement of a land claim" exception, the land transaction must have received Congressional approval as required by the Indian Non-Intercourse Act.

The Department recognizes that off-reservation gaming is a growing concern and is evaluating

the circumstances of off reservation gaming and its impacts on local communities. The Department looks forward to working with Congress on opening a dialogue to further define Congress's intent to permit or constrain the prospects for off-reservation gaming. This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

APPROVED GAMING ACQUISITIONS SINCE ENACTMENT OF IGRA (OCTOBER 17, 1988) ON AND/OR CONTIGUOUS TO THE BOUNDARIES OF THE RESERVATION

1	**White Earth Chippewa** 25 U.S.C. 2719 (a)(1)	Mahnomen, Mahnomen County, Minnesota	61.73	08/14/95
2	**Skokomish Indian Tribe** 25 U.S.C. 2719 (a)(1)	Skokomish Reservation, Mason County, Washington	3.0	12/08/03
3	**Suquamish Indian Tribe** 25 U.S.C. 2719 (a)(1)	Suquamish, Kitsap County, Washington	13.47	04/21/04
4	**Picayune Rancheria of Chukchansi Indians** 25 U.S.C. 2719 (a)(1)	Coursegold, Madera County, California	48.53	06/30/04
5	**Tunica-Biloxi Tribe** 25 U.S.C. 2719 (a)(1) (Contiguous to Reservation)	Avoyelles Parish, Louisiana	21.05	11/15/93
6	**Coushatta Tribe** **25 U.S.C. 2719 (a)(1)** (Contiguous to Reservation)	Allen Parish, Louisiana	531.00	09/30/94
7	**Saginaw Chippewa** 25 U.S.C. 2719 (a)(1) (Partially on and contiguous to reservation)	Mt. Pleasant, Isabella County, Michigan	480.32	04/14/97

APPROVED GAMING ACQUISITIONS
SINCE ENACTMENT OF IGRA (OCTOBER 17, 1988)
SETTLEMENT OF A LAND CLAIM

1	**Seneca Nation** 25 U.S.C. 1774	Niagara Falls, Niagara County, New York	12.8	11/29/02
2	****Seneca Nation** **25 U.S.C. 1774**	Niagara Falls, Niagara County, New York	8.5	12/08/03
3	****Seneca Nation** **25 U.S.C. 1774**	Niagara Falls, Niagara County, New York	.40	07/21/04
4	****Seneca Nation** **25 U.S.C. 1774**	Niagara Falls, Niagara County, New York	2.15	11/5/04

** Gaming Related

APPROVED GAMING ACQUISITIONS SINCE ENACTMENT OF IGRA (OCTOBER 17, 1988) INITIAL RESERVATION OF AN INDIAN TRIBE ACKNOWLEDGED BY THE SECRETARY UNDER THE FEDERAL ACKNOWLEDGMENT PROCESS

1	**Mohegan Tribe** **25 U.S.C. 2719 (b)(1)(B)(ii)**	New London, Montville County, Connecticut	240.00	09/28/95
2	**Nottawaseppi Huron Band of Potawatomi** **25 U.S.C. 2719 (b)(1)(B)(ii)**	Battle Creek, Calhoun County, Michigan	78.26	07/31/02
3	**Match-E-Be-Nash-She-Wish Band (Gun Lake Tribe) of Pottawatomi Indians** **25 U.S.C. 2719 (b)(1)(B)(ii)**	Wayland Township Allegan County Michigan	147.48	04/18/05

APPROVED GAMING ACQUISITIONS
SINCE ENACTMENT OF IGRA OCTOBER 17, 1988
RESTORATION OF LANDS FOR AN INDIAN TRIBE
RESTORED TO FEDERAL RECOGNITION

