

Indian Gaming and the American Indian Criminal Justice System

by

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Abstract

While there has been limited interest in a relationship between Indian gaming and American Indian criminal justice, one exception is a growing amount of research that has sought to explore possible associations between Indian casinos and criminal behavior, both on Indian reservations and in adjacent non-Indian communities. This chapter reviews the available literature on the relationship between Indian gaming and the criminal justice system, offers some insight into what American Indians themselves think about possible linkages between casinos and crime within their communities, and concludes with a consideration of the mixed positive and negative impacts of Indian gaming and their connection to criminal justice in Indian Country.

The criminal justice system in Indian Country includes everything from a consideration of criminal behavior that may lead to an individual's entry into the system, to police, prosecution, and pretrial services, the courts, corrections, and the eventual exit of individuals from the system. While there has been limited interest in the relationship between Indian gaming and American Indian criminal justice system, in general, one exception is a growing amount of research that has sought to explore possible relationships between Indian gaming casinos and criminal behavior, both on Indian reservations and in adjacent non-Indian communities. This chapter reviews the available literature on the relationship between Indian gaming and the criminal justice system, offers some insight into what American Indians themselves think about possible linkages between casinos and crime within their communities, and concludes with an consideration of the mixed positive and negative impacts of Indian gaming and their connection to criminal justice in Indian Country.

The Indian gaming industry

The Indian gaming industry in the United States is a recent phenomenon. (see Anders, 1999; Bloom, 1993; Eadington and Cornelius, 1988; Mason, 2000; Mullis and Kamper, 2000; Peroff, 2001) The earliest stages in the development of Indian tribal gaming began in the late 1970s and early 1980s when tribes in Florida, Connecticut, Wisconsin, and California first opened low-stakes bingo halls on their reservations and then gradually expanded their gaming enterprises. By 1988, when the US Congress passed the Indian Gaming Regulatory Act to provide a common statutory basis for the industry, Indian gaming was a \$500 million business. Today, gross annual revenues exceed \$14 billion.

Of the 562 federally recognized tribes in the United States, about one-third, or 201 tribes, ran 330 gaming operations in twenty-nine states in 2002. (National Indian Gaming Association, 2003; National Indian Gaming Commission, 2003) Gaming revenues vary tremendously from tribe to tribe. While Indian casinos average \$44 million in revenue per year, the top forty-one casinos average \$230,000,000 and the bottom 90 casinos average \$775,000. (National Indian Gaming Commission, 2003) About one-fourth of all Indian casinos and a little less than half of all revenues earned in Indian gaming are earned by tribes in the state of California. (Hostetter, and Olvera, 2003) Indian gaming revenues represent less than ten percent of total revenues earned annually for the entire gaming industry in the United States. (National Indian Gaming Association, 2003)

Indian gaming and organized crime

Only limited research exists on a direct relationship between Indian gaming and criminal justice systems on Indian reservations. What does exist tends to focus on gaming as a new and much needed source of revenue for system-related services. Some tribes appear to fund several components of the system, e.g., law enforcement, courts, probation and prosecution. (Apesanahkwat, 1999, 3) Others tend to focus available resources on one area of public safety such as police protection. (e.g., De La Torre, 2003; Henry, 1999; Hill, 2000; Northern Plains Indian Law Center, 2003) Still other tribes use gaming revenues to contract out for police and other public safety services from surrounding non-Indian communities. (Gorman, 1998; MAGNA Management Consulting, Inc., 2000)

There has also been limited attention focused on various claims of a relationship between Indian gaming and organized crime. For example, *Fortune* magazine and the *Wall Street Journal* published articles that argue, in turn, that organized crime on Indian reservations is rampant and that the corruption of Indian gaming by criminal interests is a scandal waiting to happen. (Useem, 2000; *Wall Street Journal*, 2002a; 2002b). The forms of alleged corruption range from criminal efforts to control investments in or the management of Indian casinos to money laundering and include allegations that organized crime has infiltrated casino equipment vendors and other suppliers to tribal gaming operations. (*Gamble Tribune*, 2002; Rezendes, 2000) Asian-based organized crime is also linked to loan-sharking and other forms of exploitation of Asian customers at the Mohegan Sun and Foxwoods Casinos in Connecticut. (Burgard and Green, 2002)

Those who see the potential for an infiltration of Indian casinos by organized crime base their concerns on the observation that Indian casinos are largely self-regulated and that oversight by the National Indian Gaming Commission, IRS and other federal agencies is inadequate because of chronic under-funding, understaffing and constraints on federal regulators who must respect Indian tribal sovereignty. (Rezendez, 2000) Nevertheless, while it is true that there have been isolated incidents (e.g., profit skimming at a casino operated by the Rincon Indian Band in California is the most publicized case of infiltration to date), there is no evidence of a systematic penetration of the Indian gaming industry by elements of organized crime. (Buffalo, 2002; Fine, 2001; Ohr, 2001)

