

Indian Gaming in the Kumeyaay Nation

By Ethan Banegas

San Diego County has the largest concentration of Indian casinos in the nation. Gaming has allowed Indian tribes to pursue the policy of self-determination, which means that Indian tribal governments can conduct their own affairs. The process of winning the right to gamble took place over the course of nine years and involved three landmark cases: *Seminole Tribe of Florida v. Butterfield* (1979), *Barona Group of the Capitan Grande Band of Mission Indians v. Duffy* (1982), and *California v. Cabazon Band of Mission Indians* (1987). This article examines the political climate that allowed the courts to favor Indian gaming. It also includes the shared history of the Barona, Sycuan, and Viejas casinos.

In the 1960s, Indians began to demand control over programs that affected their welfare. The federal government gradually allowed a higher degree of tribal sovereignty and self-determination. W. Dale Mason wrote:

Beginning with initiatives in the Kennedy administration, the 1960s brought about another dramatic change in Indian policy. By de facto ending termination and turning responsibility for federal programs over to the tribes, Presidents Lyndon Johnson and Richard Nixon set in motion a process that by the 1990s resulted in dynamic, thriving tribal governments.¹

The Reagan (1981-1989) and Bush Sr. (1989-1993) administrations solidified a policy of self-determination that began in the 1960s.

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Barona Valley Ranch Resort and Casino, 2017. Photo by Ethan Banegas.

In the early 1980s, programs run by the Bureau of Indian Affairs were at risk of being cut when the Reagan administration decided to balance the budget.² Sen. Thomas Slade Gorton (Republican-WA) remarked, “no one can or should expect to be exempt from the inevitable cuts which ensue from balancing the budget.”³ A “longtime tribal antagonist” and chairman of the Senate Interior Appropriations Subcommittee, Gorton successfully pushed to cut Indian programs.⁴ The pieces were in place for the state and federal governments to open the door for Indian gaming as a way to relieve tribal dependence on the federal government. Even a decade later in 1995, during the Clinton administration, the Senate refused to restore \$200 million in cuts to the Bureau of Indian Affairs by a vote of 61 to 36.⁵ Pro-Indian supporters like Barbara Boxer (Democrat-CA), Edward Kennedy (Democrat-MA), and Majority Leader Tom Daschle (Democrat-SD) voted with the Republican majority.

With the 1980s cuts in federal funding, tribal governments looked for other ways of generating the revenue necessary to fund their programs. In 1975, the Seminole Tribe of Florida had established a high-stakes bingo operation that generated significant revenues for education, welfare, and economic development. Indian gaming was challenged when Broward County Sheriff Robert Butterfield, acting on behalf of the State of Florida, threatened to close the Seminole bingo hall because they offered prizes over \$100. The Seminoles were granted a preliminary injunction by the district court and pursued a case against Florida, *Seminole*

v. Butterfield. Attorneys for the State of Florida defended *Butterfield* by arguing that the state had criminal jurisdiction over Indian tribes. In 1953, Congress had passed Public Law 83-280 that permitted certain states to transfer criminal jurisdiction from Indian country to the state government. The law applied to California, Nebraska, Minnesota, Oregon, and Wisconsin with the exception of three reservations: Red Lake Chippewa Reservation, Warm Springs Reservation, and Menominee Reservation.⁶ Attorneys for the Seminole Tribe, however, successfully argued in 1979 that PL 83-280 only applied to criminal jurisdiction and not to gambling. The district and circuit courts agreed and ruled in favor of the Seminole Indian Tribe because “the playing of bingo halls and operation of bingo halls is not contrary to the public policy.”⁷ The court explained:

The district court held that Florida’s gambling laws were civil/regulatory not criminal/prohibitory. Therefore, notwithstanding the state’s assumption of criminal jurisdiction over Indians in Florida reservations under Public Law 83-280, the state limits on bingo did not apply to the Seminole games.⁸

Seminole v. Butterfield paved the way for the Barona Band of Mission Indians to commence gaming. Tribal chairman (1981-1988) Edward “Joe” Welch traveled



Barona Valley Barn (1932), 2017. Photo by Ethan Banegas.

