INDIAN GAMING REGULATORY ACT

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 964

TO PROVIDE FOR THE REGULATION OF GAMING ON INDIAN LANDS, AND FOR OTHER PURPOSES

H.R. 2507

TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES ON INDIAN RESERVATIONS AND LANDS, AND FOR OTHER PURPOSES.

HEARING HELD IN WASHINGTON, DC
JUNE 25, 1987

Serial No. 100-70

Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE

96-492 ≒ WASHINGTON : 1989

H 441-26

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HOUSE OF REPRESENTATIVES

MORRIS K. UDALL, Arizona, *Chairman*

GEORGE MILLER, California
PHILIP R. SHARP, Indiana
EDWARD J. MARKEY, Massachusetts
AUSTIN J. MURPHY, Pennsylvania
NICK JOE RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
JERRY HUCKABY, Louisiana
DALE E. KILDEE, Michigan
TONY COELHO, California
BEVERLY B. BYRON, Maryland
RON DE LUGO, Virgin Islands
SAM GEJDENSON, Connecticut
PETER H. KOSTMAYER, Pennsylvania
RICHARD H. LEHMAN, California
BILL RICHARDSON, New Mexico
FOFO I F. SUNIA, American Samoa
GEORGE (BUDDY) DARDEN, Georgia
PETER J. VISCLOSKY, Indiana
JAIME B. FUSTER, Puerto Rico
MEL LEVINE, California
JAMES McCLURE CLARKE, North Carolina
WAYNE OWENS, Utah
JOHN LEWIS, Georgia
BEN NIGHTHORSE CAMPBELL, Colorado
PETER A. DEFAZIO, Oregon

DON YOUNG, Alaska,
Ranking Republican Member
MANUEL LUJAN, JR., New Mexico
ROBERT J. LAGOMARSINO, California
RON MARLENEE, Montana
DICK CHENEY, Wyoming
CHARLES PASHAYAN, JR., California
LARRY CRAIG, Idaho
DENNY SMITH, Oregon
JAMES V. HANSEN, Utah
BILL EMERSON, Missouri
BARBARA F. VUCANOVICH, Nevada
BEN BLAZ, Guam
JOHN J. RHODES III, Arizona
ELTON GALLEGLY, California
RICHARD H. BAKER, Louisiana

STANLEY SCOVILLE, *Staff Director and Counsel*
ROY JONES, *Associate Staff Director and Counsel*
LEE MCELVAIN, *General Counsel*
FRANKLIN DUCHENEAUX, *Counsel on Indian Affairs*
DEBORAH ANN BROKEN ROPE, *Staff Assistant*
ANGELA MCCOY, *Secretary*
RICHARD A. AGNEW, *Chief Minority Counsel*

CONTENTS

THURSDAY, JUNE 25, 1987

APPENDIX

THURSDAY, JUNE 25, 1987

INDIAN GAMING REGULATORY ACT

THURSDAY, JUNE 25, 1987

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC.

The committee met, pursuant to call, at 9:55 a.m., in room 1324, Longworth House Office Building, Hon. Morris K. Udall (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in session.

We meet again, the congregation, to discuss an ancient subject, but a very interesting and important subject to those involved, and I speak of Indian gaming legislation.

Today, we begin 1987 hearings on legislation providing regulations for gambling in Indian reservations. There are two bills before the committee, H.R. 964 by our colleague, Mr. Coelho, who serves on this committee; and H.R. 2507 by myself.

Without objection, we will have both bills, a section-by-section analysis and background materials made a part of the record at this point.

[The bills H.R. 964, H.R. 2507, background material and section-by-section analysis follow:]

I

100TH CONGRESS
1ST SESSION

H. R. 964

To provide for the regulation of gaming on Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1987

Mr. COELHO (for himself, Mr. PEPPER, and Mr. LUJAN) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

---

A BILL

To provide for the regulation of gaming on Indian lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Gaming Regulatory Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities within Indian country as a means of generating tribal governmental revenues;

(2) Indian tribes have a right to regulate gaming activity which is not prohibited by Federal law and which is conducted within a State which does not, as a matter of criminal prohibitory law and public policy, prohibit such gaming activity;

(3) Federal courts have held that section 2103 of the Revised Statutes, as amended (25 U.S.C. 81) requires Secretarial review of management contracts dealing with gaming, but does not provide standards for approval of such contracts;

(4) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(5) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(6) tribal operation and licensing of gaming activities is a legitimate means of generating revenues.

SEC. 3. DECLARATION OF POLICY.

The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal government;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to ensure that the tribe is the primary beneficiary of the gaming operation, to shield gaming from illegal influences, and to assure that gaming is conducted fairly and honestly; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenues.

SEC. 4. NEWLY ACQUIRED LANDS.

(a) Except as provided in subsection (b), gaming regulated by this Act shall be unlawful on lands acquired by the Secretary under other authority in trust for the benefit of an Indian tribe after January 1, 1987—

(1) if such lands are located outside the boundaries of such tribe's reservation or are not contiguous to such reservation;

(2) with respect to lands in the State of Oklahoma, if such lands are outside of the boundaries of such tribe's former reservation, as defined by the Secretary, or are not contiguous to other land held in trust

or restricted status by the United States for such tribe in Oklahoma; or

(3) outside of the State of Oklahoma, where there is no current reservation, if such lands are outside of the tribe's last recognized reservation within the State or States within which such tribe is presently located.

(b) Subsection (a) shall not apply—

(1) if the Indian tribe requesting the acquisition of such lands obtains the concurrence of the Governor of the State, the State legislature, and the governing bodies of the county and municipality in which such lands are located; and

(2) to lands taken in trust as part of a settlement of a land claim or the initial reservation of a tribe acknowledged by the Secretary under the Federal acknowledgment process.

(c) Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Provisions of the Internal Revenue Code of 1986 concerning the taxation and the reporting and withholding of taxes pursuant to the operation of gambling or wagering operation shall apply to tribal operations in accord with the Indian Gaming Regulatory Act in the same manner as they apply to State operations.

SEC. 5. NATIONAL INDIAN GAMING COMMISSION.

(a) There is established within the Department of the Interior an independent Commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of five full-time members who shall be appointed as follows:

(A) A Chairman who shall be appointed by the President with the advice and consent of the Senate.

(B) Four associate members who shall be appointed by the Secretary.

(2) Not more than three members shall be of the same political party. At least three members shall be enrolled members of federally recognized tribes. One member shall be appointed from a list of names submitted by the National Association of Attorneys General.

(3) The Department of Justice shall conduct a background investigation on any person considered by the Secretary for appointment as an associate member of the Commission.

(4) The Secretary shall publish in the Federal Register the name and other information that the Secretary deems pertinent regarding a nominee for associate membership on the Commission and shall allow a period of not less than 30 days for receipt of public comment.

(5) The members of the Commission shall be appointed for three year terms, except that the initial terms shall be staggered so that—

(A) three members including the Chairman shall serve terms of three years; and

(B) two members shall serve terms of two years.

(6) Any individual who—

(A) has been convicted of a felony or gaming offense;

(B) has any interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act,

shall not be eligible for appointment to, or to continue to serve on, the Commission.

(7) During their terms of office, Commissioners (including the Chairman) may only be removed by the appointing authority for neglect of duty, malfeasance in office, or for other good cause shown.

(8) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his or her term until his or her successor has been appointed, unless he or she has been removed for cause under subsection (b)(5).

(d) Three members of the Commission, at least one of whom is the Chairman or the Vice Chairman, shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of its members to serve as Vice Chairman during the meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule, section 5316, title 5, United States Code.

(2) The other members of the Commission shall be paid at a rate equal to that of level V of the Executive Schedule, section 5316, title 5, United States Code.

(3) All members shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in the performance of their duties.

SEC. 6. POWERS OF THE CHAIRMAN.

(a) The Chairman shall have power, subject to the approval of the Commission—

(1) to appoint a general counsel of the Commission pursuant to section 8 of this Act;

(2) to issue orders of temporary closure of gaming activities as provided in section 14(b)(1) of this Act; and

(3) to select, appoint, and supervise the staff of the Commission as provided in section 8 of this Act.

(b) The Chairman shall have the power subject to an appeal to the Commission—

(1) to approve tribal ordinances or resolutions regulating gaming as required under section 11 of this Act; and

(2) to approve management contracts for gaming as provided in section 12 of this Act.

(c) The Chairman shall have such other powers as may be delegated by the Commission.

(d) Decisions under subsections (a)(2) and (b) of this section, after appeal to the Commission, shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to the Administrative Procedures Act, title 5, United States Code.

SEC. 7. POWERS OF THE COMMISSION.

(a) The Commission shall have specific power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 17(b) of this Act;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 14(a) of this Act;

(3) by a vote of not less than three members, to impose an assessment on each Indian gaming activity regulated pursuant to this Act and to adopt the annual assessments as provided in section 17(a) of this Act;

(4) by a vote of not less than three members, to authorize the Chairman to issue subpoenas as provided in section 15(a) of this Act; and

(5) by a vote of not less than three members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 14(b) of the Act.

(b) The Commission shall have power—

(1) to monitor Indian gaming activities on a continuing basis;

(2) to inspect and examine all premises where Indian gaming is conducted;

(3) to levy and collect civil fines as provided in section 14(a) of this Act;

(4) to conduct or cause to be conducted such background investigations as may be necessary;

(5) to demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting income of a gaming activity and all other matters necessary to the enforcement of this Act;

(6) to use the United States mails in the same manner and under the same conditions as other department and agencies of the United States;

(7) to procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(8) to enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of duties of the Commission;

(9) to hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(10) to administer oaths or affirmations to witnesses appearing before the Commission; and

(11) to establish and implement such other standards, guidelines, and regulations as it deems appropriate to implement this Act.

SEC. 8. COMMISSION STAFFING.

(a) The Chairman, with the approval of the Commission, shall appoint a general counsel to the Commission who shall have a background in Indian Affairs. The general counsel shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule, section 5332, title 5, United States Code.

(b) The Chairman shall appoint other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 9. COMMISSION—ACCESS TO INFORMATION.

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

SEC. 10. INTERIM AUTHORITY TO REGULATE GAMING.

The Secretary shall promptly provide staff and support assistance to provide interim regulation of Indian gaming subject to this Act and orderly transition until such time as the Commission is appointed and can become organized.

SEC. 11. TRIBAL GAMING ORDINANCES.

(a)(1) Class I gaming is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2) Class II gaming shall be within the jurisdiction of the Indian tribes, subject to the provisions of this Act, where such gaming is located within a State that permits such gaming for any purpose by any person, organization, or entity (and such gaming is not otherwise prohibited by Federal law).

(b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if the governing body of the tribe adopts an ordinance or resolution which is approved by the Chairman pur-

suant to this Act. A license shall be required for each place, facility, or location.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of class II gaming on Indian lands of such tribe if such ordinance or resolution provides that—

(A) except as provided in paragraph (3)(A), the Indian tribe itself shall have the sole proprietary interest in and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming activity are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies:

Provided, That, per capita payments shall not be made unless the tribe has prepared a plan to allocate revenues to uses authorized by this clause and the plan is approved by the Secretary as adequate, particularly with respect to clauses (i) and (iii) of this subparagraph:

Provided, further, That if such net revenues are used for per capita payments to tribal members, those payments are subject to Federal tax;

(C) annual outside independent audits of the gaming activity shall be obtained by the Indian tribe and made available to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually, except contracts for professional, legal, or accounting services, relating to such gaming activity shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming activity, is conducted in a manner which adequately protects the environment and the public health and safety;

(F) an adequate system to ensure that background investigations are conducted on primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis, and such system shall include—

(i) tribal licenses for primary management officials and key employees of the gaming enterprise;

(ii) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the danger of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment;

(iii) notification to the Commission by the tribe before the issuance of such license of the results of such background check; and

(iv) if after the issuance of a license, reliable information is received indicating that a primary management official or key employee does not meet the standard in subparagraph (ii), the tribe shall suspend such license and after notice and hearing may revoke such license.

For the purposes of clause (iii) of this subparagraph, the Commission shall consult with appropriate law enforcement officials and shall have 30 days to notify the tribe of any objections to the issuance of a license.

(3)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming owned by individuals or entities other than the tribe, except that tribal licensing requirements and gaming

regulations shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located. No individual or entity other than the tribe shall be eligible to receive a tribal license to own a class II gaming activity within a tribe's jurisdiction if such individual or entity is not otherwise eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B) The provisions of clause (A) and subsections (b)(2)(A) and (B) shall not bar the continued operation of an Indian individually owned class II gaming operation if—

(i) on January 1, 1987, such gaming operation was licensed and regulated by a tribe pursuant to an ordinance reviewed and approved by the Secretary, and such gaming was in operation on that date;

(ii) the exemption from the application of this subsection may not be transferred to any person or entity and shall remain in effect only so long as such gaming activity remains within the same nature and scope as operated on January 1, 1987; and

(iii) that within sixty days of the enactment of this Act, the Secretary prepare a list of each such individually owned gaming operation and shall publish such list in the Federal Register.

(c)(1) Except as provided in paragraph (2) of this subsection class III gaming shall be unlawful on any Indian lands under section 1166 of title 18, United States Code.

(2)(A) A gaming activity on Indian lands that is otherwise legal within the State where such lands are located may be exempt from the operation of paragraph (1) of this subsection where the Indian tribe requests the Secretary to consent to the transfer of all State civil and criminal jurisdiction, including assessments authorized by this paragraph, but not taxing authority, pertaining to the licensing and regulation of gaming over the proposed gaming enterprise to the State within which such gaming enterprise is to be located and the Secretary so consents. Such transfer shall provide the State with the authority to make appropriate and reasonable assessments of the Indian tribe or management contractor to compensate such State for all reasonable costs incurred by it for investigating, licensing, and regulating the gaming enterprise, but the assessment may not exceed the costs attributed to the regulation of other similar gaming enterprises operated by nontribal licensees within such State. If a State assesses any charge, commission, fee, or tax on a non-Indian parimu-

tuel gaming enterprise in excess of the cost of regulating such an enterprise, a class III tribal parimutuel gaming enterprise shall not be liable for such a charge, commission, fee, or tax so long as the tribe uses the funds retained for purposes limited to those described in section 11(b)(2)(B): *Provided*, That the share of parimutuel pools returned to the bettor at Indian gaming enterprises shall not exceed the percentage share returned to bettors at non-Indian gaming enterprises of a similar nature. The Secretary shall approve such gaming jurisdictional transfer where the Commission certifies—

(i) that the tribe's authorizing ordinance or resolution provides that the Indian tribe shall have the sole proprietary interest in and responsibility for the conduct of the gaming activity and such resolution or ordinance conforms to the standards contained in section 11(b)(2)(B);

(ii) that the management contract conforms to section 12; and

(iii) that the State within which such gaming enterprise is proposed has agreed to such jurisdiction transfer.

