

## **Playing the Political Slots**

***By Donald L. Barlett and James B. Steele***

If it were a public company, the Mississippi band of Choctaw Indians would be the envy of corporate America. With a return on revenue of 41%, the tribe's Silver Star Resort & Casino would top the Fortune 500 profitability list, dwarfing even money spinners like Microsoft, whose 29% return last year seems modest by comparison. The Choctaw Tribe has proved even more productive by another crucial yardstick: influence peddling in Washington. How successful is it? In 1997 the tribe secured its very own special-interest provision hidden in a massive federal-spending bill. And it taps the government for tens of millions of dollars in federal aid every year, even though the Silver Star rakes in annual profits of about \$100 million.

Indian gaming interests have come up with a one-two punch that is helping them get their way with politicians. Indian constituents, acknowledged as long-suffering victims of ill-conceived government policies, often succeed at requesting political favors. Meanwhile, they or their wealthy backers are dumping money (staggering amounts of it) into political campaigns, lobbying and state ballot initiatives. This combination has helped create the out-of-control world of Indian gaming, a world where the leaders of newly wealthy tribes have so much political power that they can flout the rights of neighboring communities, poorer tribes and even some of their own members. Their political clout also helps them protect a chaotic gaming system that has served them well, one that is characterized by overburdened and underfunded watchdog agencies, a mishmash of regulations and a lack of financial accountability. As a result, Washington often ignores the needs of Native Americans in distress while assisting those who least need help.

As recently as a decade ago, Indian tribes were barely a blip on the special-interest radar screen. But since 1993, they have contributed \$8.6 million to federal candidates. In the Clinton years, most of the money went to Democrats. During his second run for office, in 1996, tribes handed out a total of \$1.9 million, 86% of it to Democrats. But with a Republican in the White House, Indian tribes have shifted the target of their largesse. So far this year, 56% of the \$1.4 million they have donated to federal campaigns has gone to the G.O.P. The tribes have invested even more heavily in lobbying Congress. In 2000-01 they spent \$20 million lobbying on such issues as preserving the tax-free status of casinos, expanding gaming operations and protecting Indian sovereign immunity, which allows them to avoid regulations imposed on other businesses. No tribe spends more (or more effectively) than Mississippi's Choctaw. Since 1997 the 8,800-member tribe has distributed some \$11 million to Washington lobbying firms. Most of the money has gone to one of the capital's premier lobbyists, Jack Abramoff, a top Republican Party fund raiser.

It was money well spent. In the 1997 legislative caper, Thad Cochran, Mississippi's five-term Republican Senator, slipped into a 40,000-word appropriations bill a 19-word sentence that exempts the tribe from oversight by the National Indian Gaming Commission (NIGC), the regulatory body created by Congress to oversee Indian gambling. The sentence also excuses the Choctaw from paying the fees levied on all other Indian gaming establishments, which are the NIGC's sole source of revenue. The savings for the tribe amount to about \$180,000 a year. Cochran's provision argues that the tribe was self-regulating effectively.

Meanwhile, government audit reports show that over the past five years, federal agencies have lavished \$245 million in aid on the Choctaw. In 2001 alone (the same year the tribe bought a \$4.5 million corporate plane) the Choctaw collected \$50.4 million from nearly 70 government programs, including \$14.9 million to run their tribal government, \$1.3 million for law enforcement and almost \$371,000 for food distribution. It adds up to an average of \$5,700 for each member. In contrast, federal aid for the Navajo Nation, the poorest tribe in America, averaged \$900 for each of its 260,000 members. The Navajo have no casino.

None of this is to begrudge the Mississippi Choctaw their newfound gaming wealth. Unlike tribes that are content to rely on a casino to support themselves without looking to the future, the Choctaw have plowed their profits into new businesses, from a car dealership to an electronics plant. Nor is this to begrudge the Choctaw their ability to extract aid from Washington. What is awry is a political system that consigns the majority of Native Americans to a life of poverty while rewarding the few who have casino riches with full membership in the system.