1	**Grand Ronde Community** 25 U.S.C. 2719 (b)(1)(B)(iii)	Grand Ronde, Polk County, Oregon	5.55	03/05/90
2	**Siletz Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Lincoln City, Lincoln County, Oregon	10.99	12/05/94
3	**Coquille Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Coos Bay, Coos County, Oregon	20.0	02/01/95
4	**Klamath Tribes** 25 U.S.C. 2719 (b)(1)(B)(iii)	Chiloquin, Klamath County, Oregon	42.31	05/14/97
5	**Little River Band of Ottawa** 25 U.S.C. 2719 (b)(1)(B)(iii)	Manistee, Manistee County, Michigan	152.80	09/24/98
6	**Little Traverse Bay Bands** 25 U.S.C. 2719 (b)(1)(B)(iii)	Petoskey, Emmett County, Michigan	5.0	08/27/99
7	**Paskenta Band of Nomlaki Indians** 25 U.S.C. 2719 (b)(1)(B)(iii)	Corning, Tehema County, California	1898.16	11/30/00
8	**Lytton Band of Pomo Indians** 25 U.S.C. 2719 (b)(1)(B)(iii)	San Pablo, Contra Costa County, California	9.3	01/18/01
9	**Pokagon Band of Potawatomi** 25 U.S.C. 2719 (b)(1)(B)(iii)	New Buffalo, Berrien County, Michigan	675	01/19/01
10	**United Auburn Indian Community** 25 U.S.C. 2719 (b)(1)(B)(iii)	Placer County, California	49.21	02/05/02
11	**Ponca Tribe** 25 U.S.C. 2719 (b)(1)(B)(iii)	Crofton, Knox County, Nebraska	3	12/20/02
12	**Little Traverse Bay Bands** 25 U.S.C. 2719 (b)(1)(B)(iii)	Petoskey, Emmett County, Michigan	96.00	07/18/03

PENDING GAMING APPLICATIONS UNDER SECTION 20 (b)(1)(B)

	Tribe	Location	Section 20 Exception
1	Snoqualmie Tribe of Washington	56 Acres Snoqualmie, King County, Washington	Initial Reservation 2719(b)(1)(B)(ii)
2	Cowlitz Indian Tribe of Washington	151.87 Acres Clark County, Washington	Initial Reservation 2719(b)(1)(B)(ii)
3	Greenville Rancheria of Maidu Indians of California	334.69 Acres, Red Bluff, Tehama County, California	Restored Tribe 2719(b)(1)(B)(iii)
4	Mechoopda Indian Tribe of Chico Rancheria of California	650 Acres Chico, Sutter County, California	Restored Tribe 2719(b)(1)(B)(iii)
5	Enterprise Rancheria of Maidu Indians of California	40 Acres Olivehurst, Yuba County, California	Restored Tribe 2719(b)(1)(B)(iii)
6	Elk Valley Rancheria of California	203 Acres Del Norte County, California	Restored Tribe 2719(b)(1)(B)(iii)
7	Ione Band of California	224 Acres Plymouth, Amador County, California	Restored Tribe 2719(b)(1)(B)(iii)
8	Graton Rancheria of California	360 Acres Rohnert Park, Sonoma County, California	Restored Tribe 2719(b)(1)(B)(iii)
9	Scotts Valley Band of California	29.87 Acres Richmond Contra Costa County California	Restored Tribe 2719(b)(1)(B)(iii)
10	North Fork Rancheria of California	305 Acres Madera, Madera County, California	Restored Tribe 2719(b)(1)(B)(iii)
11	Guidiville Band of Pomo Indians of CA	375 Acres Richmond, Mendicino County, California	Restored Tribe 2719(b)(1)(B)(iii)

Subject: [Fwd: Attn: Penny Coleman - Senaneca Nation of Indians illegal gamin on lands acquired after October 17, 1988]
From: Daniel Warren <d.warren@upstate-citizens.org>
Date: Fri, 29 Jul 2005 10:45:26 -0400
To: Penny_Coleman@nigc.gov

-------- Original Message --------
Subject: Attn: Penny Coleman - Senaneca Nation of Indians illegal gamin on lands acquired after October 17, 1988
Date: Fri, 29 Jul 2005 09:34:56 -0400
From: Daniel Warren <d.warren@upstate-citizens.org>
To: info@nigc.gov
CC: George.Skibine@bia.gov, James_Cason@ios.doi.gov, Michael_Olsen@ios.doi.gov

I am writing to you regarding the Seneca Nation of Indians plan to acquire land in Erie County for the purpose of opening a Casino with Class III gaming as well as the land it has acquired and is currently attempting to acquire in Niagara County.

In your Secretary's letter of November 12, 2002 to the Governor and the President of the Seneca Nation, she set forth your reasons to neither approve nor disapprove the Compact, rather to let it take effect without action. Under these circumstances, the Compact is considered to have been approved, "but only to the extent the compact is consistent with [IGRA]" (25 USC § 2710 [d] [8] [C]). Contrary to the Secretary's belief in that letter the Seneca Nation Settlement Act does not qualify under the land claim settlement exception for the reasons that follow.