The Secretary shall cause to be published in the Federal Register a notice of consent to the jurisdiction transfer. Such transfer shall be effective 60 days after publication and shall terminate as of the date such gaming enterprise ceases to

operate: *Provided, however*, That in event of a cessation of operation such transfer of jurisdiction shall remain in full force and effect as to any activity that occurred prior to such cessation. In accordance with the provisions of section 22 prosecution and enforcement pursuant to this subsection shall be within the appropriate courts of the respective States.

(B) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135), section 1172, title 15, United States Code, shall not apply to any gaming conducted under this paragraph.

(C) For purposes of this subsection, any regulation or authority exercised by a State under this subsection, including the issuance of a license, shall be exercised in the same manner and to the same extent as it is exercised on non-Indian lands within the State. For purposes of this subsection, an Indian tribe shall be considered to be a person as defined in section 1 of title I, United States Code, and shall have the same rights and remedies as does any person or citizen of the United States, and any State or Federal court of competent jurisdiction shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights guaranteed under this subsection.

(d) Not later than 120 days after the submission of any tribal gaming ordinance or resolution pursuant to subsection (b), the Chairman shall approve such ordinance or resolution

if it meets the requirements of this subsection. Any ordinance or resolution not acted upon at the end of the 120-day period shall be deemed to have been approved by the Chairman, except as such ordinance or resolution may be inconsistent with the provisions of this Act.

(e) Any United States district court shall have jurisdiction to entertain a complaint or action initiated by a State to enjoin a tribe from operating any class II or class III game which is illegal under section 1166, title 18, United States Code.

SEC. 12. MANAGEMENT CONTRACTS.

(a) Subject to the approval of the Chairman, a tribe may enter into a management contract for the operation and management of a tribal gaming enterprise: Except that, before approving such contract, the Chairman shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having any financial interest in or management responsibility for such contract, or in the case of corporations, those individuals who serve on the board of directors of such corporations and each stockholder who holds 10 percent (directly or indirectly) or more of the issued and outstanding stock;

(2) a description of any previous experience which each person listed pursuant to paragraph (1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming;

(3) a complete financial statement of each person listed pursuant to paragraph (1); and

(4) any person listed pursuant to paragraph (1) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his or her responsibilities under this section.

(b) Any management contract entered into pursuant to this section shall specifically provide—

(1) that adequate accounting procedures shall be maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on a monthly basis;

(2) that appropriate tribal officials shall have reasonable access to the daily operations of the gaming establishment and shall have the right to verify the daily income made from any such tribal gaming operation;

(3) for a minimum guaranteed payment to the tribe that has preference over the retirement of development and construction costs;

(4) for an agreed upon ceiling for the repayment of development and construction costs;

(5) that the term of the contract shall not exceed five years; and

(6) for grounds and mechanisms for terminating such contract: *Provided*, That contract termination shall not require the approval of the Commission or the Secretary.

(c) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of the tribal gaming activity if he or she determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall the fee exceed 40 percent of the net revenues.

(d) Not later than 150 days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. Any such contract not acted upon at the end of such time shall be deemed to have been approved by the Chairman.

(e) The Chairman shall not approve any contract where he or she has determined that—

(1) any person listed pursuant to subsection (a)(1) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act; or

(D) has been determined to be a person whose prior activities, criminal record, if any, reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has or has attempted to unduly interfere with or influence for its gain or advantage, any decision or process of the tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee exercising the skill and diligence that a trustee is commonly held to would not approve the contract.

(f) The Chairman shall after notice and hearing have the authority to require appropriate contract modifications or may void any contract if he or she subsequently determines that the provisions of this section have been violated.

(g) No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) The authority of the Secretary under section 2103 of the Revised Statutes, as amended (25 U.S.C. 81) relating to management contracts regulated pursuant to this Act, is delegated to the Commission.

(i) The Commission shall require the potential contractor to pay a fee which will be equal to the cost of the investigation necessary to reach a determination required in subsection (e)(1)(D) of this section.

SEC. 13. REVIEW OF EXISTING ORDINANCES AND CONTRACTS.

(a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor, who, prior to the enactment of this Act, adopted an ordinance or resolution authorizing class II gaming or entered into a management contract, which has not been previously disapproved, that such ordinance, resolution, or contract, including all collateral agreements, including those subject to litigation under section 2103 of the Revised Statutes, as amended (25 U.S.C. 81), must be submitted by such Indian tribe for review within 60 days of such notification.

(b)(1) Within 120 days after the submission of an ordinance or resolution (including all collateral agreements) authorizing Class II gaming pursuant to subsection (a), the Chairman shall review such documents to determine conformity to the requirements of section 11 of this Act.

(2) If the Chairman determines that such ordinance or resolution conforms to section 11, he or she shall approve it.

(3) If the Chairman determines that such ordinance or resolution does not conform to the requirements of section 11, he or she shall provide written notification of necessary modification to the Indian tribe which shall have not more than 90 days to come into compliance.

(c)(1) Within 150 days after the submission of a management contract (including all collateral agreements) pursu-

ant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 of this Act.

(2) If the Chairman determines, at the end of such period, that such contract and the management contractor meet the requirements of section 12, he shall approve it.

(3) If the Chairman determines, at the end of such period, that such contract does not meet the requirements of section 12, he shall provide written notification to the parties to such contract of modifications necessary to come into compliance and the parties shall have not more than 90 days to come into compliance.

(4) Where a management contract, including all collateral agreements, submitted pursuant to subsection (a) has been previously approved by the Secretary or his authorized representative, and no further action shall be required.

SEC. 14. CIVIL PENALTIES.

(a)(1) The Commission shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, or regulation adopted by the Commission pursuant to this Act. Fines collected pursuant to this section shall be utilized by the Commission to defray its operating expenses. Tribal regulations, ordinances, or resolu-

tions, approved under sections 11 and 13 of this Act are adopted as Commission regulations for purposes of this section.

(2) The Commission shall by regulation provide an opportunity for appeal and hearing before the Commission on fines levied and collected pursuant to this section.

(b)(1) The Chairman shall have the power to order temporary closure of an Indian game for substantial violation of the provisions of this Act.

(2) Not later than 30 days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have the right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. The Commission may, by a vote of not less than three members, order a permanent closure of the gaming operation after such hearing.

(c) Whenever—

(1) the Commission has reason to believe that the tribal operator of an Indian game or management contractor engaged in activities regulated by this Act or regulations thereunder has violated any provision of this Act or regulations thereunder that may result in the imposition of a fine pursuant to subsection (a) of

this section or the permanent closure of such game under paragraph (2) of subsection (b) of this section, or

(2) the Chairman has reason to believe that such activity may result in the modification or termination of any management contract under sections 12(f) or 13(c),

the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in ordinary and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(d) A decision of the Commission to levy a fine, to modify or terminate any management contract after appeal to the Commission, or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to the Administrative Procedures Act, title 5, United States Code.

SEC. 15. SUBPOENA AND DEPOSITION AUTHORITY.

(a)(1) The Commission may authorize the Chairman to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which the Commission is empowered to investigate by this Act.

(2) Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(3) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district where such person is found or resides or transacts business may, upon application of the Commission, order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(4) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for United States district courts.

(5) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena, on the

ground that the testimony or evidence required may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture by reason of any transaction, matter, or thing commencing which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury in so testifying.

SEC. 16. INVESTIGATIVE POWERS.

(a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) Subject to the limitations in section 15(b) of this Act, the Commission may, when such information indicates a violation of Federal, State, or tribal criminal statutes or ordinances, provide such information to the appropriate law enforcement officials.

(c) The Attorney General is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law including but not limited to section 13 of title 18, United States Code (Assimilative Crimes Act), section 1152 of title 18, United States

Code (General Crimes Act), section 1153 of title 18, United States Code (Major Crimes Act), and section 1163 of title 18, United States Code (embezzlement and theft from tribal organizations). The Attorney General is authorized to enforce such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon referral of information by the Commission pursuant to this section.

(d) For purposes of this section, the term "State" as used in Public Law 92–544, pertaining to criminal investigatory files, shall include "Indian tribes" as defined in section 19(5) of this Act.

SEC. 17. COMMISSION FUNDING.

(a)(1) Not less than one-half of the annual budget of the Commission shall be derived from an assessment of not to exceed 1.5 per centum of the gross revenues from each Indian gaming activity regulated pursuant to section 11(b) this Act.

(2) The Commission, by a vote of not less than three of its members, shall annually adopt the rate of assessment authorized by this section which shall be payable on a quarterly basis.

(3) Failure to pay the assessment shall, subject to the regulations of the Commission, be grounds for revocation of

any approval or license of the Commission required under this Act for operating a tribal game.

(4) To the extent that funds derived from such assessment are not expended or committed at the end of the budget year, such surplus funds shall be credited to each tribal game on a pro rata basis against the assessment for the succeeding year.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal cycle of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 18, in an amount not to exceed the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to section 18 shall be subject to the approval of the Secretary and shall be included as part of the budget request of the Department of the Interior.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) Subject to the provisions of section 17, there is hereby authorized such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 17, there is hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

SEC. 19. DEFINITIONS.

For the purposes of this Act—

(1) the term "Attorney General" means the Attorney General of the United States;

(2) the term "Chairman" means the Chairman of the National Indian Gaming Commission;

(3) the term "Commission" means the National Indian Gaming Commission established by this Act;

(4) the term "Indian lands" means—

(A) all lands within the limits of any Indian reservation; and

(B) any land title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe subject to a restriction against alienation and over which an Indian tribe exercises governmental power;

(5) the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by

the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government;

(6) the term "gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value, and shall consist of—

(A) "Class I Gaming" which shall include social games played solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as part of or in connection with tribal ceremonies or celebrations.

(B) "Class II Gaming" which shall include card games as defined in this subsection and the game of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering numbers, or objects, similarly numbered, which are drawn or electronically determined from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a card, and shall include where otherwise legal under State law, pull-tabs, punch

boards, tip jars, and other bingo type games. Class II gaming may include electronic or electromechanical facsimiles of the foregoing games, where devices of such types are otherwise legal under State law. Within 60 days of the enactment of this Act, the Secretary shall identify and prepare a list of each tribally owned card game operated on Indian lands in the States of California, Michigan, Montana, and North Dakota, as of January 1, 1987, and shall publish such a list in the Federal Register. For purposes of this subsection, the Rincon Band of Mission Indians, the Sycuan Band of Mission Indians, and the Saginaw Chippewa Tribe are deemed to have a tribally operated card game on their respective reservations on or before January 1, 1987. If the tribal ordinance governing the operation of such identified card game complies with section 11 of this Act and any management contract pertaining to such game complies with section 12 of this Act, such card game shall be deemed a Class II gaming activity for purposes of regulation under this Act;

(C) "Class III Gaming" which shall include all other forms of gaming not defined in subparagraphs (A) and (B) of this paragraph;

(7) the term "gross revenues" means total wagered or paid moneys less any amounts paid out as prizes or paid for prizes awarded less capital expenditures; for card games, gross revenues shall also include the moneys received by the gaming activity from the players as fees or percentages of amounts gambled;

(8) the term "net revenues" means gross revenues, as defined in subsection (7) of this section, of an Indian gaming activity less amounts paid out as total operating expenses including management fees; and

(9) the term "Secretary" means the Secretary of the Interior.

SEC. 20. DISSEMINATION OF INFORMATION.

Consistent with the requirements of this Act, section 1307 of title 18, United States Code, shall apply to any gaming conducted by a tribe pursuant to this Act.

SEC. 21. SEVERABILITY.

In the event that any section or provision in this Act is held invalid it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. 22. CRIMINAL PENALTIES.

(a) Chapter 53 of title 18 of the United States Code is amended by adding at the end thereof the following new section 1166:

"SEC. 1166. GAMING IN INDIAN COUNTRY.

"(a) Except as provided in subsection (c) all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply on Indian lands in the same manner and to the same extent as such laws apply elsewhere in the State.

"(b) Whoever on Indian lands is guilty of any act or omission involving gambling whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any Act of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

"(c) For purposes of this section the term "gambling" does not include Class I gaming as defined by this Act, and any gaming authorized by this Act and subject to the jurisdiction of the National Indian Gaming Commission.

"(d) It is the intent of Congress that criminal prosecutions of violations of State gambling laws applicable under this Act on Indian lands should be undertaken by the United States, unless a tribe, pursuant to section 11(c), or otherwise, has consented to the transfer of State jurisdiction with respect to gambling on the tribe's lands.".

(b) The analysis of chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following:

"1166. Gambling in Indian country."

I

100TH CONGRESS
1ST SESSION

H. R. 2507

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1987

Mr. UDALL (for himself, Mr. YOUNG of Alaska, Mr. CAMPBELL, Mr. SMITH of Florida, and Mr. BEREUTER) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

---

A BILL

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Regulatory Act".

SEC. 2. The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Indian tribes have the exclusive right to regulate gaming activity on Indian lands which is not specifically prohibited by Federal law and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity;

(3) Federal courts have held that section 2103 of the Revised Statutes, as amended (25 U.S.C. 81), requires Secretarial review of management contracts dealing with gaming, but does not provide standards for approval of such contracts;

(4) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities on Indian lands;

(5) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(6) tribal operations and licensing of gaming activities is a legitimate means of generating revenues.

SEC. 3. The purpose of this Act is—

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and the players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

SEC. 4. (a)(1) Except as provided in subsection (b), gaming regulated by this Act shall be unlawful on any lands acquired by the Secretary under existing authority in trust for the benefit of any Indian tribe after the date of enactment of this Act—

(A) if such lands are located outside the boundaries of such tribe's reservation or are not contiguous to such reservation; or

(B) with respect to tribes which do not have a current reservation, if such lands are—

(i) outside of such tribe's last recognized reservation within the State or States within which such tribe is presently located; or

(ii) are not contiguous to real property held in trust by the United States for such tribe before the passage of this Act.

(2) Nothing in this subsection shall affect or diminish the authority and responsibility of the Secretary to take lands into trust or apply to lands taken in trust as part of a settlement of a land claim or Federal acknowledgement process.

(b) Subsection (a) shall not apply if the Indian tribe requesting the acquisition of such lands in trust obtains the concurrence of the Governor of the State, and the governing bodies of the county or municipality in which such lands are located.

(c) Provisions of the Internal Revenue Code of 1986, concerning the taxation and the reporting and withholding of taxes pursuant to the operation of a gambling or wagering operation, shall apply to the operations in accord with the Indian Gaming Regulatory Act the same as they apply to State operations.