The opponents and proponents of Indian gaming

Critics of Indian gaming have written books (Benedict, 2000, Eisler, 2001), established anti-Indian gaming websites (Tribal Nation, 2003), and formed interest

groups to oppose both Indian and non-Indian casinos (Reno, 1999). Perhaps the most vehement opponent of Indian gaming on the web is a group called Tribal Nation which has specifically targeted the Foxwoods and Mohegan Sun Casinos in Connecticut. Their website states that they "...want to inform everyone of the crime statistics associated with casinos and more importantly the criminal records of 'indians' who own these casinos". (Tribal Nation, 2003, 1) To that end, they publish a multi-year compilation of local and state crime statistics connected to the operation of the two casinos and a lengthy list of the individual arrest records of tribal members who are identified by name on their website.

In nearly all cases, opposition to Indian gaming has two characteristics—a non-Indian origin and an assertion, usually stated without supporting evidence, that there is a linkage between Indian casinos and criminal behavior. While it is certainly true that Native American support for gaming is not unanimous, even within tribes who operate casinos today, the Navajo Nation receives the most publicity for its opposition to gaming, which is based in part on religious grounds and in part on a fear that gambling addiction and increased crime will follow casino gaming on their reservation. (Henderson and Russell, 1997)

Gaming opponents tend to believe that casinos are magnets for crime generally (*Arizona Daily Star*, 2002; Fairbanks, 2003; McCue, 2003; Morita, 2002; Murphy, 2002; Podger, 2003; Rosenbaum, 2002; Solomon, 2002; Vaillancourt and Sargent, 1999; *Wisconsin State Journal*, 1999), or are worried about increases in specific crimes such as burglary, robbery, and prostitution (North Carolina Criminal Justice Analysis Center, 1999; Peele, 2001), increased police, court and jail costs, especially in adjacent non-

Indian communities (*Detroit News*, 2000; Muir, 2003; Sutherly, 2003), or they are concerned about increases in crimes indirectly related to gambling addiction such as burglary, theft and embezzlement. (Hughes, 2003)

The proponents of Indian gaming dispute or downplay linkages between casinos and increased criminal behavior and emphasize the alternative view that Indian casinos contribute to declining crime rates in reservation communities. Some Native Americans argue that tribes are sovereign Indian Nations and therefore should not have to worry about such externalities as increased crime in adjacent non-Indian communities. (Lorber, 1998) More commonly, proponents of Indian gaming ignore or downplay alleged relationships between gaming and increased criminal behavior and instead cite unconfirmed statements or observations that crime rates decline with the establishment of Indian casinos. (Axtman, 2002; Wichner, 2002)

National proponents of Indian gaming, such as the National Indian Gaming Association and state organizations such as the California Nations Indian Gaming Association argue that gaming generally makes things better for Indians and non-Indians who live in and around Indian casinos. (see California Nations Indian Gaming Association, 2003; National Indian Gaming Association, 2003) Typical of the claim that Indian gaming leads to less crime is the engaging, but unsupported statement of the Chairwoman of the Wampanoag Indian Tribal Council (Massachusetts) who urges people “...to consider the overwhelming body of evidence that has shown Native American Indian gaming produces good-paying jobs, improves household incomes, and reduces social ills, such as crime in the areas surrounding most Native American Indian gaming and entertainment centers.” (Paulson, 2001, 1)

Analytical perspectives

Efforts to examine positive and negative linkages between Indian gaming and criminal behavior have met with mixed results. There have been some reasonably thorough journalistic investigations of Indian gaming and crime. (Francis, 2003; Randazzo, 2003; Roberts, 2001). A survey of state and tribal criminal justice agencies in North Carolina revealed two equal and opposing groups of opinion about the likelihood of increased crime if Indian casinos were permitted in the state. (North Carolina Criminal Justice Analysis Center, 1999). The reported results of federally sponsored research have also tended to be inconsistent and inconclusive. (Government Accounting Office, 2000; National Gambling Impact Study Commission, 1999)