The IGRA permits gaming on Indian Land as defined in 25 U.S.C. § 2703(4), 25 CFR § 502.12. Lands that do not qualify as Indian lands under IGRA generally are subject to state gambling laws. See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12382, 12388 (1992). The Seneca Nation of Indians currently did not have any Indian land within the City of Niagara Falls and does not have any within the City of Buffalo. In order for the Seneca Nation to acquire any property within the City of Buffalo it must go through the discretionary fee to trust process under either the Seneca Nation Settlement Act (25 U.S.C. § 1774 et seq.) or the Indian Reorganization Act (25 U.S.C. § 465).

The IGRA also prohibits gambling on land acquired after October 17, 1988 ("after acquired lands") with limited exceptions. The only arguable exception to this general prohibition relevant to this situation is the exception for lands acquired as a settlement of a land claim. The Seneca Nation's land claim has been dismissed by Judge Arcara in 2002 and this dismissal has been affirmed by the United States Court of Appeals for the Second Circuit. (see Seneca Nation of Indians v. State of New York, 382 F.3d 245, 383 F.3d 45 (09/09/2004) & Seneca Nation of Indians v.

State of New York, 382 F.3d 245, 383 F.3d 45 (09/09/2004)) Which leaves the Seneca Natio n Settlement Act (25 U.S.C. § 1774, et.seq.) as the basis for acquiring any land. This act did not settle a land claim it settled a lease rate dispute not title to land.

Congressman LaFalce a co-sponsor of the legislation which became the Seneca Nation Settlement Act stated "This bill provides Federal sums to compensate the Seneca Nation for
3,000 leases that were obtained and perpetuated without the consent of the rightful owners--the Senecas. For nearly 99 years, the Senecas have been receiving minuscule payments averaging $1 to $3 per year per parcel of land. Clearly, the Senecas deserve appropriate compensation." (Cong. Rec., October 10, 1990, H9289) Likewise Congressman Houghton who was the sponsor of the legislation stated "The leases were imposed by Congress upon the Nation and upon the citizens. What happened was when these leases were imposed it kept the Nation in a near state of poverty, and also put a lock on any increasing increments in the rentals which could be received by the Nation. So this bill in front of us today gives a one-time $35 million payment to be matched by $25 million from the State. So this is what I respectfully ask of the Congress." (Cong. Rec., October 10, 1990, H9288) See also 25 U.S.C. § 1774(a)(1). Clearly this was a claim for monetary compensation much like a claim that could have been pursued through the Indian Claims Commission (ICC).

The National Indian Gaming Commission has issued a decision in In Re Wyandotte Nation Amended Gaming Ordinance and held that in order to fall within the land claim settlement
exception to the IGRA's general prohibition of gaming on lands acquired after October 17, 1988, the claim involved must seek the return of the disputed land and not just monetary compensation for its loss. Specifically the NIGC held "To find that ICC money judgments fit within the plain language of the after-acquired lands exception would result in the exception swallowing the rule. The ICC handled large numbers of claims during its lifetime, and substantial relief was granted to many tribes. William C. Canby, Jr., American Indian Law at 267 (2nd Ed. 1988). Interpreting the land claim settlement exception to apply any time a tribe uses such monetary judgments to purchase land would open up the exception far beyond what was intended."

An Indian tribe may conduct gambling activities on trust lands acquired after October 17, 1988, if it meets the requirements of Section 20(b)(1)(a) of IGRA. Section 20(b)(1)(a) provides that gambling can occur on the land if the Secretary, after consultation with appropriate state and local officials and officials of nearby Indian tribes, determines that a gambling establishment on newly acquired land will (1) be in the best interest of the tribe and its members, and (2) not be detrimental to the surrounding community, but only if the Governor of the state in which the gambling activities are to occur concurs in the Secretary's two-part determination. This type of review has not been done

Furthermore since the Secretary has discretion under the Seneca Nation Settlement Act to take a particular piece of land into trust or not the requirements set forth in NEPA and 25 C.F.R. Part 151 are triggered. Also under state law the State has to comply with SEQRA (see Concern Inc. v. Pataki, 7 Misc.3d 1030(A) (N.Y.Sup. 05/25/2005)).

On behalf of the members of Upstate Citizens for Equality I request that

you take action to insure that the applicable laws are followed in the Seneca Nation's acquisition of land (past and present) and establishing a Class III gaming facility and all legal and environmental concerns are addressed as well as the required public comment periods prior to taking any land in to trust or permitting any gaming on these after acquired lands. If they are not in compliance with law we request that you compel the closure of such illegal gambling until such time, if any, they are able to comply with the law.

