

Tadd Johnson, Bois Forte Ojibwe, Minnesota

Tadd Johnson, a lawyer from Bois Forte, speaks about treaty rights, self-determination, economic survival, the National Indian Gaming Act, sovereignty and Public Law 280.

We are now the law firm of Johnson, Hamilton, Quigley, Twig, and Foley here in St. Paul, Minnesota. We represent tribes and we also represent some businesses that do work on Indian reservations, but our primary focus is representing tribes. We currently counsel to the Minnesota Chippewa Tribe. We're general counsel, and so we handle all the meetings there and any resolutions and any... right now there's some beginnings of constitutional reform. We're working on that, and we do work for the Mille Lacs Band, etc.

My story, I grew up in Duluth, Minnesota. My mother came from northern Minnesota. I went to high school in Duluth and went to St. Thomas College here in the Twin Cities and went to the University of Minnesota Law School.

I did sort of an internship during the summer with something called the Minnesota Justice Foundation, and I worked with an attorney named Larry Leventhal. We worked on something called the Little Earth Housing Case back in the early '80s, and I stayed on with Larry for...as a clerk during the rest of my law school and then for a little while afterwards.

Then, I decided to enlist in the VISTA volunteers, which was not exactly a thing you did in the 1980s, but I decided... I got my whole education paid for because I was a member of the Minnesota Chippewa Tribe, so I decided I had to go back and try to do something. I went to VISTA in Minneapolis and basically said I'd be willing to go to a reservation somewhere in America, and they sent me about 120 miles from Minneapolis up to the Mille Lacs Reservation. At the time, in the mid '80s, Mille Lacs was kind of undergoing kind of an interesting constitutional debate and discussion as to whether or not they could have a separation of powers form of government. It was a very interesting experience.

From there I went up to Washington in 1990 and worked for Mo Udahl who was chairman of what used to be called the U.S. House Interior and Insular Affairs Committee. Indian Affairs on the House side was handled by a very small group of people. There were only four staff people, Frank Duchneau and a fellow named Alex Gabine, who left to go teach at the University of Utah Law School, and I was replacing him as Deputy Counsel. Chairman Udahl

retired the following year and George Miller became chairman, and for a while I was trying to help him find my boss, the Counsel on Indian Affairs, which was Frank's position. Frank had left to become a private lobbyist, and I'd been running the office for about 5 or 6 months, and finally Chairman Miller said, "Why don't you just do it?" So I became Counsel on Indian Affairs to the committee. Then, about two years later, they started a sub-committee on Native American affairs, which Bill Richardson, who is now Secretary of Energy, was chairing as a member of the House from New Mexico...so I worked for Miller and Richardson simultaneously.

In '95 when the Republicans took over the House I came back to Minnesota and for about ten months. I was interim executive director at the Bois Forte Reservation, and we implemented a self-governance program up there, and then I found my replacement and started a law firm here in St. Paul.

In '97 I got contacted by the Clinton administration. They asked me if I wanted to chair the National Indian Gaming Commission, and I said, "no," and then they called me back and talked me into it. I did that for about a year-and-a-half, and now I'm back in private practice.

My understanding, and this is mainly from reading I've done, but as I was saying earlier, in 1889 the Congress passed the Nelson Act, which allotted the lands in Minnesota and attempted to turn the Indians into farmers. I think everybody knew that was an unsuccessful program as it was going through. There was something called the Berg Act which passed around the turn of the century, which allowed the tribes to alienate their lands earlier, so it ended up being a big federal land grant. I think the tribes lost about 93 million acres throughout the United States and considerable lands were lost in Minnesota, which was later the subject of some litigation.

What later became the Brookings Institution in 1928 did something called the Merriam Report, and that pointed out the general conditions of poverty and despair on reservations and generally pointed out the failure of the General Allotment Act or, as it was applied in Minnesota, the Nelson Act, and something needed to be done in any... reservations, but even though the report came out in '28 not much was done until 1934.

So in 1934 in the Roosevelt administration, Secretary Ickes and John Collier, who was Commissioner of Indian Affairs, worked with the Congress and the Wheeler Howard Act was passed, which was also known as the Indian Reorganization Act. That kind of acknowledged that Indian tribes were governments, that they could have constitutions, they could hire attorneys,

hold elections, etc. So it rejuvenated the governmental status of the tribes and also kind of was a way of restating that they were, in fact, sovereign entities within the United States. There were lawyers at the Interior Department actually looking over the old treaties and kind of rethinking exactly what Indians were in the United States.

In spite of the fact that the governments were now recognized again, the housing problems on reservations, the health problems, the lack of employment, the lack of any kind of real business opportunities, it just wasn't there. That situation lingered until the mid '60s and really through the '80s. There were a couple of programs in the '60s that tried to give Indian country a shot in the arm, and they would work for a while, but government money comes and goes and projects get started and if people don't have experience running them, or if government money goes away they have a tendency to fail. So Indian country needed some kind of unusual shot in the arm that would work and it came in the form of Indian gaming, and that doesn't work everywhere either, but in Minnesota, Michigan, and Wisconsin it's been a real shot in the arm.

Sure. A kind of lecture that I give on how this all came about is, interestingly enough Indian gaming kind of arose out of a very oppressive act called Public Law 280. In 1953, for whatever reason, the government decided that it wanted to terminate Indian tribes so it passed two laws. One was House Resolution 108, which basically said we're going to start terminating some Indian tribes, which basically means we're going to give you a check and say you're not an Indian any more.

The second one was Public Law 83280, and that one essentially said that in five states when it passed, which was Minnesota, Wisconsin, Oregon, California and Nebraska and later when Alaska became a state it was included in that, criminal jurisdiction in the state is going to be taken over, on the Indian reservations is going to be taken over by the state.

