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June 3, 1999

Mr. Frank Chaves
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Dear Frank,

My dissertation on Indian gaming is finally going to be published. The University of Oklahoma Press is going to release next spring. It is in the editing stages now. A couple of weeks ago I saw Kevin Gover at Acoma when Mrs. Clinton was there. He kindly agreed to read the two chapters on New Mexico. You will remember you read the first of these two chapters and made some corrections. I would appreciate very much if you could read the second New Mexico chapter and do the same.

I am also sending you an article that was published late last year in Publius: The Journal of Federalism. You have made a significant contribution to my work. I hope all is going well.

Sincerely,

W. Dale Mason
Assistant Professor
Political Science

Frank
RECEIVED

JUN -6 1999

PUEBLO OF SANDIA

**CHAPTER 5:
"WE'LL REMEMBER IN NOVEMBER"**

The future of Indian gaming appeared secure after the compacts had been signed and the legislature had adjourned without changing the gaming status quo in New Mexico. Tribal gaming operations expanded rapidly and full scale casino gambling became a reality along the Rio Grande. The months between March and July 1995, however, were like the brief blooming of a high desert flower. The harsh realities of New Mexico politics soon threatened the new vitality of tribal economic life and tested the ability of the tribes to assert their political status and stave off the political and legal challenges to the gaming compacts. Defeating the threats to what tribal leaders believed was their legal right to offer Class III gambling under the compacts required a campaign that would bring to bear all of the resources and political acumen gained in their previous battles and made possible by gaming revenues.

The impact of decisions made by non-Indian political institutions and the deficiencies of the Indian Gaming Regulatory Act became apparent in New Mexico in the latter half of 1995. Two decisions by the New Mexico Supreme Court cast doubt on the status of the compacts and created a political and legal crisis for tribal, federal, and state officials. The Court's decisions demonstrated again the vulnerability of tribes to political questions that, on their face, have little if anything to do with Indian

policy. Their practical effect was to threaten not only the economic revival underway in Indian Country in New Mexico but the fundamental ability of the tribes to conduct their own affairs free from the vagaries of non-Indian politics. Accordingly, the tribes proceeded to demonstrate their continued willingness to enter the political arena to protect their interests.

If anything, gaming became even more important to the tribes in the months following the signing of the compacts. While continuation of the gaming operations remained a fundamental question of sovereignty for the tribes, their economic importance dramatically increased. Tribal gaming operations were expanded and became full-blown casinos. Card tables were added and the banks of video slots enlarged. Tesuque Pueblo moved out of its bingo hall and temporary casino into the newly constructed Camel Rock Gaming Center. In November, two weeks before the Court's first decision, San Felipe Pueblo opened the doors of its Casino Hollywood with 20,000 square feet of gaming space, just off Interstate 25 halfway between Albuquerque and Santa Fe (Hartranft 1995). Taos Pueblo added additional video slots to its small casino, the northern-most in the state (Lujan 1996).

The evidence of the success of the gaming operations is first apparent in the amount of money taken in by the tribal casinos. The ten Class III gaming operations made a net

profit of \$46 million in 1995 (Peterson 1996a). New Mexico Indian Gaming Association Co-Chair Frank Chaves told the Senate Select Committee on Gaming that the casino "directly" employed 2,924 people and were responsible for creating an additional 8,436 jobs. According to Chaves, citing a study done for the Association, Indian gaming was responsible for \$7.6 million dollars in New Mexico gross receipt taxes and \$4.3 million in state income taxes.¹

Robbie Robertson of the Center for Applied Research told a joint hearing of several House committees that during 1995 New Mexicans spent \$172 million on Indian gaming in the state, out of a total \$231 taken in by the casinos for the same period of time. The tribes spent \$184 million on their gaming operations, including \$48 million in wages and salaries. Of the \$136 million spent by tribal casinos on goods and services, \$124 million was spent within the state. While Robertson acknowledged that businesses that compete for leisure dollars lost \$154 million dollars to tribal casinos, a "countervailing" \$216 million was spent by tourists who came to New Mexico to gamble.²

¹ While the tribes and their Indian employees are not subject to either of these state taxes, non-Indian employees must pay state income taxes and firms doing business with the casinos are subject to the gross receipt taxes.

² The quoted figures from Chaves and Robertson are from notes taken by the author while observing the hearings on January 17 and February 3, 1996 respectively.

Beyond the aggregate dollar amounts is what casino revenues enabled the tribes to do that, absent gaming revenue, they otherwise could not have done. Restricted by the Indian Gaming Regulatory Act (25 USC 2710 (11)(b)(2)(B)) in how they may use gaming revenue, New Mexico tribes used their profits on a wide variety of services for tribal members (NMIGA 1996b).

- * Isleta Pueblo's youth programs are completely funded by the Isleta Gaming Palace Revenue
- * Santa Ana Pueblo expanded its police force and funds scholarship programs
- * Sandia Pueblo operates a Wellness Center for tribal members of all ages
- * Acoma Pueblo is investing in its outdated water system

At least two tribes were using gaming revenues to invest in significant cultural needs. The Pueblo of Pojoaque had lost significant aspects of its spiritual and cultural heritage, including its sacred societies and kiva. Gaming revenues enabled the Pueblo to build a new kiva, the spiritual ceremonial center of all pueblo people (Viarral 1996, NMIGA 1996).³ In another example of what might seem an ironic use of the fruits of an activity often questioned as immoral, the Taos Pueblo Tribal Council voted to expand its small casino specifically for the purpose of using the revenues to purchase a piece of property to act as a buffer

³ As part of its economic development plan, Pojoaque Pueblo purchased the "Downs at Santa Fe" racetrack in September 1995 (Trujillo 1995).

to protect the Pueblo's sacred Blue Lake (Lujan 1996). The loss of the gaming revenue would in all probability lead to the Pueblo losing the land and its subsequent development for tourism by non-Indians.

The New Mexico Supreme Court Rules: Act I

Only four months after the compacts were signed the future of Indian gaming in New Mexico was once again a controversial issue. In July the State Supreme Court handed down its decision in New Mexico ex rel. Clark v. Johnson (1995 N.M. Lexis; 904 P. 2d 11 (1995)), the lawsuit filed by gaming opponents after the compacts were signed. In a decision that had as much importance for the office of the governor as for Indian gaming, the Court unanimously held that Governor Johnson had exceeded his constitutional authority in negotiating and signing the gaming compacts.⁴ The Court held that Johnson had violated the principle of

⁴ New Mexico is the second of three states where the separation of powers issue has been an issue in connection with Class III compacts. In 1992 the Kansas Supreme Court held that while the governor had the power to negotiate a Class III compact with the Kickapoo Tribe, she had "no power to bind the State to the terms thereof" absent specific legislative delegation (Kansas, ex re., Stephan v. Finney 251 Kan. 559; 836 P.2d 1169; 1992 Kan. LEXIS 130). See also Burr 1992 for background. Similarly, on the day after the New Mexico Supreme Court decided Citation Bingo in November 1995, the Supreme Court of Rhode Island held that the state's governor had authority to negotiate a Class III compact with the Narragansett Tribe but "absent specific authorization from the General Assembly," he has "no express or implied constitutional right or statutory authority to finally execute and bind the state to such a compact by his execution thereof" (Narragansett Indian Tribe of Rhode Island v. Rhode Island 1995 R.I. LEXIS 267).

separation of powers by performing a legislative function. Without legislative authorization, the court said, Johnson not only signed compacts he was not authorized to sign, but had in effect legalized certain types of for-profit gaming not permitted under New Mexico law.

