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_Historical Commentary*

In the _Oversight Hearing Before the House Comm. on Resources_1 Professor John Warren Kindt from the University of Illinois addressed the impacts of legalized tribal gambling activities.2 Since the important tables attached to his testimony were referenced during the Oversight Hearing but were not readily accessible via the printed record of the hearing, they were specifically included at this juncture as part of Professor Kindt’s prepared statement to the committee.3

During the Oversight Hearing, Professor Kindt noted that “U.S. tribal gambling issues are larger than myopically trying to help the selective impoverished.”4 He highlighted that “Suggestions have been made to re-criminalized gambling facilities in other states and transform the gambling facilities into educational and high-tech assets—instead of giving the gambling industry tax breaks.”5 With regard to issue involving gambling’s spiraling negative impacts on the consumer economy, “[o]pponents also note that gambling dollars spent in a legalized gambling

*REDD on Gambling, JinPing Tam & Margaret Sohie Taslim.
2 Id.
3 Id. at 42.
4 Id. at 38.
5 Id. at 39.
facility are usually reinvested in more gambling facilities.” Professor Kindt concluded that “Native American gambling should operate for the benefit of all Native Americans, if not all of the U.S. public.” Citing to academic reports, he summarized that this goal “could be achieved via federal administration of a Gambling Proceeds Trust Fund financed by Native American gambling operations while they are phased out to become educational and technological facilities.”

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6 Id. at 41.
7 Id.
8 Id.
TRIBAL PROPOSALS TO ACQUIRE LAND-IN-TRUST FOR GAMING ACROSS STATE LINES AND HOW SUCH PROPOSALS ARE AFFECTED BY THE OFF-RESERVATION DISCUSSION DRAFT BILL.

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS
FIRST SESSION

Wednesday, April 27, 2005

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(III)
Southern Cheyenne nor does it distinguish between the Northern Arapaho or the Southern Arapaho, the Treaty merely says Cheyenne and Arapaho. Therefore all of the tribes had to agree to a settlement one could not opt out they were all legally intertwined, it was the settlement of the 1851 Treaty boundaries of the Cheyenne and Arapaho Tribes.

Apparently, during the 1851 Ft. Laramie Treaty settlement with the Indian Claims Commission, there was an attempt to include the Article 6 provision of the Cheyenne and Arapaho Treaty of Little Arkansas River of 1865, in which U.S. Congress admits responsibility to the atrocities committed at the Sand Creek Massacre of November 29th, 1864 by Col. Chivington and his troops and promises reparations. However, the Indian Claims Commission rejected this claim by the Cheyenne and Arapaho Tribes, due to the fact that the claim was a descendant’s claim, not a tribal claim. The Indian Claims Commission said that the descendants of the Sand Creek Massacre would have to file the claim, not the tribes, because Article 6 specifies “certain bands of Cheyenne and Arapaho,” and not the entire tribe(s). Again, the Cheyenne and Arapaho Treaty of Little Arkansas River of 1865 does not distinguish between the northern or the southern tribes, it just says Cheyenne and Arapaho and for that matter there are descendants of the Sand Creek Massacre with the Cheyenne & Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe of Montana and the Northern Arapaho Tribe of Wind River Reservation of Wyoming.

The Northern Cheyenne Tribe rejected Steve Hilliard’s (Counciltree) proposal for a casino in or near Denver in exchange for treaty lands the tribe may still have and for the atrocities committed the Sand Creek Massacre and for the tribe to view the proceeds from the casino as reparations. After a closer analysis, Hilliard stood to gain an enormous amount of profit while the tribe would be steeped in debt for quite some time, there was a question of whether the tribe would ever get out of debt. At the conclusion of a non-disclosure agreement with Counciltree, the Northern Cheyenne Tribe refused to get involved in the shady arrangement. The Northern Arapaho Tribe apparently did not even entertain the idea from Counciltree, the Northern Arapaho had concerns elsewhere.

In the meantime, the C&A Tribes of Oklahoma apparently are continuing to entertain the notion of some business proposal with Counciltree entitled the “Homeward Project.” This proposal by Hilliard is extremely pernicious and divisive between all of the tribes mentioned herein. The Hilliard proposal has the potential to undermine and erode any trust or relations that may exist between any or all of these tribes.

Moreover, while the Northern Cheyenne Tribal Council recently passed a resolution for the Secretary of the Interior to provide the file in its entirety of the Petition submitted by C&A Tribes of Oklahoma, for a land claim in exchange for a casino operation in Denver, the Northern Cheyenne Tribe have yet to file a formal request with the Secretary of Interior. Apparently, the Secretary of Interior, thus far has rejected the land claim filed by C&A Tribes of Oklahoma. Again, thank you for allowing me to provide testimony today.

