

1 CHAIRPERSON JAMES: Mr. Husk.

2 MR. HUSK: Thank you, Madam Chairman, members of the
3 Commission. My name is Gary Husk and I'm the Director of the
4 Arizona Department of Gaming, the state agency responsible for
5 the regulation of Class III gaming on Arizona's Indian
6 Reservations. I have served in my current capacity for
7 approximately three and one-half years and previously served as a
8 county, federal and state prosecutor for 12 years. On behalf of
9 the state of Arizona and Governor Jane Dee Hull, I welcome you
10 and your staff to Arizona and I thank you for the opportunity to
11 deliver some brief remarks on the subject of regulation and
12 enforcement of Indian gaming.

13 Madam Chairman and Commissioners, I did have the
14 opportunity to be in San Diego yesterday and I noticed that a lot
15 of the people the I met there and I'm sure that you met commented
16 that they were apologizing for the warm weather in San Diego.
17 Now that you're in Tempe, I would like to take an opportunity
18 because of the fact that we're only going to be at 103 and 104
19 this afternoon, to apologize for the cold front that we're having
20 today.

21 Any thorough discussion of the current status of
22 Indian gaming in Arizona requires at least a cursory examination
23 of the historical perspective of this contentious issue. As you
24 may be aware, Arizona law permits limited forms of gaming off
25 reservation. Those forms include Bingo, horse racing, dog
26 racing, parimutuel wagering and the Arizona lottery. State law
27 prohibits the use of gaming devices in the play of any type of
28 card games that provide a direct or indirect benefit to the

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1 facility hosting the activity. The passage of the Indian
2 Gaming Regulatory Act in 1988, however, had a profound impact on
3 the gambling environment within this state. Although the State
4 of Arizona initially resisted entering into compacts for Class
5 III gaming on Indian lands pursuant to IRGA, a decision by a
6 federal mediator and the intercession of the Secretary of the
7 Interior, Bruce Babbitt had the effect of forcing the state to
8 enter into gaming compacts with 16 separate Indian tribes.

9 Generally, these gaming compacts attempt to set forth
10 the rights and obligations of the tribes and the state in the
11 area of Indian gaming. Specifically, the compacts attempt to
12 establish a regulatory structure for Indian gaming and define the
13 scope of gaming activities that are permissible on reservations
14 located within the State of Arizona. Each of Arizona's gaming
15 compacts were negotiated for a 10-year term and the first of
16 those compacts will expire in the year 2002.

17 The first step in Arizona's regulation of Indian
18 gaming was taken by the Arizona legislature through the creation
19 of the Arizona State Gaming Agency. The agency was funded
20 through an annual gaming device assessment of \$500.00 per device
21 paid by the gaming tribes that was earmarked to the State/Tribal
22 Compact Fund. From this fund, the Arizona legislature
23 appropriates funds to the State Gaming Agency to perform its
24 regulatory responsibilities. All unappropriated dollars
25 contained in the State/Tribal Compact Fund are refunded to the
26 gaming tribes on an annual basis. Thus, all costs relating to
27 the regulation of Indian gaming are borne by the gaming tribes
28 and not the Arizona taxpayers.

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1 Although the State Gaming Agency was initially
2 contained within the Arizona Department of Racing, the
3 legislature in 1995 recognized the need for a specialized and
4 independent regulatory body and established the Arizona
5 Department of Gaming. Since its inception the role of the
6 department has evolved from merely an entity that assisted the
7 tribes in opening their casinos to one that is actively involved
8 in the daily monitoring of gaming operations.

9 Today the Arizona Department of Gaming has 60 full
10 time employees and an annual budget of approximately \$4.5
11 million. As a consequence of IGRA and the various state/tribal
12 compacts, the regulation of Indian gaming is complicated by the
13 involvement of three distinct sovereigns; the Federal Government
14 in the form of the National Gaming Commission, the tribe in the
15 form of the Tribal Gaming Office and the state through the
16 Department of Gaming. Each play a role in the regulation of
17 gambling on the Indian lands.