to the Seminole Reservation in Florida to evaluate their gambling operation. After his return, the Barona tribal council voted to open their own high stakes bingo with both tribal money and funds from Welch's personal account. Barona was among the first tribes to have bingo games on a federally recognized tribal reservation.⁹ Like Florida, however, the State of California had laws forbidding high-stakes bingo. San Diego County Sheriff John Duffy, acting on behalf of the state, threatened to close the Barona bingo hall. Barona filed suit in district court in *Barona Group of the Capitan Grande Band of Mission Indians v. Duffy* and used the Seminole case as a precedent. Barona won in district court.¹⁰ The courts use the same language as the *Seminole* case to rule in favor of Barona, stating that California's gaming policy was permissive/regulatory and bingo was beyond the Sheriff's jurisdiction.¹¹ A plaque at the Barona Museum pays homage to Barona's victory; it reads, "In 1982 Barona won US Supreme Court ruling *Duffy v Barona*, allowing high-stakes Bingo."¹²

In the wake of the *Barona* and *Seminole* cases, which decided in favor of Indian gaming, approximately 80 other tribes entered the gaming business.¹³ Although these court cases ruled that gaming was beyond the reach of the state's jurisdiction to prosecute, "states continued to enforce their gambling regulations on reservations."¹⁴ The final showdown took place in California almost a decade after *Seminole v. Butterfield* in the *California v. Cabazon* case (1987).¹⁵ Eighteen tribes and two Indian organizations battled twenty-five states in the Supreme Court over the role of state governments and Indian gaming.¹⁶ Like the *Barona* and *Seminole* cases, the state's main argument rested on Public Law 83-280 giving the state jurisdiction over federally recognized tribes.

On February 25, 1987, the Supreme Court ruled 6 to 3 to reject California's position. Using the same language as *Seminole* and *Barona*, the court found that Public Law 83-280 gave California the ability to regulate gaming but not to prohibit it. Congress had passed the law in an effort to combat lawlessness on reservations; it permitted states to intervene in tribal affairs only if criminal activity was taking place. *California v. Cabazon* settled the issue of states trying to forbid Indian gaming once and for all. Significantly, it was no coincidence there was a continuity of language used in all three court cases. During the author's interview with Don Speer, long-time business advisor to the Barona Band of Mission Indians, he shared that the Cabazon attorneys used the *Barona* and *Seminole* cases as templates to win the case.¹⁷

Speer, working with the Cabazon Band of Mission Indians as an investor with a management contract for their Desert Oasis Casino at the time, emphasized that Barona was a massive influence on the steps taken to win the *Cabazon* case. These three court cases are inextricably linked. To summarize: in the beginning was the

Seminole victory, which led Joe Welch (Barona's Chairman) to visit the Seminoles and open a high-stakes bingo operation on Barona. Thereafter, Sheriff Duffy's threat brought about Barona's case and eventual victory, using the argument from prosecuting attorneys representing the Seminoles. After Barona's victory, Cabazon had the final showdown in the Supreme Court and won by replicating Barona's and Seminole's arguments.

Barona Bingo Cardroom and Casino

Under Chairman Welch, Barona's high-stakes bingo continued in an unassuming gymnasium at the center of the reservation and generated money.¹⁸ Tribal sovereignty gave Barona's bingo a competitive advantage over off-reservation games because the state could not limit hours and jackpots.

In 1983, the Sycuan tribe, located eleven miles from Barona, followed suit and opened up a bingo hall. Sycuan's high-stakes bingo enjoyed the same competitive advantage as Barona, and it was located much closer to large population centers in San Diego. It was not long before Sycuan took most of Barona's business, leaving their neighboring tribe in a vulnerable situation. Barona's nascent gaming business closed four times due to both mismanagement and Sycuan's proximity to San Diego.

Clifford LaChappa, who succeeded Joe Welch as tribal chairman of Barona, inherited a gaming business in dire straits. After closing four times, Barona's high-stakes bingo was hardly producing any income for tribal members. Chairman LaChappa was working for the San Diego Gas and Electric Company, and when



Barona Valley Ranch Resort and Casino, 2017. Photo by Ethan Banegas.

he heard about a man named Don Speer who was recognized in the gaming industry for successfully turning around the bankrupt gaming business on the Cabazon reservation near Palm Springs, California, he reached out to him. After working with the Cabazon tribe for nearly six years, he was reluctant to come to the Barona reservation because it had a bad track record and an extremely remote location. Chairman LaChappa talked him into visiting the reservation and the rest is history. Speer was drawn to the people of Barona. On a handshake deal, he committed to not only investing his own money to help Barona turn its struggling business around but had a clear vision and determination to turn it into a financial success that would rival casinos on the Las Vegas strip. He took a gamble on Barona's high-stakes bingo and built a new cardroom investing his own money in the operation.¹⁹

Speer and the people of Barona soon turned their gaming operation around. Eventually the tribe accumulated enough money to expand into a bona fide casino, the Big Top Barona Casino, that opened in 1994. Building this casino was not without risk because Barona did not yet have a state compact. Authorities could have closed the operation if a compact between the tribe and state was not agreed upon. Fortunately, the Las Vegas-style casino became an instant success. It was housed in a 39,000 square-foot tent, had 1,000 slot machines, and consisted of a vintage Barnum and Bailey circus theme. With the construction of the Barona Big Top, Barona's gaming operation went from the third most successful casino in San Diego to the first.