We have no doubt that the compact and agreement authorizes more forms of gaming than New Mexico law permits under any set of circumstances....The legislature of this State has unequivocally expressed a public policy against unrestricted gaming, and the Governor has taken a course contrary to that expressed policy....Further, even if our laws allowed under some circumstances what the compact terms "casino-style" gaming, we conclude that the Governor of New Mexico negotiated and executed a tribal-state compact that exceeded his authority as chief executive (25-26).

The Court rejected Johnson's contention that the state's Joint Powers Agreement Act (NMSA 1978, §§ 11-1-1 to -7) and Mutual Aid Act (NMSA 1978 §§ 29-8-1 to 3) gave him the requisite authority to negotiate the gaming compacts. Furthermore, the Court held that Johnson's argument that the IGRA was controlling was "inconsistent with core principles of federalism" (39). It noted that Congress could have legalized all forms of gaming on Indian lands but in passing the IGRA had chosen not to do so. Moreover, "We do not agree that Congress, in enacting the IGRA, sought to invest state governors with powers in excess of those that the governors possess under state law" (41). Finally, the Court prohibited "all actions to enforce, implement, or enable any and all of the compacts and revenue-sharing agreements..." (43).

Two weeks later, the Court issued an amended order and stay of execution, giving additional force to its earlier holding. The Court declared "that the compacts executed by the Governor are without legal effect and that no gaming compacts exist between the Tribes and Pueblos and the State of new Mexico. Thus New Mexico has not entered into any gaming compact that either the Governor or any other state officer may implement" (Text 1995).

While the legality of gaming was not a direct issue before the Court in Clark, the justices nevertheless made it clear that they narrowly interpreted New Mexico's gambling statutes. The Court clearly viewed the state gaming law as prohibitory and criminal rather than permissive and regulatory. It drew a sharp line between what was permitted under the Permissive Lottery Law (NMSA 1978 # 30-19-6) and forms of "for-profit gambling." Justice Pamela B. Minzer wrote that "New Mexico has expressed a strong public policy against for-profit gambling by criminalizing all such gambling with the exception of licensed pari-mutuel horse racing" (24). For those who could see into the future, these words would send a clear signal that the court was not finished with the issue of gambling in the state.

The broader political implications of the decision were as significant as the more narrow issue of gaming. In a system of government generally acknowledged as one with an already weak chief executive (Reed and Fort 1994), the

further limitations imposed on the governor were significant. As one observer noted, New Mexico's governors would now be limited to their appointive and line item veto powers (Gover 1996). Clark also began to raise questions among some about the political motivation of the court's decision. A unanimous decision by a Democratic court on a question involving a Republican governor who had defeated the incumbent Democrat with the assistance of Indian tribes seemed to many Indians as not coincidental. This feeling would intensify with a decision handed down by the Court later in the year.

The reaction to the decision and amended order by Indian and non-Indian officials was swift. Tribal leaders argued that the compacts were valid because they had been approved by the Secretary of the Interior in conformity with the IGRA. They therefore would continue to operate their casinos consistent with the compacts (Cole 1995f). New Mexico Indian Gaming Association Co-Chair Frank Chaves said, "I can tell you that our position is that the compacts have been approved in accordance with federal law and the Indian Gaming Regulatory Act" (Hartranft, Lumpkin, and Gallagher 1996). Governor Johnson also continued to hold the position that the compacts were valid (Cole 1995e). New Mexico Attorney General Tom Udall, however, said that he believed the compacts were invalid (Cole 1995f).

To further complicate matters for the state, in accordance with the compacts' revenue sharing agreement, the Pueblo of Sandia sent a check for \$291,000 to the New Mexico Treasurer's Office (Cole 1995c). By the second week of August the tribes had forwarded nearly \$900,000 to the state. Treasurer Michael Montoya accepted the money but was criticized for doing so by Udall (Massey 1995a).⁵ Montoya soon thereafter decided to return the money to the tribes (Massey 1995b and 1995c), although he did not do so until May 1996 (Massey 1996a).

United States Attorney John Kelly's response to Clark provided further evidence of the wide discretionary authority of that official's office and the personal nature of that authority (Eisenstein 1978). During the same period of time that the U.S. Attorney for the Northern District of Oklahoma was preparing to act against a tribe in his jurisdiction, Kelly resisted mounting pressure to move against New Mexico's Indian casinos. Increasingly, in the weeks following Clark, Kelly was criticized by state legislators, anti-gaming advocates, and the press for not closing the casinos.

While acknowledging the significance of the State Supreme Court's ruling, Kelly urged the state's elected officials to quickly resolve the issue in a special session

⁵ Tribal shares of this money were: Isleta, \$304,992; Sandia, \$290,839; Santa Ana, \$ 142,373; Tesuque, \$87,841, Pojoaque, \$82,689; and Acoma \$11,169 (Massey 1996c).

of the legislature. He said that any action by the U.S. Justice Department would be "inappropriate and premature" (Cole 1995i). "We intend, at least for the near term," he said, "to defer to what I hope will be fruitful state/tribal efforts to resolve, locally, the issues raised by the New Mexico Supreme Court" (Johnson's Compacts 1995). The U.S. Attorney also held separate meetings with Governor Johnson and the legislative leadership to discuss the growing controversy.

While Kelly advocated a political solution to the Indian gaming crisis, the state's top elected officials took significantly different positions that reflected their own responsibilities. While first standing adamantly behind the compacts as negotiated, Johnson soon indicated a willingness to renegotiate their details, a prospect immediately rejected by Frank Chaves (Cole 1995h). In early August Johnson wavered even more, suggesting the Laguna and Santo Domingo Pueblos and the legislature negotiate the compacts requested by the two tribes. These compacts, Johnson said, could then replace the ones he had himself negotiated with the 14 other tribes (Cole 1995j).

House Speaker Raymond Sanchez's role was potentially the most crucial if a political resolution was to be achieved. The Albuquerque Democrat had held meetings with the tribes during the legislative session on the compacts.

After the Court decided Clark he announced his willingness to talk with Johnson about resolving the issue.

The tribes continued to press their position that the compacts were valid as negotiated. In "An Open Letter to Governor Gary Johnson From 11 People Affected By Indian Gaming" published in the Albuquerque Journal, tribal leaders thanked the governor for his past support and urged him to hold the line. The paid advertisement expressed the leaders' "gratitude,

not so much for keeping your word, for in a simpler world a man keeping his word would not be exceptional, it would be expected. Rather, our gratitude is for your courage and for all your efforts to bring the state and tribal governments together in mutual respect for the benefit of all people. You are one of the few who understand the contributions made to this state by Indian people, Indian culture, and Indian owned natural resources....Take heart, Gary Johnson. Do not lose your honesty in a time of dishonesty, Do not fall victim to cynical and opportunistic politics. Remain resolute in your belief that great nations, like great men, should keep their word (Letter 1995).