SEC. 5. (a) There is established within the Department of the Interior an independent commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of five members who shall be appointed as follows:

(A) a Chairman who shall serve full-time and who shall be appointed by the President with the advice and consent of the Senate and who shall serve at the pleasure of the President;

(B) a member who shall be selected by the Secretary; and

(C) three members who shall be enrolled members of Federally recognized Indian tribes and who shall be appointed by the Secretary from the recommendations of tribes then engaged in or regulating gaming activities.

(2) Not more than three members of the Commission shall be of the same political party.

(3)(A) Except for the Chairman and except as otherwise provided in this paragraph, members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) the member appointed pursuant to paragraph (1)(B) and one member appointed pursuant to paragraph (1)(C) shall be appointed for a term of two years; and

(ii) the remaining members appointed pursuant to paragraph (1)(C) shall be appointed for a term of three years.

(4) Any individual who—

(A) has been convicted of a felony or gaming offense;

(B) has any management responsibility in any gaming activity regulated pursuant to this Act;

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 13 of this Act; or

(D) is employed by any Federal, State, or local government

shall not be eligible for appointment to, or to continue service on, the Commission.

(5) Except for the Chairman, a member of the Commission may only be removed for cause.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term until his successor has been appointed, unless he has been removed for cause under subsection (b)(5) of this section.

(d) Three members of the Commission shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members to serve as Vice-Chairman who shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every four months.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule (5 U.S.C. 5315).

(2) The other members of the Commission shall be paid at a rate equal to the daily equivalent to that of level V of the Executive Schedule (5 U.S.C. 5316).

(3) All members shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 6. (a) The Chairman of the Commission shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 15(b);

(2) levy and collect civil fines as provided in section 15(a);

(3) approve tribal ordinances regulating Class II and Class III gaming as provided in section 11 and 12;

(4) approve management contracts for Class II and III gaming as provided in section 13; and

(5) promulgate regulatory schemes for Class III gaming as provided in section 12.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

SEC. 7. (a) The Commission shall have specific power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 19;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 15(a);

(3) by an affirmative vote of not less than three members, to adopt the annual assessments as provided in section 19;

(4) by an affirmative vote of not less than three members, to authorize the Chairman to issue subpoenas as provided in section 17; and

(5) by an affirmative vote of not less than three members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 15(b).

(b) The Commission shall—

(1) monitor Indian gaming activities on a continuing basis;

(2) inspect and examine all premises where Indian gaming is conducted;

(3) conduct or cause to be conducted such background investigations as may be necessary;

(4) have the right to demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting income of a gaming activity and all other matters necessary to the enforcement of this Act;

(5) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(6) procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) to the extent feasible, enter into contracts with tribes, associations of Indian tribes and private entities for activities necessary to the discharge of the duties of the Commission;

(8) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) administer oaths or affirmations to witnesses appearing before the Commission; and

(10) promulgate such guidelines and regulations as it deems appropriate to implement the provisions of this Act.

SEC. 8. (a)(1). The Chairman, with the approval of the Commission, shall appoint a General Counsel to the Commission who shall have a background in Indian Affairs. The General Counsel may be paid at the annual rate of basic pay payable for GS-18 of the General Schedule (5 U.S.C. 5332).

(2) The Chairman shall appoint other staff of the Commission pursuant to the provisions of title 5, United States Code, governing appointments in the competitive service, but such appointments shall be subject to section 12 of the Act of June 18, 1934 (48 Stat. 986), as amended.

(3) The Commission may procure temporary and intermittent services under section 3109 (b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(b)(1) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

SEC. 9. (a) The Secretary or Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(b) The Secretary shall promptly provide staff and support assistance to provide interim regulation and orderly transition until such time as the Commission is appointed and can become organized.

SEC. 10. (a) Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(b) Class II and Class III gaming shall be within the jurisdiction of the Indian tribes, subject to the provisions of this Act, where such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity and such gaming is not otherwise specifically prohibited on Indian lands by Federal law.

SEC. 11. (a) An Indian tribe may engage in, and regulate, Class II gaming activity on the Indian lands of such

tribe if the governing body of the tribe adopts an ordinance which is approved by the Chairman pursuant to this Act.

(b) The Chairman shall approve any tribal ordinance concerning the conduct, licensing, or regulation of Class II gaming activity on the Indian lands of such tribe if such ordinance provides that—

(1) except as provided in subsection (c), the Indian tribe itself shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(2) net revenues from any tribal gaming activity are not to be used for purposes other than—

(A) to fund tribal government operations or programs;

(B) to provide for the general welfare of the Indian tribe and its members; and

(C) to promote tribal economic development;

(3) annual outside independent audits of the gaming activity will be obtained by the Indian tribe and made available to the Commission;

(4) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually, except contracts for professional legal or accounting services, relating to such gaming activity shall be subject to such independent audits;

(5) the construction and maintenance of the gaming facility, and the operation of that gaming activity, will meet applicable environmental, health and safety standards; and

(6) the tribe shall have an adequate system to ensure that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management will be conducted on an ongoing basis.

(c) A tribal ordinance or resolution may provide for the licensing or regulation of Class II gaming activities owned by individuals or entities other than the Indian tribe, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located. No individual or entity, other than the tribe, shall be eligible to receive a tribal license to own a class II gaming activity within the tribe's jurisdiction if such individual or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(d) Not later than sixty days after the submission of any tribal gaming ordinance, the Chairman shall approve such ordinance if it meets the requirements of this section. Any

such ordinance not acted upon at the end of that sixty day period shall be deemed to have been approved by the Chairman, except as such ordinance may be inconsistent with the provisions of this Act.

(e)(1) Any Indian tribe which operates a Class II gaming activity and which—

(A) conducts such operation directly without a management contract;

(B) has continuously conducted such activity for a period of not less than four years, including at least one year after the date of the enactment of this Act; and

(C) has otherwise complied with the provisions of this section

may petition the Commission for a certificate of self-regulation.

(2) The Commission shall issue a certificate of self-regulation if it determines, from available information and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(3) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b); subsections (i), (j), and (k) of section 13; and section 15;

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(3) and shall submit to the Commission a complete résumé on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 14 in excess of one-half of 1 per centum of the gross revenue.

(4) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by an affirmative vote of not less than three of its members

SEC. 12. (a) An Indian tribe may engage in Class III gaming activity on the Indian lands of such tribe if the governing body of the tribe adopts a Class III ordinance which meets the requirements of section 11(b) and which is approved by the Chairman and such tribe has obtained a license from the Commission pursuant to subsection (b) of this section.

(b) With respect to any application for a license to operate a Class III gaming establishment, the Commission shall ascertain the ability of the prospective licensee, and any management contractor with which the prospective licensee has entered into a management contract, to comply with the provisions of this Act and the rules of the Commission, and otherwise determine the suitability and fitness of the management contractor, if any, to operate a licensed Class III gaming establishment in an honest manner, for the general economic benefit of the tribe. The Commission shall grant a license to any tribal applicant unless it makes a specific find-

ing that such applicant cannot operate the gaming activity in accordance with the standards established under this Act and the gaming codes established by the Commission pursuant to this section.

(c) The Commission may suspend, modify, or revoke a license to operate a licensed Class III establishment if after a hearing, it concludes that, due to substantial violations of the requirements of this Act, the operator cannot continue to operate the gaming activity in accordance with the standards established under this Act. The Commission may also, with the consent of the tribe, impose additional conditions for the operation of such an establishment.

(d) Upon receipt of an application for a Class III gaming license, the Commission shall cause an appropriate review to be made and act on such application within one hundred and twenty days of the receipt of such application.

(e)(1) In any case where the Chairman first approves an ordinance under subsection (a) of this section for the conduct of a type of Class III gaming activity within any State, the Chairman, pursuant to paragraph (2) of this subsection, shall adopt a comprehensive regulatory scheme for such gaming activity. Such regulations shall be developed and adopted only after consultation with the affected Indian tribe or tribes and with the appropriate officials of the State within which such activity is to be conducted.

(2) The regulations adopted pursuant to this subsection shall be identical to those provided for the same activity by the State within which such Indian gaming activity is to be conducted which is applicable to a State licensee subsequent to the issuance of such license, except that the Chairman shall exclude any provisions of the State's regulations which impose any tax, assessment, fee, or other financial burden upon a gaming activity and shall exclude or modify any of the State's regulations which he determines are clearly inappropriate for application to Indian tribes and their operations or which would unreasonably impair the ability of the tribe to conduct its operation.

(3) The regulatory scheme adopted pursuant to this subsection shall be uniformly applied by the Commission to any other Indian tribe engaging in the same type of Class III activity within the same State.

(f)(1) Where any State law or regulation adopted by the Commission pursuant to subsection (e) involves criminal penalties for violation thereof, such criminal penalties shall be enforceable by—

(A) the State where such State has the requisite criminal jurisdiction over Indian reservations pursuant to Public Law 83-280, or

(B) the United States pursuant to the Assimilative Crimes Act (18 U.S.C. 13),

as if such criminal penalties were part of the criminal/prohibitory laws of such State.

(2) No person shall be prosecuted under paragraph (1) of this subsection where the appropriate Indian tribe has adopted the regulation in question as a part of its own laws and has prosecuted such person for violation of such law.

(g) Prior to approving a license pursuant to this section, the Chairman shall evaluate the ability of the licensee to monitor and insure that gaming operations are conducted in a fair and safe manner.

SEC. 13. (a) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a Class II or III gaming activity, except that, before approving such contract, the Chairman shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a financial interest in, or management responsibility for, such contract, or, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 per centum or more of its issued and outstanding stock;

(2) a description of any previous experience which each person listed pursuant to paragraph (1) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming;

(3) a complete financial statement of each person listed pursuant to paragraph (1); and

(4) all collateral agreements made in connection with such contract.

(b) Any person listed pursuant to subsection (a)(1) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(c) Any management contract entered into pursuant to this section shall specifically provide—

(1) that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body and the tribal licensee on a monthly basis;

(2) that appropriate tribal officials shall have reasonable access to the daily operations of the gaming activity and shall have the right to verify the daily income made from any such tribal gaming activity;

(3) for a minimum guarantee payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) that the term of the contract shall not exceed seven years; and

(6) for grounds and mechanisms for terminating such contract, except that contract termination shall not require the approval of the Commission.

(d) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed forty percent of the net revenues.

(e) Not later than one hundred and twenty days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. Any such contract not acted upon at the end of such time shall be deemed to have been approved by the Chairman.

(f) The Chairman shall not approve any contract where he determines that—

(1) any person listed pursuant to paragraph (a)(1) of this section—

(A) is an elected member of the governing body of the Indian tribe which has licensed the activity or is the party to the management contract;

(B) has been convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (b), or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity, or

96-492 O - 89 - 3

(3) a trustee exercising the skill and diligence that a trustee is commonly held to would not approve the contract.

(g) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated or that the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

(h) The authority of the Secretary under section 81 of title 25, United States Code, relating to management contracts regulated pursuant to this Act, is delegated to the Commission.

(i) The Chairman shall license all employees of a gaming operation conducted pursuant to this Act who are employed in a management capacity. The Chairman shall determine what constitutes a management capacity for the purposes of this Act.

(j) The Chairman shall grant a license pursuant to subsection (i) unless it determines that such person—

(1) has been convicted of any relevant felony or gaming offense;

(2) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act; or

(3) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits and association pose a threat to the public interest or the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods or the carrying on of the business and financial arrangements incidental thereto.

(k) The Chairman, after notice and hearing, shall have the authority to suspend or revoke a license issued pursuant to subsection (i) of this section if he subsequently determines that such licensee no longer meets or is in compliance with the conditions established in subsection (j) of this section.

(l) The Commission shall require the potential management contractor to pay a fee which will be equal to the cost of the investigation necessary to reach a determination required in subsection (f)(1)(D) of this section.

SEC. 14. (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act, adopted an ordinance authorizing Class II or III gaming or entered into a management contract, that such ordinance or contract and any collateral agreements

must be submitted for his review within sixty days of such notification.

(b)(1) Within ninety days after the submission of an ordinance authorizing Class II gaming pursuant to subsection (a), the Chairman shall review such ordinance to determine if it conforms to the requirements of section 11 of this Act.

(2) If he determines that such ordinance conforms to section 11, he shall approve it.

(3) If he determines that such ordinance does not conform to the requirements of section 11, he shall provide written notification of necessary modifications to the Indian tribe, which shall have not more than one hundred and twenty days to come into compliance.

(c)(1) Within ninety days after the adoption by the Commission of a Class III regulatory scheme governing the type of gaming involved in a Class III ordinance submitted pursuant to subsection (a), the Chairman shall review such ordinance to determine if it conforms to such regulatory scheme and the appropriate requirements of section 12 of this Act.

(2) If he determines that such ordinance conforms to such regulatory scheme and to the requirements of section 12, he shall approve it and issue any necessary license.

(3) If he determines that such ordinance does not conform to such regulatory scheme and to the requirements of section 12, he shall provide written notification of necessary

modification to the Indian tribe which shall have not more than one hundred and twenty days to come into compliance.

(d)(1) Within one hundred and eighty days after the submission of a management contract pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 13 of this Act.

(2) If he determines, at the end of such period, that such contract and the management contractor meet the requirements of section 13, he shall approve it.

(3) If he determines, at the end of such period, that such contract and the management contractor do not meet the requirements of section 13, he shall provide written notification to the parties to such contract of modifications necessary to come into compliance and the parties shall have not more than one hundred and twenty days to come into compliance.

(e) The provisions of this Act shall not be used by a tribe as independent grounds for terminating an otherwise valid existing contract if such contractor has agreed to modify the terms of the contract so as to bring such contract into compliance with the requirements of this Act.

SEC. 15. (a)(1) Subject to such regulation as may be adopted by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming

for any violation of any provision of this Act or any regulation adopted by the Commission pursuant to this Act. Fines collected pursuant to this section shall be utilized by the Commission to defray its operating expenses. Tribal ordinances approved under section 11 and 14 of this Act shall be adopted as Commission regulations for purposes of this section.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(b)(1) The Chairman shall have power to order temporary closure of Indian gaming activities for substantial violation of the provisions of this Act or regulations adopted by the Commission pursuant to this Act.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe, tribal licensee or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. The Commission may, by an affirmative vote of not less than three of its members, order a permanent closure of the gaming operation after such hearing.

(c) Whenever the Commission has reason to believe that—

(1) the tribal operator of an Indian game or a management contractor engaged in activities regulated by this Act or regulations thereunder has violated any provision of this Act or regulations thereunder that may result in the imposition of a fine pursuant to subsection (a) of this section or the permanent closure of such game under paragraph (2) of subsection (b) of this section or

(2) such activity may result in the modification or termination of any management contract under sections 13(f) or 14(c),

the Commission shall provide such operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in ordinary and concise language and must specify the statutory or regulatory provision alleged to have been violated, but may not consist merely of allegation stated in statutory or regulatory language.