There was also a civil component to Public Law 280, and exactly what that meant was not really resolved until 1976. There was actually a case in Minnesota called *Brian vs. Itasca*, and in that case the state was attempting to track, tax, a trailer on Indian land in Minnesota. It went up to the Supreme Court and a guy named Bernie Becker argued it. The Supreme Court said that this part of Public Law 280 that is civil has to do with more the judicatory powers and the regulatory powers on the reservation... is still retained by the tribes. Therefore, the case came down and a lot of tribal attorneys started saying, "Well, that means we can tax. We can...anything that's regulatory on the reservation we can still do in these Public Law 280 states.

About the same time, in the mid '70s, the Indian Self Determination Act passed in the Congress. So, tribes were kind of getting rejuvenated in the mid 70's and kind of feeling their oats and starting to feel that they could be more empowered. So consequently the-- the tribes and the tribal attorneys started looking to things that were regulated in these Public Law 280 states and that could be regulated by tribes.

Bingo, for example, was a... it's not criminal in most states to play bingo, and the pot limits are usually limited by state regulations, and so usually the Catholic church or the Elk's Club might be limited to \$500 on their bingo, but the Indian tribes could set their own pot limits, or so they thought. A whole bunch of cases... this occurred in Florida and other places in the country, and they started playing it in Minnesota, high stakes Indian bingo, as it was sometimes known.

Finally, in 1987 the Capizon case, as it's known, went up to the U.S. Supreme Court, and the Supreme Court said, "The Indians can do it. If it's specifically something that is not criminal in the state and something that the tribes can regulate, they can regulate it. All of the sudden the tribes... essentially the tribes won the case.

The next year Congress started going gangbusters to figure out how they're going to regulate, and some of the tribes were saying, "Why do we need this? We won the case. We can do it. We have the inherent sovereign right to have gaming." Because gaming is so controversial and the Nevada delegation and New Jersey delegation wanted to come in and make sure that there was a statute dealing specifically with Indian gaming, the Indian Gaming Regulatory Act was passed. Now my former boss, **Mo Udahl**, wanted to have this strictly be a federal thing and be regulated by the feds, and Senator McCain had a similar approach. But ultimately what got written was a compromise, as virtually all legislation is, wherein the Act says that Indian gaming would be divided into three classes.

Class One is traditional games played by tribes, and those would be regulated by the tribes themselves. The Chippewa Moccasin game, for example, would be regulated by Indian tribes. Class Two gaming is bingo, pull tabs, certain types of card games that are... and for the most part that would be regulated by tribes and the National Indian Gaming Commission. Then, Class Three is everything else. It's games that are legal in the state, and they would be negotiated by a compact between the state and the individual tribes.

So for the first time, there was going to be federally required agreements between the states and tribes, and a lot of tribes saw that as infringement of their inherent sovereign rights. In fact, the Red Lake Band sued, I think, along with the Nesk ko Lair(?) Apaches. They sued the United States saying that they didn't have the authority to pass this Act. That got dismissed because the Congress essentially has plenary authority, or claims to, over the Indian tribes. There is some scholarly research that says otherwise, but essentially the general rule is the Congress has authority over Indian tribes. So the Act passed, and that's essentially the story of Indian gaming.

Itasca County is in Minnesota and the issue was, exactly what does Public Law 280 mean with regard to the civil component of the Act? That went up to the U.S. Supreme Court, and what the Court said was that in spite of some language in Public Law 280, Indian tribes still have the right to regulate, and Public Law 280 states those things that are on the reservations. Tribes have the right to tax. Tribes have the right to have license plates. Tribes have the right to regulate zoning on their reservations.

So, out of that, tribes started thinking of other things they might regulate and possibly create some economic development. Bingo, which is legal in most states... The dichotomy is what is regulated and what is criminally prohibited. Things that are not criminally prohibited tribes could regulate. So bingo was something that was legal in the state, but there was a state set pot limit. So it might be \$500 for the Elks or the Knights of Pithius, but for Indian tribes, state regulations don't apply on the reservations, so the tribes themselves could set a pot limit, so \$100,000, \$10,000 for high stakes Indian bingo.

So that started after *Brian vs. Itasca* and then it ultimately culminated exactly, 10, I think... well, I guess it's 11 years after. *Brian* was '76 and the Capizon case came down in '87. But, there was this kind of 10-year period when this experimenting went on with Indian gaming. Now the tribes asserted that correctly, as it turns out, that they had the inherent sovereign right to do this and to regulate it themselves. They do continue to regulate it themselves for the most part. Most of the heavy lifting on the regulation is done by Indian tribes, but there is a national Indian Gaming Commission and there are also those things dictated or mandated under the Tribal State Compacts, which the tribes negotiated exactly what the states would do, what their component would be in the regulations.

I suppose there is a tradition of gaming in a lot of tribes. I mean there are social events. In Mille Lacs, when I was working there I used to see generally men playing this moccasin game, and it seemed to be part of the tradition. If there was wagering going on at the same time I don't know, but it seemed to be part of their inherent culture. I think bingo was an Anglo game that came in later, but the tribes picked it up and started playing it. I think that has become kind of a social outing especially for the tribal elders. Every reservation I go to there's usually a smoke-filled room in a bingo hall. It's usually some of the elders sitting there enjoying themselves and having their place set up just so. It's kind of interesting to watch.

When I worked for the Congress there were two things we never tried to define in the statute, and one was tribal sovereignty and the other was the trust responsibility between the Indians and the United States. But, when I was working for tribes, when we were writing things, we generally said that sovereignty is the right and ability of the people to control their own destiny. It's probably the singly most important concept in all of federal Indian law and it's something that the average person on the reservation is usually pretty conversant on and they think sovereignty is a near sacred term and they take it very seriously.