The New Mexico Supreme Court Rules: Act II

With the January 1996 legislative session nearing and a political solution apparently no closer, the State Supreme Court on November 29 handed down another decision that raised the stakes for not only those already involved in the controversy, but expanded the scope of conflict to include a whole new set of interests. Overturning the 1994 Appeals decision in Infinity Group, Inc. v. Manzagol, the Court found the "Power Bingo" computer game to be an illegal

"gambling device" under New Mexico law (Citation Bingo, Ltd. v. Otten, 1995 N.M. Lexis 426). The court surveyed federal and state gaming statutes and concluded that only an express statutory authorization has ever permitted electronic gaming devices.⁶ The court noted that New Mexico's legislature had never enacted such a statute.

The unanimous decision written by Justice Richard E. Ransom reaffirmed the court's view that new Mexico has a "strong public policy against gambling" (20) and declared that "With limited exceptions, gambling is a crime in New Mexico" (6). Asserting that only the legislature can legalize forms of gambling, the Court concluded, "It is for the people acting through their duly elected representative, and not for this Court, to effect any change in the public policy against gambling" (23).

The impact of Citation Bingo was even more profound than that of Clark. Not only was Indian gaming in question; the compacts had specifically tied tribal gaming to those forms legal in the state. The Court's finding that "Las Vegas Night gambling" was not legal under the Bingo and Raffle Act also meant that all of the fraternal, veterans, and charitable organizations that operated video gaming devices were now in violation of state law. On December 4

⁶ The court cited the sections of the IGRA that classified "electronic or electromechanical facsimiles of any game of chance" as Class III while "electronic, computer, or technological aids" were Class II.

the state Regulation and Licensing Department notified the non-profit organizations that electronic gaming machines were illegal. Within two days of this notification state agents began conducting raids to assure compliance with the law (Taughner and Robertson 1995).

Kelly Shows His Hand and Then Deals

In the six weeks following the State Court's latest decision, Kelly escalated the threat to the tribes and then stepped back from direct confrontation with them. Kelly first responded to the decision by pointing out that the ruling in Citation Bingo overturned the 1994 Infinity decision that had been interpreted as the "judicial authorization for putting slots and other electronic gambling devices in Indian casinos." He went on to say that "This is the kind of decision that prosecutors and policy-makers alike will applaud, because it takes the guesswork out of interpreting state law" (Cole 1995k). Kelly also said that he was going to consult with the Justice Department on how to proceed. In a December 8 meeting requested by the tribes, Kelly asked tribal leaders to voluntarily close the casinos. For their part, the tribes made it clear they would keep the casinos open and operating (Cole, Sandlin and Hartranft 1995).

Less than a week after his meeting with tribal leaders Kelly finally acted to end Class III Indian gaming in New

Mexico. On December 14 Kelly faxed letters to each of the leaders of the ten casino tribes informing them that they must cease operations by January 15 (Hughes 1995b). In a press release Kelly said, "The leaders of the New Mexico tribes are among this state's most law-abiding citizens. I doubt very seriously that the tribes will do anything other than comply with this request" (News Release 1995).

In his letter, Kelly informed the tribes that if the casinos were not closed by the deadline he would initiate forfeiture proceedings in federal court that would result in the government taking possession of the tribes' gaming equipment Kelly 1995). He repeated his assurance, made at the meeting with the leaders the previous week, that he did not intend to physically seize the machines by "calling law enforcement to the reservations." Kelly said that he was basing his actions on the Citation Bingo case "whose reaffirmation of the scope and purpose of the state's gambling laws has far-reaching implications for the future of Indian gaming in New Mexico."

Kelly was also clearly looking at the political climate in the state, noting that the legislature was to go back into session on January 16 and would probably be considering the question of Indian gaming. He wrote that "Among the factors which I considered in rejecting" the suggestion that the casinos remain open during the duration of the session "is the fact that there is no evidence of a consensus,

either within the Legislature or as between the Legislature and the Governor, on the gambling issue." The tribes were given until December 22 to respond to his ultimatum (Kelly 1995).

According to one tribal attorney, the response of tribal leaders was "harsh and not the least conciliatory" (Hughes 1995b). In a December 22 letter, Acoma Pueblo Governor Ron Shutiva informed Kelly that the tribe's casino would remain open, asserting that the state Supreme Court's ruling "does not affect Acoma Pueblo's rights under the Compact" it had signed with Johnson. "Problems with the Gaming Compacts arise from the State side," wrote Shutiva. "The Governor's authority and state approval process are not among things that Acoma pueblo controls" (Shutiva 1995). In his letter to Kelly, Isleta Pueblo Governor Alvino Lucero recounted the story of how the compacts came about. "Our Pueblo has acted conscientiously and honestly at all times," the Governor wrote.

Congress could not have intended for tribes to enter into compacts for gaming which was permitted by the state, for tribes relying on those compacts to establish and expand gaming operations, or moreover to obligate themselves to expend future monies truly investing for the future of their people, only to have the compacting state change its mind and try to back out of the compact. It could not have the intent of Congress to permit states through either treachery or legal trickery to reach this result (Lucero 1995).

By January 3 all but two of the tribes had replied in writing to Kelly's letter; none had agreed to close their casino (News Release 1996a). That same day the nine gaming

pueblos⁷ filed a motion in federal court for an injunction against Kelly, Secretary of the Interior Bruce Babbitt, and Attorney General Janet Reno to prevent them from interfering with their gaming operations (Complaint 1996, Memorandum 1996). By including both Babbitt and Reno in the action tribal attorneys hoped to demonstrate the apparent inter-agency conflict: a representative of the Justice Department was pursuing the tribes for an activity officially approved by the Department of the Interior.

As the legislature began its January session and as the tribes escalated their campaign for compact ratification, both Kelly and tribal leaders signaled their willingness to step back from the increasingly bitter approach of a direct confrontation. Anti-Kelly sentiment had been growing among Indians since his December 14 letter and tensions were generally growing across New Mexico Indian Country. The threats by Pojoaque Governor Jake Viarrial and Isleta Pueblo Governor Alvino Lucero to close the highways that ran through their pueblos got a great deal of attention, not only in the state but nationwide, and caused state law enforcement personnel to begin planning for that eventuality (Eichstaedt and Cole 1995, Baker 1995, McClellan and Linthicum 1996, Viarrial 1996). Governor Viarrial told CNN that "We're prepared to die or go to prison in order to save

⁷ Pueblos of Santa Ana, San Juan, Tesuque, Acoma, Sandia, Isleta, Pojoaque, San Felipe, and Taos.

that valuable way of making a living for our people" (CNN 1996).

As a result of talks between Kelly and tribal representatives, a stipulation was presented to Federal District Court Judge Martha Vasquez. Each side agreed to halt further proceedings against the other and seek an expedited court decision on the legality of the tribes' casinos. While Kelly agreed not to proceed with forfeiture actions against the casinos, the tribes agreed to comply with the ultimate decision of the court and to close the casinos if the court found "that the tribal casinos are operating in violation of federal law..." (Stipulation 1996, 2). The tribes also agreed to "refrain from taking any and all action to close public highways and thoroughfares crossing Indian land in New Mexico, or otherwise interfering with the public's right to travel...[and] renounce the use of force or violence in the pursuit of their goal of keeping the casinos open and agree to take no action that would otherwise violate applicable state or federal law" (Stipulation 1996, 2-3).