### *MONEY TALKS*

These days some of the highest-stakes lobbying in the nation goes on about two miles west of Capitol Hill at the Bureau of Indian Affairs (BIA). The agency, which oversees Native American affairs, decides, among other things, which tribes qualify for federal recognition (and are thus entitled to build a casino and receive federal benefits). Not surprisingly, as Indian gaming has evolved from bingo halls to a multibillion-dollar industry, the number of tribes clamoring for recognition has soared: there are now 337 tribes in the lower 48 states) up almost 25% since 1979.

But since 1993, while the volume and complexity of the petitions have grown, Congress has slashed the BIA's budget, forcing the agency to shrink its staff for handling petitions 35%, to just 11. The agency's Branch of Acknowledgment and Research (BAR) staff, which evaluates applicants on a complex range of factors, including genealogy, culture and continuous existence, is overwhelmed. The result: a November 2001 report by the General Accounting Office (GAO), the investigative arm of Congress, paints the picture of a process in disarray, calling the BIA understaffed, lacking coherent guidelines and having no clear sense of mission. It's a situation ripe for manipulation. In the last two years of the Clinton Administration, despite a recommendation by bar staff to deny recognition to six tribal groups, Assistant Secretary for Indian Affairs Kevin Gover, a former Clinton fund raiser appointed to the post by the President, recognized four of the tribes before he left office on Jan. 3, 2001. His successor, Michael Anderson, another Clinton appointee, then pressured the BAR staff to change its recommendation on the two other tribes. In an atmosphere so tense that a staff member later described it to the Interior Department's Inspector General as "pure hell," BAR was pushed to complete the documentation recognizing the tribes by Jan. 19, the Administration's last day in office. Three days later, on the first working day of the Bush Administration, the BAR staff discovered that Anderson had failed to sign all the documents necessary to recognize one tribe, the Duwamish of Washington State. Alerted to the omission, Anderson drove to the BIA, where an employee took the papers out to his car to be signed. The staff member, according to the Interior Department's report, then backdated the documents to Jan. 19. Anderson says politics played no role in his decision. "These tribes were well qualified to be recognized," he says. Incoming Bush BIA appointees put a hold on Anderson's two 11th-hour approvals. Neither has been recognized so far.

It didn't take the Bush Administration long to pick up where the Clintonites had left off. Last June, Bush appointees in the BIA recognized the Eastern Pequot, an amalgamation of two Connecticut tribes with casino plans that had received preliminary approval under Clinton. In the past four years, spanning both Administrations, the tribe and its investors paid \$525,000 to Ronald Kaufman (a well-connected Republican lobbyist, White House political director for the first President Bush and a brother-in-law of current White House chief of staff Andrew Card) to press their case. The BIA's recognition came amid widespread opposition by Connecticut politicians and community groups and questions about the tribe's authenticity.

Sometimes having a sympathetic Administration in power isn't even necessary. When their agenda bogs down, well-connected tribes can go to friends in Congress, skirting the BIA and the regulatory process altogether. Congress recognized the Pokagon Band of Potawatomi Indians of Indiana and Michigan in 1994. With help from a financial backer, Lyle Berman's Lakes Entertainment Inc., the tribe is on the verge of building a casino about 70 miles east of Chicago, in New Buffalo, Michigan.

Meanwhile, in the Senate, Virginia Republicans George Allen and John Warner have introduced a package deal for six Virginia tribes—despite the opposition of the BIA, which says the bill would permit the tribes to bypass regular channels and allow them “to avoid the scrutiny to which other groups have been subjected.”

### *TAX DOLLARS AT WORK*

Even as they reap ever larger profits from slot machines and gaming tables, tribes with successful casinos continue to collect federal taxpayer dollars. An Office of Management and Budget report shows that from 1993 to 2001, overall federal funding for key Native American programs climbed from \$5.3 billion to \$9.4 billion—a 77% increase. Government and congressional officials say they have no idea how much of that went to tribes with successful casinos. But data Time has analyzed suggest that Washington often rewards rich tribes and penalizes poor ones by distributing funds based on historical practices rather than need. A tribe with a profitable casino often gets more money per capita than a tribe without one. Consider the BIA’s distribution of tribal-priority-allocation (TPA) funds to tribes. Each year the BIA hands out about \$800 million for basic programs such as general assistance to individual Indians and families, vocational training and child welfare. While tpa funding is a small fraction of the BIA’s total spending on Native Americans, it underscores how awry the system has gone. In President Bush’s 2003 budget proposal, the 28,000 Turtle Mountain Chippewa in North Dakota, 68% of whom are unemployed, will receive the equivalent of an average \$154 each. But the 400 members of the Miccosukee Tribe in Florida, whose Miccosukee Resort and Gaming Center rakes in an estimated \$75 million a year, will collect \$2,858 per person—almost 19 times as much. In South Dakota the 41,000 Oglala Sioux, with unemployment at 88%, will receive \$168 per person. But California’s Rumsey Band of Wintun Indians, whose casino takes in an estimated \$150 million a year, will collect an average of \$4,457 for each of its 44 members.