The CHAIRMAN. Thank you.
Mr. Kindt?

STATEMENT OF JOHN WARREN KINDT, PROFESSOR, UNIVERSITY OF ILLINOIS

Mr. KINDT. Thank you, Mr. Chairman. Thank you, Mr. Vice Chairman. Thank you Members of the House Resources Committee. I'm Professor John Kindt from the University of Illinois. I apologize—I'm told that technologically they could not put my overheads up for the Committee. But they are in your packets and they are attached to my testimony. I will go through those overheads or those attachments one by one.

Several issues involving my home State of Illinois have come up, and so I'd like to start off by talking about the National Gambling Impact Study Commission, which completed its report in 1999. I'm sure several members of the Committee here voted in favor of this commission report, or to get it established. And it calls for a moratorium on the expansion of any type of gambling anywhere in the
United States—and for a large reason; those are economic types of reasons.

Also, in Illinois, I believe we are the first State which, after hearing the economic testimony, has passed out of committee basically unanimously, with only one dissenting vote, a bill, House Bill 1920 out of the House Administration Committee, to recriminalize the casinos—or I should say to eliminate the casinos in Illinois.

There has never been a statewide vote in Illinois as well. If there were, the polls, which we have monitored for about 15 years now, indicate that the vote would be 2-1 against gambling or against the expansion of gambling. The most recent poll is from the Chicago Tribune in 2004. But if you look at your attachments, you'll see the first one is a headline from the Omaha World-Herald, which says “40 Economists Side Against More Gambling.” Now, can you get 40 economists to agree about anything? Well, here are 40 economists who come out and say that the costs are likely higher than the benefits. And this was back in 1996. This is basically an Economics 101 type of problem, if you look at it from an economic-social standpoint.

A notable quote from Donald Trump, a casino owner: “People will spend a tremendous amount of money in casinos, money that they would normally spend on buying a refrigerator or a new car. Local business will suffer because they'll lose customer dollars to casinos.” Basically, what happens with gambling is that you have consumer dollars coming out of the consumer economy which then go into the gambling economy. And primarily we are talking slot machines at this point, because 80 to 90 percent of all the money that's going into the casinos is going into slot machines.

If you look at the circle diagram attached to my testimony—it is out of the Michigan State DCL Law Review—and it shows the 35-mile feeder market around casinos. Now, when an analysis of what was happening in this feeder market was done of the Wisconsin tribal casinos, one of the results was that people were spending 10 percent less on food, 25 percent less on clothing, and 37 percent had raided their bank accounts in order to put the money into gambling.

In this same area, we found that initially in these feeder market areas around casinos, that you weren't creating net new jobs. And in fact, more recent data coming out indicates that you're probably losing one job per year for every slot machine that is located in the feeder market area. So if you have a thousand slot machines within that 35-mile feeder market, you're probably losing a net of 1,000 jobs per year. Well, why is that? Well, you're bringing in $100,000 on average to each slot machine per year. That translates into $300,000, more or less, in lost economic multiplier effect. That translates into a lost job out of the consumer economy.

Also, we find that the taxpayer social costs are $3 for every $1 in benefits. And that ratio has held up for many years.

We also find that crime in the feeder market area goes up 10 percent the third year after the casinos open, and then increases after that.

Business and personal bankruptcies, in a report done by the American banking industry, increases 18 to 42 percent as the con-
sumer dollars are lost into these casino establishments. Drive-by businesses, in one study, are down 65 percent.

The citations for all of this may be found attached to that circle chart.

There's also a Table 2 here, which indicates the social costs—analyzes all nine academic studies across the country of the costs of $3 for every $1 in benefits.

I also have a Table 18, which shows the net economic impact of the Indian casinos in Wisconsin. It's Table 18. As you can see, this is not my study, this is someone else's study. It shows that it's a net loss of between $200 million and $500 million to the State of Wisconsin.

Two final tables. One shows the percentage of expenditures in the casinos, showing that 25 percent to 75 percent of all the money going into the casinos is coming out of pathological and problem gamblers. And then a bankruptcy cost table is included for your perusal, as well as some of my law review articles which you may wish to review.

Thank you, Mr. Chairman. Thank you, Mr. Vice Chairman. Thank you members of the House Resources Committee. It is a pleasure being here today. I'll take questions when you wish.

[The prepared statement of Mr. Kindt follows:]

Statement of John Warren Kindt, Professor, University of Illinois

This Statement will address the following issue areas, as requested by the Committee.

2. Solutions: Transform Tribal Gambling Facilities into Educational and Practical Technology Facilities;
3. The Feeder Market Impacts of Tribal Casinos;
4. Tribal Gambling Activities: The Issues Involving Market Saturation; and
5. Are Tribal Games and Slots “Fair” to Patrons?