After receiving editorial and public praise for his December ultimatum to the tribes (Now 1995), Kelly was severely criticized for entering into the stipulation. An editorial in the Albuquerque Journal charged that he had

given in to threats of violence (Threat 1996).⁸ Guy Clark and State Representatives Max Coll (D-Santa Fe) and George Buffett (R-Albuquerque), the plaintiffs in Clark, asked the federal court to allow them to intervene in the case. Their attorney, Victor Marshall wrote in his petition that, "Although the U.S. Attorney has officially stated that the casinos are operating illegally, he appears to be negotiating non-enforcement of the laws" (Shoup 1996).

Kelly responded to the criticism in a column in the Albuquerque Journal, re-asserting his opinion that the tribal casinos were illegal. He argued that his ultimate goal of closing the casinos would still be accomplished but without having to send U.S. Marshals to seize the gaming machines. "The real story this week," he wrote, "is about 'conflict defused'" (Kelly 1996).⁹

The Tribes Raise the Ante

In the aftermath of their success in achieving signed compacts, the tribes' unified political activity had subsided (Hughes 1995b). However, following the second Supreme Court decision, Kelly's intervention, and the approach of the legislative session, the tribes began a well

⁸ At least one Pueblo Governor, Jake Viarrial, believed that the road blockade threats was the tactic that led Kelly to back away from the forfeiture action (Viarrial 1996).

⁹ Federal District Judge Marsha Vasquez approved the stipulation and rejected Marshall's intervention petition.

funded and highly coordinated campaign to protect their interests. Directed at both public officials and the public at-large, the tribes' campaign comprised both inside and outside strategies. Brought in to coordinate the effort was Rex Hackler, the Bernalillo campaign consultant recruited by Kevin Gover in the waning days of the 1995 legislative session. Odis Echols, whom Hackler described as the "lord god king of all lobbyists" (Hackler 1996a), was again the ultimate insider. Walking the halls of the Roundhouse and buttonholing legislators and other lobbyists, Echols attempted to protect and advance the interests of the 14 sovereigns for which he was working.

As the 1996 thirty day legislative session opened, the tribes began executing what Echols and Hackler termed a "three tier" lobbying effort (Hackler 1996a, Echols 1996). The first tier comprised Echols and his assistants working the legislative process inside the Roundhouse. The second tier consisted of the public relations campaign and the casino employees who contacted their legislators. The final tier was the tribal leaders and attorneys. A budget of over a half million dollars supported the combined effort (Echols 1996). Echols called this "the largest single lobbying effort" in the thirty legislative sessions he had worked, as a senator and lobbyist (Echols 1996). The strategic goal included providing an environment in which it would be

easier for legislators to support the tribes and vote to ratify the compacts (Gover 1996).

Coordinated by Hackler out of a suite in the Hotel Santa Fe,¹⁰ the tribes conducted what in many respects resembled any political campaign. Hackler's desk was a large table in what was normally a bedroom but which had been converted into the "War Room." The telephone was rarely silent. Over the doorway leading into this room hung a red, white, and blue hand-lettered sign proclaiming "Warriors Only." On top of a television set usually tuned to CNN was a box for "Lobbying Forms." Hanging on the wall behind the TV were five full page ads that had recently appeared in the state's major newspapers. Leaning next to the dresser were large color photographs exhibited at a State Senate hearing to illustrate the importance of Indian gaming to New Mexico tribes. Assisting Hackler were Tribal members and casino workers on loan to the campaign. As one person would leave for the Roundhouse, another would come in for her marching orders. This was the command center for a new dimension in American politics: the sophisticated, highly coordinated, well financed campaign by New Mexico Indian tribes to win the hearts, minds, and votes of the state's electorate and legislators. Their message was simple and direct: "Ratify the Compacts."

¹⁰ The Hotel Santa Fe is owned by the Picuris Pueblo.

This message was most visible in the media, public rallies, and in the work done at the casinos themselves. The tribes used their usual casino advertising budgets to buy air time to push support for Indian gaming (Echols 1996). The thrust of the messages was three fold: no more broken treaties; Indian gaming is working for New Mexico; and don't let the feds decide this question for New Mexicans. Both television and radio ads urged those who heard them to contact the legislature. Clearly, the ads offered the public a variety of reasons to support the tribes. An argument that simultaneously appealed to morality, economic self interest, and a mistrust of the federal government presumably would reach many, if not most, New Mexicans.

The first rally, held the day before the opening of the legislative session, took place on a brilliant January New Mexico morning at the Pueblo of Isleta along Interstate 25, fifteen minutes south of downtown Albuquerque. Supporters of Indian gaming begin to gather early at the Isleta Gaming Palace. As some headed toward the highway with their support-Indian-gaming signs, others begin to line up in front of the refreshment tent, or join others seeking to register to vote in a tent erected for that purpose, or simply grab a good seat in front of the large canopy covered stage and wait for the day's events to begin. As the crowd grew, the casino parking lot filled to capacity and people

begin leaving their cars along the Interstate. By the time the rally was under way, parked cars lined I-25 in front of the Pueblo's gaming facility for nearly a mile in both directions. Police from Albuquerque, Bernalillo County, the Highway Patrol, and Isleta Pueblo parked in the median with emergency lights flashing, attempting to keep through traffic flowing and pedestrians safe in their journey across the highway and up the hill to the rally.

Passing the inflated and moored bright yellow Isleta Gaming Palace hot air balloon, those heading to the rally began to hear the eclectic selection of recorded music coming from the speakers near the stage; a little country, some classic rock, and a smattering of Dakota Sioux folk singer Floyd Westerman. An interview with a former Governor of Isleta Pueblo was conducted amid the merging sounds of Westerman's "Custer Died For Your Sins" and the drums and chants of singers from Laguna Pueblo preparing for their performances later in the day. Part revival meeting, part old time political rally, 5,000 New Mexicans gathered to send a dual message to the state's elected officials:

"Ratify the Compacts" and "We will remember in November."

Casino employees were bused to Isleta. Most wore t-shirts and buttons printed by their employers urging support for Indian gaming. Hand painted signs with slogans about gaming, voting, and sending messages to elected officials were carried by gaming supporters of all ages and

ethnicities. Three reoccurring themes were, "Save our (my) job(s)," "We will remember in November," and "No more broken treaties."

Speakers included many elected Pueblo officials, some of whom renewed talk of road blockades and raised the possibility of closing the pueblos to outsiders. Several woman casino employees recounted their experiences of moving off the welfare rolls into productive secure employment. To demonstrate the national significance of what was occurring in New Mexico, National Congress of American Indians Executive Director Ron Allen and National Indian Gaming Association Chairman Rick Hill appeared and assured the tribes of their organizations' support and the support of tribes nationwide.