The GAO has twice criticized the BIA’s distribution system, pointing out that “tribes with the highest reported revenues can receive more tpa base funds than other tribes with no revenues or with losses.” Congress directed the BIA to report by April 1, 1999, “on alternative methods for distributing tpa funds, taking into account tribal revenues and the relative needs of tribes and tribal members.” While acknowledging funding inequities, the BIA will not change the system. One reason: the tribes view such government funding as an entitlement. As an official of the Mille Lacs Band of Ojibwe Indians (a tribe in Minnesota with two casinos, which take in an estimated \$200 million a year in revenue) once told a congressional committee, “The United States has a moral and legal obligation to provide tpa funding to tribal governments . . . The facts of the inequities are not that some tribes have been given too much but rather that other tribes have been given too little.”

Such inequities occur not only with BIA funds. A TIME examination of spending by the Department of Housing and Urban Development (HUD) shows that tribes with casinos often pull in more hud money per capita than casino-less, poor tribes. Over the past four years, while hud has handed the Florida Seminoles housing funds averaging \$2,800 per member, the tribe’s five casinos have generated nearly \$1 billion in revenue. The Mississippi Choctaw tribe, with its lucrative Silver Star Resort & Casino, pocketed an average of \$5,900 in hud funds per person. By contrast, the Navajo, the country’s largest tribe, has a 52% unemployment rate but has received only \$1,500 per member.

### *CALIFORNIA SCHEMING*

Tribes may be wielding increased political influence in Washington, but at the state level, small Indian tribes with immensely profitable casinos are exerting even more disproportionate clout. Nowhere is it greater than in California, where combined Indian gaming revenue, at \$4 billion and growing, is set to surpass that of all the casinos in Las Vegas. How much are tribes spending? To win passage of the two ballot initiatives in 1998 and 2000 that legalized Indian gaming in the state, several small tribes spent a total of nearly \$100 million. The San Manuel Band of Serrano Mission Indians, which owns a casino in San Bernardino County, spent a staggering \$34.7 million—an average of almost \$520,000 for each of the tribe’s 67 adult members. Both initiatives passed.

It's not only the size of the political expenditures that is causing concern. Some tribes have violated campaign-finance laws. Earlier this year, California's Fair Political Practices Commission, which monitors the state's elections, charged that since 1998 one tribe—the 232-member Agua Caliente Band of Cahuilla Indians, which has a pair of money-churning casinos near Palm Springs—had failed to promptly report multiple contributions totaling \$8.5 million. When the commission tried to work out a settlement, the Agua Caliente would not negotiate, contending that because the tribe is a sovereign nation, California campaign-finance laws do not apply. Like all federally recognized tribes, the Agua Caliente is a self-governing entity and thus generally exempt from state and local laws.

Despite that, the commission filed a lawsuit, assuming that California's attorney general, Bill Lockyer (the state's top law-enforcement officer) would represent the agency. But he declined. Lockyer, by the way, has accepted substantial campaign contributions from Indian tribes—some \$800,000 in the past four years, including \$175,000 from the Agua Caliente Band. As a consequence, the commission has had to hire an outside lawyer, a move that will cost unnecessary tax dollars. Jim Knox, California Common Cause's executive director, believes that actions against the Agua Caliente and other tribes must be pursued. "If they are sovereign nations, they shouldn't be able to contribute to candidates or ballot measures," says Knox, pointing out that it's illegal for a foreign state or business to pump money into U.S. elections. "And if they aren't, they should be subject to the state's election and campaign-finance laws. The tribes are trying to have it both ways."

