CHAIRPERSON JAMES: Mr. Anderson, thank you.

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

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

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

What I'm going to try to do is summarize in 10 minutes how IGRA works, a little bit about our ANPR, our proposed rule on a bypass procedure when states and tribes cannot agree on a compact, how that would work; some discussion about legislative activities on Capitol Hill dealing with this important topic.
then just a word about minimum standards and how Congress could possibly act in that area as well.

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

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

Homicide is the second leading cause of death among Indians from one to 14 years old and third for 15 to 24 years old. Finally, more than 180 gangs have been identified in Indian country. Those inescapable facts led to some of the members of Congress, tribes and others seeking better economic opportunity for Indian tribes. In 1987 the Supreme Court held that California did not have the authority to enhance or enforce its
regulatory gaming laws against Indian tribes in Indian country, that case, *California v. Cabazon Band of Mission Indians* left Indian gaming regulated by the tribes without state regulatory involvement whatsoever.

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

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

The tribal gaming operations produce anywhere from 4 to $6 billion in gross revenues. The exact facts of what the gross revenue might be is something that I think would be a valuable service of this Commission to determine. Many times you'll see facts stated in gaming and wagering magazines that talk about the gross revenue amount but does not account for what
actually is netted out to the tribes. So there's sometimes 
overstatement of actually how much revenue is being generated in 
Indian country.

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

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

IGRA provides state governments with a different sort 
of benefit as well. The Constitution establishes Indian affairs 
as a unique area of federal concern. Absent a delegation of this 
authority to states, federal law governs relations with Indian 
tribes. Thus IGRA extends states a power withheld to them by the 
Constitution, namely the opportunity to participate in regulating 
and developing standards for the operation of Class III gaming 
through the compacting process.
Overall as I've mentioned, this process where states and tribes can cooperate in a mutually beneficial way, it's led to many, many compacts. Of course, there are cases where states and tribes cannot agree. Prior to the U.S. Supreme Court decision in the *Seminole v. Florida* case, there was an opportunity for tribal governments to avail themselves of federal courts to make a decision on what the scope of gaming or whether states were negotiating in good faith. As you've probably heard either through written testimony or oral testimony, the Court ruled the tribes do not have that ability to sue under the congressional authority.

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

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

If the state waives its sovereign immunity then a Court would determine whether the state is, in fact, negotiating
in good faith. If, however, the state decides to invoke its right to not be sued by the tribe, then the Secretary of Interior would begin a process to determine whether he should issue procedures submitted by the tribe that would be required to address a number of things including the scope of gaming, how the tribe would regulate gaming in its lands, and also with assurances that the games would be conducted fairly and with financial integrity.

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

It is something that the Secretary has done, even in his role as a trustee for the tribe in a number of other areas, dealing with water rights where there are competing state and tribal claims even amongst Federal Government agencies and tribes, off reservation hunting rights in national parks. The Secretary has fulfilled this role as a member of the Executive Branch in those circumstances and it is the view of the Department that that is a viable process where states and tribes can't agree as well.
We would certainly prefer legislation that would both affirm and reduce litigation over the authority of the Secretary to engage in this procedure but again, the most viable way for this to happen is for states and tribes to negotiate in good faith without involving the Federal Government.

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

While, as you've heard today, the best and primary regulator are the tribes themselves as governments, to the degree that there needs to be a federal oversight and uniformity of these standards, the NIGC and the Administration in the past has certainly supported having another level of federal review. With that, Madam Chairwoman, I just wanted to conclude by saying that the area of Indian gaming requires balancing of a number of interests. Thus far, the courts have been the final mediator of these issues. We've found that that's not always the best means to do it. We would certainly seek congressional legislation that's developed on a consensus basis as the best way to ultimately resolve these questions.
The Secretary of Interior has recently convened and promoted the idea of having negotiations with states, tribes and attorney generals, governors, representatives and others as a sign of confidence and so also respect for this process. We will not engage in discussions about specific points in those negotiations. Our Secretary has asked that to the degree we can, we keep negotiations confidential so that we can have a free-flowing discussion so we're not able to put on the table what the primary points of that negotiation will lead to, but we certainly would hope that we could find a consensus based model to then take to the Congress for final implementation by the Congress.

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

CHAIRPERSON JAMES: Thank you.