As far as economic development goes, there were people that feared for years doing business on an Indian reservation, because one of the accouterments of sovereignty is the sovereign immunity that goes along with it, which essentially means that you can't be taken to court and sued. That essentially comes down from the English law tradition that the king can't be sued or taken to court for the most part. That is a right of sovereigns. The United States, for example, can't be sued without its own consent. So the problem arose if somebody slipped on a banana peel in the Department of Treasury, where do you go? Well, the Federal government passed a Federal Tort Claims Act and essentially waived its sovereign immunity.

The Indian tribes are doing that more and more as they have more invited guests on the reservation with the gaming. They are essentially creating their tribal tort claims acts where the tribe can be sued in its own court system, or if they enter into a business venture with another entity they will sometimes do what's called a Waiver of Sovereign Immunity where they will allow themselves to be taken to court. So it's not that prohibitive, and if you work with somebody who understands how the reservation works or if you... there are various ways to waive sovereign immunity and one of the rights of having the sovereign immunity is the ability to

waive it. So many tribes choose to do that in order to enter into contracts and get businesses on reservations.

Yeah. I think right now they're rethinking that relationship, but essentially the-- the six bands that are members of the Minnesota Chippewa Tribe are treaty tribes that were created with different treaties over the years in the 19th century. In the 1930s, with the passage of the Indian Reorganization Act, the Interior Department came out and created the Minnesota Chippewa Tribe. They voted on it on different reservations and it ultimately passed, and it's a constitution, which includes the six tribes. The way it was written originally was that there were reservation business committees, which consisted generally of a chairman, a secretary-treasurer, and then three committee people. Now some of the tribes took that and then there were, just to complete that, the Minnesota Chippewa Tribe Tribal Executive Committee consisted of the chairman and the secretary-treasurer from each of the six reservations, so there were there were 12 people sitting on the TEC, as they call it. Some of the tribes, as they started changing in the 1970s and '80s, took a different look at that.

Now what the Mille Lacs Band did, for example, was they decided they didn't like that system but they knew that under the Constitution they had to sort of stay under it. So they took the chairman position that was mandated under the MCT Constitution and created the chief executive and that they created actually an executive branch. Then they took the secretary-treasurer position and they made that person the speaker of the band assembly, which is essentially the legislative branch, and they took the three committee people and created three districts and elected them under... and that became the legislative branch. Then they did something that was unprecedented. They created a court system.

That is something that the Interior Department wasn't sure they could do. There were existing solicitors' opinions saying that the Minnesota Chippewa Tribal Constitution didn't provide the authority to create a court system. So a solicitor's opinion came down saying, "Well, if they want to they can call the chairman the chief executive and they can call the secretary-treasurer the speaker, and they can even, you know, create these two separate branches of government. The court will be subject to challenges is basically what the solicitor's opinion said.

It wasn't until 1993 or 1994 when the president of the Minnesota Chippewa Tribe actually came out to Washington, and I was actually at the meeting. We met with the Interior Department. The Clinton administration had a different view of the whole thing, and they

couldn't believe that an Indian tribe, if it wanted to, couldn't have court systems. So then an opinion came from the Interior Department essentially saying that these previous opinions are reversed and if members of the Minnesota Chippewa Tribe want to have court systems they can.

There is kind of a new feeling in Washington during the 1990s that tribes are having a great deal more authority and that has been a real fundamental change in Indian affairs that, actually, I got to see part of while I was there. When I first started in Washington in 1990 there were about 15 lobbyists or so that all...you know, everybody knew each other. It was a very small community. Now there's, you know, virtually a couple hundred people who are representing Indian tribes in Washington, and tribes have become a very viable political force, and they have staved off some nasty amendments in the Ways and Means Committee trying to tax Indian tribes and the Appropriations Committee trying to take away sovereign immunity and elsewhere, and they've become quite an incredible lobbying force.

The Minnesota Chippewa Tribe is an anomaly. It's there I don't think there's anything else like it. There are certain-- there are some confederations of tribes in the United States, but they're not as tightly held within one constitution as the Minnesota Chippewa Tribe. It basically includes all the Chippewa in Minnesota except the Red Lake Band.

Red Lake is kind of an interesting group unto itself. Red Lake has always managed to stay out of any nastiness that was going on, whether it was when the lands got divided up under the Nelson Act, the Red Lake Band managed to keep its trust lands solid. When the Public Law 280 got imposed on the other tribes in Minnesota, Red Lake managed to stay out and keep its criminal jurisdiction. It's kind of an interesting place.

But the MCT is one of a kind. It's kind of an interesting group and it recognizes that it needs to change, but change is coming very slowly. What's happening now is the bands are asserting themselves more and acknowledging that the true inherent sovereign powers originally came from the bands, and I think they would like a constitution that more reflects that fact. So there are the beginnings of constitutional revision, I think, where the bands will be given more autonomy to have governments that truly reflect their unique history and their unique sovereignty. That is a movement that has been coming for a long time and it's actually coming to fruition right now.

One thing that everybody seems to think is that all of the tribes are getting per capita distributions from gaming and that each individual Indian is getting rich from the slot machines

on the reservations. For the most part there that's not true. There are some tribes that give some very small per caps, a very small number give very large per caps. But for the most part, most of the tribes have avoided that and they put the money back into the community, which essentially the Indian Gaming Regulatory Act requires, that the money go for education and community development, economic development on the reservations, and the money is essentially to be used for infrastructure and helping the tribes with their housing and other needs, and that's a common misconception.

Taxes are something we get asked a lot about. Do we need to pay taxes? Indians pay federal taxes, but if they live on a reservation and they work there they don't pay state taxes, but that's because the laws of states don't apply on reservations.