And so far, that has worked. Tribes have become California's largest special-interest donors. In his recent re-election campaign, Governor Gray Davis picked up \$1.8 million from them, and he, more than anyone else, is responsible for the face of California gaming. The compacts he signed with the tribes in 1999 paved the way for the explosion in the state's Indian casinos, which number 48 and may climb to 70.

Because tribes pay no state or local taxes, the compacts Davis negotiated provide for tribal contributions to a special impact fund. The money will go to local communities overburdened by booming casinos and help defray the increased costs of local government services. California officials estimate that the tribes will pay about \$100 million a year into the fund. By contrast, Connecticut collected \$332 million last year from its two Indian casinos, Foxwoods and the Mohegan Sun. If California tribes were paying at the same rate (25% of slot revenue) the state would collect up to \$1 billion.

### *NIGHTMARE NEIGHBORS*

As the profitability and size of Indian casinos have grown, so has friction between the gaming ventures and surrounding communities. Last summer tensions between the Rumsey Band of Wintun Indians and its neighbors in the rural Northern California Capay Valley erupted into a bitter war of words when the tribe announced plans to double the size of its hillside gaming business. Highway 16, the narrow, serpentine road that winds past the Cache Creek Indian Bingo and Casino on its way into the tiny hamlet of Brooks, is already congested from round-the-clock traffic to the casino. In 2001, traffic to Cache Creek, with its estimated \$150 million annual revenue, was up 87% from the year before, according to a California department of transportation study.

Indian casinos are overloading other communities across the country. One exacerbating factor: because of tribal sovereignty, if a casino overwhelms local emergency services, draws down the local water supply or pollutes the environment, local authorities have no recourse. Tom Frederick, who owns a small vineyard north of the casino, found that out the hard way. For years, as sewage from the casino seeped onto his property, he tried to get the Rumsey Indians to deal with the problem. Recently the waste-water drainage slowed when the tribe relined a sewage-holding pond, but tribal officials will not talk to him about any damage to his property. "They use sovereignty as a shield," he says.

After protracted negotiations, the Rumsey Band and Yolo County officials reached a tentative accord on the casino expansion. The tribe, which views the deal as a concession, since it is a partial surrender of its sovereignty, agreed to slightly reduce the size of the expansion and pay the county more than \$5 million a year for 18 years to deal with traffic, environmental and other problems. But relations remain strained. Bulldozers moved onto the Rumsey reservation and began clearing land even before the county board had approved the agreement.

### *A TALE OF TWO TRIBES*

After the supreme court gave the green light to gaming on Indian reservations, Congress set up a regulatory scheme that is contradictory, inconsistent and shielded from public scrutiny. How arbitrary is it? The National Indian Gaming Commission can levy fines but has no power to collect them. Each tribe has its own gaming commission, but that's like Enron's auditors auditing themselves. States monitor casinos in some situations but not in others. Federal prosecutors may go after one casino for a gaming violation while ignoring the same violation by a wealthy and powerful tribe.

Few tribes are more powerful than Florida's Seminoles, who pioneered high-stakes bingo and won Supreme Court approval for Indian gaming everywhere. James E. Billie, the Seminoles' alligator-wrestling, folk-singing chief from 1979 to 2001, is the person most responsible for creating the tribe's gambling wealth and also personifies its flamboyant excesses. In a power struggle last year, the tribal council suspended Billie pending resolution of a sexual-harassment lawsuit (it was recently dropped) and an audit of questionable tribal financial dealings, which is still going on. At the time, he was the highest-paid elected official in Florida, with an annual salary of \$330,000. He was responsible as tribal head for the purchase of a corporate jet and a minifleet of helicopters.

But Billie also shared his wealth with tribe members, who last year received individual dividend checks of \$36,000 from casino profits. And he took care of other Seminole leaders. Under his reign, each councilman had a discretionary fund of at least \$5 million; Billie's was \$15 million.