In this testimony I have cited to my own work only as introductions to the hundreds of source materials cited in the footnotes. These sources can be referenced by researchers. This Committee has my permission (and the permissions which I have already received from the publishers of my articles and the attachments herein) to reprint and distribute any or all of the articles authored by myself on gambling issues.


During the 1990s, the international economic and diplomatic ramifications of the spread of U.S. gambling technologies throughout the United States and the world were outlined in an article written at the suggestion and under the auspices of former Secretary of State Dean Rusk. The article was: John W. Kindt, U.S. Security and the Strategic Economic Base: The Business/Economic Impacts of Legalized Gambling Activities, 33 St. Louis U.L.J. 567-584 (1995), reprinted in National Gambling Impact and Policy Comm'n Act: Hearing on H.R. 497 before the House Comm. on the Judiciary, 104th Cong., 1st Sess. 519-27, 528-45 (1995).

U.S. tribal gambling issues are larger than myopically trying to help the selective impoverished. The U.S. tribal model is being marketed around the world as economic development to Third World countries, but their economies just become poorer, and their infrastructures and financial institutions become destabilized.

As commonly utilized by U.S. State Department analysts, the McDougal/Lasswell methodology for policy-oriented decision-making highlights these strategic problems with the spread of U.S. gambling technologies. See, e.g. John W. Kindt & Anne E.C. Brynn, Destructive Economic Policies in the Age of Terrorism: Government-Sanctioned Gambling as Encouraging Transboundary Economic Raiding and Destabilizing National and International Economies, 16 Temple Int'l & Comp. L.J. 243 (2002-03) (lead article).
2. Solutions: Transform Tribal Gambling Facilities into Educational and Practical Technology Facilities


Thereafter, as pro-gambling interests returned to Nebraska, they were repeatedly rebuffed by the academic community, which was exemplified in one instance by 40 economists publicly rejecting new gambling proposals that would "cannibalize" the consumer economy. Robert Berr, 40 Economists Side Against More Gambling, Signers: Costs Likely Higher than Profits, Omaha World-Herald, Sept. 22, 1996, at B1.

In a unanimous vote (except for one dissent by a representative from a casino district) on March 17, 2005, the Illinois House Government Affairs Committee favorably reported H.B. 1920 to the House for a vote to re-criminalize Illinois casinos. Similarly, suggestions have been made to re-criminalize gambling facilities in other states and transform the gambling facilities into educational and high-tech assets, allowing the gambling industry tax breaks. Casinos and gambling parlors would generally be compatible with transformations into educational and high-tech resources. For example, the hotels and dining facilities could be natural dormitory facilities. Historically, facilities built for short-term events, such as various World’s Fair Expositions, the 1996 Olympic Village (converted to facilities for the Georgia University system), and other public events have been transformed into educational and research facilities.

Given the allegations of misuse, non-accounting, and even malfeasance involving gambling revenues in Native American operations, various legislative personnel in the late 1990s considered potential legislation that would place Native American gambling revenues in trust for the benefit of all Native Americans, not just a few senior tribe members. This policy was to be combined with the partial use of trust monies to convert Native American gambling facilities into educational, cultural, and business facilities. For a historical summary of issues, see Bruce Orwell, Gambling the System: The Federal Regulator of Indian Gambling Is Also Part Advocate, Wall St. J., July 22, 1996, at A1.

For concerns by the 1999 U.S. National Gambling Impact Study Commission, see, for example, Nat’l Gambling Impact Study Commn. Final Report 7-9 (June 1999), "Again, the unwillingness of individual tribes as well as that of the National Indian Gaming Association (the tribes’ lobbyists) and the National Indian Gaming Commission, (the federal agency that regulates tribal gaming), to provide information to this Commission, after repeated requests and assurances of confidentiality, limited our assessment..." Id. With only one dissenting vote by Commissioner Robert W. Loesher who was unduly protecting Native American gambling interests, the 1999 U.S. National Gambling Impact Study Commission voted eight to one to subpoena information from the U.S. National Indian Gaming Commission in 1999. However, use of its subpoena power was thereafter deemed largely ineffectual by the Commission and was not pursued.

3. The Feeder Market Impacts of Tribal Casinos

The Final Report of the Congressional 1999 National Gambling Impact Study Commission called for a moratorium on the expansion of any type of gambling anywhere in the United States. Although tactfully worded, the National Gambling Commission also called for the re-criminalization of various types of gambling, particularly slot machines convenient to the public. Some of the negative impacts of casinos and slot machines are detailed in the appendix to the article, Diminishing Or Negating The Multiplier Effect: The Transfer of Consumer Dollars to Legalized Gambling: Should A Negative Socio-Economic “Crime Multiplier” be Included in Gambling Cost/Benefit Analyses?, 2003 Mich. St. DCL L. Rev. 281,313 (lead article). The circle "feeder market" chart and sources documentation follow this written testimony.