One thing that's not discussed very much is how much money goes into the state from payroll taxes of the casinos. That's a pretty considerable amount in Minnesota, and some studies have shown that. There have also been some studies showing that the economic growth and the positive aspects of Indian gaming in areas where there was just a lot of rural poverty, Indian and non-Indian. The Indian gaming casinos have stimulated growth in certain towns. I think if you look at, for example, Garrison, Minnesota, there's several businesses there: a couple of major gas stations, and a McDonald's, and several fast food places. That has grown exclusively because the Mille Lacs Band has a casino there. There's a lot of bickering among the non-Indians about Indian gaming taking away business, but the studies have shown, in fact, the opposite, that Indian gaming has brought business to those areas and brought customers, that is another misconception.

Yeah. I'm not sure what I can say there. It does go off the tax roll. A lot of what happens, though, is that land goes into trust, which essentially means that it's held in... owned by the United States for the benefit of the Indian tribe. It does go off the track...tax rolls, but frequently what happens is Indian business is started there and it stimulates growth in the economy. Sometimes it's used for tribal housing, etc.

The Interior Department evaluates land in trust and right now there are new regulations being developed by the Interior Department, and even under the old regulations public comment was invited for placing land in trust. But essentially the land in trust concept kind of came about... it was actually part of the General Allotment Act. And land was going to be held in trust

for the tribes for 25 years and then it would be handed over in fee to the Indian farmers, I guess, was the theory.

When the Indian Reorganization Act passed in 1934, because of all the land that was lost under the General Allotment Act, the Nelson Act, and the Berg Act, where property got alienated to non-Indians. The Indian Reorganization Act wanted to offer a remedy to that, and so the land was put into perpetual trust for Indian tribes and there was the opportunity for tribes to gather back some of the lands that they had lost. The irony is that now virtually all this land got stolen during the allotment process and now tribes are just gradually adding back to what were originally their reservations. There seems to be a lot of complaints about their opportunity to add these lands, and people forget that all these lands were once in fact held by Indian tribes. So I don't think it's quite the awe-inspiring problem that is often perceived.

One of the complaints about Indian gaming is that it's not regulated, and I heard that all the time when I was chairman of the National Indian Gaming Commission from various quarters. The reality is that, first of all, Indian tribes do the day-to-day heavy lifting on regulating their casinos. I think what people might want to think about is the fact that Indian tribes don't want cheats or corruption in their casinos and so they're keeping a pretty careful watch on what's going on in their casinos. But second, under the Indian Gaming Regulatory Act, there also is a watchful eye by the National Indian Gaming Commission, the Interior Department, the Justice Department. The Treasury Department regulates matters of the Bank Secrecy Act and they are underlying that, there are the matters that are provided for in the Tribal State Compacts, so the state sometimes carves out a large regulatory role for itself. Sometimes it's a small regulatory role, but that's all negotiated in the compacts. So as far as regulation goes, there is a very complex system in there, but there is regulation going on.

What's happened recently was in '97 the Congress virtually doubled the size of the National Indian Gaming Commission and the appropriation, the amount of money that the NIGC could assess from tribes went from 1.5 million up to 8 million so that it more than tripled, actually, the size of the NIGC. So there's more enforcement capability by the Commission.

The second thing that happened in January of this year was the chairman of the NIGC, Monty Deer, finalized a project that I kind of initiated which was minimum internal control standards, which is essentially you go into a casino and you place a dollar down and the internal control standards essentially insure that that dollar is watched by either a camera or a human

until it gets into the count room and into the bank. They were extraordinarily strict regulations. They were very unpopular. It was probably the most difficult decision I had to make while I was working for the government, but we went ahead with that and ultimately it got signed by the subsequent chairman. That felt like the right thing to do because what was going on in the United States at that point was there was a National Gambling Impact Study Commission, which was heavily scrutinizing Indian gaming.

There also still continued to be scrutiny by the Congress and the media, all of who were saying that Indian gaming is not regulated. One of the complaints one of my staff got when I was chairman of the Commission, and she went out and testified in front of the Gambling Impact Study Commission, and they said, "Well, the first thing you usually do when you're regulating gaming is institute minimum internal control standards." Well that for the most part that had been done by the tribes, but the comment essentially meant that there should be national standards. We had actually been working on that, and she brought that up and got chastised because we were, in his opinion, too late. But, we did that.

Now the tribes are in the process of insuring that they're in compliance with those standards. For the most part in Minnesota they are. I think they already had those things in place, but it showed the world that the Indian gaming was being regulated, which is one of the constant misconceptions of the skeptics. It's in fact regulated by several federal agencies, one specifically created to regulate it. The compacts are approved by the Interior Secretary so the Interior Department has its hands in that and the tribes themselves are... The movement that's going on now is creating tribal gaming commissions across the country, which I think is a very positive development.

No. There's since... in fact, written into the Indian Gaming Regulatory Act there is discussion of trying to keep organized crime elements out of the casinos, and the Justice Department frequently testifies on this matter in front of the Congress. The reality is that there have been two instances of organized crime attempting to infiltrate tribal gaming. In both instances it got caught fairly early on and the Indians turned the bad guys in, and so that was the end of it.

Now when I was working for the NIGC, I used to meet regularly with the Justice Department, and the organized crime guy would come to the meetings and we'd talk about these issues. There are possibilities of organized crime infiltrating Indian gaming otherwise, the linen

industry or the kitchen industry, but there's a watchful eye being kept out for that by the Justice Department and the tribes. People seem to forget that Indian tribes don't want this stuff on their reservations, and to this date there have been two instances. They were stopped pretty early on, and that's that. I didn't see it. Plus, you know, does organized crime want to relocate to northern Minnesota? I don't know.

