CHAIRPERSON JAMES: Mr. Di Gregory.

MR. Di GREGORY: That's very kind of you. Thank you.

CHAIRPERSON JAMES: Thank you.

MR. Di GREGORY: Good morning, members of the Commission.

CHAIRPERSON JAMES: Good morning.

MR. Di GREGORY: My name is Kevin Di Gregory and a I'm Deputy Assistant Attorney General in the Criminal Division of the United States Department of Justice. Thanks for inviting me to present the views of the Department of Justice on Indian gaming and the Indian Gaming Regulatory Act. Let me begin by providing you with some background on the government to government relations between the United States and Indian tribes. In the recent Executive Order on consultation and coordination with Indian tribal governments, President Clinton explained some of the fundamental principles of federal/tribal relations when he said, "Since the formation of the union, the United States has recognized Indian tribes as domestic dependent nations. Indian tribes exercise inherent sovereign powers over their members and territories. The United States continues to work with Indian tribes on a government to government basis to address issues concerning Indian tribal self-government trust resources and Indian tribal treaty and other rights". That's from Executive Order Number 13084. For our part, the Department of Justice policy on Indian sovereignty and government to government relations with tribes sets forth our recognition of tribal self-government and our commitment to assist Indian tribes
in strengthening their institutions of law enforcement, tribal courts and traditional justice systems.

The Indian Gaming Regulatory Act was enacted in 1988 pursuant to the longstanding federal Indian self-determination policy to promote tribal economic development, self-sufficiency and strong tribal governments and to protect Indian tribes and the general public from corrupt influences. IGRA has successfully promoted tribal economic development. Today there are more than 140 Class III compacts in 26 states generating government revenue for essential tribal services including law enforcement, roads, water and sewer systems, hospitals, schools, youth centers and alcohol and substance abuse treatment centers.

And the economic benefits of Indian gaming do not stop at the boundaries of Indian country. Indian gaming generates jobs and economic activity in neighboring state and local communities but an effective regulatory system is essential to protect Indian gaming and the benefits that accrue from it. What is the role and what are the interests of the Department of Justice?

The Department of Justice has significant responsibilities in Indian country in terms of law enforcement and in our governmental relations with the tribes. Although the Department does not participate directly in gaming regulation, the Department is keenly interested in seeing the Indian Gaming Regulatory Act's regulatory system work and work well. The Department has testified to Congress that in the absence of adequate regulatory oversight, large scale gaming which generates huge cash flows may be targeted by organized crime or criminal
entrepreneurs, may have its proceeds skimmed by corrupt managers and may be victimized by dishonest employees or outside cheats.

Minimum federal standards for Indian gaming should be established to improve the safeguards for Indian gaming against corruption. Although to date there have been few attempts by organized crime associates to infiltrate Indian gaming, when attempts to obtain an interest in Indian casinos has been made, the FBI, usually with the cooperation of tribal leaders, has reacted swiftly. A recent example is the coordinated prosecution of Pittsburgh organized crime figures and their associates by the United States Attorneys in Pittsburgh and San Diego for the attempts of those organized crime figures to take over the gaming operations of the Rincon Band.

Seventeen defendants were indicted for various offenses including obstruction of justice and conspiracy to interfere with the functioning of the National Indian Gaming Commission by making fraudulent representations to that Commission. All have pleaded guilty and have been sentenced. The Constitution of the United States establishes Indian affairs as a unique area of federal concern. In the absence of a delegation of congressional authority to the states, federal law governs relations with Indian nations and in 1987 the Supreme Court held that gaming permitted under state law and policy was not subject to state regulation under Public Law 280. That was the case of *California v. Cabazon Mission Indians*.

Public Law 280 does give some states the authority to enact certain laws and have law enforcement jurisdiction over Indian lands. At that time, Congress sought to provide clear
standards or regulations for the conduct of gaming on Indian lands and Congress enacted the Indian Gaming Regulatory Act. Recognizing that state interests as well as tribal interests are implicated by high stakes Indian gaming because many patrons are state citizens drawn from off reservation, Congress established a tribal/state compact process to create regulatory systems which reflect the interests of states, Indian tribes and the Federal Government in Class III or casino style gaming.