The most authoritative and specific example involving tribal casinos is a 1995 Wisconsin report which concluded that "[w]ithout considering the social costs of compulsive [addicted] gambling, the "rest-of-the-state" areas lose-over, transfer in $223.94 million to the local gaming areas. Considering the lowest estimated social costs of problem gambling, the rest of—[Wisconsin] loses $318.61 million to gambling." This report also concluded that without casino gambling, many local citizens would have increased participation in other "outside" activities. "More than 10% of the locals would spend more on groceries if it were not for the casino, while nearly
one-fourth would spend more on clothes. Thirty-seven percent said that their savings had been reduced since the casino had opened..." William Thompson, Ricardo Gaze, & Dan Rickman, The Economic Impact of Native American Gambling in Wisconsin (Wis. Policy Res. Inst. 1995).

From the business perspective, businesses are not naive. For example, "in a rare public stand on a controversial political issue, the Greater Washington Board of Trade's 85-member board voted unanimously against" Mayor Sharon Pratt Kelly's initiative to bring casino-style gambling to Washington, D.C. Liz Spayd & Yolanda Woodlee, Trade Board Rejects D.C. Casino Plan, Wash. Post, Sept. 25, 1993, at A1, A8. With the exception of the cluster services associated with gambling, new businesses tend not to locate in areas allowing legalized gambling because of one or more of the aforementioned costs. In areas saturated with legalized gambling activities, pre-existing businesses face added pressures that push them toward illiquidity and even bankruptcy.

4. Tribal Gambling Activities: The Issues Involving Market Saturation

In his classic book entitled Economics, Nobel-Prize laureate Paul Samuelson summarized the economics involved in gambling activities as follows: "There is—a substantial economic case to be made against gambling. First, it involves simply sterile transfers of money or goods between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, where the main purpose after all is to "kill" time, gambling subtracts from the national income. The second economic disadvantage of gambling is the fact that it tends to promote inequality and instability of incomes." Paul A. Samuelson, Economics 245 (10th ed.). Furthermore, Professor Samuelson observed that "[j]ust as Malthus saw the law of diminishing returns as underlying his theory of population, so is the "law of diminishing marginal utility" used by many economists to condemn professional gambling." Id. at 425.

The concern of the legalized gambling interests over "market saturation" is largely a non-issue. From the governmental perspective, focusing on this issue misdirects the economic debate, because fears of market saturation are predicated upon the unwarranted assumption that legalized gambling operations constitute regional economic development—which they do not. In reality, legalized gambling operations consist primarily of a transfer of wealth from the many to the few—accompanied by the creation of new socio-economic negatives. It is well-established that the societal and economic costs to the taxpayers are $3 for every $1 in benefits.

These issues should first be examined from the strategic governmental perspective. In this context, the inherently parasitic manner in which legalized gambling activities must apparently collect consumer dollars to survive is frequently described as "cannibalism" of the pre-existing economy—including the pre-existing tourist industry. According to the skeptics of legalized gambling activities, this industry-specific phenomenon means that in comparison with most other industries, legalized gambling activities must a fortiori not only grow as rapidly as possible, but also grow as expansively as possible. John W. Kindt, Legalized Gambling Activities: The Issues Involving Market Saturation, 15 N. Ill. U.L. Rev. 271-306 (1995). See also John W. Kindt, The Negative Impacts of Legalized Gambling On Businesses 4 U. Miami Bus. L.J. 93-124 (1994) (lead article).

In California and Nevada: Subsidy, Monopoly, and Competitive Effects of Legalized Gambling, the California Governor's Office of Planning and Research highlighted in December of 1992 "the enormous subsidy that Californians provide to Nevada through their gambling patronage" and concluded that "Nevada derives an enormous competitive advantage from its monopoly on legal gambling." The report summarized that "[g]ambling by Californians pumps nearly $3.8 billion per year into Nevada, and probably adds about $8.8 billion—and 196,000 jobs—to the Nevada economy, counting the secondary employment it generates—and that this was "a direct transfer of income and wealth form California to Nevada every year." Thus, the Nevada economy appears to constitute a classic example of a legalized gambling economy "parasitically" draining or "cannibalizing" another economy (primarily Southern California). Cal. Governor's Off., Plan & Research, California and Nevada: Subsidy, Monopoly, and Competitive Effects of Legalized Gambling ES-1 (Dec. 1992).