A second rally was held two weeks later at the Roundhouse. Despite a bittersnow storm late the previous night, more than 300 people gathered in front of the capitol, a building designed to resemble the Zia Pueblo sun symbol. Twelve busloads of people from around the state, including four or five from the Navajo Nation had to cancel due to road conditions (Hackler 1996c). As at the Isleta Rally, tribal leaders and casino employees emphasized the importance of ratifying the compacts. National support was again demonstrated by the presence of a representative of the Oneida Nation of Wisconsin and Tim Wapato, Executive Director of the National Indian Gaming Association. There

was a significant change in the tone of this rally, however. The confrontational language of Isleta was muted and speakers representing non-Indian gaming interests took the podium. Among the latter were representatives of the fraternal and veteran organizations whose fund raising gaming had been halted by the court's Citation Bingo decision. Also speaking, and appearing somewhat uncomfortable, was a spokesman from the New Mexico Horsemen and Breeders Association.

The visible presence of non-Indian gaming organizations represented a strategic change for the tribes. Unlike the 1995 session, this time the tribes figured that their best chance of success lay in a joint effort with others who had been adversely affected by the state supreme court. This resulted in a piece of legislation Hackler termed the "everybody wants something bill" (Hackler 1996c). The fraternal, charitable, and veterans groups, along with the racetracks and resorts sought to be included in whatever form of legalized gaming emerged from the legislature. The tribes agreed and participated in the drafting of the omnibus legislation.¹¹

The casinos themselves provided a valuable outlet for pro-gaming outreach among New Mexicans. As mentioned, the casinos provided manpower for the campaign. Beyond this

¹¹ Towards the end of the session Frank Chaves told the Santa Fe New Mexican that joining forces with the other gaming interests might have been a mistake (Peterson 1996c).

source of manpower were the customers who streamed through the casino doors twenty-four hours a day. To motivate this unorganized mass of potential electoral support, the tribes publicized their campaign among the poker tables and slot machines. Cards supporting Indian gaming were distributed, collected and mailed to legislators by the casinos. Several casinos printed pro-gaming bumper stickers and lapel pins, most of which had some variation on the message "I support Indian gaming and I vote." Business size cards with the following message were available at several casinos:

The money used to make this purchase at your business today came from employment in the Indian Gaming Industry! Please pass this card to your management. Thank You!

The public campaign seemed to have an effect. An Albuquerque Journal poll published on January 21 reported that by a margin of 60% to 33%, New Mexicans favored the legislature allowing Indian casino gaming (Poll 1996). Support for all kinds of gaming at a variety of venues did not have the same level of support as Indian gaming. By a margin of 47% to 43% New Mexicans opposed legalizing video slots at race tracks; only 22% favored video slots in bars and restaurants; 53%, however, favored legalizing the machines for fraternal and charitable organizations. A strong majority of 56% of the respondents also agreed that the legislature should act on gaming during its current session (Poll 1996).

While the outside public relations and campaign-style activities were underway Echols, tribal leaders, and attorneys were active inside the Roundhouse, testifying at hearings, building coalitions, rounding up votes, writing legislation, and working to reach an agreement with the significant legislators.

After discussions with Senate President Pro Temp Aragon, the tribes announced they were willing to modify the compacts if the legislature would ratify them. This represented a change in strategy by the tribes and was initiated by them (Gover 1996, Shutiva 1996).

Many of the concessions were relatively minor and had been raised in previous discussions with legislators. These included a minimum age of 21, closing four hours a day from Monday to Thursday, and no free food and liquor at the casinos. Other concessions were more substantial, including increasing the revenue sharing requirements. The current three percent up to \$4 million and 5% of any amount over that would be changed to 3% of the first \$4 million, 5% of the next \$6 million and 6% over revenues of \$10 million (Cole 1996a).

One of the most potentially significant activities by a tribal attorney was the drafting of legislation to rectify the constitutional quandary raised in Clark. In an effort to avoid the separation of powers issue used by the court to nullify the compacts negotiated by Johnson, Richard Hughes

tackled the procedural question of joint executive-legislative compact approval (Hughes 1995a and 1996). Based largely on a similar Kansas statute, Hughes drafted a bill that was the basis for legislation introduced by House Speaker Sanchez (HB 703) and Senate President Pro Tem Aragon (SB 684).¹² The bills would create a Joint House-Senate Committee to review compacts negotiated by the governor and recommend to its respective bodies whether approval should be granted. Hughes and Sanchez testified on behalf of HB 703 before a combined hearing of several House committees sitting to take gaming-related testimony (Tribal lawyer 1996). Hughes' behind the scene role was not openly noted in the press but was alluded to in an Albuquerque Journal editorial on the legislation. The editorial observed,

The terms specified in advance in the Sanchez-Aragon bill inure only to the benefit of the Indian side of the negotiations - not a surprising turn of events since the bill reportedly was drafted by a lawyer for one of the gaming tribes (Legislative Compact 1996).

The fate of this legislation was indicative of the ultimate success of the tribes during the session. Aragon's

¹² The author of this dissertation informed Richard Hughes of Oklahoma's Tribal-State Relations Act and provided him a copy of it in the early stages of Hughes' work on the New Mexico bills. Following the Finney decision nullifying the Kickapoo compacts, the Kansas legislature passed a statute creating a provision for legislative approval of Class III compacts negotiated by the governor. As of September 1995 two Kansas tribes had ratified Class III compacts under this law. The Kansas statute was deemed more consistent with the New Mexico Constitution than the Oklahoma statute is and thus served as the model for the bill drafted by Hughes (Hughes 1996).

version passed the Senate, but Sanchez saw his bill killed in the House Judiciary Committee. Similarly, the omnibus gaming bill passed the Senate but was unanimously defeated by voice vote when brought to the floor of the House. The status of gaming in New Mexico was thus the same at the end of the session as it had been ever since Clark and Citation Bingo. The only legal gaming in the state were bingo, paper pull tabs, and parimutuel horse and bicycle racing, and the state lottery, scheduled to begin in April. As far as the state was concerned, the compacts were null and void.

Analysis

The tribes' strategic response to late 1995 and early 1996 threats was in effect an attempt to control the scope of conflict of the gaming controversy. What was remarkable was the ability of the tribes to respond to the shifting fronts of the battle and continue to adjust to the ever changing rules of the game. At each step of the process, from the first request for compacts made during Governor Carruthers' administration, to the federal law suit against Governor Bruce King, to the gubernatorial campaign to the signing of the compacts, to lobbying the legislature, the tribes had mobilized the appropriate resources to participate at the appropriate level. As time went on, the field of battle continued to change. Each time the tribes

appeared victorious in one arena of the political or legal system another arena nullified the victory.

The shifting arenas of battle led Frank Chaves in January 1996 to ask the Senate Select Committee on Gaming, "Who is the State?" There were two fundamental problems facing the tribes in their struggle that made Chaves' question significant. First, in a separated system of shared powers among independent branches, checks and balances not only prevent the concentration of power. They also mean that a policy question is not finalized until the three branches have at least resolved the process of policy formulation. For groups with a policy interest, such as Indian tribes, this system means that the possibilities of the scope and arenas of conflict shifting are great. New Mexico tribes were thus caught in a classic institutional conflict over the legitimate constitutional scope of power of the state's three institutions.

The second reason for the salience of Chaves' question results from the Indian Gaming Regulatory Act itself.

Section 2710(3)(A) of the Act provides:

Any Indian tribe having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the state shall negotiate with the Indian tribe in good faith to enter into such a compact.

