



## Reflections of a NIGC Chairman

by Jonodev Osceola Chaudhuri

As I anticipate leaving my post in the near future, I want to share some outgoing reflections on my time as the National Indian Gaming Commission (NIGC) Chairman. As Chairman since 2013, it has been my deepest honor to lead the agency during a period of Indian gaming that has brought significant economic development and sustainability to tribal governments, and ultimately, reinforced the Indian Gaming Regulatory Act's (IGRA) fundamental pillar of tribal self-determination.

I have been blessed to work with an incredible team, including NIGC General Counsel Michael Hoenig, and his team of skilled and knowledgeable attorneys; and NIGC Acting Chief of Staff, Christinia Thomas and her professional and expert staff that help shape policy and perform the day-to-day regulatory and administrative functions that make the agency an effective regulator and source of information and assistance in Indian Country. All of these people, along with the countless regulators across Indian Country have helped me navigate significant challenges. I am also fortunate to have worked with dedicated co-commissioners who share my commitment to upholding tribal self-determination and economic development, while ensuring that we regulate with strength and discipline when necessary to prevent the bad actions of the few from jeopardizing the good efforts of all.

As a citizen of the Muscogee (Creek) Nation, I have approached challenges over the last six years through the lens of our Mvskoke teachings. One of the most powerful teachings or symbols we Creeks have is our medicine wheel which incorporates much of the dualism that defines our belief system. Although the medicine wheel divides into four (i.e., the four directions – east, south, west, and north), the four directions embody the dualism of our lives (i.e., winter and summer, night and day, yesterday and tomorrow). Dualism is present in our Mvskoke clanship and kinship structures, with primacy of our lineages and our traditions being placed with the maternal, but certain ministerial functions being placed with the paternal. This dualism is present in almost every aspect of modern Mvskoke life.

I see this dualism in gaming. As I think about the most critical lessons learned in my time as Chairman, some involve properly contextualizing the events of the past, while others require looking forward to understand the economic and technological trends we will face as we find ourselves in the midst of a changing global economic landscape. Thus, as my time as Chairman comes to a close, my hope is that my reflections will offer lessons from our past, while pointing to solutions for our future.

One of the most significant lessons I take from my time as

Chairman is the knowledge that Indian gaming is making a profound difference for the lives of our Native people, on the ground. While this was certainly a primary goal of IGRA at the time of its passage, it was not a foregone conclusion. Instead, the impact that Indian gaming has had on individuals' lives and well-being in tribal communities reflects the hard work of tribal leaders coupled with the successful implementation of effective regulations at our agency.

I have seen firsthand the benefits that gaming brings to tribal communities. For instance, just two years ago, I was given the opportunity to tour the language program created by the Chitamacha Tribe in Louisiana, where the tribe is using gaming revenue to fund a program that is re-introducing their endangered language to the youth of the tribe. The tribe has created an "app" and is utilizing federal archives and recordings of their language; work that simply would not be possible without Indian gaming revenue. Truly our Native languages make us who we are. They are the foundation of tribal sovereignty and self-determination. I am humbled to see the success of the Chitamacha Tribe's leaders hard work to save their language.

I have also toured educational facilities funded by Indian gaming revenue. In Milwaukee, the tribes of Wisconsin have used their gaming revenue to fund the Milwaukee Indian School, a school open for enrollment to any Native student and offering courses in Native languages such as Menominee, Ojibwe, Oneida and Ho-Chunk. Funding the education of our youth ensures that our Nations will be strong in the future, as we are investing in future elected leaders and educated citizenry.

At Cherokee, North Carolina, I was able to see the incredible hospital that the Eastern Band Cherokee of Indians (EBCI) have built and opened using their gaming revenue. This facility is state of the art, offering the highest quality of health care to EBCI citizens in an environment that features works of Cherokee art and culture to create an environment that inspires health and well-being.

It is inspiring to see what our tribal nations have done with Indian gaming revenue. Looking back, I can now say with confidence that regulation by tribes themselves works best. This too was a goal of IGRA, as the Act placed emphasis on the tribes' role as the primary regulator. But when I first assumed my role as the Senate confirmed Chairman of the NIGC, some legislative policy-makers privately shared some skepticism as to whether tribes are truly able to regulate their own gaming facilities and ensure a healthy, law-abiding industry free of corruption and crime. I took advantage of those

conversations at the time to privately educate colleagues about the robust regulatory structure that tribal nations have developed, but I knew then that formal and informal education of fellow policy-makers would be an important part of my work as Chair.