The Indian Gaming Regulatory Act anticipated that there would be a lot of management companies coming to tribes, approaching them with regard to startup money, etc. That did happen, and the Act contemplated that. The National Indian Gaming Commission has to approve any management contract that goes through. So while I was there I did some of that, but for the most part the tribe is supposed to get 70 percent of the revenues, and the management company is limited to 30 percent and in very limited cases 40 percent. The commission has pretty much stopped approving 40 percent splits.

As far as I...there seem to be fewer management companies around these days. The tribes are taking over their own management, and I think that's actually a positive development. They got trained in. But, you've got to remember when they started in Minnesota in the early '90s the tribes had almost no money, and so some of them went with management companies because they could help them build the casino, build it fairly big. The goal of the tribes is generally to eventually take over their own management, and that has been going on.

It's another positive movement, I think. It's nothing against management companies. They do a fine job, and they actually, some of them develop very, very nice relationships with the tribes and some of the tribes still feel comfortable keeping the management companies there. But generally, members of tribes like to see 100 percent of the revenues coming back to the tribes opposed to just 70 percent. So there seems to be a movement where management companies are... when the contract ends, they generally move on. Now some places in the country, management companies continue to operate the casinos and the tribes feel very comfortable with that, and that's a tribal decision.

When I was staff director for the House Subcommittee on Native American Affairs we were... I think it was '93 or '94; we were trying to get congressmen to come in and say something positive about Indian gaming. I knew Jim Oberstar and he was one of three that actually came in, and he gave this tremendous statement and basically said that...listed a whole bunch of businesses that we tried to start on different reservations in his district, because most of

the tribes are in the 8th District in Minnesota, and he went through a litany and he basically said this is the only thing that works. I mean it's not anybody's favorite form of economic development, but it worked, and that's just a fact. Prior to that I'd seen, you know, sawmills and resorts and, you know, tribes tried all kinds of stuff, grocery stores, but they needed something unique to get people to come to an Indian reservation and this basically was it. It's certainly not my favorite form of how to make money, but tribes needed this shot in the arm. Congress acknowledged that in 1988.

Without one dollar of federal money they basically, you know, have rebuilt the infrastructures on a lot of the reservations in Minnesota. I mean, if you take a look at what they've done at Mille Lacs, they immediately built day care centers and hospitals and new schools, and it's just been a tremendous change from what it was. When I first went there as a VISTA volunteer to Mille Lacs in the mid '80s they had about, I think, around 60% unemployment. They now, I believe, are the largest employer in central Minnesota. I've seen people that I knew there whose lives have just completely turned around. So I mean it, when I first passed the Act I thought, "Oh, this isn't a good thing for us to do."

We had high stakes bingo at Mille Lacs. I was there as an attorney and then they passed the Act and I just thought, "This is not a terrific form of economic development," but as it turns out it, I think it's done more good. I think if you... in the final analysis, if you weigh all the good that it did for the various reservations I think it... in spite of all the problem gambling...

I think overall a lot of people across the country worry about the sovereignty that the tribes sometimes give up when they enter into a compact with the state. That's another concern. Another concern is, you know, if you enter into a compact with the state is the state going to put everything on the table from treaty rights to environmental rights to zoning rights? That's a concern. That has happened in Wisconsin to a certain extent. I guess that they dealt with it and they got by that, but there are a lot of different potential problems with gaming, but with all the problems it has been overall, I think, a positive thing and it has created jobs and created an environment where tribes have become completely empowered in the community and the state and in the country.

Now there's this whole new...for example, I mean, today is July 14th. There are several tribal leaders in Washington meeting with Trent Lott, with the Speaker of the House, with the Republican leadership on the House side, and the Republican leadership on the Senate side. That

just didn't happen 10, 15 years ago. The tribes have access to the White House and they have access to the leaders in Congress, and that was not the case just not very long ago. An unfortunate fact of life is that the money that gaming provides buys that access and buys lobbyists. So overall it has been a positive.

Indian tribes are now on the list of people that if you were running for public office and there was an Indian tribe in your state or in your district that is somebody you have to deal with. The tribes did have friends before gaming, before they had money, but it was a different type of friendship. When I first started in the House there was Mo Udahl and a few other congressmen that simply had a great deal of affection for Indians and Indian tribes, generally. So the areas that Indian tribes were impoverished and didn't have that much and had these needs, and they relied on Udahl and Senator Inowe and a few select congressmen to do things for them.

Now in the House of Representatives there's a Native American caucus that has, I think, 77 members now. It's led by J. D. Hayward, a Congressman from Arizona, and Dale Kilby, a Congressman from Michigan. Hayward is a Republican. Kilby is a Democrat. Patrick Kennedy from Rhode Island plays a very active role in that, and George Miller and some of the old guard from the House and Don Young from the Resources Committee plays an active role in the caucus. But getting, you know, 77 members unified on an Indian issue of any kind, even when I was there from '90-'95, was kind of hard to do. But there's this whole empowerment of Indian tribes that's happened just fairly recently and they're players. They're players on a national scale.

I mean the down sides of gaming are, of course, people going in and becoming problem gamblers. There are some who will gamble their paychecks away and compulsive gambling is a problem, and I hope it doesn't become a tremendous problem on reservations. A lot of the tribes have set up methods for assessing whether or not someone is developing a gambling problem, and I think they especially keep an eye on tribal members. But I mean that is a problem. It's a down side to it and it's an unfortunate thing. When the industry first started out it was one of the reasons that I personally didn't like it, but I think if you go to the reservations and look and see who's gambling, there's a lot of senior citizens. They're playing the nickel slot machines. They're placing low bets on blackjack. I think the average person that goes into a tribal casino doesn't have a gambling problem. But, for those that do, I think the tribes have-- have gone to great lengths to try to figure out who's got that problem and if they can be helpful. When I go into the

tribal casinos I see a lot of signs up for if you've got a gambling problem call this number, etc, so they're trying to deal with it, as they rightly should.