(d) Nothing in this Act shall preclude and Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is consistent with this Act or with any rules or regulations adopted by the Commission.

SEC. 16. Decisions made by the Commission pursuant to section 11, 12, 13, 14, and 15 shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code.

SEC. 17. (a) The Commission may authorize the Chairman to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which the Commission is empowered to investigate by this Act. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(c) If a person issued a subpoena under paragraph (a) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may, upon application of the Commission, order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under inves-

tigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(e) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

SEC. 18. (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission may, when such information indicates a violation of Federal, State, or tribal criminal statutes or ordinances, provide such information to the appropriate law enforcement officials.

(c) The Attorney General of the United States is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law, including but not limited to the Major Crimes Act (18 U.S.C. 1153), the Assimilative Crimes Act (18 U.S.C. 13), and 18 U.S.C. 1163. The Attorney General is authorized to enforce

such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon the referral of information by the Commission pursuant to subsection (b) of this section.

SEC. 19. (a)(1) Not less than one half of the annual budget of the Commission shall be derived from—

(A) an assessment of not to exceed 2 per centum of the gross revenues from each Indian Class II gaming activity; and

(B) an assessment from each Indian Class III gaming activity which shall be established by the Commission based upon the reasonable costs incurred by the Commission in its investigation, licensing, and regulation of each such gaming operation, but which shall not exceed the costs which are incurred by the appropriate State for its regulation of a similar gaming operation within its jurisdiction.

(2) The Commission, by an affirmative vote of not less than three of its members, shall annually adopt the rate of assessment authorized by this section which shall be payable on a quarterly basis.

(3) Failure to pay the assessment shall, subject to the regulations of the Commission, be grounds for revocation of any approval or license of the Commission required under this Act for the operation of tribal or individual gaming.

(4) To the extent that funds derived from such assessments are not expended or committed at the end of the budget year, such surplus funds shall be credited to each gaming activity on a pro rata basis against the assessment for the succeeding year.

(5) For purposes of this section, gross revenues shall constitute the total wagered monies less any amounts paid out as prizes or paid for prizes awarded.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal cycle of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 20, in an amount not to exceed the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

SEC. 20. (a) Subject to the provisions of section 19, there is hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 19, there is hereby authorized to be appropriated not to exceed

$2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

SEC. 21. For the purposes of this Act—

(1) "Attorney General" means the Attorney General of the United States;

(2) "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act;

(3) "Indian lands" means—

(i) all lands within the limits of any Indian reservation; and

(ii) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or which is held by any Indian tribe or individual subject to a restriction by the United States against alienation over which an Indian tribe exercises governmental power;

(4) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized by the United States as possessing powers of self-government;

(5) "gaming" means to deal, operate, carry-on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value, and shall consist of—

(A) "Class I gaming" which shall include social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations;

(B) "Class II gaming" which shall include card games and the games of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn or electronically determined from a receptable and the game being won by the person first covering a previously designated arrangement of numbers or designations on such card, including the use of electronic or electromechanical facsimiles, and shall also include pull-tabs, punch boards, tip jars, instant bingo, other games similar to bingo; and

(C) "Class III gaming" which shall include all other forms of gaming not defined in subparagraph (A) and (B) of this paragraph.

(6) "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses excluding management fees; and

(7) "Secretary" means the Secretary of the Interior.

SEC. 22. Consistent with the requirements of this Act, a tribe shall be considered as a state for the purposes of section 1307 of title 18 of the United States Code.

SEC. 23. Upon the request of the Miccosukee Tribe of Indians of Florida, the Secretary of the Interior is directed to accept from the tribe, in trust as a part of the reservation of such tribe under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985, 986), all of the tribe's interest in approximately twenty-five contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail. Such lands shall be accepted by the Secretary subject to existing encumbrances and rights. In addition to economic, residential, cultural and social uses and notwithstanding the provisions of section 4 of this Act, Class II gaming may be operated by the tribe on the lands

taken in trust pursuant to this section. A legal description of the land taken in trust shall be published by the Secretary in the Federal Register.

SEC. 24. In the event that any section or provision of this act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

BACKGROUND

Although Indian tribes have been engaged in the operation of gaming activities on their reservations for some time and although some tribes have conducted bingo operations on a regular basis since at least 1974, it is not until the 80's that such gaming operations have begun to proliferate at a rapid pace. Recent information indicates that over 100 such operations are currently in existence.

Tribal involvement in the conduct of gaming activities started to increase after the seminal case of Seminole v. Butterworth, 658 F 2d. 310 (1982).

In this case, the 5th Circuit upheld a ruling of the Federal District Court that the Seminole Tribe of Florida could engage in bingo gambling within the reservation free of State licensing and State regulation. While the court found that the State of Florida has criminal and civil jurisdiction over the Seminole reservation pursuant to Public Law 83-280, it found that, pursuant to the Supreme Court's decision in Bryan v. Itasca County, 426 U.S. 373 (1976), P.L. 83-280 did not confer general regulatory power over Indian tribes.

Therefore, the question of whether or not Florida had the right to license and regulate bingo operations on the Seminole Reservation turned on whether the State law regulating bingo operations was criminal/prohibitory in nature or civil/regulatory. Finding that the operation of bingo games in Florida was not prohibited by the State law as against public policy, but merely regulated, the Court held that the State law was civil/regulatory in nature and, therefore, was not applicable to bingo operations on

the Indian reservation. Similar decisions were handed down in the case of Oneida Tribe of Indians v. Wisconsin, 518 F. Supp. 712 (1981) and Barona Group of the Capitan Grande Band of Mission Indians v. Duffy, (9th Circuit; 1982). Finally, in 1987, the rationale of the lower Federal courts was upheld by the Supreme Court in California v. Cabazon Band of Mission Indians.

Whether a certain activity is against the public policy of the State has also determined whether such gambling activity is legal under the Organized Crime Control Act of 1970. This Act prohibits gambling businesses which are in violation of the laws of the State in which they are located. The Federal Courts have concluded that gambling activities which are regulated rather than prohibted by State law are not against the public policy of the State and therefore not violative of the Organized Crime Control Act. See: U.S. v. Farris, 624 F 2nd 890 (9th Cir. 1980).

Besides the favorable court decisions, it is clear that in these times of Federal budget reductions, many tribes which have traditionally relied on Federal funding to conduct their tribal governmental operations, have found the revenues generated from tribal gaming operations on the reservations to be a welcome source of funds to replace dwindling federal funds. As the Department of the Interior stated during its testimony on similiar gaming legislation in the previous Congress.

> "Indian reservation gambling provides economic benefit to many of the tribes involved, especially those with no valuable natural resources or other significant sources of income. Tribes have used their bingo income for a variety of purposes relating to the welfare of their members including. . . payment of medical expenses for tribal members. . . fire department equipment and operation, road repairs, and flood control repair."

The proliferation of tribal gaming operations was also encouraged by President Reagan's Indian Policy Statement which encouraged the tribes to reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government and which pledged to assist tribal governments by removing impediments to tribal self-government. This policy also encouraged private sector involvement and innovative approaches to overcome the legislative and regulatory impediments to economic progress. To comply with this policy and Federal law, the Department of the Interior has approved tribal ordinances and laws providing for tribal regulations of gaming activities on Indian lands and testified during the Committee hearings that, "We wish to permit continuation of Indian bingo as a matter of Federal policy, but recognize that it had to be regulated effectively to avoid the potential law enforcement problems."

It is precisely such potential law enforcement concerns and especially allegations of criminal infiltration by organized crime which first interested the Committee in the issues facing gaming on Indian lands. On the issue of organized crime, the Committee has not yet found any conclusive evidence that such infiltration has occurred. The Justice Department, in its testimony on similar legislation in the last Congress, stated that, while it did not claim that Indian gambling operations were presently "mobbed-up", there was still a potential for such infiltration by organized crime especially after such operations have become successful and have established their credentials and legitimacy.

SECTION-BY-SECTION ANALYSIS OF H.R. 964

Section 1

Section 1 provides that the Act may be cited as the "Indian Gaming Regulatory Act".

Section 2

Section 2 contains various congressional findings related to the conduct of gaming activities on Indian reservations.

Section 3

Section 3 sets out as the purposes of the Act to provide a statutory basis for gaming by Indian tribes; to provide a statutory basis for the regulation of tribal gaming; and to establish a National Indian Gaming Commission for the regulation of tribal gaming.

Section 4

Subsection (a) provides that gaming regulated by this Act shall be unlawful on any lands acquired in trust for an Indian tribe after January 1, 1987, if the lands are outside of, or are not contiguous to, the existing reservation or, in the case of tribes without a reservation including those in Oklahoma, outside of its last recognized reservation or not contiguous to existing trust lands.

Subsection (b) provides that subsection (a) shall not apply: (1) of the tribe obtains the consent of the Governor, the State legislature, and the governing body of the county or municipality in which such land is located and (2) to lands taken as a part of a land claim settlement or the initial reservation of a tribe acknowledged by the Secretary under the Federal acknowledgement process.

Subsection (c) provides that nothing in this section shall affect the authority or responsibility of the Secretary to take land into trust.

Subsection (d) provides that the provisions of the Internal Revenue Code of 1986, concerning the taxation and withholding of taxes pursuant to a gambling or wagering operations, shall apply to tribal operations as they apply to State operations.

Section 5

Subsection (a) provides for the establishment of an independent agency within the Department of the Interior to be known as the National Indian Gaming Commission.

Paragraph (1) of subsection (b) provides that the Commission shall be composed of five members with the Chairman to be appointed by the President with the advice and consent of the Senate and the other four members to be appointed by the Secretary of the Interior.

Paragraph (2) provides that not more than three members may be of the same political party; at least three shall be enrolled members of Federally recognized tribes; and one shall be appointed from a list of names submitted by the National Association of Attorneys General.

Paragraph (3) provides that the Department of Justice shall conduct background checks on any person considered for appointment as an associate member.

Paragraph (4) provides that the Secretary shall publish in the Federal Register the names and other information regarding persons nominated for membership on the Commission and shall allow 30 days for public comment.

Paragraph (5) provides that the members shall serve three year terms and provides for staggered terms for initial appointees.

Paragraph (6) provides that the appointment to, or continued service on, the Commission of any individual who has been convicted of a felony or gaming offense; has nay mangement responsibility for a tribal gaming activity; or has a financial interest in, or management responsibility for, any management contract approved under the Act.

Paragraph (7) provides that the members may only be removed by the appointing authority for neglect of duty, malfeasance in office, or other good cause shown.

Paragraph (8) provides for the filling of vacancies.

Subsection (d) provides that three members, at least one of whom is the Chairman or Vice-Chairman, shall constitute a quorum.

Subsection (e) provides for the selection, by majority vote of the Commission, of a Vice-Chairman.

Subsection (f) provides that the Commission shall meet at the call of the Chairman or a majority of the members.

Subsection (g) provides for rates of pay for the Chairman at a level IV of the executive schedule and for the members at a level V. It also provides for reimbursement of members for travel, subsistence, and other necessary expenses.

Section 6

Subsection (a) provides that the Chairman, subject to the approval of the Commission, shall have power to appoint a General Counsel, issue orders of temporary closure of gaming activities, and to provide for Commission staff.

Subsection (b) provides that the Chairman, subject to an appeal to the Commission, shall have power to approve tribal gaming ordinances or resolutions under section 11 and to approve management contracts.

Subsection (c) provides that the Chairman shall have such other powers as may be delegated by the Commission.

Subsection (d) provides that decisions under subsection (a)(2) and (b) shall be final agency decisions pursuant to the Administrative Procedures Act.

Section 7

Subsection (a) provides that the Commission shall have power, not subject to delegation, to approve a Commission budget, adopt regulations for the assessment and collection of civil fines; adopt annual assessments of tribal gaming by a vote of not less than three members; authorize the Chairman to issue subpoenas by a vote of not less than three members; and to make permanent an order of closure by a vote of not less than three members.

Subsection (b) establishes numerous other powers and duties of the Commission.

Section 8

Subsection (a) provides for the appointment of a General Counsel by the Chairman subject to approval by the Commission and for his salary.

Subsection (b) provides for the appointment of other staff of the Commission.

Subsection (c) provides that the Commission may procure temporary and intermittent services under existing law.

Subsection (d) authorizes the Chairman to request the detail of personnel from other Federal agency if authorized by law.

Subsection (e) provides that the Secretary of the Interior or the Administrator of GSA shall provide administrative support services to the Commission on a reimburseable basis.

Section 9

Section 9 provides that the Commission may secure from other Federal agencies information necessary for it to carry out this Act if otherwise authorized by law.

Section 10

Section 10 provides that the Secretary of the Interior shall provide staff and support assistance for interim regulation and order transition until the Commission is appointed and organized.

Section 11

Subsection (a), paragraph (1), provides that Class I gaming shall be with the exclusive jurisdiction of the tribes and not subject to this Act.

Pargraph (2) provides that Class II gaming shall be within the jurisdiction of the tribes and subject to this Act where the State permits that gaming activity and it is not otherwise prohibited by Federal law.

Subsection (b), paragraph (1), provides that an Indian tribe may engage in, or license and regulate, Class II gaming if it adopts an ordinance or resolution which is approved by the Chairman of the Commission. It provides that a license is required for each place, facility, or location.

Paragraph (2) provides that the Chairman shall approve the ordinance or resolution if it meets certain minimum standards. Those standards are (1) only the tribe shall own the gaming activity except as provided in paragraph (3); (2) net revenues may be used only for certain defined purposes; (3) annual independent audits must be obtained and submitted to the Commission; (4) all other ancillary contracts, except for legal or accounting services, must be subject to such audit; (5) the gaming activity must be developed and conducted in a manner which adequately protects the environment and public health and safety; and (6) that an adequate tribal system exists and is implemented to conduct background investigations on primary management officials and key employees and that oversight of such officials is conducted on an on-going basis.

Paragraph (3), subpargraph (A), permits the tribe to license and regulate non-tribal gaming on the reservation, but only if the tribe regulates such activity in a manner at least as stringently

as the State and only if any person or entity seeking a tribal license would have been eligible for such a license if within the State's jurisdiction.

Subparagraph (B) of paragraph (3) 'grandfather's in' any individual-owned Class II operation, notwithstanding this section, if it was in operation as of January 1, 1987. The operation is grandfathered only as long as it is run by the existing owner and the activity remains within the same nature and scope. The Secretary is required to prepare a list of such operations within 60 days and to publish the list in the Federal Register.

Subsection (c), paragraph (1), provides that, except as provided in paragraph (2), Class III gaming shall be unlawful on any Indian lands under section 1166 of title 18, U.S.C.