Many obstacles face anyone attempting to obtain an independent and objective perspective on the relationship between Indian gaming and crime. While there is considerable research on the relationship between gambling and crime generally, Indian casinos are often not specifically targeted or identified and may not even be included within the scope of the reported research. Much of the research on gambling and crime is vulnerable to the charge that it is “agenda driven” because it is sponsored by the gaming industry in general or gaming tribes in particular (Walker, 2001), law enforcement agencies (Wheeler, 1999), or because state and local non-Indian governments sponsoring the research seem most interested in finding support for their efforts to pass along the costs of alleged gaming-related crime to tribes operating Indian casinos. (e.g., Thompson, 1996)

Much of the available research to date suffers from methodological problems and inconsistencies, weak correlations and questionable statistical analysis. (Walker, 2001)

Indian gaming is a relatively recent phenomenon so data is simply not available or relationships between gaming and crime have not, as yet, materialized. Moreover, Indian casino earnings and other gaming-related data are difficult to obtain because the information is proprietary. And while associations between Indian gaming and crime may spillover beyond reservation boundaries into adjacent non-Indian communities, most go unexplored because local governments are reluctant to do research outside of their immediate jurisdictions.

Guided by the assumption that Indian casinos may be directly or indirectly related to many forms of criminal behavior, research on casinos and crime has gone in many directions. Some observers have suggested that casinos may increase crime because they concentrate cash and people in one area where criminals, mostly non-Indians, can easily prey upon their victims. (North Carolina Criminal Justice Center, 1999) Research is exploring what many believe is a strong relationship between casinos and gambling addiction which, in turn, leads to the commission of embezzlement, fraud, forgery and other illegal acts to finance pathological gambling behavior. (Committee on the Social and Economic Impact of Pathological Gambling, 1999; French, 2000; Lesieur, 1998; Wellford, 2001) Criminal behavior may also take the form of profit skimming and other white color crimes committed by casino management and the corruption of tribal political leaders. (Barlett and Steele, 2002a; 2002b; Barsamian, 2000; *Tulsa World*, 2000)

Few doubt that Indian casinos have a significant impact on local reservation economies. It is a common assumption that casinos reduce crime because increases in local wages reduce crime. If casinos provide more jobs to low-skilled workers, crime should decrease. Casinos should also reduce crime indirectly by stimulating economic

development. (Grinols and Mustard, 2001, 10-11; Mollison, 2003a; 2003b) On the other hand, Indian gaming may harm economic development and raise crime by undermining the local business climates because casinos may attract an unsavory clientele, and encourage prostitution, drug trafficking, and other illegal activities. And while a casino may improve local economies overall, the large increase in pawnshops that accompany new casinos suggests that economic well-being of everyone within surrounding communities may be uneven at best. (Grinols and Mustard, 2001, 11)

The relationship between Indian gambling and crime

Understanding of the association between tribal casinos, crime, and criminal justice in Indian Country remains very incomplete, but is improving with the help of recent research on the relationship between Indian casinos and criminal behavior. Only a few years ago, published research suggested that the relationship between legalized casino gambling and crime rates is statistically insignificant and that there is probably no relationship whatsoever between legal casino gambling in general and total crime rates. (Horn, 1997) And early studies that looked specifically at the impact of Indian casinos on surrounding non-Indian communities found that when Indian casinos opened, there is actually a net decline in certain crimes such as auto theft and robbery. (Taylor, Krepps, and Wang, 1998)

A somewhat clearer picture started to emerge when research began to suggest that the impacts of new casinos on communities differ and not all communities experience the same “casino effect” on the incidence of crime. (Stitt, 2000) And, for the first time, research suggested that crime increases in a community after a casino opens. (Evans and Topoleski, 2002, 40) In 2001, a study used local county crime data from 1977-1996 to

examine the impact of non-Indian and tribal-owned casinos on crime rates and found a clear and distinct increase in most crimes after the introduction of casinos (Grinols and Mustard, 2001)

As of this writing, the most recent research available offers some important new insights into the relationship between Indian gaming and crime in counties with or near an Indian casino, but does not look at the relationship between gaming and crime specifically on Indian reservations. Perhaps the most significant finding in this research is the existence of a significant delay between the startup of a tribally-owned casino and a large increase in crime and problem gambling in counties with or near an Indian casino. (Evans and Topoleski, 2002) While the counties experience an immediate increase in employment and a significant decline in mortality presumably due to better socio-economic conditions brought about by the casino's stimulation of the local economy, the benefits come at a cost. Auto thefts, larceny, violent crime and bankruptcies all increase by about 10 percent four or more years after an Indian casino opens in a county. A greater concentration of people into small geographic areas generated by the casino opening is the most likely reason for the increase in property crime. The slow build-up of criminal activity for larceny and auto thefts over the first four years a casino opened is also consistent with the belief that casinos encourage pathological gambling and that the afflicted people eventually turn to crime to support their addiction. (Evans and Topoleski, 2002, 45-46)

What do American Indians think about casinos and crime?