I think what a lot of tribes would like to develop is a tribal sector economy where more dollars...originally they wanted to... they thought maybe what we should do is keep dollars on the reservation here, but as time has gone on, they've discovered that working with their local communities and spreading dollars around has actually worked better.

What a lot of tribes are trying to do now is figure out, what do we do next? Because, they have this feeling... history tells them that gaming is not going to last forever, and as the morality changes in states, and you can see it going on in Minnesota. Gaming is not considered where it once was with tantamount to dealing in narcotics or prostitution or something. Now it's kind of seen as not exactly a wholesome activity but more of an acceptable activity. State laws may well change so that tavern owners can get forms of gaming and when that starts to happen, and it might, tribes are going to need something else to do.

So some of them are going into the banking business, some are going into other... cellular phone businesses and things like that, but they're trying to develop different types of business that are viable on the reservation. There are some tax incentives in the IRS code for locating a business on a reservation, and there's other good reasons...a work force on the reservation. So they're looking around for other ways to create economic development. Some of them are building strip malls, etc, and there are some that are saving their money and endowing themselves for the future. So I think you'll see tribes doing some creative ventures in the future that hadn't occurred to people.

I think we're going to see some creative forms of economic development on reservations in the next 20 years that... People are fascinated by tribal history and they're fascinated by culture, and there are all kinds of reasons for going to an Indian reservation and gambling is one, but a lot of the tribes are building museums. When I was with the Congress we did the Repatriation Act, where tribes can actually receive back their own artifacts from museums that are held. So we thought there would be a movement of more tribes establishing museums.

I think as more people do business on reservations and recognize that it's not that scary to enter into a joint venture with an Indian tribe and recognize that tribes waive their sovereign immunity and can be brought into court and they will be honorable and keep their word and keep

their contracts. There begins to be a series of business deals done with particular reservations. I think you'll see more of a flurry of economic activity.

I was just discussing this with somebody from the National Indian Gaming Association. Tribal leaders have to do all kinds of stuff. They have to make governmental decisions on, you know, where we're going to build a road, where we're going to pave on a reservation. But, more and more they're making sophisticated financial decisions and what's happening is they're employing better advisors and they're getting the best of the best in the private sector.

What has kind of happened just recently is the tribes used to rely on technical assistance from the Bureau of Indian Affairs. With the advent of the self governance movement, I think, and the self determination movement, as the Bureau of Indian Affairs played less of a pervasive role on the reservations and the Interior Department, and the tribes took over the contracts themselves and took over the day-to-day governance of the reservation and started hiring their own people, they found that they could make decisions much more effectively, get better information locally. That's why those programs have been such a success is because the tribes themselves are now empowered to make those decisions and they can figure out who the good advisors are financially, legally, etc.

There are a pretty wide variety of people now who want to work for reservations and are seeking that business. Tribes have a, you know, they...getting a, you know, a tribe as a client is now a real coup if you're doing financial advising or if you're a law firm, etc. So that's how decision-making has changed a bit.

Tribal leaders and the tribal council people are also, you know, educating themselves more. They're taking a lot of seminars and they're doing a lot of reading. A lot of proposals come before tribal councils every week, so they're reading stacks and stacks of materials. I was executive director of a reservation for a while, and we used to get approached a couple times a month with business ideas, and it's hard to tell what will work and what won't work. Sometimes the tribal leaders will have a gut feeling and sometimes they'll go, "We need more information on this. We really should talk to a mechanical engineer to see if building this plant is really viable here and if we can really sell this stuff here."

I mean, the most business ideas get rejected on reservations, and rightfully so, because most of them won't work. But, some of them will work and now tribes are sending out separate...For example, in Mille Lacs they have a Corporate Commission. Other reservations

will have some sort of business advisory commission that are made up of members of the business community and tribal members who will help the tribal council, the political folks with the decision making, and will insure that the bad proposals get weeded out and the good ones get taken seriously. Then, when they get to the... and tribes are becoming familiar with the terminology of business and due diligence and making sure that they're making the right decision for their people... they have to make the right decision. A lot of them are up for reelection every couple of years, and they have very, very tough politics. So they are very cautious, very careful about how they make those decisions, and so they are taking in a lot of information every day. I wouldn't say that being a tribal leader is more difficult now than it was before. I think that just the issues are different and the levels of information on the variety of subjects that they have to deal with have changed.

I'm very curious how this (self governance) will play out in history, but I do think the self governance movement, which was actually started by two of the Minnesota tribes in 1988...but it traces its roots way, way, way back, and tribes have been always inherently self governing. The history of it is there were treaties up until 1871 when the... on one of the Appropriations Act the house said, "We don't want the senate just dealing in Indian affairs any more, because there's all this money in Indian affairs and we want to have some decision-making authority on that. So in 1871 the house put into an appropriations act that there weren't going to be treaties any more, but the old treaties were going to be in place. So the Interior Department got essentially moved over from the War Department. The authority to have an entity that deals with Indian tribes with the Interior started in 1849 and they dealt with Indian tribes over the years.

I wrote an article on this Self Governance Act because I thought it was of the things I wrote/worked on in the Congress. It was probably, I think, the one that most affected tribes and the one that changed things the most. If that's true it remains to be seen, but I think it has changed a lot of things.

So the Interior Department ended up having this pervasive role. On reservations there is this kind of strange Act from 1834 that says that there are certain things that Indian tribes can take over. There's very archaic language in the statute, but it's still on the books. That was later used in... as we wrote the Self Governance Act.