In anticipation of a Barona compact with the State of California, Speer and the people of Barona began plans in 1998 with world-renowned Las Vegas architect Joel Bergman to build a new \$225 million resort casino. Bergman had designed the Golden Nugget (Atlantic City), the MGM Resort & Casino (Las Vegas), the Mirage (Las Vegas), Caesar's Palace (Las Vegas), The Paris Casino and Resort (Las Vegas), and numerous other projects. Significantly, Barona's first gaming compact with the state was signed on October 8, 1999, during the preliminary stages of the new resort and casino.²⁰ After four years of planning and construction, Barona's new casino was completed on December 31, 2002. There is a detailed description of Barona's resort and casino on their website:

About Barona Resort & Casino: Named Best Casino and "Loosest Slots" for six consecutive years in the San Diego's Best Union-Tribune Readers Poll, Barona Resort & Casino is the ultimate gaming entertainment destination featuring 2,000 slot and video poker machines and over 90 table games. The AAA Four Diamond rated property features 400 spacious guest rooms and suites with beautiful

views of Barona Valley, award-winning dining, the AmBience Day Spa, a full-service events center and the 18-hole championship Barona Creek Golf Club, which was rated the 4th Best Resort Course in California by *Golfweek Magazine*.²¹

Sycuan Aims for Economic Diversity

Barona and Sycuan share a common history in Indian gaming. Among the most noteworthy correlations are bingo history and a pioneering tribal chair. In 1972, Anna Prieto Sandoval won the tribal chair of the Sycuan Band of the Kumeyaay Nation. There were approximately eighty tribal members at the time and “none had a steady job.”²² Life on the reservation was full of extreme hardships and Sandoval walked ten miles one day to retrieve milk for her children. News travels fast among reservations in San Diego County due to ancient kinship ties, and Sandoval heard about Barona’s successful high-stakes bingo operation eleven miles away. In 1983, Chairwoman Sandoval was approached by Pan American International (PAI), a management company, to open a high-stakes bingo operation on Sycuan. This was the same management company that managed Seminole bingo in Florida.

A year after Chairman Edward “Joe” Welch opened a bingo hall in Barona’s recreation center, Sandoval pioneered Sycuan’s high-stakes bingo. Like Welch, Sandoval used her own personal assets to start a gambling operation. PAI’s



Sycuan Casino, 2017. Photo by Ethan Banegas.



Sycuan Casino interior, 2017. Photo by Ethan Banegas.

proposition had created strong opposition among a faction of Sycuan's tribal members who feared that traffic jams and strangers would change their quiet reservation life. Sandoval, however, offered a remote site on the outskirts of the reservation (she owned half the title) to satisfy the tribal opposition. The Sycuan Bingo Palace, as it was called, irked those who had doubted Sandoval, particularly after her business venture became profitable.²³

Sycuan had a competitive advantage over Barona because it was located closer to large population centers in San Diego and just ten miles from the city of El Cajon. The tribe's early success allowed them to part ways with PAI management in 1987 and to manage the bingo game themselves. Profits eventually allowed them to pay for an expansion that was completed in 1990. The new bingo hall consisted of a 68,000 square-foot structure and included a 1,500-seat bingo parlor, 35 poker tables, and 20 off-track betting seats. Chairwoman Sandoval was the leader of Sycuan for twenty years (1972 to 1992) and brought Sycuan's eighty tribal members out of abject poverty. By the early 1990s unemployment disappeared.²⁴

In 2002 Sycuan hired Steve Penhall to be the general manager of their casino. He previously worked at the Sandia Casino in Albuquerque, New Mexico, for three years, and at the Ute Mountain Casino in Durango, Colorado, for seven years.²⁵ Penhall resigned in 2008 and Sycuan returned to managing their own casino for a second time. Hank Murphy, an elder tribal member of Sycuan, said that he could not believe so many Indian casinos spent money on management

companies. With great pride, Murphy explained that the people of Sycuan and the tribal council “run our own affairs.”²⁶

Don Speer mentioned that management companies are often important for financial investment and gaming expertise to open an Indian casino. For example, he stated that San Diego’s newest casino on the Jamul Reservation “probably would not have gotten off the ground without a management company.”²⁷ He also believed the same was true for Harrah’s Rincon Casino in San Diego County, which is operated by the largest management company in the world. Notably, Barona, Viejas, and Sycuan all entered the casino industry with management companies. However, after their casinos became profitable, they no longer thought it was necessary to hire management companies.

