

1 CHAIRPERSON JAMES: Mr. Anderson, thank you.

2 MR. ANDERSON: Thank you, Madam Chairwoman. I am
3 pleased to present the Department of Interior's views of the
4 Indian Gaming Regulatory Act as we near the tenth anniversary of
5 the signature by President Reagan in 1988. Just by way of
6 background, I serve as the Deputy Assistant Secretary for Indian
7 Affairs and provide policy advice to the Secretary of Interior,
8 the Assistant Secretary for Indian Affairs and the Bureau of
9 Indian Affairs.

10 Prior to being appointed Deputy Assistant Secretary I
11 also served as the Associate Solicitor for Indian Affairs. I'm
12 pleased to be here today. I might add, Madam Chairwoman, the
13 last time I saw the Committee was at your initial organizational
14 meeting and it seemed at that time you had many challenges before
15 you in terms of what is this Commission, what its role is going
16 to be and actually scheduling visits.

17 I'm very pleased that you've chosen Arizona and this
18 special section on Indian Native American Affairs as part of the
19 Commission's work. I think it's going to be very valuable to
20 hear directly from tribal leaders, affected communities and
21 others who are directly impacted by Native American gaming. So I
22 certainly applaud you and wish you good luck on your final
23 report.

24 What I'm going to try to do is summarize in 10
25 minutes how IGRA works, a little bit about our ANPR, our proposed
26 rule on a bypass procedure when states and tribes cannot agree on
27 a compact, how that would work; some discussion about legislative
28 activities on Capitol Hill dealing with this important topic, and

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1 then just a word about minimum standards and how Congress could
2 possibly act in that area as well.

3 I wanted to first begin though by just laying a
4 couple of key facts about American Indians and Alaska Natives so
5 that when we consider this topic and we think about the impacts
6 of gaming, where are we starting from in terms of the realities
7 of Indian country today. Of the 1.43 million Indians living on
8 or near reservations, nearly 500,000 are under the age of 15. So
9 we basically have an Indian country where at least a third of the
10 population are children or adolescents. Indian infants die from
11 sudden infant death syndrome, SIDS at a rate 1.8 times the rate
12 for all U.S races.

13 Thirteen percent of Indian deaths pertain to ages
14 under 25 compared to only four percent for U.S. all races.
15 Thirty-eight percent of all Indians age six to 11 now live below
16 the poverty level, more than twice the number for all the rest of
17 the population of the U.S. The alcoholism death rate for Indians
18 15 to 24 years of age is over 17 times the comparable rate for
19 all U.S. races. The suicide death rate for 15 to 24 year old
20 Indians is 2.4 times the corresponding rate for all U.S.
21 citizens.

22 Homicide is the second leading cause of death among
23 Indians from one to 14 years old and third for 15 to 24 years
24 old. Finally, more than 180 gangs have been identified in Indian
25 country. Those inescapable facts led to some of the members of
26 Congress, tribes and others seeking better economic opportunity
27 for Indian tribes. In 1987 the Supreme Court held that
28 California did not have the authority to enhance or enforce its

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1 regulatory gaming laws against Indian tribes in Indian country,
2 that case, California v. Cabazon Band of Mission Indians left
3 Indian gaming regulated by the tribes without state regulatory
4 involvement whatsoever.

5 At that time federal law did not provide clear
6 standards or regulations for the conduct of Indian lands, the
7 gaming on Indian lands. In 1988 Congress passed IGRA to
8 establish regulatory standards to protect Indians from corrupt
9 influences and also to promote economic development. IGRA
10 provides for a unique sharing of authority between tribes, state
11 and the Federal Government in order to regulate casino type
12 gaming which IGRA terms Class III gaming.

13 Unique almost in its involvement of state authority
14 and regulation over federal affairs and American Indian affairs
15 and this balance basically was struck through a tribal/state
16 compacting process. The outcome and final approval, of course,
17 is left to the approval of the Secretary of Interior. Today at
18 least 145 tribes have 171 compacts in the Class III area
19 effecting 24 states. What these do is generate revenue for
20 Indian Tribal governments and provide funding for essential
21 government services, including hospitals, schools and youth
22 centers.

23 The tribal gaming operations produce anywhere from 4
24 to \$6 billion in gross revenues. The exact facts of what the
25 gross revenue might be is something that I think would be a
26 valuable service of this Commission to determine. Many times
27 you'll see facts stated in gaming and wagering magazines that
28 talk about the gross revenue amount but does not account for what

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1 actually is netted out to the tribes. So there's sometimes
2 overstatement of actually how much revenue is being generated in
3 Indian country.

4 The economic benefits produced by Indian gaming do
5 not stop at the boundaries of Indian country, as you've heard
6 from the prior panel. State and local economies also benefit
7 from the economic activity surrounding Indian gaming. I wanted
8 to briefly just address Commissioner Dobson's questions earlier
9 about South Dakota, why the unemployment rate might go up even
10 after gaming.

11 Many times the viability of a tribal gaming operation
12 depends on what the state itself is doing. The State of South
13 Dakota actually expanded its state gaming laws with video poker
14 in bars throughout the state. When that happens the competitive
15 advantage that tribes might enjoy that might draw a market is
16 lost. And so it's not seen as a panacea. The fact that you have
17 a casino located at a reservation doesn't mean people will
18 automatically come. There has to be something for the market to
19 actually respond to. And so in that case, with both those
20 reservations, their market was basically undercut.