Anyway, as I was saying earlier, they went through all these different permutations in history. Policies shifted. They tried to make the Indians farmers after the treaty making period

ended. It started from 1887 and then in 1934 the Congress said, “Okay, tribes are governments again so they're going to have the ability to write constitutions and have lawyers and make decisions about their day-to-day lives.” Then, in the '50s they tried to terminate tribes, and that didn't work out very well.

Then, around the time of the Nixon administration this concept of self determination contracting came about, and the idea was instead of us sending you, the Bureau of Indian Affairs, sending you five BIA cops, instead we'll have a contract between the United States and the Indian tribes wherein we will give you whatever the cost of paying those police officers is, and their equipment and the overhead expenses, and we'll write out a check and we'll have a contract, and the tribe will carry out those, and those will be called Self Determination Contracts. It was Public Law 93638, so they're also called 638 Contracts. That started essentially in 1975.

That was a shot in the arm for a whole bunch of tribes. It completely changed the Oneida tribe in Wisconsin, as I understand. I went and took a tour of their reservation. They said they didn't have anything until they got Self Determination Contracts. So tribes started taking over Bureau of Indian Affairs roles and as it turns out, there were some tribes that weren't getting that many BIA services, but they ended up getting a 638 Contract to do things.

Well, as the decade rolled along, from 1975 until about 1987, the tribes were getting more and more 638 Contracts. They would have one for social services, one for law enforcement, one for natural resources, etc, and with each of those came a bundle of reports that had to be written and a bundle of bureaucracy that came with it.

In 1987 Art Gabbo from Mille Lacs, Roger Jourdain from Red Lake, Wendell Chino from Mescalero in New Mexico, and altogether ten tribal leaders testified in front of the House Appropriations Committee. At the time the chairman was Sid Yates from Illinois. And they said, “We want to try something new.” They had just been... it was the 200th anniversary of the Constitution and these same tribal leaders, who were at the time called the Alliance of Tribal Leaders, had met in Philadelphia for the 200th anniversary of the Constitution, and they agreed. They wanted to go take this problem to Sid Yates, who had always been a friend of Indian tribes and was ready to try something innovative. So they basically said, “Instead of us having all these 638 Contracts, what if we had one big compact, something as close akin to a treaty as we could get to in the 20th century, building on the self determination program but also starting something

new?” And Yates said, “All right, I'm going to appropriate \$1 million for this for the next fiscal year”.

So they all did, they divided up into ten. They did a plan, and it was a weird situation where first you have the appropriation. Normally, you have the authorizing language first, which is essentially, you know, saying this is the program, these are the requirements, blah, blah, blah. Here was a case where the appropriations came first and then the authorizing language didn't come until 1988.

Mille Lacs sent me out to this meeting, and I was a VISTA volunteer, and we were sitting there essentially writing this demonstration project. It ended up being called the Self Governance Demonstration Project, and they decided they wanted to have a limited number of participants at first. It was going to be limited to 20. They were going to be allowed to negotiate for programs with their area director, and under this new concept of self governance these tribes, this limited number of tribes, could essentially redesign, reprogram, the money any way they wanted to.

So if they wanted to, you know, put more money into forestry as opposed to, having it over in social services, there wouldn't be any rigid firewalls between the money. They'd get one kind of block grant and the money would be for the tribe to decide how to use. There were all kinds of discussions as this was going on. “What if the tribal chairman wants to buy a fleet of Cadillacs? What if the...” you know etc, etc., so the tribes said, “If we do that, we're not going to get elected again,” and all the standard arguments. I mean the tribes are not stupid. They know there are certain services that they have to provide.

The concern to the United States was the protection of the trust assets, and so that was built into the law that that would be reviewed by the Interior Department and protected, etc. So timber and coal and other resources would be protected. For the most part this became one of the amendments to the Self Determination Act in 1988 and became the Self Governance Demonstration Project.

Mille Lacs was one of the first tribes to negotiate a compact with the United States. In fact, I think they might have been the very first group. At the time, the Assistant Secretary, I think, was Eddie Brown and the Associate Solicitor was a guy named Bill Lavalley. They came out and they held negotiations on the Mille Lacs Reservation, and it's kind of a historic thing. So Mille Lacs got at the forefront of this movement.

In the meantime, in 1990 as they were doing their thing, I was moving to Congress to go work for Mo Udahl. In '92 we extended the Self Governance Program to the Indian Health Service. Then we started talking about, "Why don't we make this permanent?" Originally, it was supposed to be a five-year program, but it took the Bureau a couple of years to even begin to negotiate, so five years would have been up in '93. I think.

We gave it a year extension and then we decided that... I was working very closely with the tribes on this, and the tribes actually did a significant amount of the drafting. We didn't make the permanent legislation all that different from the demo project, but Mille Lacs was actively involved on the lobbying of this thing and the assistance in drafting the legislation. Red Lake had some political issues and they dropped out. They never actually went into the program until a couple years later, and I actually helped them negotiate when I went back into private practice.

The whole movement kind of came to a head in '94 and the legislation got introduced by McCain on the Senate side and Richardson, who was my boss, on the House side. There was a big debate because one thing that we did was we stuck on the opportunity for tribes to not only access the programs in the Bureau of Indian Affairs but other Interior Department programs. That became a whole other can of worms, because that's what slowed the bill down so much.

They were terrified that Indian tribes were going to, under this legislation, be able to take over the national monuments, the Washington Monument, the Lincoln Memorial, etc, and the tribes said, "We're not interested in that, but if there is a Fish & Wildlife Buffalo Program going on our reservation we would like to take that over, or if there is a Bureau of Reclamation project in the middle of our reservation we would like the opportunity to negotiate a compact for that, or if there is a national park next to us that was a significant part of our history, we want to be able to negotiate the possibility of taking over part of that."