There are costs and benefits to Indians managing their own casinos. Management companies are extremely expensive and their employees make all the daily decisions for the casinos. As a result, tribal members know very little about their own business and often feel worlds apart due to a lack of involvement. On the other hand, many Indians lack experience in the casino industry. In that business, decisions that seem counter-intuitive are often the right ones. Sometimes it helps to have a management company with decades of experience in the casino industry. The question of whether to self-manage or hire a management company remains a debate that is extremely important for gaming tribes and a topic that deserves more study.

Daniel Tucker was the tribal chair of Sycuan for most of the development of Class III Vegas-style gaming. He served as tribal chairman for fourteen years (1993-1996 and 2003-2014). Before his tenure, El Cajon’s major golf course, Singing Hills, had been bought by Sycuan in 2001 to attract customers to play at the casino. Singing Hills was renamed the Sycuan Golf Resort and includes fifty-four holes, two restaurants, a swimming pool, one-hundred-twenty rooms and suites, and shuttle service to the casino, located three miles away.

In 2011, Sycuan Casino spent twenty-seven million dollars to renovate their casino “reminiscent of a Sultan’s palace.” They gutted “the entire casino, section by section,” added a world class sports bar, and expanded the buffet.²⁸ The total square footage is 305,000, which is equivalent to Viejas’ floor plan. Currently, the Sycuan casino has a total of five restaurants and “the Bingo Palace on the second floor...can easily be said to be the most elegant bingo in San Diego.”²⁹

Viejas—A Casino plus a Factory Outlet

In 1977, before the Seminoles opened their high-stakes bingo hall, Viejas opened a bingo room in their Ma Tar Awa RV Park. This event, however, is



Viejas Casino and Resort, 2017. Photo by Ethan Banegas.

insignificant to the genesis of Indian gaming because it did not challenge the state with high-stakes jackpots and extended hours of operation, as Barona did six years later.

Following the three cases that made Indian gaming legal in United States, the people of Viejas voted to open a 100,000 square-foot casino in 1991. Eight years later, in 1999, they expanded to a 300,000 square-foot casino.³⁰ This new expansion coincided with the signing of a state compact with then-Governor Gray Davis of California.

September 10, 1999 is considered the “economic Independence Day of California Indians” because 58 state compacts, including Sycuan and Viejas, were signed by tribal leaders and Governor Davis. Three more compacts were signed, including Barona’s compact, on October 8, 1999.³¹ Gaming compacts limited Indian casinos to 2,000 slot machines; Viejas, Barona, and Sycuan maxed out their allotted quota at the turn of the twenty-first century. On June 14, 2000, Viejas was the first casino to have Las Vegas-style (coin operated) slot machines on a reservation.³²

On March 21, 2013, Viejas Casino became the Viejas Casino and Resort after a \$36 million dollar expansion added a hotel.³³ Tribal chairman Anthony Pico said Viejas originally planned for a six-hundred room hotel in 2007, but after the economic downturn, the hotel was reduced to approximately 80 percent less square footage. The Viejas hotel currently has a total of 128 rooms, which include ninety-nine deluxe and twenty-nine luxury suites. Like Barona and Sycuan, the



Viejas Outlet Center, 2017. Photo by Ethan Banegas.

people of Viejas manage their hotel without a management company.³⁴

To make way for the new hotel, the old bingo hall was razed and a new four-hundred-seat bingo hall was constructed across the street from the casino in the Viejas Outlet shopping center.³⁵ Currently, the Viejas Casino has six restaurants, a night club called the “Dream Catcher,” an RV park, and a sixty-store retail outlet mall. Although the Viejas Outlet Center has struggled in recent years, it grossed twenty million dollars in 2013 according to tax yields.³⁶ In addition, the mall has managed to attract and sustain several designer brands such as Tommy Hilfinger, Polo Ralph Lauren, Levi’s Outlet, Guess Factory Store, Gap Outlet, Eddie Bauer, Coach, Sunglass Hut, Nike Clearance Store, and eight eateries.³⁷

Comparing Three Native Nations

In the early history of the Kumeyaay Nation, Barona and Viejas shared a common history on the Capitan Grande Reservation. This was mostly a mutual political relationship because the kinship ties between Los Conejos and the Barona Band were tenuous. This political relationship became most evident during the relocation of 1932. Later, Barona and Sycuan enjoyed a common gaming history. Both tribes pioneered high-stakes bingo in San Diego County with trailblazing chairs, Edward “Joe” Welch and Anne Prieto Sandoval. Intense competition between Sycuan and Barona ensued in the burgeoning high-stakes bingo business,



Hollywood Casino in Jamul, 2017. Photo by Ethan Banegas.

but in the end there were no losers. As Don Speer said, “Gambling begets more gambling.”³⁸ Sycuan still leads the Kumeyaay Nation in bingo, Viejas opened a new bingo hall in 2013, and Barona is out of the bingo business altogether, but is recognized as the leading gaming resort destination in the San Diego market.