The gambling interests argue that the dollars they take in are "entertainment dollars" or "recreational dollars." This observation is valid with regard to approximately 35% of the "gambling dollars," but it is invalid with regard to the remaining 65%. Opponents of legalized gambling argue that there are also differences because the entertainment dollars spent on a movie, for example, largely generate more movies, and recreation dollars spent on a speedboat, for example, largely generate
orders for more speedboats. Accordingly, while most entertainment or recreational dollars contribute to a positive multiplier effect legalized "gambling dollars" result in a negative multiplier effect. This negative impact apparently occurs, in part, because approximately two-thirds of the gambling dollars are not recreationally-oriented, but are spent by a compulsive market segment reacting to an addictive activity—probable or possible pathological gambling—as delimited by the American Psychiatric Association. Am. Psychiatric Ass'n Diagnostic and Statistical Manual of Mental Disorders, 615-18 §312.31 (4th ed. 1994). Opponents also note that gambling dollars spent in a legalized gambling facility are usually reinvested in more gambling facilities—which just intensifies the socio-economic negatives associated with gambling activities and "reduces the national income" even further.

5. Are Tribal Games and Slots "Fair" to Patrons?


The Office of the Inspector General reported in 1993 to the U.S. Department of the Interior (DOI) that 32 percent of Native American gambling operations were being conducted in violation of federal statutes/regulations. Office of the Inspector General, U.S. Dept of Interior, Audit Report: Issues Impacting Implementation of the Indian Gaming Regulatory Act (1993). Thereafter, the National Indian Gaming Commission (NIGC) allegedly suppressed numbers that indicated in November 1998 that 84 percent of Native American gambling facilities were openly operating illegally or in violation of federal statutes/regulations. Nat'l Indian Gaming Comm'n, Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act (Nev. 1998). Other reports suggested that there were more than just isolated instances of crime and corruption caused by Native American gambling activities.

Furthermore, the implicit goals of the 1988 Indian Gaming Regulatory Act (IGRA) to enhance the lives of all Native Americans were not being realized, as the large majority of Native Americans remained in grinding poverty as the 21st century began. See e.g., U.S. General Accounting Office, Indian Programs: Tribal Priority Allocations Do Not Target the Neediest Tribes 1 (1998). Accordingly, policymakers have suggested that future legislation should not disproportionately enrich isolated tribes. Instead, Native American gambling should operate for the benefit of all Native Americans, if not all of the U.S. public. This could be achieved via federal administration of a Gambling Proceeds Trust Fund financed by Native American gambling operations while they are phased out to become educational and technological facilities.

In 2000, it was reported that "[d]espite an explosion of Indian gambling revenues from $100 million in 1988 to $8.26 billion a decade later [1998]—an Associated Press [AP] computer analysis of federal unemployment, poverty and public-assistance records indicates the majority of American Indians have benefited little." Between 1988 and 1998 "poverty and unemployment rates changed little," as exemplified by the Fort Mojave Indian Reservation, where despite two casinos, the Native American unemployment rate climbed from 27.2 percent in 1991 to 74.2 percent in 1997." This development was attributed to the fact that "among the 130 tribes with casinos, a few near major population centers have thrived while most others make just enough to cover the bills." In addition, any "new jobs [created by the Indian gambling facilities] have not reduced unemployment for Indians." David Pace, Casino Boom a Bust for Most Members of Indian Tribes, News-Gazette (Champaign, Ill.), Sept. 2, 2000, at A1. According to the National Indian Gaming Association, the lack of net new jobs for Indians was because "75 percent of jobs in tribal casinos are held by non-Indians." Unexpectedly, the 55 tribes with casinos before 1992 had their 1991 unemployment rate of 54 percent even increase somewhat to 54.4 percent by 1997. For an extensive investigative report highlighting the problems of Native American gambling activities, see Donald L. Bartlett & James B. Steele, Look Who's Cashing In At Indian Casinos: Wheel of Misfortune, Time, Dec. 14, 2002, at 44 (cover story).
These situations were exacerbated by illusory accounting standards that resulted in some tribal members with exorbitant wealth while most Native Americans remained disenfranchised. The tribes also claimed to have sovereign immunity from general federal statutes like those involving labor rules, sexual harassment, equal employment opportunity, and tortious acts. As reported in the Wall Street Journal, and as most disconcerting to Congressional leaders were the allegations involving alleged organized crime activities. The concerns among the U.S. Representatives were exemplified by Representative Chris Shays (R-Conn.) and Representative Frank Wolf (R-Va.), who highlighted these in a letter to President Clinton.

NOTE: Attachments to Professor Kindt's statement have been retained in the Committee's official files.

The CHAIRMAN. Thank you.

Rev. Abrams?