Eventually, we ended up writing language that was acceptable to the Interior Department. Then, there were a number of holds put on the bill, essentially senators can put a hold on a bill and kill it. We had 34 holds on the self-governance bill. That was largely done partly by the International Association of Fish & Wildlife regulators, who were very afraid about what the bill would mean for Alaska and were we going to be taking over all this stuff. The national parks people were worried about it, and the people that had concession stands in national parks were worried about the bill.

Anyway, we managed to, at the last minute, towards the last night of the Congress, the 103rd Congress, managed to get an agreement out of everybody, and we tacked the bill on the... the bill on the senate side continued to have holds on it, and at 3:00 in the morning we went to the House floor and we did... Title I was essentially the 638 Contract amendments, and what we did there was there was so much debate over that that we created a model contract and stuck it in that. Then Title II was the Self Governance Act, and so that went through and became law. Now we're working on Title V, that'll make self-governance permanent in the Indian Health Service.

Rather than having the Indian Health Service on the reservation performing these day-to-day tasks of running a clinic, doing medical examinations, rather than having that as the only option, tribes now have three options. They can, if they like the Indian Health Service, which some tribes do, in the southwest some of them want to keep the Indian Health Service there and keep them running the hospital, and they the can do that. The Dakotas, particularly, want to have BIA and IHS on their reservations. The tribes have essentially the option of entering into a Self Determination Contract for a portion of the hospital.

So if they wanted to take over some particular portion of medical care they can do that, or if they wanted to enter into a Self Governance Compact where they take over the entire hospital themselves they can do that. The difference is with the Self Determination Contract is that you limit yourself to this particular sector be... I'm just trying to think of an example in a hospital or clinic things they might take over. There are specific divisions where you can contract for certain things. If they want to do that there's a certain amount of paperwork that comes with that that they have to do, or they can take over the whole thing, which is to me, the most simplistic way of doing it and the best exercise of sovereignty, because essentially you're hiring your own doctors and nurses and medical professionals. If you wanted to have traditional healing included in your program, you can allocate money to do that.

So right now this is still a demonstration project in Indian Health Service even though it's been going on since, I think, '92, and there are over 200 tribes involved in this. There are about 557 tribes that are federally recognized in the United States. A good bunch of the tribes involved in self-governance are Alaskan native villages and there's I think 200 or 300 of those up there that make up the bulk of the federally recognized tribes. They have entered into agreements among themselves for...and they negotiate the...so there'll be a cluster of 12 villages that will

enter into a Self Governance Compact with the Indian Health Service. These are crucial life and death issues up in Alaska and elsewhere.

It's important in Minnesota for a number of different reasons. Virtually, I think, all of the all of the Chippewa bands except for White Earth have now entered the Self Governance Program in the Bureau of Indian Affairs, and I think most of them are in the Indian Health Service Self Governance Program. So it's become an important facet of exercising sovereignty and also making sure that things are run right. Again, if tribes wanted to redesign things, reprogram money, if they want to have a sweat lodge for chemical dependency treatment, if they want to put a traditional Chippewa religious person on the payroll, they can reprogram the money as they see fit. They can use what works for healing in their community, and that's the whole point.

Well, tribes need young people from virtually every field, from be it medical or legal or business. I mean, whatever interests people, but I would...you know, there's a lot of technical training that tribes need. They like to see young people going to college, and I think that's a terrific goal. When I was living on the reservation I would see a lot of young people kind of starting a community college and kind of going for a couple of years and, or then possibly spreading their degree out over ten years or something and sometimes never finishing, which is always disappointing to see, because I saw that ... (a couple sentences missing)

... when they want to do something they can do it. It's sometimes it's a hard road, but they can get through these programs. There are all kinds of people that will help you, you know, mentors.

Then coming back and doing something on the reservation is very rewarding, because you can actually see the results of your work on a day-to-day basis. They need people coming back to reservations. I've noticed with the advent of gaming again that people are going back to reservations because there are jobs there.

There are more jobs beyond just being a dealer or working in the casino. Those are, you know, those are fine jobs to have, but one thing that you don't see a lot of and it would be nice if there were more, are American Indian PhDs teaching in colleges or coming back to the reservation and teaching history, for example. I mean the history of each tribe is absolutely fascinating. Everybody has their own tragic story, and everybody has their own recovery story. I

mean, how we came back from this hardship. It's great stuff, and it's studying the history of your own tribe... is always a fascinating thing.

But, we need Indian political scientists, Indian economists, Indian MBAs, across the board, Indian physicists.

Now, in the last ten years, there's been more of a development. Since the mid 1960s Sam Deloria in New Mexico has operated the American Indian Law Center and that's turned out, I guess, over 1,000 tribal attorneys and that's a terrific thing. There's the American Indian Science, ASIS, and they have their own magazine and they're encouraging Indian kids to get into engineering and science, and that's another great thing. North Dakota has a program called In-Med where they actually bring Indian students and give them the experience of what medical school would be like or other areas of the medical profession. So Indian kids can go anywhere today. I mean there's no limitation.

So if they wanted to be a tribal leader, they would probably want to study finance and history and law and figure out what direction the tribe will want to go, because you need to study history to figure out where you've been and now where you're going. There are a lot of legal and financial issues right now on reservations, so you'd want to know those matters as well.

But, reservations need people from all corners of the academic experience and they need, you know, technical folks that go to vocational schools as well. So that's their goal, because as they get more different varieties of business, they're going to need all kinds of people working construction and electricians and plumbing and all that. So, hopefully, they won't be just working in casinos. Maybe they could get the training elsewhere and still work in the casino, I suppose, but getting training from different areas is important. I hope that Indian kids will go into more of a variety of professions because they're needed.