The Supreme Court explained in providing states the opportunity to participate in the regulation of Indian gaming Congress extended to the states power which would otherwise be withheld from them by the Constitution. They explained that in the case of Seminole Tribe v. Florida, which I know you all are aware of and I know you all have discussed both today and perhaps yesterday as well.

Under the tribal/state compact process states and tribes currently perform primary on-site regulation of Class III gaming. An Indian tribe that desires to engage in Class III gaming starts the process by requesting that the state negotiate with the tribe to conclude a compact which may set forth a particular regulatory framework for the gaming. IGRA contemplates that a compact will be concluded within 180 days from the time of such a request.

Congress understood, however, that the voluntary compacting process might falter. To guard against this, tribes were granted the ability to sue states. At the conclusion of such suits, if the court holds that the state has failed to negotiate in good faith, the court sets in motion a five-step
process. One, the court orders the state and the tribe to conclude a compact within 60 days. Two, if the parties fail to reach a compact they must submit proposed compacts to a court appointed mediator.

Three, the mediator selects from the submitted compacts the one that best comports with IGRA, other applicable law and the findings of the court. Four, the state has 60 days to consent to the compact selected by the mediator and five, if the state does not consent to the compact, the Secretary in consultation with the tribe, prescribes procedures for Class III gaming.

This mediation process can provide a strong incentive for negotiation, even though the Department of the Interior had resorted to the final step in this process only once and as I eluded to earlier, I eluded to the Seminole cases, I know you are all aware in Seminole the Supreme Court held that neither the commerce clause nor the Indian commerce clause provide Congress with the authority to abrogate state sovereign immunity. As a result the federal courts have been divested of jurisdiction over suits brought by Indian tribes against states under IGRA if the state raises an 11th Amendment defense.

The Seminole decision, by not requiring states to submit to suit, raises serious questions concerning the functioning of the process that I outlined. IGRA provides a much needed avenue for economic development in Indian country and to the extent permitted by law, the Administration is committed to protecting well-regulated Indian gaming as a means of building strong tribal government and economic self-sufficiency.
Although the Supreme Court held in *Seminole* that Congress does not have authority to waive 11th Amendment immunity of states from suit in federal court, IGRA remains a valid statute and does not effect existing tribal/state Class III gaming compacts. The Secretary of the Interior, as you have been made aware, is considering a rule to provide for a process to insure that IGRA continues to fairly meet the interests of state and tribal governments.

In the absence of comprehensive legislation to address the compact process after *Seminole*, the Secretary's process may be an important one to insure the continued functioning of IGRA. Over the past several years, however, Congress has considered legislative measures which, if enacted, would eliminate IGRA's post-*Seminole* 11th Amendment infirmity. One proposal would provide states and Indian tribes with the opportunity to negotiate Class III gaming compacts. State participation on the compacting process would be voluntary.

If no Class III gaming compact were concludes within a period for negotiations, however, responsibility for concluding a compact with a tribe would shift to the Secretary of the Interior. The Department of Justice believes that some statutory solution to the 11th Amendment problem is in the best interests of all parties.

In light of the tribal/state compact process, the Federal Government has retained limited oversight of Class III gaming. Tribal gaming ordinances and management contracts for Class III gaming are subject to the approval of the National Gaming Commission. Tribal/state compact negotiating process is

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subject to federal court oversight and tribal/state compacts are subject to the approval of the Secretary of the Interior.

NIGC and Indian tribes share regulatory oversight of Class II gaming or bingo, pull tabs and similar games. Under its authority under Class II games, the NIGC may review tribal gaming ordinances and management contracts, conduct background checks, as necessary, audit books and records of gaming operations, levy fines and issue closure orders. The NIGC has promulgated detailed regulations to implement their authority.

Class I gaming or traditional cultural gaming is subject to the exclusive regulatory authority of the tribes. The Department of Justice is also charged with enforcement of the law, which it does through the United States Attorneys for the Criminal Division and the Environment and Natural Resources Division playing supporting roles. The Environment and Natural Resources Division also represents the Secretary and the NIG in civil litigation.

The Federal Bureau of Investigation, in addition to investigating felonies in Indian country, provides the NIGC and other regulatory agencies with background and criminal record information. The Department has a clear policy concerning uncompacted Class III gaming in Indian country and the overall goal of the policy is the peaceful termination of illegal operations within a reasonable period of time by negotiation and where negotiation fails then by legal action.