Juxtaposing economic diversity among Barona, Viejas, and Sycuan is significant. Barona is the least diversified and possesses almost no other form of income outside of gaming. Viejas owns an outlet shopping mall that grossed approximately \$20 million in 2013. Sycuan owns the U.S. Grant Hotel which it purchased in 2003 for \$45 million (with an additional \$10 million set aside for renovations). Its namesake President Ulysses S. Grant created Sycuan via executive order in 1875, irony which is not lost on Sycuan’s tribal members.³⁹ In 2007, Chairman Danny Tucker was honored inside the Grant Hotel by the San Diego History Center at the History Makers Gala with the George W. Marston Award for civic leadership. According to *The Journal of San Diego History*, “to date, the casino has been the Band’s most noteworthy economic success.”⁴⁰ Such a bold statement deserves qualification.

If Barona, Viejas, and Sycuan were judged simply by economic output, Barona is the most successful casino by a large margin. Strictly from a gaming perspective, the Barona Valley Resort and Casino grosses more than Sycuan and Viejas combined and is the envy of the casino industry. If we measure Sycuan, Viejas, and Barona on economic diversity, then Sycuan is the clear winner. So far, Barona’s attempts at economic diversity have been nominal, and their economic development committee, SIGNATUS, has only invested in stocks, bonds, and

mutual funds. SIGNATUS was created approximately a decade ago and consists seven board members (all tribal). The people of Barona recently approved a \$40 million casino expansion in 2016.

In contrast to Barona, the people of Viejas have attempted other business ventures outside of gaming. The Viejas Factory Outlet Center is 255,000 square feet and includes allotments for 60 stores.⁴¹ Currently, San Diego's newest outlet center is operating 30 stores and grossing \$20 million.

After building their casino, Sycuan established the Sycuan Tribal Development Corporation to diversify their economic portfolio. They have made several noteworthy acquisitions. Their first major purchase was in 2001, with the Singing Hills Golf Course. In 2003, the U.S. Grant Hotel was purchased followed by the procurement of Ringside Promotions (boxing promotions).⁴² In addition, in 2003 the Sycuan Tribal Development Corporation proposed a twenty-five-million-dollar hotel in National City and launched a mutual fund to invest in large and medium American stocks.⁴³ The drastic and subtle differences among these three tribes make for an intriguing case study indeed. One can only speculate about their future competition.



Big Top interior, Barona Valley Ranch Resort and Casino, 2017. Photo by Ethan Banegas.

NOTES

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2. *Ibid.*, 26.
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4. Mason, "Indian Gaming," 27.
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8. Mason, "Indian Gaming," 47.
9. Don Speer, interview by Ethan Banegas, Barona Resort and Casino, November 25, 2015.
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11. Mason, "Indian Gaming," 48.
12. Museum Label for 1981-88 Edward (Joe) Welch Administration, Barona, California, The Barona Museum, May 2, 2016.
13. Steven Andrew Light and Kathryn R.I. Rand, *Indian Gaming and Tribal Sovereignty: The Casino Compromise* (Lawrence, KS: University Press of Kansas, 2005), 40.
14. *Ibid.*
15. *California v. Cabazon*, 480 U.S. 202. See Iris Engstrand, *San Diego: California's Cornerstone* (San Diego: Sunbelt Publications, 2016), 17-20.
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17. Speer, interview by Banegas; *California v. Cabazon*, 480 U.S. 202, 208.
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23. *Ibid.*
24. *Ibid.*
25. David J. Valley and Diana Lindsay, *Jackpot Trail: Indian Gaming in Southern California* (San Diego, Sunbelt Publications, 2003), 149.
26. Hank Murphy, interview by Ethan Banegas, Sycuan Reservation, November 5, 2015.
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40. "The Sycuan Band of the Kumeyaay Nation," *The Journal of San Diego History*, 53, no. 3 (Summer 2007), 150.
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Barona Tribal Museum and Cultural Center. Photo courtesy Barona Tribal Museum.