Sincerely,

Daniel T. Warren
Chair
Niagara Frontier Chapter of Upstate Citizens for Equality, Inc.
http://www.upstate-citizens.org

Exhibit "I"

August 11, 2005

Mr. Daniel T. Warren
Upstate Citizens for Equality
Niagara Frontier Chapter
836 Indian Church Road
West Seneca, NY 14224-1235

RE: NIGC-FOIA-2005-112

Dear Mr. Warren:

This is in response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request to the National Indian Gaming Commission (NIGC) dated July 6, 2005, in which you requested copies of all records pertaining to all decisions, determinations, or rulings that gaming on lands acquired after October 17, 1988 is permitted for the land occupied by the Turning Stone Casino and Resort and the Seneca Niagara Casino, along with any supporting documents submitted. A search of NIGC records failed to disclose any records responsive to your requests.

If you have not already done so you may wish to send a request to the Bureau of Indian Affairs, Department of the Interior. They may have responsive records for the portion of your request regarding the Seneca Niagara Casino.

If you consider my response to be a denial you have the right to administratively appeal this decision. Appeals should be in writing and addressed to: Office of General Counsel, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005, within 30 days of your receipt of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Regina Ann McCoy
FOIA/PA Officer

Exhibit "J"

United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

AUG 3 1 2005

Mr. Daniel T. Warren
Chair, Upstate Citizens for Equality, Inc.
Niagara Frontier Chapter
836 Indian Church Road
West Seneca, New York 14224-1235

Dear Mr. Warren:

Thank you for your letter of July 7, 2005, regarding whether the Seneca Niagara casino in Niagara Falls, New York, and the Turning Stone Casino and Resort in Verona, New York, are operating in violation of State and Federal law.

It is our view that the Seneca Nation of Indians is operating the Seneca Niagara Casino in compliance with applicable State and Federal law. The class III gaming compact between the Seneca Nation of New York and the State of New York became effective on December 9, 2002, when notice of its approval was published in the *Federal Register*. In a letter dated November 12, 2002, to Governor Pataki, Secretary Norton indicated that the legislative history of the Seneca Nation Settlement Act of 1990 makes clear that one of its purposes was to settle some of the Seneca Nation's land claim issues. Thus, the Nation's parcels to be acquired under the class III gaming compact and the Settlement Act will be exempt from the prohibition on gaming contained in Section 20 of the Indian Gaming Regulatory Act of 1988 because they are lands acquired as part of the settlement of a land claim and fall within the exception in 25 U.S.C. 2719(b)(1)(B)(i).

It is our understanding that the National Indian Gaming Commission (NIGC) is presently considering the issue of whether the Oneida Nation of New York is operating the Turning Stone Casino in compliance with Federal and State law following the U.S. Supreme Court's decision in *City of Sherrill v. Oneida Nation of New York* (2005). We will advise you of the NIGC's decision as soon as we have received it.

Thank you for your interest in this very important matter.

Sincerely,

Principal Deputy Assistant Secretary - Indian Affairs

Subject: Fw: Feedback from DOI.gov
From: webteam@nbc.gov
Date: Wed, 19 Oct 2005 06:52:10 -0400
To: EXSEC@ios.doi.gov
CC: d.warren@upstate-citizens.org

Please provide a response to Mr. Warren at: d.warren@upstate-citizens.org
----- Forwarded by WebTeam/NBC/OS/DOI on 10/19/2005 06:51 AM -----

d.warren@upstate-citizens.org 10/18/2005 04:51 PM		To cc Subject
	webteam@nbc.gov, DOInews@nbc.gov	
	Feedback from DOI.gov	

Daniel T. Warren writes
RE: Seneca Nation's acquisition of land in Erie County, NY for casino

Dear Secretary Norton:

I am writing to you regarding the Seneca Nation of Indians acquisition of land
in Buffalo, New York for the purpose of opening a Casino with Class III gaming.

In your letter of November 12, 2002 to the Governor and the President of the
Seneca Nation, you set forth your reasons to neither approve nor disapprove the
Compact, rather to let it take effect without action. Under these circumstances,
the Compact is considered to have been approved, "but only to the extent the
compact is consistent with [IGRA]" (25 USC ? 2710 [d] [8] [C]).

The IGRA permits gaming on Indian Land as defined in 25 U.S.C. ? 2703(4), 25 CFR
? 502.12. Lands that do not qualify as Indian lands under IGRA generally are

subject to state gambling laws. See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12382, 12388 (1992). The Seneca Nation of Indians currently does not have any Indian land within the City of Buffalo. In order for the Seneca Nation to acquire any property within the City of Buffalo it must go through the discretionary fee to trust process under either the Seneca Nation Settlement Act (25 U.S.C. ? 1774 et seq.) or the Indian Reorganization Act (25 U.S.C. ? 465).

