CHAIRPERSON JAMES: Mr. Husk.

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

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

Any thorough discussion of the current status of Indian gaming in Arizona requires at least a cursory examination of the historical perspective of this contentious issue. As you may be aware, Arizona law permits limited forms of gaming off reservation. Those forms include Bingo, horse racing, dog racing, parimutuel wagering and the Arizona lottery. State law prohibits the use of gaming devices in the play of any type of card games that provide a direct or indirect benefit to the
The passage of the Indian Gaming Regulatory Act in 1988, however, had a profound impact on the gambling environment within this state. Although the State of Arizona initially resisted entering into compacts for Class III gaming on Indian lands pursuant to IRGA, a decision by a federal mediator and the intercession of the Secretary of the Interior, Bruce Babbitt had the effect of forcing the state to enter into gaming compacts with 16 separate Indian tribes.

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

The first step in Arizona's regulation of Indian gaming was taken by the Arizona legislature through the creation of the Arizona State Gaming Agency. The agency was funded through an annual gaming device assessment of $500.00 per device paid by the gaming tribes that was earmarked to the State/Tribal Compact Fund. From this fund, the Arizona legislature appropriates funds to the State Gaming Agency to perform its regulatory responsibilities. All unappropriated dollars contained in the State/Tribal Compact Fund are refunded to the gaming tribes on an annual basis. Thus, all costs relating to the regulation of Indian gaming are borne by the gaming tribes and not the Arizona taxpayers.
Although the State Gaming Agency was initially contained within the Arizona Department of Racing, the legislature in 1995 recognized the need for a specialized and independent regulatory body and established the Arizona Department of Gaming. Since its inception the role of the department has evolved from merely an entity that assisted the tribes in opening their casinos to one that is actively involved in the daily monitoring of gaming operations.

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

In addition, the ability to enforce criminal laws is the exclusive authority of the federal law enforcement authorities. While this sharing of responsibility may have been perceived by Congress to be necessary, it has created a regulatory and enforcement nightmare for those of us assigned the task of monitoring this multi-million dollar cash industry, for despite the fact that three separate regulatory bodies possess some limited authority for Indian gaming, no single body has complete authority for the regulation and enforcement of Indian gaming. This has created endless conflict, needless confusion and a regulatory atmosphere that is entirely dependent
upon a consensus among political entities with very diverse interests. Consequently the regulatory scheme of Indian gaming is considerably less effective than that imposed upon non-Indian gaming enterprises in the vast majority of jurisdictions. At first blush, Arizona's regulatory scheme may appear to be adequate and there has certainly been occasions where the state, the tribes and the NIGC have coordinated their efforts in order to provide for effective regulation of the gaming industry. Regrettably, however, that has not always been the case. Since tribal regulators are usually employed directly by the Gaming Commission and reports directly to the tribal council, some tribal regulators have lacked the autonomy of their off-reservation counterparts.

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

Basically this opinion concluded that the manner by which poker was being played at Arizona's Indian casinos violated state law and therefore, constitute Class III gaming. In the absence of a gaming compact with the state that specifically authorized poker to be played in this manner, Indian tribes were not permitted to engage in this type of activity. After the
Arizona Attorney General declined to amend and/or withdraw this opinion several tribes persuaded the NIGC to express their opinion on this issue. NIGC elected to insert themselves in this debate despite the fact that prior to ever soliciting an Attorney General opinion on this matter, the Department of Gaming had made three separate requests for guidance from the NIGC on this very issue and those requests had apparently been ignored.

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

Regardless of the continuing debate on poker, the lack of a true independent regulatory presence in Arizona's card rooms is a cause of great concern. NIGC clearly does not have the necessary resources to effectively regulate these card rooms and any interpretation that poker constitutes Class II gaming poses an insurmountable obstacle for state regulation.

This significant void in the regulation of card games is a major factor that leads one to the inescapable conclusion that the regulation of card games at Arizona's Indian casinos is woefully inadequate.

Shifting the focus of my remarks to Class III gaming activities at Arizona's casinos, our compacts authorize gaming devices, keno, lottery, off-track parimutuel wagering, parimutuel
wagering on horse racing and parimutuel wagering on dog racing. The most popular and lucrative forms of Class III gaming are the slot machines. The regulatory responsibility for Class III gaming lies exclusively with the Department of Gaming and the individual Tribal Gaming offices. With some exceptions, these entities have been successful in implementing policies and procedures that are intended to reduce the likelihood of criminal activity and corruption within Indian casinos.

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

Other functions of the department include the regular and random inspection of the gaming devices, regular inspections of the gaming facilities and a general monitoring of the casino operations to insure compliance with the provision of the compacts. The most common methods for accomplishing these objectives are; one, the assignment of investigators to individual casinos who are expected to make weekly visits to the facility; two, the conducting of announced inspections of gaming devices; and three, the conducting of biannual compact compliance reviews of the gaming facility through the use of a team of investigators, auditors and slot machine technicians.
addition the Tribal Gaming offices generally perform regulatory activities that mirror those of the Department of Gaming and these separate entities have worked in conjunction with one another on this issue. There is no question that Arizona is one of the premier regulators of Indian gaming. The Department of Gaming has done a remarkable job given the constraints created by vague compacts and vague federal law.

Nonetheless, Arizona's regulation of Indian gaming is a far cry from the type of stringent regulation of private commercial gaming that has been adopted in other jurisdictions. Arizona's authority is limited to that established in either IGRA or the compacts. Thus, Arizona lacks the authority to impose civil fines on gaming operators, it lacks the authority to audit gaming operations, and it lacks the ability to certify all gaming employees. It also lacks the authority to track gaming revenues. Although the Department of Gaming can and does cite tribes for compact violations and violations of IGRA, those violations unfortunately carry little effect. Instead the Department is forced to seek voluntary compliance from the gaming tribes. Fortunately, the vast majority of tribes strive for compliance and work with the state on most issues. There have, however, been instances where a particular tribe has defied state regulation and the state has been somewhat powerless to obtain full compliance. This lack of authority is not healthy and it's caused many of Arizona's leaders to promote greater regulation of the Indian gaming industry.

Although critics of this type of enhanced regulatory structure are quick to point out that operators of these casinos
are sovereign nations, I do not believe that such a status should exempt the $6 billion Indian gaming industry from effective regulation.

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

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

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

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

Thank you.

CHAIRPERSON JAMES: Thank you, Mr. Husk.