Nowhere does the IGRA define "the state," or specifically, to which state official the Indian tribe must make its request. Clearly, this ambiguity is a tacit recognition of federalism and the right of a state government to determine its own constitutional and administrative procedures. As has been noted, for Indian tribes wanting to negotiate Class III compacts with "the state," this ambiguity can stall and even prevent the expansion of their gaming options. As described in the previous chapter, New Mexico tribes faced this dilemma when they first wanted to begin such negotiations in 1988 and decided to make the request to the Office of Indian Affairs (Chaves 1995). Governor Carruthers then removed the Office from the process and conducted the negotiations between his staff and the tribes (Pecos 1996). Then, once the compacts had been negotiated, signed by a subsequent governor, and approved by the United States Secretary of the Interior, the tribes were told that the gaming allowed as a result of the process was illegal.¹³

Consequently, as they had in the past, the tribes engaged in a simultaneous multi-front battle: in the

¹³ A cartoon in the July 19, 1996 Albuquerque Journal graphically captured the problem: Two Indian men stand in front of a wall that has lines leading downward from the words "New Mexico State Government" to three windows marked "Executive," "Legislative," and "Judicial." In the windows are the heads of Johnson, Aragon, and Chief Justice Baca, over which appear, respectively, the words "Yes!" "Maybe..." and "NO!". One of the Indian men holds a piece of paper marked "Indian Gaming compacts;" the other comments, "It's the same old story - white man speak with forked tongue..."

federal court, in the Roundhouse, and among the public at-large. The tribes were defending their sovereignty and the fruits of that sovereignty - the economic opportunities made possible by the casinos. Protecting that status again required them to bring to bear all of the options available to them.

Importantly, losing this battle could limit their options in the future. Being prohibited from operating casinos would not only be a diminishment of their self-governing powers. It would also reduce the financial resources that had helped to make the tribes a significant actor in new Mexico politics. While they would still have the opportunity to make political endorsements and register tribal members to vote, the tribes would lose the ability to mount the kind of campaigns that had given them influence in the gubernatorial race and allowed them to appeal directly to the public during the 1996 legislative session. The greater meaning of a loss is that, as Office of Indian Affairs Executive Director Regis Pecos said, an infringement in one area of sovereignty threatens all other areas of sovereignty (Pecos 1996). Without gaming resources the tribes' fight to protect and expand all aspects of their sovereignty would be curtailed.

Inside Lobbying: The Executive Branch

For the first time in nearly a decade the tribes did not have to worry about convincing the state's chief executive to support them. But Johnson's support was largely verbal and not substantive. Although he publicly continued to support Indian gaming, the governor did little before or during the session to advance the issue in the legislature (Hughes 1995b). He did make a strong appeal in his State of the State Message, but it came at the end of the speech and was not included in the bound version distributed to the public (Johnson 1996). The reaction to that address indicated the apparent weakness of Johnson's influence in the legislature. Not once during the address was the governor interrupted for applause (Jadrnak 1996); an editorial in the Santa Fe New Mexican critiquing the Message was entitled "The sound of no hands clapping" (Sound 1996).

Notwithstanding his public support for Indian gaming, Johnson did not present his own legislation for compact approval until the second week of the session. House Majority Leader Michael Olguin (D-Socorro) blamed the governor for the legislature's failure to ratify the compacts, saying, "I believe he turned his back on the Native Americans" (Bluster 1996). But whether he could have delivered Republican votes is questionable since Senate Minority Leader opposed any legislative action on gaming (Hughes 1996, Bluster 1996). Olguin contended that gaming

was issue that "went way beyond party, and the governor did not coach his Republican legislators as to what would be best for everyone" (Olguin 1996).

Inside Lobbying: The Courts

While the political battle was fought in the legislature and in the court of public opinion, the tribes simultaneously fought in the court of law. Attempting to seize the initiative from Kelly, the tribes had counter-sued in federal court. As has been shown, this led to the January stipulation that set the stage for what could be the ultimate determination of the legality of tribal casino gaming in New Mexico. The tribes took this step while still working for a legislative solution. The tribes could not afford to rely on the political arena alone.

Inside Lobbying: The Legislative Branch

Gaming dominated the thirty-day legislative session; the intricacies and conflicting interests seemed at times to overwhelm the legislature. House Majority Leader Michael Olguin wrote in the Albuquerque Journal that gaming was "by far the most complicated and controversial issue ever to be thrust upon this Legislature" (Olguin 1996). In the end, gaming's social, political, and economic ramifications seem to have paralyzed legislators and prevented any action on the compacts.

The tribes were inside players within the Roundhouse. Not only did tribal leaders, attorneys, and casino employees testify at legislative hearings; individual legislators were lobbied by both elites and non-elites. As mentioned above, casino employees personally contacted their own legislators. At the same time, according to Echols' strategy, tribal leaders and attorneys worked behind the scenes to negotiate a solution, round up votes, form coalitions, and draft legislation. They took the offensive and attempted to define the issue on their terms. The tribes worked with whomever could further their interests but their efforts ultimately fell short. As Rex Hackler said after the session had ended, the tribes "did everything right and still got beat" (Hackler 1996d).

There were at least three reasons for the legislature's failure to ratify the compacts. First, partisan politics was a significant dynamic in the battle for Indian gaming and the tribes found their interests a pawn in party positioning. During the administration of Governor Bruce King the Democratically controlled legislature passed legislation giving the governor power to negotiate gaming compacts; King vetoed the bill. Now that there was a Republican who supported Indian gaming and who in turn had been supported by the tribes, the Democratically controlled leadership balked at approving the Republican negotiated compacts. "The shifting political winds" noted Senator

Leonard Tsosie (D-Crownpoint), "catches the tribes in a crossfire" (Tsosie 1996).

The partisan battles went beyond the more narrow issue of Indian gaming. Budgetary differences between the governor and the Democratic majority were deep. The Senate also refused to confirm several of the governor's appointees to state office. There were also fundamental differences over the scope of state government itself. As Santa Fe New Mexican reporter Barry Massey wrote following adjournment, "Whether the issue was the budget, prisons or nominations, the outcome in the Legislature usually hinged on a philosophical or partisan battle between the Democrats who control the House and Senate and the conservative Republican occupying the governorship" (Massey 1996b). As House Minority Whip Kip Nicely (R-Albuquerque) said, "Really, the underlying theme of this whole session has been: Who is in charge of this place?" (Massey 1996b).

Second, the Democratic leadership of the legislature was unable to develop a consensus around gaming and was thus unable to deliver a bill to the governor. While the "something for everyone" bill hammered out by Aragon and pro-gaming lobbyists passed the Senate, it was quickly killed in the House. Sanchez was not able to build a consensus for any gaming legislation, including his bill to create a process for compact approval. His inability to free that legislation from Committee was a surprise and

demonstrated the risk of supporting any gaming legislation in the House, even in light of the polls showing overwhelming approval for Indian gaming.