21 IGRA provides state governments with a different sort
22 of benefit as well. The Constitution establishes Indian affairs
23 as a unique area of federal concern. Absent a delegation of this
24 authority to states, federal law governs relations with Indian
25 tribes. Thus IGRA extends states a power withheld to them by the
26 Constitution, namely the opportunity to participate in regulating
27 and developing standards for the operation of Class III gaming
28 through the compacting process.

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1 Overall as I've mentioned, this process where states
2 and tribes can cooperate in a mutually beneficial way, it's led
3 to many, many compacts. Of course, there are cases where states
4 and tribes cannot agree. Prior to the U.S. Supreme Court
5 decision in the Seminole v. Florida case, there was an
6 opportunity for tribal governments to avail themselves of federal
7 courts to make a decision on what the scope of gaming or whether
8 states were negotiating in good faith. As you've probably heard
9 either through written testimony or oral testimony, the Court
10 ruled the tribes do not have that ability to sue under the
11 congressional authority.

12 So it's now left to the Secretary of Interior to find
13 a means to resolve impasses. The Department has testified before
14 the Indian Affairs Committee which has primary jurisdiction in
15 the Senate and also the House Resources Committee on the House
16 about this issue, that there needs to be a viable option for
17 tribes to gain the preference that Congress intended through the
18 Indian Gaming Act.

19 What we have done is we've issued a notice of
20 proposed rulemaking. The comment period has not been closed in
21 June, received many, many comments from states, tribes, effected
22 communities, and others on how this process could work. In a
23 nutshell, basically it would require the state -- or the tribe
24 first to file a lawsuit if they believe the state is not
25 negotiating in good faith and then see whether the state would
26 waive its sovereign immunity.

27 If the state waives its sovereign immunity then a
28 Court would determine whether the state is, in fact, negotiating

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1 in good faith. If, however, the state decides to invoke its
2 right to not be sued by the tribe, then the Secretary of Interior
3 would begin a process to determine whether he should issue
4 procedures submitted by the tribe that would be required to
5 address a number of things including the scope of gaming, how the
6 tribe would regulate gaming in its lands, and also with
7 assurances that the games would be conducted fairly and with
8 financial integrity.

9 The state would then have an opportunity to comment
10 on those proposals. We would notify the tribe within 15 days
11 that we received their proposal. Then the Department would
12 notify the tribe that its eligible for these procedures and then
13 the process of having state comment would begin. In the end our
14 strong preference is to have an interactive dialogue between the
15 state and the tribe and, indeed, if agreement is not reached have
16 a mediator mediate this type of dispute, ultimately though with
17 the Department of Interior and the Secretary perhaps issuing
18 procedures if he agreed with the tribal provisions.

19 It is something that the Secretary has done, even in
20 his role as a trustee for the tribe in a number of other areas,
21 dealing with water rights where there are competing state and
22 tribal claims even amongst Federal Government agencies and
23 tribes, off reservation hunting rights in national parks. The
24 Secretary has fulfilled this role as a member of the Executive
25 Branch in those circumstances and it is the view of the
26 Department that that is a viable process where states and tribes
27 can't agree as well.

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1 We would certainly prefer legislation that would both
2 affirm and reduce litigation over the authority of the Secretary
3 to engage in this procedure but again, the most viable way for
4 this to happen is for states and tribes to negotiate in good
5 faith without involving the Federal Government.

6 Finally, I just wanted to note that the Department
7 and the Administration has testified that there is a need for
8 federal minimum standards to reinforce the regulatory efforts of
9 the National Indian Gaming Commission. You'll hear from a
10 witness later today from the NIGC, but I just wanted to highlight
11 what a federal minimum regulatory standard could do. It could
12 have standards nationally that would regulate background
13 investigations and licensing of key managers and employees, the
14 extension of credit, banking requirements, internal financial
15 controls, cash accounts, record keeping and audits and
16 surveillance and security systems.

17 While, as you've heard today, the best and primary
18 regulator are the tribes themselves as governments, to the degree
19 that there needs to be a federal oversight and uniformity of
20 these standards, the NIGC and the Administration in the past has
21 certainly supported having another level of federal review. With
22 that, Madam Chairwoman, I just wanted to conclude by saying that
23 the area of Indian gaming requires balancing of a number of
24 interests. Thus far, the courts have been the final mediator of
25 these issues. We've found that that's not always the best means
26 to do it. We would certainly seek congressional legislation
27 that's developed on a consensus basis as the best way to
28 ultimately resolve these questions.

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1 The Secretary of Interior has recently convened and
2 promoted the idea of having negotiations with states, tribes and
3 attorney generals, governors, representatives and others as a
4 sign of confidence and so also respect for this process. We will
5 not engage in discussions about specific points in those
6 negotiations. Our Secretary has asked that to the degree we can,
7 we keep negotiations confidential so that we can have a free-
8 flowing discussion so we're not able to put on the table what the
9 primary points of that negotiation will lead to, but we certainly
10 would hope that we could find a consensus based model to then
11 take to the Congress for final implementation by the Congress.

12 This Commission certainly, its views would be
13 important to learn as you go throughout your travels through
14 Indian country to find out what ideas you might have on how IGRA
15 can work better and also how the states, tribes and all interests
16 can be protected. So with that, again, I just wish you success
17 on your final report. We are available to work on providing
18 information. We had a good meeting with your Director Kelly a
19 couple of weeks ago, with Assistant Secretary Gilver and have
20 offered to provide economic information to his office. So again,
21 thank you today.

22 CHAIRPERSON JAMES: Thank you.

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