Paragraph (2), subparagraph (A), would permit Class III gaming on Indian lands, if it is otherwise legal within the State, only if the Indian tribe involved requests the Secretary to consent to the transfer of all civil and criminal jurisdiction over such gaming to the State, except for tax authority, and the Secretary so consents. The transfer would also permit the State to make certain assessments against the tribal operations to defray the cost of regulations. It also limits the ability of an Indian operation to return to bettors a percentage in excess of that obtaining at non-Indian operations. The Secretary must approve such transfer where the Commission certifies that the tribe has otherwise met the requirements of the Act. The subparagraph also provides that the Secretary must publish notice of consent in the Federal Register and jurisdiction will take effect 60 days after publication.

Subparagraph (B) provides that the provisions of section 1172, title 18, U.S.C., prohibiting mechanical gaming devices on Indian reservations, shall not apply to any gaming conducted under this paragraph.

Subparagraph (C) provides that, for the purposes of this subsection, state laws and regulations shall be applied to Indian operations the same as non-Indian operations. An Indian tribe shall be considered to be a person as defined in section 1 of title 1, U.S.C. and shall have the same rights and remedies as any person or citizen of the U.S. and any State or Federal court shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights guaranteed under this subsection.

Subsection (d) provides that the Chairman shall approve any tribal gaming ordinance or resolution submitted under subsection (b) within 120 days if it meets the requirements of this subsection. If it is not acted upon within that 120 days, it shall be deemed approved except as inconsistent with this Act.

Subsection (e) provides that any U.S. district court shall have jurisdiction to entertain a suit by a State to enjoin an Indian tribe from operating a Class II or Class III operation which is illegal under section 1166, title 18, U.S.C.

Section 12

Subsection (a) provides that an Indian tribe may enter into a management contract for the operation of a Class II or III gaming activity, subject ot the approval of the Chairman. The Chairman, before approving the contract, must obtain detailed information on

all persons having a financial interest or management responsibility in the management firm; a detailed description of such persons' previous experience with the Indian and non-Indian gaming industry; and a complete financial statement of such persons. It provides that all persons listed shall be required to respond to written and oral questions propounded by the Chairman.

Subsection (b) establishes required standards which must be met any any proposed management contract before approval. Those standards include accounting systems and financial reports being available to the tribe; access to the gaming facilities by appropriate tribal officials; term of the contract; payments to the tribe; and mechanisms for termination of the contract.

Subsection (c) permits the Chairman to approve a management contract involving a fee based upon a percentage of net revenues if he feels it is reasonable, but in no event to exceed 45% of such revenues.

Subsection (d) provides that the Chairman shall not approve the contract where he makes certain findings, including (1) that any person identified in subsection (a) is a member of the governing body of the tribe; has been convicted of a felony or gaming offense; has knowingly and willfully provided the Commission with materially important false statement or information or has refused to respond to questions; or has a previous history or character which would pose a threat to the honest operation of a gaming enterprise; (2) that the managment contractor has unduly attempted to influence tribal government; or (3) that a trustee exercising due diligence would not approve such contract.

Subsection (f) provides that the Chairman may require certain modifications or void a contract where he subsequently determines that provisions of this section have been violated.

Subseotin (g) provides that not management contract shall transfer or, in any manner, convey any interest in land or other real property unless specific statutory authority exists and unless clearly specified in writing in said contract.

Subsection (h) provides that the power of the Secretary of the Interior to approve tribal contracts under section 81, title 25, U.S.C., as it applies to management contracts for gaming operations is delegated to the Commission.

Subsection (i) provides that the Commission shall require the potential managment contractor to pay a fee sufficient to defray the expenses of the Commission in carrying out its responsibilities under subsection (e)(1)(D).

Section 13

Subsection (a) provides that the Chairman, as soon as possible after organization of the Commission, shall notify each tribe or managment contractor which has adopted a Class II ordinance or resolution or entered in a managment contract which has not been previously approved that they must submit such ordinance or contract to the Commission for review within 60 days of notification.

Subsection (b) provides that, within 120 days after submission of a Class II ordinance or resolution, the Chairman shall review and approve it if it does not, require the tribe to come into compliance within 90 days thereafter.

Subsection (c) provides that, within 150 days after submission of a management contract, the Chairman shall subject such contract to the requirement and process of section 12. If he determines that it meets those requirements, he shall approve it. If not, he shall give the tribe and the management contractor notice of necessary modifications and they shall have 90 days to come into compliance. It provides that where any management contract and collateral agreements have been previously approved by the Secretary of the Interior or his authorized representatives, no further action shall be required.

Section 14

Subsection (a) provides that the Commission shall have power to levy and collect civil fines, not to exceed $25,000 per violation, against a tribal operator or managment contractor for violations of the Commission regulations or this Act. Fines collected may be used by the Commission for its expenses. The subsection also provides that tribal ordinances adopted under section 11 and 13 shall be adopted by the Commission for purposes of this section.

It also provides that the Commission shall provide procedures and opportunity for appeal from fines levied and collected by the Chairman.

Subsection (b) provides that the Chairman shall have power to order temporary closures of Indian gaming activities for substantial violations of the Act or regulations. It provides that the tribe, tribal licensee, or management contractor shall have the

right to appeal the olosure to the Commission which may dissolve the order or make it permanent. The Commission's decision must be adopted by a vote of not less than three members.

Subsection (c) provides that the Commission, when it has cause to believe that a tribal gaming activity is being operated in a manner which brings it into substantial violation of the provisions of the Act or regulations, shall notify the operator or contractor in writing of the acts or omissions giving rise to that belief and the action or choice of actions being considered by the Commission.

Subsection (d) provides that a decision of the Commission to levy a fine, modify or terminate any contract after appeal to the Commission, or order a permanent olosure shall be appealable to the appropriate Federal district court pursuant to the Administrative Procedures Act.

Section 15

Section 15 provides that the Commission may authorize the Chairman to issue subpoenas for witnesses and evidence needed in carrying out its responsiblities. It establishes the standards and procedures for the issuance and enforcement of the subpoena power.

Section 16

Subsection (a) provides that, except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential under section 552(b) of title 5, U.S.C.

Subsection (c) restates the authority of the Attorney General in the investigation of crimial activity on Indian lands growing

out of gaming activity and his power to enforce certain Federal laws relating to crimes on Indian reservations.

Subsection (d) provides that, for purposes of this section, the terms "State" as used in P.L. 92-544, pertaining to criminal investigation files, shall include Indian tribes.

Section 17

Subsection (a), paragraph (1), provides that not less than one-half of the annual budget of the Commission shall be derived from an assessment of not to exceed 1.5% of the gross revenues of Indian gaming activities.

Paragraph (2) provides that the Commission shall annually adopt the assessment rate by a vote of not less than three members.

Paragraph (3) provides that failure to pay the assessment shall be grounds for revocation of any licenses or approvals required under this Act.

Paragraph (4) provides that unexpended funds derived from assessments shall be credited to each gaming activity on a pro rata basis against subsequent assessments.

Subsection (b), paragraph (1), provides that the Commission shall adopt an annual budget in coordination with the Secretary of the Interior and in conjunction with the fiscal cycle of the United States.

Paragraph (2) authorizeds the Commission to request appropriations each year in an amount not to exceed the amount which was collected as assessments for the preceding fiscal year.

Paragraph (3) provides that the appropriation request shall be subject to approval by the Secretary and shall be a part of the budget of the Interior Department.

Section 18

Subsection (a) authorizes the appropriation of such sums as may be necessary for the operations of the Commisssion, subject to the provisions of section 17.

Subsection (b) provides that, notwithstanding the provisions of section 17, there is authorized to be appropriated not to exceed $2,000,000 to fund the Commission for the first fiscal year after the date of enactment.

Section 19

Section 19 defines certain terms for purposes of the Act. Indian lands are defined to mean all lands within the limits of an Indian reservation and any other lands held in trust for the tribe or individual lands held in trust for the tribe or individual Indian owner over which the tribe exercises governmental power. Gaming is defined and broken-down into three classes: Class I being social gaming for prizes of minimal value or traditional Indian gaming engaged by individuals as part of tribal ceremonies or celebrations. Class II is defined as bingo and related games and grandfathers in as Class II gaming tribal card games operated on Indian lands within the States of California, Michigan, Montana, and North Dakota as of January 1, 1987, and certain other tribal card games. Class III is defined as all other forms of gaming not included in Class I and II.

Section 20

Section 20 provides that section 1307 of title 18, U.S.C. shall apply to tribal gaming if otherwise consistent with this Act.

Section 21

Section 21 is a constitutional savings clause

Section 22

Subsection (a) amends chapter 53 of title 18, U.S.C., by adding a new section 1166 as follows

Subsection (a) provides that all State gambling laws shall apply on Indian lands the same as elsewhere in the state except as provided in subsection (c).

Subsection (b) provides that persons committing gambling violations on Indian lands which are illegal under state law shall be guilty of a like offense and subject to like punishment.

Subsection (c) provides that, for purposes of this section, gambling does not include Class I or any gaming authorized by this Act and subject to the jurisdiction of the Commission.

Subsection (d) provides that it is the intent of Congress that criminal prosecutions for violation of State gambling laws under this Act on Indian lands shall be undertaken by the U.S. unless the tribe has consented to State jurisdiction.

Subsection (b) amends chapter 52 of title 18, U.S.C , by adding the new section 1166 to the analysis portion of the chapter.

SECTION-BY-SECTION ANALYSIS OF H.R. 2507

SECTION 1

Section 1 provides that the Act may be cited as the "Indian Gaming Regulatory Act".

SECTION 2

Section 2 contains various congressional findings related to the conduct of gaming activities on Indian reservations.

SECTION 3

Section 3 sets out as the purposes of the Act to provide a statutory basis for gaming by Indian tribes; to provide a statutory basis for the regulation of tribal gaming; and to establish a National Indian Gaming Commission for the regulation of tribal gaming.

SECTION 4

Subsection (a) provides that gaming regulated by this Act shall be unlawful on any lands acquired in trust for an Indian tribe after the date of enactment if the lands are outside of, or not contiguous to, the existing reservation or, in the case of tribes without a reservation, outside its last recognized reservation or not contiguous to existing trust lands. Nothing in the subsection is to affect the authority of the Secretary of the Interior to take lands in trust for Indian tribes.

Subsection (b) provides that subsection (a) shall not be applicable if the tribe obtains the consent of the Governor of the State and the governing body of the county or municipality affected.

Subsection (c) provides that provisions of the Internal Revenue Code of 1986, concerning the taxation and withholding of taxes pursuant to a gambling or wagering operation, shall apply to tribal operations as they apply to State operations.

Subsection (e) provides for the selection of a Vice-Chairman.

Subsection (f) provides that the Commission shall meet at the call of the Chairman, but at least once every four months.

Subsection (g) provides for rates of pay for the Chairman and, on a daily equivalent, for the members and provides for reimbursement of members for travel, subsistence, and other necessary expenses.

SECTION 6

Subsection (a) provides that the Chairman, subject to an appeal to the Commission, shall have power to issue orders of temporary closures of an Indian gaming activity; levy and collect civil fines; approve tribal ordinances for Class II and III gaming; approve management contracts; and promulgate regulatory schemes for Class III gaming.

Subsection (b) provides that the Chairman shall have such other powers as the Commission may delegate.

SECTION 7

Subsection (a) provides that the Commission shall have power, not subject to delegation, to approve a Commission budget; adopt regulations for the assessment and collection of fines; adopt annual assessments of tribal gaming by an affirmative vote of not less than three members; authorize the Chairman to issue subpoenas by an affirmative vote of three members; and to make permanent orders of closure by the affirmative vote of three members.

Subsection (b) establishes numerous other powers and duties of the Commission.

SECTION 8

Subsection (a) provides for the appointment of a General Counsel for the Commission; for the appointment of other Commission staff; and for the procurement of temporary or intermittent services.

Subsection (b) authorizes the Commission to obtain the services of personnel or information from other Federal agencies if not otherwise prohibited by law.

SECTION 9

Subsection (a) provides that the Secretary of the Interior or the Administrator of GSA shall provide to the Commission on a reimburseable basis administrative support services.

Subsection (b) provides that the Secretary of the Interior will provide staff and support assistance for interim regulation and orderly transition until the Commissioners are appointed and the Commission is organized.

SECTION 10

Subsection (a) provides that Class I gaming, later defined as social or traditional Indian gaming, shall be within the exclusive jurisdiction of the tribes and not subject to this Act.

Subsection (b) provides that Class II and III gaming shall be within the jurisdiction of the tribes and subject to this Act where the State permits that gaming activity and it is not otherwise specifically prohibited in Indian country by Federal law.

SECTION 11

Subsection (a) provides that an Indian tribe may engage in, or license and regulate, Class II gaming if it adopts an ordinance to that effect which is approved by the Chairman of the Commission.

Subsection (b) provides that the Chairman shall approve the ordinance if it meets certain minimum standards. Those standards are (1) only the tribe shall own the gaming activity; (2) net revenues must be used for tribal government operations or for governmental programs; (3) annual independent audits must be obtained and submitted to the Commission; (4) all other ancillary contracts, except for legal or accounting services, must be subject to such audit; the construction, maintenance, and operation of the gaming facility must meet applicable environmental, health and safety standards; and the tribes must have an adequate system for the investigation of management officials and key employees.

Subsection (c) provides that a tribal ordinance may provide for the licensing and regulation of Class II gaming by non-tribal persons or entities, but only if the tribe's regulatory scheme for such non-tribal activity is at least as stringent as the State's scheme and only if the person or entity to be licensed would have been eligible for licensing by the State.

Subsection (d) provides that the Chairman shall approve an ordinance within 60 days after submission if it meets the requirements of subsection (b) and that it shall be deemed approved, to the extent not inconsistent with this Act, if the Chairman does not act upon it within that time.

Paragraph (1) of subsection (e) provides that a tribe may petition the Commission for a certificate of self-regulation if it operates the activity itself; has operated it continuously for not less than four years, including at least one year after the passage of this Act; and it has otherwise complied with the provision of this section.

Paragraph (2) provides that the Commission shall issue such certificate if it makes certain findings relating to the past history of the operation of the activity and to the existing procedures and systems of the tribe for self-regulation.

Paragraph (3) provides that, upon the issuance of a certificate, a tribe shall not be subject to named provisions of this Act; shall continue to submit the annual independent audit; and shall submit resume's of all personnel hired subsequent to the issuance. It also provides that the fee assessed by the Commission for that tribal gaming activity shall not exceed one-half of one percent of the gross revenue as defined in section 14.

Paragraph (4) provides that the Commission may revoke the certificate for just cause and after an opportunity for a hearing.