There are statistically significant relationships between casinos and crime and recent research suggests that Indian gaming contributes to increased crime in counties

with or adjacent to Indian casinos. However, whether or not there is a relationship between casinos and crime on Indian reservations has not been adequately addressed to date. Moreover, little attention has been given to the broader issue of the impact of gaming on American Indian criminal justice systems generally.

There are several reasons for this omission in the literature and many, such as the proprietary nature of much of the relevant data, have already been identified. Perhaps the biggest underlying reason for the absence of comprehensive research on the relationship between casinos and crime on reservations is that Indian tribes are sovereign nations and, for good reason, are very reluctant to grant an approval to research by non-tribal members on their reservations. They assume, correctly, that individuals and organizations who oppose Indian gaming will use any suggestion of a harmful linkage between casinos and crime to support their campaigns against the Indian gaming industry.

While any systematic exploration of the relationship between Indian gaming and crime in Indian Country is well beyond the scope of this chapter, some insight into the topic can be drawn from research now being conducted by the author on the Menominee Indian Reservation in Wisconsin. The research, now into its third year, is a follow up study to an earlier research on the termination and subsequent restoration of federal recognition of the tribe in the 1960s and 1970s. (Peroff, 1982) To date, nearly 80 semi-structured, open ended interviews have been conducted on the reservation and provide a basis for the following discussion.

Today, the Menominee Nation is working to build a basis of long-term economic and political strength to support the growth of greater tribal self-determination now and

in the future. About half of the over 8,200 enrolled Menominee tribal members live on the reservation. While their forest remains central to the uniqueness of the tribe, the reservation economy is also supported by the establishment of a gaming casino in 1987. Although it is not large (less than \$3 million in annual revenues), the casino is the largest employer on the reservation and proceeds from gaming provide support for police, tribal courts and other services related to public safety, as well as for a broad range of health, education and welfare services, economic development programs, and many other forms of community investment.

One question, used in all of the interviews, asked respondents to identify the most significant changes that have accompanied the establishment of the Menominee Casino on their reservation. While several positive and negative impacts of gaming on the reservation were identified, direct connections between the tribe's casino and crime on the reservation were only made around 15 percent of the time. The most common concern expressed by respondents involved observations of an increased incidence of gambling addiction among Menominees, especially the elderly. An association between the casino and substance abuse was mentioned with about same frequency, but was often qualified with the observation that alcohol has long been a problem on the reservation. One respondent wryly observed that people have more money in their pockets because of better employment opportunities in the casino so now there is a "better quality of drugs" (more cocaine and heroin) available on the reservation.

A chronic problem with gangs and juvenile delinquency is also linked to Indian gaming because parents (especially single parents), worked long hours at the casino, often from 5 or 6 o'clock in evening to 2 or 3 o'clock in morning, and their

children, left unsupervised, were free to get into one or another form of delinquent misbehavior . While it was recalled that youth gangs were around before the casino was built, lately gang members seem to be better organized, perhaps by kids returning to the reservation with parents seeking work at the casino.

Interviews, especially with Menominees employed at the casino, suggest that theft, fraud, bogus credit card use, prostitution, and drug trafficking have at one time or another all been observed in or around the casino. However the incidence of such behavior seems to be very infrequent. Certainly a conclusion that the Menominee Casino is a “magnet for crime” is not supported by the available data. Some respondents did say, though, that they only began to feel that it was necessary to lock their doors after the casino appeared on the reservation. As for any relationship between the Menominee Casino and crime off the reservation, the only relevant comment is an observation by a local newspaper reporter who said more people in the adjacent city of Shawano, Wisconsin were embezzling local businesses to play at the casino.

Conclusion

Research completed to date on Indian gaming, crime and criminal justice in Indian Country suggests that there is a statistically significant relationship between casinos and crime and also suggests that Indian gaming contributes to increased crime in counties with or adjacent to Indian casinos. While the specific relationship between casinos and crime on Indian reservations remains as a topic for future research, it is safe to assume that most individual Native Americans on reservations probably respond to the presence of casinos in much the same way as people everywhere.

Indian casinos provide new options for tribal members, for good and for ill. Some observers emphasize the former and point to new jobs, better services, improved public safety, and more economic development opportunities. Others stress the latter and call attention to increased gambling addiction, drug use, property crime and the other ills that seem to accompany the gambling industry wherever it is situated. Whatever the negatives associated with it, gaming on Indian reservations brings new opportunities to places where opportunities have been scarce for a very long time. What, in turn, that means for criminal justice in Indian Country remains to be seen.

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