In recognition of the different conditions existing in the various federal districts, the United States Attorneys have been given a large measure of discretion to implement this
policy. This discretion has at times been necessitated by varying judicial interpretations of IGRA, varying state law backgrounds, the status of pending negotiations with the states and many other factors. Pursuant to this policy, the United States engaged in litigation to enforce compliance with IGRA in California, Florida, Idaho, Michigan, Nebraska, New Mexico, Oklahoma, Texas and Washington.

The State of California and the Pala Tribe recently concluded a compact which I'm sure you heard a great deal about yesterday. The United States Attorneys for California with the concurrence of the Department of Justice, offered the California tribes two options. Under one a tribe could enter into compact negotiations provided that it has not begun or ceases uncompacted Class III gaming. The State of California, if the tribe selected that option, agreed not to raise the 11th Amendment defense to a suit by a tribe for failure to negotiate in good faith if a compact is not concluded under the option.

Under the second option, a tribe could simply elect to adopt the Pala compact. The Department of Justice has commenced litigation, has commenced enforcement actions against California tribes that failed to choose one of those two options and continue to conduct uncompacted gaming. Some tribes have agreed to the application of state regulatory standards and authority for Class III gaming through the tribal/state compacting process.

Other tribes have developed their own sophisticated regulatory standards and tribal agencies to implement those standards. Yet, there is a wide variation in terms of regulatory
systems in Indian gaming and in some cases neither the state nor
the tribe has developed adequate regulatory systems for Class III
gaming. Moreover in some cases states don't wish to engage in
the tribal/state compact process and the Secretary of the
Interior may ultimately have to promulgate procedures for the
conduct of Class III gaming.

There is a need for minimum federal regulatory
standards and it is now clear that NIGC authority must be
increased to provide for the enforcement of those minimum
standards. Federal standards -- federal minimum regulatory
standards for Indian gaming should address background
investigations and licensing of key managers and employees,
surveillance and security systems to oversee the conduct of
gaming in cash accounts, procedures and controls to protect the
integrity of gaming, credit and debit collection controls,
controls over gambling devices and equipment, accounting and
auditing.

Tribes and states should have the option of meeting
these minimal federal regulatory standards in the negotiation and
implementation of tribal/state compacts. The federal regulator,
that is the NIGC, could operate a certification process to insure
that state or tribal gaming regulatory agencies possess the
qualifications and capacity to enforce the federal minimum
standards. The NIGC could also provide secondary regulatory
oversight as necessary to support state or tribal regulatory
agencies.

To insure that the NIGC has the capacity to enforce
federal minimum regulatory standards, any legislation
contemplated by Congress should provide the NIGC clear authority
to do such regulation and authority to assess reasonable fees on
all Class III gaming regulation to defray the cost of such
regulation. The Department believes that if these initiatives
are pursued the result will be a system that provides for a
rigorous enforcement of uniform standards and minimum regulation
for all Indian gaming activities.

Thank you again for the opportunity to present these
views, and I hope I didn't speak too quickly because I tend to do
that, of the Department of Justice on Indian gaming and on the
Indian Gaming Regulatory Act. And I'd be happy to try to answer
any questions you might have and if I can't answer them,
certainly to follow up at a later point in time.

CHAIRPERSON JAMES: Thank you, Mr. Di Gregory. We'll
go ahead and take questions for Mr. Di Gregory right now so that
he can make his flight.

COMMISSIONER LOESCHER: Madam Chairman --

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: -- just one question; have
your recommendations been presented to Congress at this time? On
what basis are you advancing these recommendations? Are they
cleared by the Attorney General and the White House?

MR. Di GREGORY: The items that I discussed in here
with respect to minimum regulatory standards have been presented
to the Senate Indian Affairs Committee on at least two occasions,
I believe, Mr. Loescher, when they have had hearings on amending
the Indian Gaming Regulatory Act and one of the subjects of those
hearings has been whether or not minimum federal regulatory
standards are necessary or required. So, yes, the comments I made about those minimum standards are comments that have been made previously to Congress.

COMMISSIONER LOESCHER: Thank you.

CHAIRPERSON JAMES: Commissioner Bible?

COMMISSIONER BIBLE: Could you expand on your testimony dealing with the Rincon Band and the connection with organized crime and how that came to be uncovered and whether or not that was a compacted Class III operation?