SECTION 12

Subsection (a) provides that an Indian tribe may engage in Class III gaming if it adopts an ordinance which meets the requirements of section 11(b) and which is approved by the Chairman. The Tribe must also obtain a Commission license as provided in subsection (b).

Subsection (b) provides that the Commission shall grant a license if the applicant meets certain standards established in the subsection as determined by the Commission.

Subsection (c) provides that the Commission may suspend, modify, or revoke a license to operate a Class III activity if it finds that the licensee has committed substantial violations of the Commission's regulations or of the provisions of this Act and that the operator cannot continue to operate the activity in accordance with those standards.

Subsection (d) provides that the Commission shall act upon an application for a license within 120 days after submission.

Paragraph (1) of subsection (e) provides that the Chairman of the Commission shall develop and adopt a regulatory scheme for a type of Class III gaming activity in any case where he first approves a Class II ordinance within any State. The Chairman must consult with the appropriate officials of the concerned State and the affected tribe or tribes in developing such regulations.

Paragraph (2) provides that the regulations adopted by the Chairman shall be identical to those which the State has adopted and applies to its licensees subsequent to the issuance of a license. The Chairman is directed to exclude from his regulatory scheme any of the State's regulations or laws which impose any financial burden upon a licensee or which he determines are clearly inappropriate for application to an Indian tribe or which would unreasonably impair the ability of the tribe to conduct its operation.

Paragraph (3) provides that such regulatory scheme shall be uniformly applied to any other tribe within that State engaging in the same Class III activity.

Subsection (f) provides that, where any State law or regulation adopted by the Commission in its regulatory scheme involves criminal penalties, those penalties shall be enforceable by the State if it has criminal jurisdiction under P.L. 83-280 or by the United States under the Assimilative Crimes Act as if such penalties were a part of the criminal/prohibitory laws of the State. It excepts from the application of that enforcement any person who has been prosecuted by the Indian tribe which has adopted that regulation or law with the criminal penalty under its own laws.

Subsection (g) provides that prior to approving a license under this section, the Chairman shall evaluate the ability of the licensee to monitor and insure that the game is operated fairly and safely.

SECTION 13

Subsection (a) provides that an Indian tribe may enter into a management contract for the operation of a Class II or III gaming activity, subject to the approval of the Chairman. The Chairman, before approving the contract, must obtain detailed information on all persons having a financial interest or management responsibility in the management firm; a detailed description of such persons previous experience with the Indian and non-Indian gaming industry; a complete financial statement of such persons; and all collateral agreements made in connection with such contract.

Subection (b) provides that all persons identified pursuant to subsection (a) must respond to oral or written questions propounded by the Chairman.

Subsection (c) establishes required standards which must be met by any proposed management contract before approval. Those standards include accounting systems and financial reports being available to the tribe; access to the gaming facilities by appropriate tribal officials; term of the contract; payments to the tribe; and mechanisms for termination of the contract.

Subsection (d) permits the Chairman to approve a management contract involving a fee based upon a percentage of net revenues if he feels it is reasonable, but in no event to exceed 40% of the net revenues.

Subsection (e) provides that the Chairman must approve or disapprove a management contract on the merits within 120 days of submission or it will be deemed approved.

Subsection (f) provides that the Chairman shall not approve the contract where he makes certain findings, including (1) that any person identified in subsection (a) is a member of the governing body of the tribe; has been convicted of a felony or gaming offense; has knowingly and willfully provided the Commission with materially important false statement or information or has refused to respond to questions; or has a previous history or character which would pose a threat to the honest operation of a gaming enterprise: (2) that the management contractor has unduly attempted to influence tribal government: or (3) that a trustee exercising due diligence would not approve such contract.

Subsection (g) confers authority on the Chairman, after notice and hearing, to require contract modifications or to void a contract if he finds substantial violations by the contractor of the law or Commission regulations.

Subsection (h) provides that power of the Secretary of the Interior to approve tribal contracts under section 81 of title 25, U.S.C., as it applies to management contracts for gaming operations, shall be delegated to the Commission.

Subsection (i) provides that the Chairman shall license all employees of a gaming activity who are employed in a management capacity.

Subsection (j) provides that the Chairman shall grant a license under subsection (i) unless he determines that any such person has

been convicted of a relevant felony or gaming offense; has provided false information to the Commission or tribe; or has been determined to be a person of poor character such as to pose a threat to the honest operation of a gaming enterprise.

Subsection (k) authorizes the Chairman to suspend or revoke a license issued pursuant to subsection (i) if he determines that the licensed person is no longer in compliance with the criteria established in subsection (j).

Subsection (l) provides that the Commission shall require the potential management contractor to pay a fee sufficient to defray the expenses of the Commission in carrying out its responsiblities under subsection (f)(1)(D).

SECTION 14

Subsection (a) provides that the Chairman, as soon as possible after organization of the Commission, shall notify each tribe or mangagement contractor who had adopted a Class II or III ordinance or entered into a management contract that they must submit such ordinance or contract to the Commission for review within 60 days of such notification.

Subsection (b) provides that, within 90 days after the submission of a Class II ordinance as required by subsection (a), the Chairman shall review and approve it if it meets the requirements of section 11 or, if it does not, to require the tribe to come into compliance within 120 days thereafter.

Subsection (c) provides that within 90 days after the adoption by the Commission of a regulatory scheme covering the type of Class III gaming involved in any Class III ordinance submitted pursuant to

subsection (a), the Chairman shall review it to determine if it conforms to the regulatory scheme and the provisions of section 12. If it does, he must approve it. If not, the tribe has 120 days to bring it into compliance.

Subsection (d) provides that, within 120 days after submission of a management contract under subsection (a), the Chairman shall subject such contract to the requirements and process of section 13. If he determines that the contract meets those requirements, he shall approve it. If not, he shall give the tribe and management contractor notice of necessary modification and they shall have 120 days to come into compliance.

Subsection (e) provides that a tribe may not use the provisions of this Act as independent grounds for terminating an existing contract if the contractor agrees to modify the contract to come into compliance with the terms of the Act.

SECTION 15

Subsection (a) provides that the Chairman, under regulations adopted by the Commission, shall have power to levy and collect civil fines, not to exceed $25,000 per violation, against a tribal operator or management contractor for violations of Commission regulations or this Act. Fines collected may be used by the Commission for its expenses. The subsection also provides that tribal ordinances adopted by the tribe under section 11 and 14 shall be adopted by the Commission for purposes of this section.

It also provides that the Commission shall provide procedures and opportunity for appeal from fines levied and collected by the Chairman.

Subsection (b) provides that the Chairman shall have power to order temporary closures of Indian gaming activities for substantial violations of the Act or regulations. It provides that the tribe, tribal licensee, or management contractor shall have the right to appeal the closure to the Commission which may dissolve the order or make it permanent. The Commission's decision must be adopted by an affirmative vote of three members.

Subsection (c) provides that the Commission, when it has cause to believe that a tribal gaming activity is being operated in a manner which brings it into substantial violation of the provisions of the Act or regulations, shall notify the operator or contractor in writing of the acts or omissions giving rise to that belief and the action or choice of actions being considered by the Commission.

Subsection (d) provides that nothing in this Act shall detract from a tribe's existing power to regulate gaming within its jurisdiction as long as such regulations are not inconsistent with this Act or Commission regulations.

SECTION 16

Section 16 provides that decisions of the Commission pursuant to section 11, 12, 13, 14 and 15 of this Act shall be final agency actions for purposes of the Administrative Procedures Act.

SECTION 17

Subsection (a) provides that the Commission may authorize the Chairman to issue subpoenas for witnesses and evidence needed in carrying out its responsibilities. Witnesses fees and expenses will be paid as in the courts of the United States.

Subsection (b) provides that witnesses and evidence may be required from any place in the United States at any designated hearing place in the United States.

Subsection (c) provides that the appropriate U.S. district court may compel a person to obey a Commission subpoena and to punish a failure to obey the court order as a contempt of court.

Subsection (d) provides that Commission subpoenas shall be served in any judicial district where the person lives or may be found.

SECTION 18

Subsection (a) provides that, except as provided in subsection (b), the Commission shall keep information received pursuant to this Act confidential under section 552(b) of title 5, U.S.C.

Subsection (b) provides that the Commission may provide such information to appropriate law enforcement officials if it appears a criminal violation has occurred.

Subsection (c) reaffirms the existing power of the Attorney General to investigate and prosecute crimes on Indian reservation in connection with gaming activity.

SECTION 19

Subsection (a), Paragraph (1), provides that not less than one half of the annual budget of the Commission is to be derived from assessments of not to exceed 2% of the gross revenues from Class II Indian gaming activities and from an assessment from each Class III activity to be established by the Commission based upon its reasonable costs of regulating that activity, but not to exceed the costs which are incurred by the appropriate State for its regulation of similar activity within its jursidiction.

—

Paragraph (2) provides that the rate of assessment shall be annually set by the Commission by an affirmative vote of not less than three members and that the assessment shall be payable on a quarterly basis.

Paragraph (3) provides that failure to pay the assessment shall be grounds for revocation of any licenses or approvals required under the Act.

Paragraph (4) provides that unexpended funds derived from assessments shall be credited to each gaming activity on a pro rata basis against subsequent assessments.

Paragraph (5) provides that, for purposes of this section, gross revenue means total wagered monies less amounts paid out as, or for, prizes.

Subsection (b), paragraph (1) provides that the Commission shall adopt an annual budget in coordination with the Secretary of the Interior and in conjunction with the fiscal cycle of the United States.

Paragraph (2) authorizes the Commission to request appropriations each year in an amount not to exceed the amount which was collected as assessments for the preceding fiscal year.

Paragraph (3) provides that the appropriation request shall be subject to the approval of the Secretary and shall be a part of the budget request of the Interior Department.

SECTION 20

Subsection (a) authorizes the appropriation of such sums as may be necessary for the operation of the Commission, subject to the provisions of section 19.

I had originally intended to have only a short hearing to update the extensive record that our committee made on this issue in the last two Congresses. However, it is clear that much more extensive hearings and consideration by the committee will be necessary in this Congress. Already, the Senate committee has taken considerable testimony.

Much has changed since the 99th Congress. Indian tribes have won a surprising victory before the Supreme Court in the Cabazon case, and many are now opposed to any legislation on this matter.

The non-Indian gaming industry, fearful of this new source of competition, has become more insistent on State regulation of Indian gaming.

As a consequence, many parties have demanded an opportunity to testify. I have heard from several members who have asked that more extensive hearings be scheduled.

As a consequence, I have decided to schedule a series of field hearings on this legislation in the coming months, and will advise everybody of the time and place when we get around to the scheduling.

That concludes my opening statement.

[Prepared statement of Mr. Udall follows:]

STATEMENT FOR MR. UDALL FOR COMMITTEE HEARINGS ON INDIAN GAMING LEGISLATION

THE COMMITTEE WILL BE IN ORDER.

TODAY, THE COMMITTEE BEGINS HEARINGS ON LEGISLATION PROVIDING REGULATION FOR GAMBLING ON INDIAN RESERVATIONS. BEFORE THE COMMITTEE ARE TWO BILLS, H.R. 964 BY MR. COELHO AND H.R. 2507 BY MYSELF. WITHOUT OBJECTION, A COPY OF BOTH BILLS, THE SECTION-BY-SECTION ANALYSES, AND THE BACKGROUND WILL BE MADE A PART OF THE RECORD AT THIS POINT.

I HAD ORIGINALLY INTENDED TO HAVE ONLY A SHORT HEARING TO UPDATE THE EXTENSIVE RECORD THE COMMITTEE HAS MADE ON THIS ISSUE IN THE LAST TWO CONGRESSES.

HOWEVER, IT IS CLEAR THAT MUCH MORE EXTENSIVE HEARINGS AND CONSIDERATION BY THE COMMITTEE WILL BE NECESSARY THIS CONGRESS.

MUCH HAS CHANGED SINCE THE 99TH CONGRESS.

THE INDIAN TRIBES HAVE WON A SURPRISING VICTORY BEFORE THE SUPREME COURT IN THE CABAZON CASE AND MANY ARE NOW OPPOSED TO ANY LEGISLATION ON THIS MATTER.

THE NON-INDIAN GAMING INDUSTRY, FEARFUL OF THIS NEW SOURCE OF ECONOMIC COMPETITION, ARE MORE INSISTENT ON STATE REGULATION OF INDIAN GAMING.

AS A CONSEQUENCE, MANY PARTIES HAVE DEMANDED AN OPPORTUNITY TO TESTIFY. I HAVE HEARD FROM SEVERAL MEMBERS WHO HAVE ASKED THAT MORE EXTENSIVE HEARINGS BE SCHEDULED.

AS A CONSEQUENCE, IT IS MY INTENT TO SCHEDULE A SERIES OF FIELD HEARINGS ON THIS LEGISLATION IN THE COMING MONTHS.

The CHAIRMAN. Mr. Marlenee?

Mr. MARLENEE. Mr. Chairman, I believe that most people are aware of my opposition, or my problems with Indian gaming bills. I believe that we have to look beyond the questions most often brought out on Indian tribal rights. We have to look at some very fundamental issues and the direction we want our country going for several decades in the future.

Congress, States, counties, cities, individual citizens' relationships to Indians of this country are brought—and the interrelationships are brought to the surface by this kind of legislation.

I think if one looks back at the relationship between the Indian, non-Indian community, the private industry, private enterprise and the Indian enterprise, I think you will see that the tribes have had the support of Congress in the past, and in general, of the American people on natural resource issues, on civil rights issues, on education and health, strongly on education and health; but they, the tribes, are crossing into unchartered waters, in my opinion. Those waters may be very rough when it comes to the issues such as gaming, and I believe that they may get so rough, in fact, that they erode the public support that we have seen in the past.

Now, if we are going to talk about Indian gaming, tribal issues such as the taxation of non-Indian property by the tribes, sovereign rights, et cetera, et cetera, I think you are going to see a movement by the general population and by the Congress itself, in refuting some of those old relationships that we have had and support that we have had for the tribes, and in fact, the attitude may come that, well, if we have reached this point in our history, maybe it is time to sever those ties to the reservations.

And I conclude my statement and commend the chairman for having the hearings, and thank him for the time.

The CHAIRMAN. Other opening statements?

Mrs. Vucanovich, then Mr. Campbell?

Mrs. VUCANOVICH. Thank you, Mr. Chairman. I appreciate your holding these hearings on both of these bills, which provide for Indian gaming on Indian reservations. I would particularly like to welcome Senator Harry Reid, our Senator from Nevada, and a former colleague in our House, and Senator John McCain, a former colleague who used to sit right next to me up here. We have talked a lot about these issues.