More was available if needed, and it often was. One councilman ran through \$57 million in less than four years. Ordinarily states have no jurisdiction over sovereign Indian reservations. But if an Indian casino wants to offer Las Vegas-style games (like roulette, baccarat and blackjack) or slot machines in a state where such gambling is illegal, it must make a regulatory compact with the state. The Seminoles have 3,160 machines that look and perform like slots. Florida, which doesn't allow such high-stakes professional gambling, also known as Class III gaming, says the machines are illegal without a compact and wants the casinos closed down. The Seminoles claim the machines are not slots but "electronic terminals," so the tribe needs no compact. The Clinton Administration, in one of the decisions made as it was turning out the lights on Jan. 19, 2001, issued an order approving the Seminole operation. The incoming Bush Administration promptly rescinded the order pending further study.

But the Seminoles aren't waiting for the Federal Government's go-ahead. They have broken ground for a casino-hotel-entertainment complex with a new partner, Hard Rock Cafe International. The casino-resort, which will also have convention facilities, a beach club and a spa, will add to the Seminoles' lucrative gaming business. Last year the tribe's two casinos, in Hollywood and Tampa, made a combined profit of \$216 million on revenue of \$254 million—a return of 85%. By comparison, General Electric, often described by the media as America's best-managed company, reported net income of \$13.7 billion for 2001, an 11% return on revenue.

The Santee Sioux casino is a more modest affair. Set on a 200-sq.-mi. reservation along the Missouri River in northeast Nebraska, the gambling hall was set up in a converted cafe and has 60 slot machines. But soon after the casino opened in 1996, federal authorities sought to close it. The issue: the tribe, like the Seminoles, has no compact with the state, though it wasn't for lack of trying.

In the early 1990s the 2,700-member tribe sought a compact with Nebraska to open a casino on the reservation where some 1,000 members still live.

Nebraska refused to negotiate. In February 1996, when the only private employer on the reservation, a pharmaceutical company, closed its small plant, the tribe, with 59% of its members living below the poverty line, went ahead anyway, opening the Ohiya Casino and installing Las Vegas-style slot machines. Thelma Thomas, a Santee Sioux who managed the casino, recalls that the tribe thought it had “the inherent sovereign right and legal right” to offer Class III gaming because, she says, “Nebraska would not negotiate a tribal gaming compact after six years of negotiations.” The Indian Gaming Regulatory Act (IGRA), the law governing Indian gambling, seems to support the Santees’ decision. The act says, “It is the committee’s intent that the compact requirement for Class III not be used as a justification by a state for excluding Indian tribes from such gaming.” No matter. The NIGC ordered the tribe to close the casino by May 1996. It did, with the understanding the state would work with the tribe on other economic development ventures.

When the state failed to deliver, the tribe reopened the casino in June. Enter the Department of Justice, which sued to close the operation down. The tribe, reluctant to end its one moneymaking venture, refused. A federal judge imposed a \$3,000-a-day levy, then upped it to \$6,000. In no time, the tribe owed more than \$1 million. Meanwhile, the Justice Department began seizing the tribe’s bank accounts, including those containing funds earmarked for child safety seats and nutrition programs for the elderly. It even took money out of individual Indians’ accounts. Says Thomas: “They’ve virtually moved to shut this tribe down—the United States.” The uproar of negative publicity forced the government to return some of the money, but it is still holding most of it. And there is still \$4 million in unpaid fines, according to the tribe’s attorney, Conly J. Schulte. “The tribe to this day can’t use bank accounts for fear that the Federal Government is just going to seize any money,” says Schulte. That thwarts the tribe’s attempts to invest in any business, even one having nothing to do with gambling.

Castling about for a way out of the dilemma, Schulte and Santee Sioux representatives traveled to Washington in February 2001 to seek the NIGC’s guidance. Commission officials advised the tribe to install pseudo slot machines—like those used by the Seminoles—to get around the Class III controversy. The tribe complied—at a substantial economic cost. With the switch to the pseudo slots, Thomas says, revenue has fallen by two-thirds. The casino employs only 15 people, and the income barely covers operating costs. There is no longer any money for tribal programs.

But that’s the least of the tribe’s worries. The Justice Department sued the tribe again, charging that the machines the NIGC had recommended were actually illegal. A federal judge in Omaha, Neb., disagreed and sided with the Indians and the NIGC. But the Justice Department appealed the ruling and dispatched a squad of high-powered litigators who prosecute organized-crime kingpins to argue the case. Commenting on the Justice Department’s actions, Thomas says, “They have done everything they could to make this tribe out to be criminals when all we are is struggling to survive.”