The IGRA also prohibits gambling on land acquired after October 17, 1988 (? after acquired lands?) with limited exceptions. The only arguable exception to this general prohibition relevant to this situation is the exception for lands acquired as a settlement of a land claim. The Seneca Nation? s land claim has been dismissed by Judge Arcara in 2002 and this dismissal has been affirmed by the United States Court of Appeals for the Second Circuit. (see Seneca Nation of Indians v. State of New York, 382 F.3d 245, 383 F.3d 45 (09/09/2004) & Seneca Nation of Indians v. State of New York, 382 F.3d 245, 383 F.3d 45 (09/09/2004)) Which leaves the Seneca Nation Settlement Act (25 U.S.C. ? 1774, et. seq.) as the basis for acquiring any land. This act did not settle a land claim it settled a lease rate dispute not title to land.

Congressman LaFalce a co-sponsor of the legislation which became the Seneca Nation Settlement Act stated ? This bill provides Federal sums to compensate the Seneca Nation for 3,000 leases that were obtained and perpetuated without the consent of the rightful owners--the Senecas. For nearly 99 years, the Senecas have been receiving minuscule payments averaging $1 to $3 per year per parcel of land. Clearly, the Senecas deserve appropriate compensation.? (Cong. Rec., October 10, 1990, H9289) Likewise Congressman Houghton who was the sponsor of the legislation stated ? The leases were imposed by Congress upon the Nation and upon the citizens. What happened was when these leases were imposed it kept the Nation in a near state of poverty, and also put a lock on any increasing increments in the rentals which could be received by the Nation. So this bill in front of us today gives a one-time $35 million payment to be matched by $25 million from the State. So this is what I respectfully ask of the Congress.? (Cong. Rec., October 10, 1990, H9288) See also 25 U.S.C. ? 1774(a)(1).

Clearly this was a claim for monetary compensation much like a claim that could have been pursued through the Indian Claims Commission (ICC). This is so, because no claim to real property was made and none was returned nor was there a release of any claim to any land were provided for in the Act.

The National Indian Gaming Commission has issued a decision in In Re Wyandotte Nation Amended Gaming Ordinance and held that in order to fall within the land claim settlement exception to the IGRA? s general prohibition of gaming on lands acquired after October 17, 1988, the claim involved must seek the return of the disputed land and not just monetary compensation for its loss. Specifically the NIGC held ? To find that ICC money judgments fit within the plain language of the after-acquired lands exception would result in the exception swallowing the rule. The ICC handled large numbers of claims during its lifetime, and substantial relief was granted to many tribes. William C. Canby, Jr., American Indian Law at 267 (2nd Ed. 1988). Interpreting the land claim settlement exception to apply any time a tribe uses such monetary judgments to purchase land would open up the exception far beyond what was intended.?

An Indian tribe may conduct gambling activities on trust lands acquired after October 17, 1988, if it meets the requirements of Section 20(b)(1)(a) of IGRA. Section 20(b)(1)(a) provides that gambling can occur on the land if the Secretary, after consultation with appropriate state and local officials and officials of nearby Indian tribes, determines that a gambling establishment on newly acquired land will (1) be in the best interest of the tribe and its members, and (2) not be detrimental to the surrounding community, but only if the Governor of the state in which the gambling activities are to occur concurs in the Secretary's two-part determination.

As you know a review of an application under the IGRA requires a complete evaluation of the costs and benefits to both the tribe and the surrounding community. For example, in determining whether the gaming establishment on newly acquired land will not be detrimental to the surrounding community, the review considers:

? evidence of environmental impacts and plans for mitigating adverse impacts;

? reasonably anticipated impact on the social structure,

infrastructure,
services, housing, community character, and land use patterns of the surrounding community;

? impact on the economic development, income, and employment of the surrounding
community;

? costs of impacts to the surrounding community and sources of revenue to
accommodate them;

? proposed programs for compulsive gamblers and the source of funding.
The benefits to the tribe are also examined. In reaching the conclusion that the
newly acquired land will be in the best interest of the tribe and its members,
the Department considers:

? projections of income statements, balance sheets, and other financial data;

? projected tribal employment, job training and career development, including
the basis for projecting an increase in tribal employment considering the off-reservation location of the facility, and the impact on the tribe if tribal
members leave to take jobs off-reservation;

? projected benefits to the tribe from tourism and basis for the projection;

? projected benefits to the tribe and its members from the proposed uses of the
increased tribal income;

? projected benefits to the relationship between the tribe and the surrounding
community;

? possible adverse impacts on the tribe and plans for dealing with those
impacts.