While some legislators suggested that the significant divisions on gaming among the public killed gaming's chances (Peterson 1996b), there is a third and even more intriguing possibility for the legislature's failure to act. Kevin Gover argues that what was at stake in the battle over Indian gaming was a redistribution of political and economic power in the state, a battle that the entrenched establishment was determined to win (Gover 1996). To Gover this explained the opposition of such groups as the Santa Fe County Chamber of Commerce, the Albuquerque Business Alliance, and most of the Republican Party. Regis Pecos argues that it is the money generated by Indian gaming that lead to the "heightened confrontation" (Pecos 1996). In a statement that was daringly candid, anti-gaming attorney Victor Marshall told the Los Angeles Times, "Politically, non-Indians are not going to allow Indians to make hundreds of millions of dollars in profits without getting a piece of the action - either everybody does it or nobody does it" (Sahagun 1995). Hackler believes "this whole thing is not about gaming," but about "money and power" (Hackler 1996d).

What is curious is that while the sources of Indian support were quite apparent, the opposition was much more amorphous. As Hackler said, it was difficult to put a face

on the opposition (Hackler 1996a). Four names were consistently linked to efforts to kill Indian gaming: Max Coll, George D. Buffett, Guy Clark, and Victor R. Marshall. The first three were the plaintiffs in Clark and Marshall was their attorney. Clark, a dentist from Corrales, was the leader of the New Mexico Coalition Against Gambling, an apparently under-staffed and under-funded organization. Representative Coll, a Santa Fe Democrat was Chairman of the House Appropriations and Finance Committee and Representative Buffett was a senior Republican member of the same committee.

Marshall, an Albuquerque attorney, was involved in other efforts to legally end gaming in the state. First, he had filed an amicus curiae brief for Clark, Coll, and Buffett in the Citation Bingo case. Second, he filed suit against several banking institutions on behalf of a group of people alleging that they had suffered losses at Indian casinos. The suit was filed under a Civil War era New Mexico anti-gambling statute (Cole 1996b). Third, he sent a letter to the Financial Institutions Division, the state banking regulator, asking it to revoke approval of Automatic Teller Machines at Indian casinos, since, he contended, the casinos were illegal (Cole 1996c). The use of ATMs to withdraw welfare payments at Indian casinos had become a public issue, one that the tribes indicated they were willing to address.

Clark himself continued his public opposition to gaming which he claimed to be based on a moral objection to the activity, as was much of the opposition among the general public (Day 1996). He was a frequent visitor to the Roundhouse, including testifying before legislative committees. Clark also filed a complaint with the Federal Communications Commission over the airing of casino advertisements and pro-compact commercials paid for by the casinos (Linthicum 1996).

Whatever the sources of opposition were, tribes had to deal with their political consequences. As Alan Rosenthal has noted, "Any lobbyist who ignores the politics of the state and of the legislature cannot possibly succeed at the job. Politics drives the process" (Rosenthal 1993, 89). Because of traditional political inclinations as well as because of the locus of legislative power, tribal leaders focused on members of the Democratic Party, particularly Aragon and Sanchez. Both of these powerful leaders were inclined to support the tribes but Sanchez was careful not to jeopardize his obvious ambition to run for governor. Personality politics emerged when Aragon and the tribes agreed to certain concessions in the compacts and Sanchez held back, notwithstanding his own extensive negotiations with tribal leaders over the past year (Hackler 1996c, Gover 1996).

Protecting their traditional alliance with the Democratic Party was made difficult by tribal support for Republican Gary Johnson in his 1994 race. Gover and others, including pueblo governors, worked to maintain the relationships with party leaders. For example, Pojoaque Governor Viarrial attended a recent \$10,000 a plate Party fundraiser in Washington, D.C. and sat at Vice President Al Gore's table (Viarrial 1996). Tribes bought ten of the forty tables at the Democratic Party fund raiser at the opening of the 1996 New Mexico legislative session (Gover 1996).¹⁴

One important factor in the legislative effort to get the compacts ratified was the unity of the six Indian legislators, two senators and four representatives, all Democrats (see previous chapter). Senator Tsosie noted that having a block of legislators united on the issue was an important factor in furthering the tribes' position (Tsosie 1996). Senator Tsosie was the point man for Indian gaming in the Senate while Representative James Roger Madalena (D-Jemez Pueblo) acted in that role in the House.

There is circumstantial evidence that Indian gaming politics had a role in defeating efforts to override some of Governor Johnson's vetoes left over from the 1995 legislative session. Among that evidence is the fact that

¹⁴ Rex Hackler himself had strong ties to the Democratic Party, most recently in the successful 1994 reelection campaign of United States Senator Jeff Bingaman (Hackler 1996a).

Senator Tsosie was only one of two Democrats to vote against override of several pieces of legislation.¹⁵ Tsosie worked closely with the tribal leaders and attorneys on legislative strategy.

The role of tribal attorneys in the lobbying process disproves Rosenthal's contention that "Legal work and lobbying generally do not overlap" (Rosenthal 1993, 25). The work of Gover, Hughes and other lawyers was crucial to the tribes' lobbying strategy. From strategic planning to bill drafting, their work was indispensable.

Outside Lobbying: Appealing to the Public

The tribes' outside campaign in the media paralleled the inside effort. The television, radio, and newspaper ads were designed to define the issue (Hackler 1996a) and give New Mexicans, and ultimately legislators, a reason for supporting compact ratification. As noted, the appeals to morality, self-interest, and anti-Washington feelings, could appeal to a wide segment of the population and apparently did so. The extent that the public relations campaign was successful is due to, first, the strategic planning, second,

¹⁵ It is the nature of participant observation that sometimes bits and pieces of interviews, conversations, and observations provide tantalizing bits of information that point in a direction that leads not to a smoking gun but to the sound of gunfire. The speculation about the role of Indian gaming in the over-ride attempts is high priority for further research.

the flawless execution, and third, the resources available to carry it out.

Rosenthal writes that "The objective of a grass-roots campaign is to prove to legislators that their constituents are concerned about a particular issue" (Rosenthal 1993, 155). The tribes's campaign was designed to accomplish that end. As Rosenthal also notes, an outside lobbying effort "cannot be independent of the inside one" (155). The inside and outside efforts of the tribes were tightly linked; Echols, the tribes' deep inside man, had veto over the outside publicity campaign (Echols 1996).

The United States Attorney

John Kelly continued to demonstrate the crucial role that a United States Attorney can play in public policy. Eisenstein has observed that the "...aggressiveness and interpersonal skills, and the conception of the position's prerogatives - also determine the impact" of the U.S. Attorney (Eisenstein 1978, 196). While he resisted public pressure to move against the Indian casinos after Clark, following Citation Bingo Kelly was no longer able to ignore the changed legal and political environment. He acted only after the questions surrounding the legality of the compacts became extraordinarily muddled. When he did act in December and issued his ultimatum, he apparently was weighing the political considerations. Earlier in the summer he had

suggested that a special session of the legislature be called to clear up the legality of the compacts; the timing of the ultimatum's deadline seemed to have been made with similar political considerations. He set the deadline one day before the legislative session was to open. Kelly apparently believed that this would somehow induce a political settlement (Hughes 1995b), when in fact it may have provided additional reasons for some legislators to strike a wait-and-see pose.

His willingness to continue to negotiate with the tribes in an attempt to defuse the situation is notable, especially when compared to what took place in Oklahoma in September (see next Chapter). As Kelly noted in his Albuquerque Journal article, he did not want to have to send armed United States Marshals to the reservations to confiscate the allegedly illegal machines. Eisenstein has posited that in exercising discretion U.S. Attorneys "represent their locality, and the interests and policy preferences of important segments of the local community sometimes conflict sharply with those of the national administration" (Eisenstein 1978, 197).