STATEMENT OF REV. CYNTHIA J. ABRAMS, DIRECTOR, ALCOHOL, OTHER ADDICTIONS AND HEALTH CARE WORK AREA, GENERAL BOARD OF CHURCH AND SOCIETY OF THE UNITED METHODIST CHURCH

Rev. Abrams. Good morning, Chairman Pombo and honorable members of the House Resources Committee. I want to thank the Committee for this opportunity to testify on behalf of the General Board of Church and Society of the United Methodist Church.

The United Methodist Church has for many years expressed its opposition to gambling. Our doctrinal statements, known as The Social Principles, state that gambling is a menace to society, deadly to the best interests of moral, social, economic, and spiritual life, and destructive of good Government. As an act of faith and concern, we call Christians to abstain from gambling and to minister to those victimized by the practice. Furthermore, we call the church to promote standards and personal lifestyles that would make unnecessary and undesirable the resort to commercial gambling as a recreation, as an escape, and as a means of producing public revenue or funds for support of charities or Government.

We are alarmed at the expansion of gambling and, more specifically, the proliferation of off-reservation casino and casino proposals. We believe that off-reservation casinos are having a negative effect on inter-tribal relations, as you have seen here today between two tribes, and between tribal and community relations. In addition, the United Methodists' historic opposition to gambling is coupled with a very clear and strong support of self-determination of American Indian people, and we continue to support good legislation that supports American Indian people in their long-term best interest.

Gambling and legislation to expand it is a grave moral concern. Because of the United Methodist public witness on gambling, we are on countless mailing lists for groups opposed to gambling. We believe that off-reservation casinos have fostered an anti-sovereignty climate, which is growing. Furthermore, the proposals cast a shadow over legitimate applications for Federal tribal recognition. And we find the increase in anti-sovereignty and anti-Indian racist rhetoric by some of these groups alarming. And we do our best on behalf of the United Methodist Church to counteract the positions of these groups at every opportunity. But the careless disregard for communities and children in promoting off-reservation casinos, some in the poorest of areas, makes this very difficult. It
Tribe were restricted to gaming in its current largely rural and underdeveloped location.
While the City would welcome members of the Tribe and anticipate that some may desire to relocate to work at the facility, we view it as highly unlikely that the entire general membership would relocate to Ohio. Our view is that the Tribe will more likely invest its revenues so as to improve the quality of life and economy of its members residing in Oklahoma. Moreover, we believe that achieving a higher level of prosperity will strengthen, not weaken the tribal community.

4. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health services?
See previous answer. We believe the Eastern Shawnee have an opportunity not only to dramatically improve its own economic conditions, but those of non-tribal communities in both Oklahoma and Ohio. Therefore, we believe such restrictions would not be good and prevent Lorain from improving its own condition.

5. If some tribes are permitted to select the “best gaming” locations, wouldn't all tribes want to do that?
In our view, all communities want to maximize their economic potential. Such desire, however, is not determinative of whether a tribe will succeed in establishing an “off-reservation” gaming site. The IGRA contains checks and balances that restrict the capacity of tribes to establish off-reservation facilities where such facilities are not welcome by the state and local community. The question, thus, is not one of what a tribe may wish, but rather whether it is able to meet all the legal requirements and establish the political relationships essential to the establishment of an off-reservation gaming site. Under existing law both tribes and states have the opportunity to establish mutual beneficial relationships; but there is no guarantee that such opportunity will be realized in the absence of willing parties to the relationship.

• What about tribes that played by the rules and have their casino on their reservation land even though it may not be the best gaming location?
All tribes must comply with the law and implementing regulations. The IGRA does not restrict the opportunity for tribes with existing on-reservation sites from seeking to establish off-reservation gaming sites as well. Again, however, it does not guarantee any particular tribe success in such endeavor. We feel an Indian Casino in Lorain, Ohio would not negatively impact any gaming facilities on any reservations.

6. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.
We respectfully decline comment as we are unfamiliar with the law in this regard. Thank you again for the opportunity to provide additional comments.

Response to questions submitted for the record by John Warren Kindt,
Professor, University of Illinois

Question 1: This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.

• Do you have any specific suggestions on how Congress should proceed in this regard?
• Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting “reservation shopping” and “off-reservation gaming” will have on communities across the country.

Response: The honorable Member raises salient questions concerning the extensive and rapid spread of tribal gambling facilities and their negative impacts upon the U.S. economy and population. One option for Congress is to enact legislation eliminating land-into-trust and prohibiting reservation shopping. Experts have maintained that eliminating land-into-trust is the only workable solution.
Another option which would eliminate the many abuses of the Indian Gaming Regulatory Act (IGRA) would be to repeal this problematic legislation. For a recent example, the case of Dalton v. Pataki.—N.E.2d— 2005 WL 1017641 (N.Y. Ct. App., May 3, 2005) is currently scheduled for appeal to the U.S. Supreme Court, because it apparently held that IGRA preempted and superseded the ban on
gambling mandated in the New York Constitution (see N.Y. Const., Art. I, sec. 9). Congressional hearings on the option of repealing IGRA would also provide opportunities to delimit practical alternatives to IGRA.