Furthermore since the Secretary has discretion under the Seneca Nation Settlement Act to take a particular piece of land into trust or not the requirements set forth in NEPA and 25 C.F.R. Part 151 are triggered. Also under state law the State has to comply with SEQRA (see Concern Inc. v. Pataki,
7 Misc.3d 1030(A) (N.Y.Sup. 05/25/2005))

I request that you take action to insure that the applicable laws are followed
in the Seneca Nation? s acquisition of land and establishing a Class III

gaming
facility and all legal and environmental concerns are addressed as well as the
required public comment periods under NEPA including an environmental impact
statement and the discretionary fee to trust regulations are provided and are
followed prior to taking any land in to trust or permitting any gaming on these
after acquired lands.

Sincerely,

Daniel T. Warren
836 Indian Church RD
West Seneca, NY 14224-1235

Exhibit "L"

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITES STATES SENATE
APRIL 27, 2005

Mr. Chairman, I want to thank you and the members of the Committee for inviting me here today to talk about the regulation of Indian gaming.

Over the last decade, my Office has conducted a number of audits on issues directly related to Indian gaming regulation such as the implementation of the Indian Gaming Regulatory Act (IGRA), the financial management activities of the National Indian Gaming Commission (NIGC) and, more recently, tribal gaming revenue allocation plans and the taking of land into trust. In addition, we have investigated and prosecuted numerous individuals for theft and/or embezzlement from Indian gaming establishments, investigated allegations surrounding the federal recognition process and we are currently working with our Federal law enforcement partners on several criminal investigations related to the Indian gaming industry.

All of these audits and investigations, coupled with my personal observations and background as a federal law enforcement professional for over 30 years, lead me to believe that it is time to seriously consider regulatory enhancements and potential legislative changes to reflect the realities of this $18.5 billion burgeoning industry. My law enforcement experience and intuition also tell me that when there is this much money involved, bad guys will come. To think otherwise, or to imagine that Indian gaming will somehow escape the evils faced by non-Indian gaming, equates to the proverbial ostrich sticking its head in the sand. The gaming industry in Las Vegas estimates that all casinos

typically lose 6% of their revenues to fraud and theft. Applying that same percentage, Indian gaming operations potentially lost $1.1 billion in 2004.

While the investigations we have conducted into allegations involving particular tribal recognitions made by the Department have rarely uncovered any improper behavior, we are nevertheless troubled by the invariable presence of wealthy individuals and companies invested heavily in the recognition outcome for seeming one reason only – that is, to ultimately fund and then reap the financial benefits of a new gaming operation.

As this Committee well knows, one of IGRA's primary purposes was to ensure that the proceeds from tribal gaming were used to fund tribal operations, economic development and the general welfare of its members. Therefore, any loss of gaming revenue as a result of criminal behavior will obviously negatively impact the ability of the tribes to provide vital services such as health care, law enforcement, housing and education.

IGRA envisioned a regulatory scheme where tribes, states and NIGC would all play a vital role. Since my office has never actually evaluated the capacity or the effectiveness of tribes and states to implement IGRA's vision in this regard, I will confine my comments today to the role the NIGC and Federal law enforcement play in this regulatory scheme.

Our audits of IGRA and the NIGC, dating back as far as 1993, chronicle the lack of federal resources available to effectively oversee Indian gaming. For instance, in our 1993 audit report, we reported that the NIGC only had a staff of 24 and a budget of $2 million dollars to oversee the 149 tribes which had already initiated 296 gaming

operations. When we recently took a snapshot of NIGC we found the Commission with a budget cap of $11 million, and only 39 auditors and investigators tasked with overseeing more than 200 tribes with over 400 gaming. By contrast, in 2003 the Nevada Gaming Commission had a budget of $35.2 million dollars with 279 auditors and investigators to oversee 365 gaming operations with total reported revenues of $19.5 billion.

One also has to consider the fact that today's Indian gaming operations range from a 30 seat bingo parlor in Alaska to a tribal operation in Connecticut with 6 separate casinos, nearly 7,500 slots, 388 table games, 23 restaurants and three hotels. A giant step forward was achieved in 2002 when NIGC promulgated the Minimum Internal Control Standards (MICS) which established minimum standards and procedures for Class II and Class III gaming. However, the MICS also placed a training, guidance and monitoring burden on an already beleaguered NIGC. In our opinion, the NIGC needs additional resources to fulfill their expanding role commensurate with the escalating growth of the Indian gaming industry.