But Kelly had a broader problem than his New Mexico critics and their opposition to Indian gaming. For a considerable time after the State Supreme Court reshaped the realm of legal gaming Kelly had no clear indication from Washington what the administration's position was. There

was in fact evidence of a lack of coherent policy. While the Interior Department had approved the compacts prior to Clark and Citation Bingo, the Justice Department would not indicate a clear opinion on their continued legality. By mid December, however, Kelly apparently had received at least a tacit go ahead from the Justice Department to move against the casinos (Hughes 1995b, Gover 1996). A special committee on Indian gaming within the Department of Justice is suppose to review any action contemplated by United States Attorneys on the issue. The committee deferred to Kelly's decision (Becker 1996).

An interesting aspect of Kelly's role is his public visibility. While Eisenstein has noted that "the general public's ignorance of the role of the U.S. Attorney" (Eisenstein 1978, x), Kelly was not only the subject of alternating newspaper attacks and praise. The tribes themselves contributed to making him a visible player in the gaming controversy. In a humorous but pointed incident, Kelly's office phone lines were jammed after the tribes ran a number of radio ads asking listeners to contact the U.S. Attorney's office to let him know the public's views. This occurred after the December meeting between tribes and Kelly and before Kelly sent his ultimatum. Because tribal leaders emerged from the meeting believing that Kelly would take no immediate action they attempted to cancel the air time they had bought. For whatever reason, they were not able to stop

all of the ads, resulting in the lines being tied up (Hughes 1995b, Hackler 1996). After that, callers to the U.S. Attorney's office who had a question about Indian gaming were immediately transferred to a recorded message that offered the caller the opportunity to leave his views.

Kelly was also one of the significant targets of speakers and signs at the Isleta rally. Speaker after speaker derisively referred to the U.S. Attorney, some comparing him to General Custer. One hand lettered sign contained Kelly's name inside a circle with a diagonal arrow drawn through it.

Tribal Unity

Inter-tribal unity continued to be the crucial element in the tribes' efforts. While there were disagreements among the pueblo governors, and while Mescalero Apache President Windell Chino maintained a low public profile, the tribal front appeared solid. The threats by Pojoaque Governor Viarrial and Isleta Governor Lucero to close portions of Route 84-285 and Interstate 25 were not supported by most of the other leaders (Hughes 1995b, Vigil 1996). Chino, in fact, spoke out directly against such actions (Chino 1996). But at crucial moments, such as when the decision was made to enter into the stipulation with Kelly, the pueblo leaders came together behind a unified strategy (Viarrial 1996).

Once again, the New Mexico Indian Gaming Association and its co-chairmen were visible in the Roundhouse and in the press. Both Frank Chaves and Ken Paquin testified at legislative hearings and the Association provided data supporting the economic contributions of Indian gaming and the potential harm if the casinos were forced to close. The Association was indeed acting increasingly like a nascent political party. Its strategic and tactical efforts were fundamentally no different from those employed by political parties, with the exception of a ballot line. This latter attribute will be replicated, however, if the Association or the tribes through the Association become more involved in the active support or opposition of candidates for public office. Kevin Gover believes that the NMIGA already is at least as a significant player in New Mexico politics as the state's two major political parties (Gover 1996).

The gaming tribes provided the finances necessary to run the campaign, paying for television, radio, and newspaper ads, as well as for other related expenses.¹⁶ A significant resource available to the campaign was the manpower provided by the casinos. Casino employees were loaned to the "war room" during the duration of the legislative session to provide whatever legwork was needed.

¹⁶ Documents submitted in March 1996 as evidence in the upcoming federal litigation showed that several tribes contributed \$150 per slot tribal machine to the pro-gaming efforts (Peterson 1996e).

Many employees also participated in the direct lobbying effort in the Roundhouse, calling on their individual legislators, asking that they be allowed to continue in their jobs (Beverly 1996, Viarrial 1996).

The tribal effort was not only coordinated in the public relations and lobbying effort. As already described, tribal leaders unified behind the legal strategy that led to the mid-January agreement with U.S. Attorney Kelly.¹⁷ To achieve this unity, the governors who had advocated direct action had to agree to tone down their rhetoric and not engage in action that could lead to confrontation.

Finally, the public leadership of the Indian effort must be noted. In public, for the most part, tribal leaders presented a united front. While Mescalero Apache President Wendell Chino criticized the threats to close the highways, he did nothing to interfere with the broad strategic and tactical goals of the other NMIGA tribes (Chino 1996). Navajo Nation President Albert Hale spoke to the legislature about the importance of tribal gaming even though his tribe had rejected legalized gaming (Gambling Bill 1996). Pueblo leaders and the leaders of the NMIGA consistently

¹⁷ The exception was once again Mescalero Apache President Chino. His tribe joined neither the pueblos' motion for a preliminary injunction nor the stipulation with Kelly. Instead, the Mescalero Tribe asked the Federal District Court for the District of Columbia for a restraining order against Babbitt and Reno. The Court refused and sent the tribe's motion back to the Federal District for New Mexico to be joined with the pueblos' case (Mescalero Suit 1996, Hume 1996).

demonstrated a calm public presence in the face of increasingly difficult political and legal obstacles.

While the inter-tribal effort has been described, the inter-ethnic work must also be noted. The non-Indian consultants, such as Hackler and Echols, appeared to have a relationship with the Indian leadership based on trust and confidence. At the level of "campaign workers," Indian and non-Indian casino employees worked together to achieve their common goal. Various participants warmly described the closeness of those who worked long hours in the Hotel Santa Fe "war room."

The Future

The failure of the tribes to convince the legislature to act on Indian gaming in no way alters or diminishes their political status. In fact, in the latter months of 1995 and in early 1996, the tribes demonstrated their flexibility within the political system. New Mexico tribes again demonstrated that being within that system with the status they have is fraught with both possibilities and dangers. Their flexibility was the result of their status and the gaming resources available to them to work within the system. But the historic fragility of that status and of fleeting tribal resources are also apparent. Because of their ambiguous constitutional and political status Indian tribes have more arenas in which to engage their opponents.

As the IGRA has shown, tribes are clearly both within and outside of the normal avenues of American politics.

The opportunities for New Mexico tribes to win either a political or legal victory remain. Although the legislature adjourned without resolving the gaming issues raised by Clark and Citation Bingo, the tribes' efforts did not end; they only moved to other arenas. With the ultimate legality of the casinos still an unresolved question, the tribes will continue a multi-tier effort to be able to continue their gaming operations. The matter of the compacts remained in federal court. Whatever decision is eventually reached by Federal Judge Vasquez, the tribes and New Mexico officials faced months of continued uncertainty over the ultimate outcome. For their part, the tribes prepared to once again take their case to the voters. The 1996 legislative elections would provide an opportunity to exert electoral influence through strategic endorsements and financial contributions. Tribal strategists spoke of becoming involved in districts held by legislators - Democrats as well as Republicans - who had actively opposed them during the session (Hackler 1996b and 1996c, Gover 1996, Peterson 1996b).