MR. Di GREGORY: No, it was not a compacted Class III operation.

COMMISSIONER BIBLE: So there was no state oversight.

MR. Di GREGORY: There was no state oversight, no, and as best I can recollect about what happened with the Rincon information was developed that there was going to be an attempt by Pittsburgh organized crime figures to gain some control over whatever gaming the Rincon were conducting and whatever gaming they might conduct in the future by misrepresenting to the NIGC who it was who was going to be supporting the operation of the Rincon and I believe that that was one of those cases and I can get you more detailed information if you like, but I believe that that was one of those cases where there was cooperation on the part of some tribal members.

COMMISSIONER BIBLE: Thank you.

CHAIRPERSON JAMES: Thank you. Commissioner Moore?

COMMISSIONER MOORE: I'd just like to ask if there was any way possible if this could be delayed by a year, your presentation on this. I believe that this Commission might come
up with something that would be of benefit to put in this regulation for you to think about.

MR. Di GREGORY: Well, I don't know how long it's going to take us to get to the point where we have minimum federal regulatory standards. As I said, Mr. Moore, there have been proposals, there have been amendments proposed to the Indian Gaming Regulatory Act but no action has been taken on them and there's -- it's hard for me to say, I just don't know when any such action will be taken, so you may have that year.

CHAIRPERSON JAMES: Additional questions? Hearing none, I want to do thank you, Mr. Di Gregory, for making this trip and for your testimony that was offered before this Commission. As I've said to all of our panelists, we hope that we have your advice and expertise upon which we can depend for the life of the Commission and any additional information that you think would be helpful to us for our deliberation, I would ask that you go ahead and submit it.

MR. Di GREGORY: Well, thank you for having me. I'm glad I could be here and I regretted that when you had your hearing on Internet gaming back in May that I had a scheduling conflict and couldn't appear, but thanks for this opportunity today and we will be glad to provide you with assistance as the need arises.

COMMISSIONER BIBLE: Since he brought up the topic, can we ask you questions about Internet gaming? Are you the responsible person within the Department of Justice?

CHAIRPERSON JAMES: You almost got out.
MR. Di GREGORY: Almost. Well, I will do my best to try to answer whatever question you might have.

COMMISSIONER BIBLE: Should the Kyl Bill become law, how do you see it being enforced?

MR. Di GREGORY: I'll tell you what, I can't answer that question and I will be glad to offer the Commission an explanation as to why I can't answer it, but I'm unable to do so. I can refer you, though, to the testimony that I presented before the House subcommittee on crime of the House judiciary committee that was -- I think that was given back in June of this year which talks -- which speaks about what we believe should be considered by the Congress when it tries to decide what kind of Internet gambling regulation or prohibition it passes.

CHAIRPERSON JAMES: Commissioner Wilhelm?

COMMISSIONER WILHELM: Am I right in understanding -- on the Kyl Bill, am I right in understanding that it was the -- or is the position of the Department of Justice that Congress ought to wait for the recommendations of this Commission?

MR. Di GREGORY: I did in my testimony, which I think I have here as a matter of fact --

COMMISSIONER WILHELM: Yes, I read it.

MR. Di GREGORY: Okay.

COMMISSIONER WILHELM: You did.

MR. Di GREGORY: I believe I did say in my testimony that one of the things that Congress ought to consider doing is waiting for you people do to your work and hear your recommendations.

COMMISSIONER WILHELM: Thank you.
COMMISSIONER McCARTHY: Well, that might apply, Madam Chair, to Commissioner Bible's request also.

CHAIRPERSON JAMES: Possibly. Let me put you on the spot before you leave and ask, we have had several requests in to the Department for technical expertise and help in the form of detailees that could help the Commission with its work. And we have an Internet subcommittee and I wonder if you would be willing to entertain yet another request for that kind of technical assistance and help to this Commission.

MR. Di GREGORY: Yes, we will entertain that request and only because I don't have ultimate authority over who in the Criminal Division gets to go where, because I'm only a Deputy Assistant Attorney General, I'm not the Assistant Attorney General who heads the Commission -- who heads the Division, I can't commit to you at this time, but we would be glad to entertain that request.

CHAIRPERSON JAMES: Thank you. Any other questions?

Thank you very much.

MR. Di GREGORY: Thank you.