18 In addition, the ability to enforce criminal laws is
19 the exclusive authority of the federal law enforcement
20 authorities. While this sharing of responsibility may have been
21 perceived by Congress to be necessary, it has created a
22 regulatory and enforcement nightmare for those of us assigned the
23 task of monitoring this multi-million dollar cash industry, for
24 despite the fact that three separate regulatory bodies possess
25 some limited authority for Indian gaming, no single body has
26 complete authority for the regulation and enforcement of Indian
27 gaming. This has created endless conflict, needless
28 confusion and a regulatory atmosphere that is entirely dependent

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1 upon a consensus among political entities with very diverse
2 interests. Consequently the regulatory scheme of Indian gaming
3 is considerably less effective than that imposed upon non-Indian
4 gaming enterprises in the vast majority of jurisdictions. At
5 first blush, Arizona's regulatory scheme may appear to be
6 adequate and there has certainly been occasions where the state,
7 the tribes and the NIGC have coordinated their efforts in order
8 to provide for effective regulation of the gaming industry.
9 Regrettably, however, that has not always been the case. Since
10 tribal regulators are usually employed directly by the Gaming
11 Commission and reports directly to the tribal council, some
12 tribal regulators have lacked the autonomy of their off-
13 reservation counterparts.

14 Frequently, tribal gaming offices are required to
15 serve as advocates for the casino for which they are responsible
16 for regulating. On the issue of federal regulations, the State
17 of Arizona has been extremely disappointed by recent actions by
18 the NIGC that demonstrate a greater preference towards promoting
19 Indian gaming rather than regulating Indian gaming. Nowhere was
20 this more evident than during an incident earlier this year
21 involving a formal legal opinion issued by the Arizona Attorney
22 General concerning the play of poker at Indian casinos.

23 Basically this opinion concluded that the manner by
24 which poker was being played at Arizona's Indian casinos violated
25 state law and therefore, constitute Class III gaming. In the
26 absence of a gaming compact with the state that specifically
27 authorized poker to be played in this manner, Indian tribes were
28 not permitted to engage in this type of activity. After the

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1 Arizona Attorney General declined to amend and/or withdraw this
2 opinion several tribes persuaded the NIGC to express their
3 opinion on this issue. NIGC elected to insert themselves in this
4 debate despite the fact that prior to ever soliciting an Attorney
5 General opinion on this matter, the Department of Gaming had made
6 three separate requests for guidance from the NIGC on this very
7 issue and those requests had apparently been ignored.

8 Nonetheless, NIGC wasted little time in addressing
9 this issue on behalf of the tribes. With little consultation and
10 absolutely no notice to the Department of Gaming or the Arizona
11 Attorney General, the NIGC did not hesitate to issue a letter to
12 Arizona's Indian tribes that concluded that the Attorney General
13 opinion was incorrect. This is obvious -- this obviously
14 demonstrates a need to enhance cooperation between state
15 regulators and the NIGC.

16 Regardless of the continuing debate on poker, the
17 lack of a true independent regulatory presence in Arizona's card
18 rooms is a cause of great concern. NIGC clearly does not have
19 the necessary resources to effectively regulate these card rooms
20 and any interpretation that poker constitutes Class II gaming
21 poses an insurmountable obstacle for state regulation.
22 This significant void in the regulation of card games is a major
23 factor that leads one to the inescapable conclusion that the
24 regulation of card games at Arizona's Indian casinos is woefully
25 inadequate.

26 Shifting the focus of my remarks to Class III gaming
27 activities at Arizona's casinos, our compacts authorize gaming
28 devices, keno, lottery, off-track parimutuel wagering, parimutuel

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1 wagering on horse racing and parimutuel wagering on dog racing.
2 The most popular and lucrative forms of Class III gaming are the
3 slot machines. The regulatory responsibility for Class III
4 gaming lies exclusively with the Department of Gaming and the
5 individual Tribal Gaming offices. With some exceptions, these
6 entities have been successful in implementing policies and
7 procedures that are intended to reduce the likelihood of criminal
8 activity and corruption within Indian casinos.