It is clear to me now more than ever that the skepticism of those colleagues was unfounded. Tribal self-regulation is working. To be sure, the ability of a nation to develop local solutions to local problems is valued in the American system because it is the most efficient and best use of resources for local communities. On the ground, tribal governments are solving problems and maintaining the success of what has become a \$34 billion industry. Tribal courts are adjudicating the civil claims that arise out of tribal gaming facilities, and tribal environmental laws and codes direct the day to day environmental matters arising from commercial activities on tribal lands. We have tribes with regulatory bodies funded entirely by their gaming revenues that rival or exceed the staff and resources of federal and state regulatory bodies.

Local regulation also keeps out bad actors. The crooked tribal casino narrative that framed the debates at the time of IGRA's passage was not based on facts or actual events that had taken

place, and nothing to support this false narrative has transpired since. Instead, local tribal control is the reason organized crime has not taken hold as every tribe is best positioned to protect its own assets and operations.

During my tenure, the NIGC has issued three self-regulation certificates to tribes whose excellence in self-regulation commands recognition. I am thankful to my fellow commissioners, Vice-Chair Kathryn Isom-Clause, and Associate Commissioner Sequoyah Simermeyer, who also serves as the Director of our Office of Self-Regulation and former Commissioner Dan Little, for our collaboration in issuing these certificates from the full Commission. Certificates are issued after an exhaustive review of the tribe's internal controls and regulatory capacity and allow a tribe to self-regulate Class II gaming with minimal NIGC involvement. These reflect the successful standard of regulation that tribes are regularly meeting these days. The first to receive one of these certificates was the Seminole Tribe of Florida, the second was the Barona Band of Mission Indians, and just recently we issued a certificate of self-regulation to the Pokagon Band of Potawatomi Indians. Continued investment is necessary to support the capacity of tribes to regulate their own gaming facilities.

After overseeing the primacy IGRA places on tribal self-determination, I can confidently say the system works. Looking forward, there are two areas that I advise the industry to watch closely. The first is gamesmanship – that is, people or entities outside the tribe trying to manipulate business, professional, and employment relationships associated with Indian gaming operations to further their own interests at the expense of the tribal gaming operation and the tribe. Gamesmanship is our biggest threat in my view. Over the last six years, we have taken significant steps at the agency to curb gamesmanship and stem the bad actions of third parties who seek to interfere and take advantage of Indian gaming. Assisting the primary regulators of Indian gaming, namely tribal nations themselves, by being faithful partners in their efforts to insulate tribal operations and decision-making from bad actors and snake-oil salesmen should remain one of our highest priorities. At NIGC, we do this by supporting tribal capacity through training and technical assistance, coordinating with law enforcement agencies such as the FBI and tribal and state police, making referrals, and, where appropriate, bringing targeted enforcement actions.

One of the most prominent recent success story has been with the Cheyenne & Arapaho Tribes of Oklahoma. The tribe worked closely with the NIGC to identify and hold accountable bad actors. Instead of simply highlighting and sensationalizing the tribes' violations of IGRA, we were able to reach a settlement agreement with the tribes that utilized a measured and targeted approach to address a situation that was clearly gamesmanship on the backs of the tribes.

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The NIGC's action allowed the parties to acknowledge the problem, create a solution, and prevent interruption of the casino operations. I commend the Cheyenne & Arapaho Tribes of Oklahoma for fully cooperating with the NIGC and its staff to reach a solution.

As the Indian gaming industry continues to grow and expand, third party bad actors will likely seek new and innovative ways to wrongly take control of or gain profit from tribal gaming operations. When third party bad actors see opportunities to take advantage of tribes and their gaming facilities, we must look for ways to support and empower the tribes on the ground to identify the bad actors and address their harmful conduct.

Finally, I hope that all involved in Indian gaming – from tribal regulators to tribal leaders to whoever takes my place at the NIGC – will put significant emphasis on the role technology plays in this industry. Over the last six years, I have seen tremendous changes in the field of technology, changes that impact everything from the assets of Indian gaming enterprises to ensuring the safety of patrons on the gaming floor.

Looking ahead, big data, analytics, and artificial intelligence (AI) are going to change all businesses, including gaming. But gaming has always been a technological industry and so the impacts on gaming will be profound. And to be sure, shifts to the global economic landscape will result in greater pressures for non-Natives to take advantage of the resources we have in Indian Country. We need ammunition for the fights to come.

My hope is that as technology continues to rapidly develop, we are posed to change with the entire global economic landscape. If we correctly position ourselves, we can ensure that tribal nations and the Indian gaming industry will benefit from such change, rather than suffer from it. ♣

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