Jointly and severally to acting on eliminating land-in-trust and/or IGRA, Congress should enact the National Tribal Gambling Impact Study Commission as proposed by U.S. Representatives Christopher Shays, Frank Wolf, et alia.

Economics codifies that a nation cannot gamble itself rich. Furthermore, summary analyses of the socio-economic costs of gambling have continued over the years to conclude that the cost/benefit ratios for gambling activities are $3 in costs for every $1 in benefits (see Table of Studies from 22 Manag. & Decision Econ. 143, 153 (2001) which is attached to Prof. Kindt's testimony of April 27, 2005). In this context, proposals to spread tribal casino gambling would be rejected by objective analysts.

Activities which are commonly termed "reservation shopping" and "off-reservation gaming" coalesce as attempts to locate close to major population areas with as many slots/electronic gambling devices (slots/EGDs) as can be negotiated. These machines constitute 70 to 100 percent of casino gambling revenues—except most notably in Las Vegas where this percent has had traditional limits (e.g., 50 percent) to keep card games with a viable market share. The Final Report of the 1999 National Gambling Impact Study Commission noted that these machines were delimited by the psychological community as the crack-cocaine of gambling addiction (see, e.g., NGISC Final Report at 5-5) and recommended that these machines not be located convenient to the public and that states "should cease and roll back existing operations" (NGISC recommendation 3.8).

The honorable Member notes that there are currently "over 300 tribes seeking recognition and presumably gaming," but these 300 tribes would only be the first wave of off-reservation gambling. Accordingly, reservation shopping and off-reservation gambling would be extremely detrimental to the host communities in the casinos' feeder markets and to the entire U.S. strategic economy.

**Question 2:** When tribes seek to enter already established gaming areas, doesn't that create an uneven playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do not pay state taxes; etc.?

**Response:** This question lists only some of the competitive advantages which tribal gambling establishments have over nontribal gambling establishments and also over non-gambling businesses trying to compete for consumer dollars. Regarding one topic of the Committee's April 27 hearing, local business and community opposition was evidenced by 9,000 petitions against the Ho-Chunk casino proposal for the Lansing/Lynnwood area of Illinois (Chicago Tribune, Oct. 16, 2004, at 16). On February 17, 2004, a similar Ho-Chunk casino proposal was defeated by a 65 to 35 percent vote of the University of Wisconsin academic community in Madison, Wisconsin—despite a $1.3 million Ho-Chunk campaign against little organized opposition (see, e.g., Judith Davidoff, Defeated, Ho-Chunk to Refocus, Capital Times (Madison, Wis.), Feb. 18, 2004, at A1).

Tribal leaders with gambling operations have been outspoken about protecting these competitive advantages via expanding the scope of tribal sovereignty. States such as Minnesota have experienced difficulties and friction in their dealings with tribes over their casinos and the practical inability to adjust compacts. The National Gambling Impact Study Commission complained about the "unwillingness of individual tribes, as well as that of the National Indian Gaming Association (the tribe's lobbyists) and the National Indian Gaming Commission (the federal agency that regulates tribal gambling), to provide information to this Commission, after repeated requests and assurances of confidentiality." (NGISC Final Report at 7-9).

If enacted, the proposed legislation for a National Tribal Gambling Impact Study Commission could address these issues.

**Question 3:** What criteria should be used by the Department of the Interior in its determination of land-in-trust?

- Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?
- How recent should the historical connection be? 100 years? 20 years?
- What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?
- Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of...
employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

Response: This question poses many of the issues which arise involving the Department of Interior's determination of land-into-trust. One option for serious consideration would be legislatively to eliminate land-into-trust because it is an unworkable concept when linked with gambling. Each of the honorable Member's questions raises definitional issues which have inherent ambiguities, such as: What constitutes a 'substantial historical connection'? The lobbying power of tribal gambling interests vis-a-vis social welfare groups almost guarantees that the ambiguities inherent in land-into-trust issues will be decided in favor of expanding tribal gambling to the public detriment. Legislatively eliminating land-into-trust (or at least, prohibiting gambling on any land-into-trust properties) would appear to eliminate these issues.