We also have Mr. Stanley Hunterton, an attorney from Las Vegas, Nevada and a former prosecutor for the U.S. Department of Justice in the Organized Crime Strike Force. I am glad he is able to be here.

I think these hearings will give us an opportunity to really look at the best method of regulating Indian gaming. And as you know, my State of Nevada is a unique State where this issue is concerned. Gaming is Nevada's No. 1 industry, the major contributor to our economy. We also have several Indian reservations which should have the opportunity to improve their economies through gaming activities.

However, I strongly believe that any gaming on Indian land should be strictly licensed and regulated by the State. As far as I can see, the issue before the committee is not Indian gaming, but gaming on Indian lands. Gaming on Indian lands will more likely

attract mostly non-Indian patrons, and most of the operators will probably be non-Native Americans.

Therefore, I think it is imperative that we balance the legitimate interests of the States in regulating gaming with the sovereignty of the Indian nations. The States have a legitimate interest in preventing potential corruption and the infiltration of criminal elements that will likely result on the reservations if the States are not allowed the power to regulate this activity.

It is my opinion that the control of crime in gaming on Indian lands will be the key to the success of that gaming. It makes sense that the States are the regulators. First of all, they are closer to the situation than the Federal Government.

Also, States with gaming, especially Nevada, have the necessary regulatory procedures in place, derived through years of trial and error and experimentation with different methods.

On the other hand, the Indians and the Government commission that would be established through these bills, simply cannot match this expertise. That can only be acquired through years of experience.

I am also concerned about regulation of class III gaming, which includes horse racing, dog racing, casino gaming, slot machines and other mechanical devices which are regulated according to State law.

As you know, H.R. 2507 provides that class III games be regulated by the commission which interprets that State law; hence, the Federal regulation. H.R. 964 provides for States to regulate class III gaming. I believe it is absolutely imperative that the States regulate class III activities, based on law enforcement concerns.

I also feel that electromechanical devices, such as slot machines and video machines, should not even be allowed on reservations. The risk for cheating those machines is simply too dangerous and great.

Last week, during hearings before the Senate Select Committee on Indian Affairs, one of my constituents, Mr. Donald Hill, an attorney from Reno, testified about slot machine cheating. As a former U.S. Assistant Attorney with the Department of Justice in Reno, Mr. Hill is well versed in just how easy it is to cheat these electromechanical devices, as well as with the dangers these machines pose.

I suggest that we take the time to read the testimony by Mr. Hill which I would like to submit for the record, Mr. Chairman.

The CHAIRMAN. We would be pleased to have for the record.

Mrs. VUCANOVICH. Thank you very much.

[EDITOR'S NOTE.—At time of printing the above-mentioned statements have not been received.]

Mrs. VUCANOVICH. Another responsibility of the States is consumer protection. Citizens must be protected from any fraud or abuse by the operators of games, and also from the criminal elements that will attempt to control the gaming on reservations.

One of our primary goals must be to ensure the honest conduct of the games themselves. The owners and operators must be carefully examined. We must assure that gaming activities are legally and fairly run.

I feel very strongly that the only way to accomplish this goal is to make certain that the regulators and operators are not one and the same. In addition, it is imperative that we maintain the integrity of the gaming industry by not encouraging preferential treatment for one group of gaming operators over another group.

Finally, Mr. Chairman, let me close by saying that it is my hope that Nevada's unique concerns will be looked at carefully by the committee when considering this legislation. Neither the State nor I oppose gaming on Indian reservations as long as the State is responsible for regulating and for enforcing the activities.

The fact is that tribes do not need to avoid State regulation to make money. Tribes will be better off because State regulation is in their best interests, as it seeks to protect them from graft, crime and corruption.

Thank you, Mr. Chairman, and I am sure that the testimony of these witnesses here today will greatly assist the Congress in formulating the best possible policy regarding gaming on Indian lands. I would also like to submit for the record a statement from Senator Hecht of Nevada and ask that the record be left open for 10 legislative days so that other statements and testimony may be inserted into the official record.

The CHAIRMAN. Without objection, so ordered.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

[Prepared statement of Mr. Hecht, with attachments, follow:]

STATEMENT BY SENATOR CHIC HECHT

JUNE 25, 1987

HOUSE INTERIOR COMMITTEE

MR. CHAIRMAN: THANK YOU FOR THE OPPORTUNITY TO SHARE MY VIEWS ON THE QUESTION OF LEGAL GAMING ON INDIAN LANDS. I AM FROM NEVADA, A GAMING STATE, AND THE ONLY MEMBER OF THE SENATE WITH A GAMING LICENSE AND A GAMING BACKGROUND.

LEGAL GAMING ON INDIAN LANDS SHOULD BE SUBJECT TO THE SAME RULES AND REGULATIONS WHICH NON-INDIAN GAMES MUST ABIDE. INDIAN GAMING SHOULD ALSO BE TAXED THE SAME WAY.

SINCE LAST FEBRUARY WHEN THE SUPREME COURT RULED THAT ABSENT CONGRESSIONAL AUTHORITY, THE STATES GENERALLY MAY NOT REGULATE GAMING ON INDIAN LANDS, IT HAS BEEN APPARENT THAT A FEDERAL POLICY TOWARD SUCH GAMING WAS NECESSARY. THE QUESTION NOW BEFORE CONGRESS IS, WHO WILL BE RESPONSIBLE FOR ENSURING THAT THE GAMING ACTIVITIES ARE LEGALLY AND FAIRLY RUN?

MR. CHAIRMAN. I'D LIKE TO SUBMIT MY PREPARED REMARKS FOR THE RECORD AND SUMMARIZE THEM FOR THE SAKE OF TIME, IF THERE IS NO OBJECTION. INCLUDED ARE SOME STATISTICS ON THE IMPACT ON STATE REVENUES WHERE INDIAN GAMING WILL BE PERMITTED.

LAW ENFORCEMENT, NOT INDIAN SOVEREIGNTY, IS KEY TO LEGAL WAGERING ON INDIAN LANDS

Proposed Federal gambling legislation, erroneously tagged an "Indian Rights issue," would, if passed, open the door to crime and corruption on Indian lands.

More and more Indian tribes are turning to legal wagering--currently high-stakes bingo and cards--as a way of raising revenues. On the horizon are the more complex forms of wagering--dog and horse racing, jai alai and casino gaming. Past experience with these forms of legal wagering has shown that stringent governmental regulation is necessary to keep the activities legal and fair. And the states that now have legal gaming were able to develop that regulatory expertise only after many long and sometimes discouraging years.

Nonetheless, two identical measures (S. 1303 and H.R. 2507) recently introduced on Capitol Hill take a "hands off" approach to regulating the recent upsurge in legal gaming on reservations. Under the rubric of Indian sovereignty, the proposals put substantially all regulatory control in the hands of the Indian tribes themselves.

There is no question that American Indians have a strong interest in legislation that affects them. They would not, however, be the only entities touched by the regulatory proposals. However, the states have an equally strong interest in

controlling crime and corruption within their borders and in seeing that their citizens and citizens from other states, who would make up the vast majority of consumers of the gaming activities on Indian lands, are treated fairly in all commercial activities.

The approach taken by S. 1303 and H.R. 2507 ignores that fact that the tribes have neither the experience, expertise, money or time to develop an adequate regulatory system. It also ignores the fact that most wagering patrons and game operators will not be Indians, but rather citizens of the states in which the reservations are located or visitors to those states.

Rather than assuming that Indian sovereignty is the issue, the Congress must balance the legitimate rights of the Indians and the sovereign and law enforcement interests of the states.

As the states have learned only by painful experience, the more complex forms of legal wagering--such as parimutuels and casinos--are easily corrupted and require constant vigilance by trained and experienced regulators to ensure that the activities are legally and fairly operated and that criminal elements do not gain control.

S. 1303 and H.R. 2507, in allowing self-regulation, fail to separate the regulated activity and the regulators. Moreover, their expansive provisions allow the tribes to offer a given form of wagering so long as any other person or entity in the surrounding state may do so; this means that a "Casino Night" operated by a church charity in a given state would trigger the right to operate full-fledged casinos in tribal territory. Like

other proposals regarding gaming on Indian lands, S. 1303 and H.R. 2507 divide legal gaming into classes according to complexity (and hence potential for corruption). These two measures, however, allow Indian regulation of all gaming classes, with only minor oversight from a Federal commission for the most complex forms.

The eagerness of the Indian tribes to engage in an obviously profitable activity is understandable. However, unscrupulous promoters who promise quick riches may prove overwhelmingly seductive. Without an effective regulatory scheme in place, the tribes face the specter of corrupt gaming operations--and corruption in the support industries connected with those activities. Such an outcome would have a profound impact on reservation life, on the states within which the reservations lie and on the patrons of the gaming activities.

By requiring the Indians themselves to police parimutuel and casino activities on their lands, S. 1303 and H.R. 2507 place a tremendous burden on the already severely strained monetary and manpower resources of the Indians. Yet, without immediate and effective regulation, the wagering operations will inevitably draw unsavory elements and crime to the reservations, thus dooming the original purpose behind the games: raising revenues for the tribes.

The operation of legal gaming to provide tribal income is a relatively new phenomenon on Indian reservations. To date, the tribes offer high-stakes bingo and a few card games. But the rush appears to be on to operate the more complex forms of legal

wagering. This past February, the Supreme Court, in Cabazon Band of Mission Indians, ruled that without Congressional authorization, the states generally may not regulate gaming on Indian lands. For some, this has been a green light to forge ahead with all types of gaming. For others, the decision has clarified the need for a Federal position regarding the regulation of legal gaming on Indian reservations.

On Capitol Hill the question has become, who will regulate the activity?

Those states that allow legal wagering already have time-tested regulatory policies, programs and personnel. Bringing the more complex types of wagering on Indian lands under the protection of state regulation would allow the tribes to share in the hard-won respectability state-regulated gaming activities have achieved. Those who seek to cross over into tribal territory to escape strict state scrutiny of their wagering activities and operations would have no place to hide: all legal wagering within a state would be treated exactly the same. Moreover, the use of State law enforcement agencies to regulate gaming wherever located within the state is the most efficient allocation of taxpayers' money.

S. 1303 and H.R. 2507, along with several other gaming regulation measures, are now before the House and Senate committees dealing with Indian affairs, where hearings are scheduled for later this month. It is clear that Congress must enact legislation on this important issue. S. 555 and H.R. 964, which place regulation of the complex forms of gaming with the states, are preferable alternatives to S. 1303 and H.R. 2507.

Regulation of legal gaming on Indian lands is not an Indian rights issue. It is, quite simply, a law enforcement issue. And it is the states that are in the best position to regulate legal wagering within their borders.

June 9, 1987

IMPACT OF INDIAN RESERVATION GAMBLING ON STATE REVENUES

The rapid increase in the number of Indian tribes turning to commercial gambling as a source of tribal revenues has important implications for the States and for State-authorized gambling enterprises. In particular, the 32 States that have Indian lands within their borders can anticipate severe negative impacts on legal gambling revenues as a result of reservation gaming.

Most States now have one or more forms of legal gambling; bingo and charitable gaming predominate. In 1985, legal gambling contributed more than $15 billion in direct revenues to State economies. The monies were used to pay Federal, State, and local taxes; to defray the housing and utility costs of the elderly; to supplement the budgets of public school systems; to support publicly funded arts programs; to fund charitable and religious organizations; and to pay gambling industry costs and profits. States also receive additional direct revenues from gambling in the form of licensing fees, admission taxes, and gambling business and property taxes.

Recent Supreme Court decisions have reaffirmed tribal jurisdiction over gambling on reservations unless Congress authorizes State regulation. Absent such Congressional action, gambling on reservations is likely to develop in an uncontrolled fashion, creating an increasingly competitive environment for limited consumer dollars.

For the 32 reservation States as a group, the probable revenue loss from uncontrolled gambling on reservations ranges from a low of $192 million to a maximum of $850 million.

--State-authorized bingo would suffer revenue losses ranging from $89 million to $199 million.

--Revenues from charitable games other than bingo ("Las Vegas Nights," pull-tabs, etc.) would decline by $27 million to $74 million.

--Parimutuel horseracing would lose at least $8 million and possibly as much as $127 million.

--Greyhound racing revenues would be reduced by at least $4 million up to $44 million.

--Jai-alai would lose revenues ranging from $0.4 million to $3 million.

--Revenues from State lotteries would be reduced by at least $28 million and potentially by as much as $123 million.

UNITED STATES
IMPACT OF INDIAN RESERVATION GAMBLING
ON ALL AREAS EXCEPT CASINOS AND LEGAL BOOKMAKING

Adult Population: 178,158,300
Personal Income (000): $3,206,597,000
Number of Tribes: 521

Negative Impact of Indian Reservation Gambling -
Revenue Losses Under Four Alternative Scenarios

	1985 Gross Wagering (000)	1985 Gross Revenues (000)	Scenario I Bingo Only		Scenario II Bingo and Greyhounds		Scenario III Bingo and Gaming Devices		Scenario IV Bingo and Casinos	
			Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)	Minimum (000)	Maximum (000)
PARI-MUTUELS										
Horses	$12,240,249	$2,390,148	0.3%	0.6%	1.8%	5.3%	0.8%	..7%	1.1%	
Greyhounds	$2,703,358	$527,133	0.7%	1.4%	4.7%	8.3%	1.2%	2.5%	1.4%	3
Jai-alai	$663,968	$129,385	0.3%	0.5%	1.0%	2.0%	0.4%	1.1%	0.6%	1
Total Pari-mutuels	$15,607,575	$3,046,665	0.4%	0.8%	2.2%	5.7%	0.8%	1.8%	1.1%	2
LOTTERIES (1986)										
Numbers	$4,410,090	$2,249,146	0.1%	0.2%	0.2%	0.4%	0.2%	0.4%	0.1%	0
Instant	$3,401,630	$1,734,831	0.9%	1.6%	1.3%	2.5%	1.7%	3.0%	2.3%	4
Lotto	$4,388,540	$2,238,155	0.4%	0.7%	0.6%	1.2%	0.8%	1.3%	1.0%	1
Total Lottery	$12,200,260	$6,222,133	0.4%	0.7%	0.7%	1.3%	0.8%	1.5%	1.1%	2
BINGO	$3,437,989	$910,036	9.7%	17.2%	11.0%	20.0%	11.0%	20.3%	11.6%	21
CHARITABLE GAMES	$1,681,680	$525,189	5.1%	9.6%	6.1%	12.2%	6.2%	12.6%	6.8%	14
TOTAL LEGAL GAMING	$32,927,503	$10,704,022								
Revenues/Personal Income		0.334%								
Total Negative Impact ($)			$155,734	$277,050	$240,915	$498,250	$209,591	$396,300	$244,702	$472,1
Total Negative Impact (%)			1.5%	2.6%	2.3%	4.7%	2.0%	3.7%	2.3%	4