As the members of this Committee also may recall, the National Gambling Impact Study Commission's report, issued in June of 1999, encouraged Congress to assure adequate NIGC funding for the proper regulatory oversight of the industry's integrity and fiscal accountability.

While we support additional resources for the NIGC, we continue to be concerned with the dual role that NIGC civil investigators perform. One is to act as NIGC's liaison to the gaming tribes. In this capacity, the investigators consult with gaming tribes and provide compliance training regarding IGRA's statutory requirements and NIGC regulations. On the other hand, these same investigators issue preliminary violation

notices against the tribes for civil gaming violations and refer criminal matters to the FBI. While I understand that the NIGC does not see this as a conflict, our view is that these dual roles are wholly incompatible and contrary to advancing compliance in Indian gaming. Put another way, it is hard to wear a white hat on Monday and Tuesday and switch to a black hat on Friday and Saturday.

Historically, Federal law enforcement has been severely challenged to address crime in Indian Country. Violent crime alone consumes most of the available resources. As a result, white collar crime relating to Indian gaming has, regrettably, often gone unattended. Recently, however, under the direction of the Attorney General's Indian Country Sub-Committee, and specifically under the leadership of Tom Heffelfinger, the U.S. Attorney for the District of Minnesota, various law enforcement entities came together to form the Indian Gaming Workgroup. We are proud to be part of this effort. None of the Federal, State or local law enforcement members of this Workgroup, alone, has the resources to address the potential crime in the Indian gaming industry. Leveraging our investigative resources in a common alliance not only makes perfect sense to us but, I would submit, is the kind of good government action that the American public would expect us to take.

Mr. Chairman, my greatest fear is not that the integrity or accountability of Indian gaming will be compromised from inside the actual Casinos, but rather by the horde of paid management advisors, consultants, lobbyists and financiers flocking to get a piece of the enormous amount of revenues being generated by Indian gaming. I would now like to briefly mention a number of obstacles and challenges that we have identified over the years that hinder effective monitoring and enforcement in Indian gaming.

When gaming tribes enter into management contracts for the operation of gaming activities, those contracts are submitted to and approved by the Chairman of the NIGC. Included in NIGC's review is a background investigation of the principles and investors. Some tribes have circumvented the review and approval process by entering into consulting agreements which, although called by a different name, do not differ significantly in substance from management contracts.

As a result, the terms of these consulting agreements, including the financing and compensation, are not subject to review and approval by the NIGC, nor are the backgrounds of the consultant's principles and investors scrutinized. Ancillary agreements related to gaming operations (such as construction, transportation, and supplies) are also ripe for abuse.

This has resulted in the management and operations of some tribal gaming enterprises under financial arrangements unfavorable to those tribes. It has also opened the window for undesirable elements to infiltrate the operations and management of tribal casinos. During a recent FBI-sponsored conference on investigations of crime in tribal gaming, it was the consensus of those law enforcement officials in attendance that if they could only change one element of IGRA, it would be to ensure that gaming consultants are subject to the same requirements as management contractors.

Another obstacle we have identified is the Federal statue that carves out an exception to the usual recusal period for departing Department of Interior officials. 25 U.S.C. § 450i(j) permits former officers and employees of the United States to represent recognized Indian tribes in connection with any matter pending before the federal government. The statute requires only that the former federal employee advise the head

of the agency with which he is dealing of his prior involvement as an officer or employee of the United States in connection with the matter at issue.

This exemption was enacted because Indian tribes, at the time, lacked effective representation in front of federal agencies. When the provision was enacted in 1988, virtually the only persons with expertise in Indian matters were federal employees. Today, that dynamic has changed. Indian law experts (attorneys and lobbyists) are much more widely available to represent tribal interests.

Having outlived its original intent, this statutory exemption now perpetuates a "revolving door" where federal employees who leave the government, after handling sensitive tribal issues in an official capacity, go on to represent the very same tribes on the same or similar issues before the government. Without the exemption, this would be a violation of the criminal conflict of interest laws that apply to all other departing federal employees.

IGRA prohibits gaming on trust lands acquired after October 17, 1988 unless the lands meet specific statutory exemptions. BIA and NIGC share responsibility for reviewing applications for converting trust land use to gaming.