9 Pursuant to the terms of the compacts, the Arizona
10 Department of Gaming is authorized to conduct background
11 investigations of companies seeking to provide gaming services to
12 Indian casinos and individuals seeking to obtain employment with
13 Indian casinos. Certification of a company is required if that
14 company exceeds \$10,000.00 worth of services in any given month.
15 The state is also required to certify all non-tribal gaming
16 employees and is limited to making employment recommendations to
17 the Tribal Gaming offices on all tribal member gaming employees.

18 Other functions of the department include the regular
19 and random inspection of the gaming devices, regular inspections
20 of the gaming facilities and a general monitoring of the casino
21 operations to insure compliance with the provision of the
22 compacts. The most common methods for accomplishing these
23 objectives are; one, the assignment of investigators to
24 individual casinos who are expected to make weekly visits to the
25 facility; two, the conducting of announced inspections of gaming
26 devices; and three, the conducting of biannual compact compliance
27 reviews of the gaming facility through the use of a team of
28 investigators, auditors and slot machine technicians. In

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1 addition the Tribal Gaming offices generally perform regulatory
2 activities that mirror those of the Department of Gaming and
3 these separate entities have worked in conjunction with one
4 another on this issue. There is no question that Arizona is one
5 of the premier regulators of Indian gaming. The Department of
6 Gaming has done a remarkable job given the constraints created by
7 vague compacts and vague federal law.

8 Nonetheless, Arizona's regulation of Indian gaming is
9 a far cry from the type of stringent regulation of private
10 commercial gaming that has been adopted in other jurisdictions.
11 Arizona's authority is limited to that established in either IGRA
12 or the compacts. Thus, Arizona lacks the authority to impose
13 civil fines on gaming operators, it lacks the authority to audit
14 gaming operations, and it lacks the ability to certify all gaming
15 employees. It also lacks the authority to track gaming revenues.

16 Although the Department of Gaming can and does cite
17 tribes for compact violations and violations of IGRA, those
18 violations unfortunately carry little effect. Instead the
19 Department is forced to seek voluntary compliance from the gaming
20 tribes. Fortunately, the vast majority of tribes strive for
21 compliance and work with the state on most issues. There have,
22 however, been instances where a particular tribe has defied state
23 regulation and the state has been somewhat powerless to obtain
24 full compliance. This lack of authority is not healthy and it's
25 caused many of Arizona's leaders to promote greater regulation of
26 the Indian gaming industry.

27 Although critics of this type of enhanced regulatory
28 structure are quick to point out that operators of these casinos

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1 are sovereign nations, I do not believe that such a status should
2 exempt the \$6 billion Indian gaming industry from effective
3 regulation.

4 Many of the issues which I have addressed could
5 conceivably be resolved through amendments to the Indian Gaming
6 Regulatory Act. Arizona's Senator John McCain's pending
7 legislation provides an excellent starting point for constructive
8 reforms in the area of Indian gaming. It is critical, however,
9 that such legislation be complimented by providing the states and
10 the tribes with some parameters for the scope of gaming that is
11 to be negotiated under IGRA. That is consistent with the
12 position being advanced by the National Association of Governors.

13 Equally important is the necessity to create a
14 mechanism by which states may take direct enforcement action
15 against tribes who violate federal law and/or state gaming
16 compacts. This concern has been expressed by the National
17 Association of Attorneys General. There is no question that
18 reforms of this nature would be controversial. However, I
19 believe that such reforms are absolutely essential for Indian
20 gaming.

21 In conclusion, this Commission will undoubtedly have
22 an opportunity to hear from many Indian tribes regarding the
23 economic importance of gaming to their respective communities.
24 In fact, some tribes have emphasized the importance of this
25 industry by referring to Indian gaming as quote, "The modern day
26 buffalo". As a native Arizonan who is quite familiar with the
27 quality of life on Indian reservations in this state prior to
28 gaming, I, too, can attest to the fact that gaming revenues have

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1 provided Indian tribes with an infusion of financial resources
2 that is long overdue.

3 However, effective regulation and enforcement are
4 absolutely necessary to insure the integrity of Indian gaming.
5 Indian gaming must be kept free of fraud, corruption and crime.
6 Thank you.

7 CHAIRPERSON JAMES: Thank you, Mr. Husk.

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