With regard to jobs for Native Americans via tribal gambling facilities, a study sponsored by the Associated Press has raised significant doubts about job benefits to most Native Americans (see, e.g., Assoc. Press, Casino Boom a Bust for Most Members of Indian Tribes, News-Gazette (Champaign, Ill.), Sept. 2, 2000, at A1). The issue of a tribal casino's distance from the tribe's main population base would argue for less impact on tribal unemployment, particularly since middle and upper management positions reportedly tend to be filled by nontribal employees. However, the main job impact involves lost jobs in the consumer economy "feeder markets." These lost jobs to the pre-existing consumer economy significantly outnumber the jobs created by the tribal casino (because of the reliance of tribal casinos, in particular, on slots/EGDs). These lost jobs in the consumer economy correlate to the numbers of slots/EGD machines.

It has also been postulated that absent tribal gambling, none of the aforementioned definitional issues is really an issue. These concerns argue for the enactment of the proposed National Tribal Gambling Impact Study Commission.

Another legislative option would be to repeal the Indian Gaming Regulatory Act and transform the existing gambling facilities into educational and practical technological facilities. Such an option may have to survive a challenge to the U.S. Supreme Court, but given the many abuses linked to IGRA and the socio-economic arguments, California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) may be ripe to be overturned. Since IGRA was drafted and enacted on a fast track the year after Cabazon, IGRA's multiple defects should have been expected. Congress should consider repealing IGRA in anticipation of new legislation tempered by two decades of problematic experience.

Question 4: If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

Response: It would seem logical that land-into-trust should be restricted to where the tribe is located if the tribe is landless, but how is the "location" of a landless tribe initially to be delimited? Given the historical roaming of many tribal bands, it would be unusual if a band could not find some historical connection to one or more of today's population centers.

The more important problem with landless tribal members is that tribal members can claim that individual bands should have tribal status or that even individual Native Americans should be recognized as a tribe.

Theoretically, numerous Native Americans could eventually claim distinctions under their tribal law that argued for tribal status as separate bands, and it would be reasonable to anticipate new landless small bands or even individuals involved in future reservation shopping. Prodding this trend would be millions of dollars in incentives to establish Native American gambling facilities as close as possible to population centers. Tribes with three members or a few dozen members have already been recognized (see, e.g., Donald L. Barlett & James B. Steele, Look Who's Cashing In At Indian Casinos: Hint: It's Not The People Who Are Supposed To Benefit, Time, Dec. 16, 2002, at 46 (cover story)).

In the instance of the Lone Band of Miwok Indians, the Bureau of Indian Affairs (BIA) reportedly opened the membership roles in 2004 and "Among the new members are several BIA employees and dozens of their relatives." (Don Thompson, Assoc. Press, Seattle Times, Feb. 23, 2004).
Question 5: If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that?

- What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

Response: From the perspective of the operators of tribal gambling facilities, the U.S. population centers constitute the prime gambling locations. By whatever justification or rationale, the "fairness" of allowing one tribe vis-à-vis another tribe to conduct gambling in the U.S. population centers needs to be weighed against the overall detriment to the consumer economy and increased criminal costs (summarized previously as $3 in costs for every $1 in benefits).

Related problems involve many tribes with gambling who are diverting their surplus cash (or even cash which should be used to benefit their own members) to seek out and use other tribes as conduits for reservation shopping. For example, the Iowa tribe of Kansas and Nebraska, a small Kansas tribe with a few hundred members, is proposing to move their casino 236 miles from their reservation in northeast Kansas to Park City, which borders Wichita, the largest city in Kansas. Approximately 700,000 people live within the 50-mile feeder market of the proposed casino. However, the Mashantucket Pequot tribe of Foxwoods, Connecticut, will provide the necessary $270 million financing and operate the casino. To date, the Kansas legislature, the Wichita City Council, and the Sedgwick County Commission have shown no interest in this proposed casino. Kansas Governor Kathleen Sebelius has therefore refused to engage in compact negotiations with the tribe—despite the efforts of the casino promoter retained by the tribe, a former Wichita mayor (see generally, Glenn O. Thompson, Casino Plan a Threat to Community, Wichita Eagle [Kan.], May 12, 2005).

Question 6: Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

Response: The honorable Member notes "that tribes are exempt from overall donor limits and can give directly from their treasuries." The potential abuses have increased exponentially since the article in 556 Annals of the Am. Acad. of Political & Soc. Sci. 85 (1998). See also, e.g., Editorials, N.Y. Times, Mar.1, 2002 & Apr. 4, 2002; Susan Schmidt, Wash. Post, Feb. 22, 2004. These types of concerns argue further for the need for a National Tribal Gambling Impact Study Commission and for the elimination of land-into-trust gambling acquisitions.

NOTE: Responses to questions from Wade Blackdeer, Vice-President, Ho-Chunk Nation, and William Blind, Vice-Chairman, Cheyenne and Arapaho Tribes of Oklahoma, have been retained in the Committee's official files.