Our recent evaluation of the process of taking land into Federal trust status for Indian gaming found 10 instances in which tribes converted the use of lands taken into trust by the Bureau of Indian Affairs after October 17, 1988 from non-gaming purposes to gaming purposes without approval of BIA or NIGC. We determined that neither the BIA nor NIGC has a systematic process for identifying converted lands or for determining whether the IGRA exemptions apply. Therefore, unless a tribe abides by the rules and applies for approval, conversion of trust lands to gaming purposes goes

essentially unchecked. Neither the Department nor NIGC has a way to ensure that Indian gaming is being conducted only on approved lands.

In another OIG audit report issued in 2003, we discovered that neither the BIA nor the NIGC was monitoring Indian tribes to determine whether gaming tribes comply with BIA-approved revenue allocation plans (RAP) or whether tribes are making per capita distributions of gaming revenues without an approved plan.

IGRA provides that tribes may make per capita payments of net gaming revenues only after BIA's approval of their RAP. IGRA provides the NIGC authority to enforce RAP requirements, but does not provide either BIA or NIGC the authority to monitor. Absent a process for systematic monitoring of tribal revenue distributions, BIA's approval authority and NIGC's enforcement authority serve little practical purpose.

To illustrate this problem, we conducted a review of the per capita distribution of the Table Mountain Rancheria Tribe of California at the request of BIA. BIA was responding to complaints by tribal members. We determined that the Rancheria had significantly exceeded their authorized per capita distribution and referred the matter to NIGC. In reply to NIGC's letter citing the tribe with violating IGRA, the Rancheria said the problem was caused by prior leadership and they would comply with the plan. Without authority to do so, NIGC has been unable to make any further verification.

Finally, some Indian casinos and financial institutions are particularly vulnerable to becoming the victims of financial fraud. Gaming tribes' new-found wealth has only added to that dynamic, and unfortunately, many tribes have little experience managing or dealing with financial operations that are particularly vulnerable to a myriad of fraud schemes.

Because Indian casinos are a cash-rich enterprise, they are, in our opinion, particularly attractive to money launderers. In this example, criminals would use casinos to cash in illegal proceeds for chips, tokens, or coins in amounts that do not trigger reporting requirements. The criminals then game for short periods of time to redeem "clean" money.

The failure to provide background investigations on all individuals involved in tribal gaming is a serious weakness in the regulatory system. For example, in January 2005, a gaming regulator from the Santa Ynez Band of Chumash Indians was convicted for a felony offense. The offense occurred in November 2004. Rather than receiving notice from the tribe, the NIGC became aware of the conviction as a result of an article in the Los Angeles Times.

Tribal financial institutions without federal or state charters, and attendant regulation, are also particularly vulnerable to manipulation. In 1992 and 2001, the U.S. Reservation Bank & Trust (USRB&T), an Indian-controlled banking institution, was granted business licenses by the Rosebud Sioux Tribe in South Dakota and the Salt River Pima-Maricopa Indian Community in Arizona. Although represented as a bank to other financial institutions and investors, USRB&T is alleged to have been a financial institution established solely to execute a "Ponzi" scheme. $20 million was seized by the Federal Government in Arizona shortly before the operators of USRB&T intended to wire the funds to an off-shore account.

Absent sound regulation, these Indian casinos and financial operations remain extremely vulnerable to criminal exploitation. As this Committee so recently demonstrated, greater care must be exercised by gaming tribes when they are approached

by unsavory Indian gaming lobbyists promising imperceptible services for astonishing fees.

Mr. Chairman and members of the Committee, as you can see, federal regulators and law enforcement personnel face a host of challenges in their effort to protect the interests of individual Indians and tribes that emanate from Indian gaming operations and proceeds.

My office has been reviewing our audit and investigative authorities in Indian country to determine whether we can establish an even more vigorous presence in the gaming arena. In the meantime, we have had the opportunity to review the proposed technical amendments to IGRA advanced by NIGC. Overall, we support NIGC's effort in regard to funding flexibilities and regulatory enhancements, particularly the provisions that extend background checks to a broader category of individuals working in the Indian gaming industry.

The Office of Inspector General will continue to explore opportunities to identify weaknesses and gaps in the federal oversight and regulation of Indian gaming, and formulate recommendations to correct these shortcomings. We will also continue to conduct investigations into allegations of crime that adversely affects tribes and gaming establishments. Should this Committee have specific issues of concern that might benefit from an audit, evaluation or investigation by the Office of Inspector General, I stand ready to assist the Committee in any way I can.

Mr. Chairman, members of the Committee, thank you for the opportunity to testify here today. I am happy to answer any questions you may have.