UNITED STATES
IMPACT OF INDIAN RESERVATION GAMBLING
ON ALL AREAS EXCEPT CASINOS AND LEGAL BOOKMAKING

Adult Population: 178,158,300
Personal Income (000): $3,206,597,000
Number of Tribes: 521

Negative Impact of Indian Reservation Gambling - Revenue Losses Under Four Alternative Scenarios

	1985 Gross Wagering (000)	1985 Gross Revenues (000)	Scenario I Bingo Only Minimum (000)	Scenario I Bingo Only Maximum (000)	Scenario II Bingo and Greyhounds Minimum (000)	Scenario II Bingo and Greyhounds Maximum (000)	Scenario III Bingo and Gaming Devices Minimum (000)	Scenario III Bingo and Gaming Devices Maximum (000)	Scenario IV Bingo and Casinos Minimum (000)	Scenario IV Bingo and Casinos Maximum (000)
PARI-MUTUELS										
Horses	$12,240,249	$2,390,148	$8,170	$15,000	$42,000	$126,750	$19,137	$39,700	$26,183	$55,7[illegible]
Greyhounds	$2,703,358	$527,133	$3,738	$7,300	$24,540	$43,500	$6,175	$13,400	$7,631	$17,9[illegible]
Jai-alai	$663,968	$129,385	$350	$600	$1,350	$2,600	$536	$1,400	$714	$2,15[illegible]
Total Pari-mutuels	$15,607,575	$3,045,665	$12,258	$22,900	$67,890	$172,850	$25,848	$54,500	$34,528	$75,79[illegible]
LOTTERIES (1986)										
Numbers	$4,410,090	$2,249,146	$2,453	$4,000	$4,428	$9,025	$4,373	$8,900	$5,839	$12,60[illegible]
Instant	$3,401,630	$1,734,831	$15,952	$27,050	$22,624	$43,425	$29,872	$51,850	$40,279	$76,31[illegible]
Lotto	$4,388,540	$2,238,155	$9,587	$15,600	$13,950	$27,125	$17,381	$30,100	$22,408	$40,13[illegible]
Total Lottery	$12,200,260	$6,222,133	$27,992	$46,650	$41,002	$79,575	$51,626	$90,850	$68,526	$129,04[illegible]
BINGO	$3,437,989	$910,036	$88,694	$156,850	$99,901	$181,850	$99,757	$184,850	$105,910	$199,22[illegible]
CHARITABLE GAMES	$1,681,680	$525,189	$26,790	$50,650	$32,122	$63,975	$32,360	$66,100	$35,738	$74,10[illegible]
TOTAL LEGAL GAMING	$32,927,503	$10,704,022								
Revenues/Personal Income		0.334%								
Total Negative Impact ($)			$155,734	$277,050	$240,915	$498,250	$209,591	$396,300	$244,702	$472,16[illegible]
Total Negative Impact (%)			1.5%	2.6%	2.3%	4.7%	2.0%	[illegible]%	2.3%	4.[illegible]

The CHAIRMAN. Mr. Campbell?

Mr. CAMPBELL. Thank you, Mr. Chairman.

I would like to make a short comment and submit my total statement for the record.

I am pleased to be here today to hear testimony on Indian gaming, and I appreciate your concern about expanding it, because I know there is a great deal of controversy.

I might also say that I am very happy to see Senator McCain here, who Indian people know has been very supportive and sensitive to the problems that Indians across this land face, and I just thank him for being here.

In recent years, many tribes have become involved with the operation of gaming activities as a means of economic development and employment. These activities seem to have caused a certain amount of controversy among non-Indians who fear infiltration of organized crime and/or the economic competition by Indian gaming activities.

I would hope that we will be able to keep these activities in separate contexts as we hear the testimony. We have seen numerous proposals for regulation on Indian reservations and Indian lands in previous Congresses. Most of them have not worked out very well.

There has been a fair amount of litigation over the past several years, which has tried to limit tribal authority to engage in and regulate gaming activities on Indian lands. I would hope that the hearings this year would give us some concrete evidence to help us determine the direction we should take on this.

Thank you for holding the hearings.

[Prepared statement of Mr. Campbell follows:]

STATEMENT OF BEN NIGHTHORSE CAMPBELL
ON GAMING ACTIVITIES ON INDIAN LANDS

MR. CHAIRMAN AND OTHER DISTINGUISHED MEMBERS OF THIS COMMITTEE, I AM PLEASED TO BE HERE TODAY TO HEAR TESTIMONY ON THE INDIAN GAMING REGULATORY ACT HR 2507 AND HR 964, BILLS TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR GAMING ACTIVITIES ON INDIAN LANDS AND RESERVATIONS.

IN RECENT YEARS MANY TRIBES HAVE BECOME INVOLVED IN THE OPERATION OF GAMING ACTIVITIES AS A MEANS OF ECONOMIC DEVELOPMENT AND EMPLOYMENT. THESE ACTIVITIES SEEMED TO HAVE CAUSED A CERTAIN AMOUNT OF CONTROVERSY AMONG NON-INDIANS WHO FEAR THE INFILTRATION OF ORGANIZED CRIME AND/OR THE ECONOMIC COMPETITION GENERATED BY INDIAN GAMING ACTIVITIES. WE HAVE SEEN NUMEROUS PROPOSALS FOR REGULATION ON INDIAN RESERVATIONS AND INDIAN LANDS IN PREVIOUS CONGRESSES. THERE HAS BEEN A FAIR AMOUNT OF LITIGATION OVER THE PAST SEVERAL YEARS WHICH HAS TRIED TO LIMIT TRIBAL AUTHORITY TO ENGAGE IN AND REGULATE GAIMING ACTIVITIES ON INDIAN LANDS.

WE ARE ALL HERE THIS MORNING TO TRY AND ESTABLISH POSITIVE GROUND WHERE THE INTERESTS OF THE TRIBES AND THE STATES ARE HEARD. I THINK WE CAN ALL AGREE THAT CLASS I AND II GAMES ARE NOT AT ISSUE. WHERE THERE ARE PROBLEMS, I BELIEVE THE DIFFERENCES CAN BE WORKED OUT. IT APPEARS WHERE WE HAVE THE DIFFERENCES OF OPINION IS OVER CLASS III GAMING ACTIVITIES. TO BE MORE DIRECT, WHETHER OR NOT A TRIBE SHOULD BE SUBJECT TO STATE REGULATION FOR CIVIL

AND CRIMINAL JURISDICTION ON CLASS III ACTIVITIES.

THESE CONCERNS HAVE BEEN ADDRESSED IN HR 2507. UNDER THE UDALL BILL, A TRIBE CAN OPERATE A CLASS III GAME WHERE THE STATE PERMITS THAT PARTICULAR GAMING ACTIVITY AND IF IT IS NOT PROHIBITED IN INDIAN COUNTRY BY FEDERAL LAW. IF A TRIBE CHOOSES TO OPERATE CLASS III GAMES ON INDIAN LANDS, THESE ACTIVITIES WOULD BE SUBJECT TO THE IDENTICAL REGULATORY SCHEME WHICH IS PROVIDED BY THE STATE. HR 2507 ALSO STIPULATES THAT REVENUES GENERATED BY INDIAN GAMING ACTIVITES CAN BE USED ONLY FOR: TRIBAL OPERATIONS, THE GENERAL WELFARE OF THE TRIBE AND ITS MEMBERS, OR TO PROMOTE ECONOMIC DEVELOPMENT.

THE RECENT CABAZON COURT DECISION CLEARLY RULED IN FAVOR OF THE TRIBES AND THEIR RIGHT TO ENGAGE IN GAMING FREE OF STATE REGULATION. SUBSEQUENT TO THE CABAZON DECISION, THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DETERMINED THAT THE SECRETARY OF INTERIOR PROPERLY DISAPPROVED THE PLANS OF THE PUEBLO OF SANTA ANA TO OPERATE A DOG TRACK. IN THE CASE OF PUEBLO OF SANTA ANA V. HODEL THE COURT RELIED ON THE CABAZON DECISION AND DETERMINED THAT THE PUEBLO OF SANTA ANA COULD ENGAGE IN HORSE RACING BUT NOT DOG RACING UNDER NEW MEXICO STATE LAW.

DURING OUR DELIBERATIONS, WE WILL HEAR FROM VARIOUS INDIAN TRIBES, THE STATES AND THE NON-INDIAN GAMING INDUSTRY. IT IS IN THE BEST INTERESTS OF ALL PARTIES TO ENACT LEGISLATION WHICH

PROVIDES CLEAR AND CONSISTENT STANDARDS FOR REGULATING INDIAN GAMING ACTIVITIES. IN RESOLVING THIS ISSUE WE SHOULD TAKE INTO CONSIDERATION ALL POINTS OF VIEW . WE MUST ALSO BE MINDFUL OF THE HISTORIC AND LEGAL RELATIONSHIP BETWEEN THE TRIBES AND THE STATES, THE STATES AND THE FEDERAL GOVERNMENT, AND THE TRIBES AND THE FEDERAL GOVERNMENT. I BELIEVE THAT HR 2507 PROVIDES A GOOD STARTING POINT FOR OUR DELIBERATIONS ON THIS DIFFICULT ISSUE.

96-492 0 - 89 - 5

The CHAIRMAN. Any further opening statements?

Mr. RICHARDSON. Mr. Chairman?

The CHAIRMAN. The gentleman from New Mexico.

Mr. RICHARDSON. Thank you, Mr. Chairman.

First of all, I commend you for calling this hearing. I commend you for this bill. This is an issue of vital importance to many Indian tribes and many States. The recent court decisions and other developments require the committee to examine the current situation regarding Indian gaming so it can formulate the best possible Federal policy.

Mr. Chairman, my district in New Mexico contains over 20 Indian reservations. In recent years, some of these reservations and other reservations across the country have instituted bingo gaming operations.

For those tribes, bingo has become an important part of their economic development. At the same time, it has provided the public with an increased opportunity to engage in bingo games. Many of the tribes which have bingo games have turned to private companies to manage the games on behalf of the tribes. Several tribes entered into contracts with these management companies, which were approved by the Secretary of the Interior pursuant to 25 U.S.C. section 81.

These contracts were the result of extensive negotiations between the tribes and the companies, and have worked for the benefit of both parties. Congress must give serious consideration to protecting the sanctity of these contracts in any legislation on Indian gaming.

Reconfirming the validity of these previously approved contracts in any new legislation will send a strong signal to private companies willing to invest in tribal enterprises. Such private investment is a crucial ingredient in the large task of economic development on Indian reservations.

Let me emphasize that I do not advocate approval of any contracts or agreements which were not previously approved by the Secretary or which contain onerous' terms regarding the affected tribe.

Mr. Chairman, I have two other concerns. One, this committee probe deeply and deal with the law enforcement side of this legislation. There have been some recent concerns brought to my attention, and looking at the witness list, I believe that the chairman has made sure that the law enforcement side of this issue is dealt with, and if necessary, I would urge the chairman to consider additional hearings on the subject.

No 3, Mr. Chairman, the issue of class III is going to be perhaps the most sensitive on this matter. Last year, in the development of this legislation, I joined the Chair and the gentleman from California and several members of the minority in producing a moratorium on class III, a 4-year moratorium to have a study in between those 4 years to determine the best way to deal with class III gambling.

I see that two pieces of legislation, the chairman's bill and Congressman Coelho's bill, have different approaches on class III. This is a very divisive issue. This is an issue I think that has to be dealt with very carefully.

Once again, if the gentleman from New Mexico can serve in a role of mediation and compromise, I do think that neither of the two provisions perhaps address the issue as undivisively as possible, and I would urge that we look at approaches that we can all deal with class III, which not just deals with Indian sovereignty issues, but States' rights, and I will be pleased to work with any member of this committee to develop something that is acceptable to all, which once again, may be difficult.

But, nonetheless, Mr. Chairman, I commend you for your leadership on this issue over the years. I hope we move expeditiously. I look forward to a series of positive hearings.

And let me just commend the gentleman that will be testifying, Mr. McCain, for his leadership on Indian issues; Congressman Harry Reid, I know he is now in the other body now, but I think of him as a leader on many issues, especially the one we are dealing with today; and the new member of the Nevada delegation, Mr. Bilbray, an equally strong force on this and many issues.

So, Mr. Chairman, thank you once again.

The CHAIRMAN. Other statements? The gentleman from Arizona.

Mr. RHODES. Thank you, Mr. Chairman.

Mr. Chairman, when you first introduced me to this committee, you commented that while I was an attorney, you would not hold that against me, I hope that that remains true today.

But I can't quite shed all those stripes, and as a lawyer, I would like to try to state for the committee and for the audience what I believe the current status of the law is, as far as Indian gaming is concerned. It is important to do this because the testimony we are receiving today concerns two pieces of legislation which will, if enacted, change the status of the law in regard to Indian gaming operations.

Since the U.S. Supreme Court Decision in *California* v. *Cabazon Band of Mission Indians* last February, we have all heard many differing opinions as to what that decision means. Tribes have portrayed it as a complete affirmation of tribal sovereignty. Some Members of Congress have stated that the court is begging Congress to act on the issue, and others contend that the court is allowing illegal gaming.

In Cabazon, I believe that the court has balanced the State interest and the tribal interest within the general context that, absent Congressional action, the State civil regulatory law does not apply to Indian tribes on Indian reservations. The court found that an activity not criminally prohibited by the State can be regulated by an Indian tribe under its own laws, such as bingo.

This appears entirely consistent with other Supreme Court decisions going all the way back to Chief Justice Marshall's decision in 1830 in *Cherokee Nation* v. *Georgia.* There, the Justice defined the Federal-tribal political relationship and the duty of the Federal Government to act as a buffer between tribes and the States. That buffer continues in the Cabazon Decision.

The point is, Mr. Chairman, we in Congress must also balance the tribal interests and other interests. At the same time, we should be reluctant to dramatically change political relationships which are centuries old.

I look forward to the testimony, and at other hearings with great interest in an effort to balance tribal sovereignty with State interests, and address legitimate concerns about organized crime. I am looking forward to these hearings, Mr. Chairman. I thank you for calling them. I especially welcome my colleague from Arizona, Senator McCain, I look forward to John's testimony, and I thank you, Mr. Chairman.

The CHAIRMAN. Anyone else? If not, we will proceed to the testimony.

I would urge all the witnesses to try to outline their main points and not read 20-page statements. We have made the request to try to shorten our hearings and keep things moving. There will be votes from time to time today, and we will have to have short recesses when this occurs.

With that, I will go to the panel, and these are friendly and familiar faces. We welcome you all to the committee: Senator McCain, Senator Reid and Congressman Bilbray. This may be his first appearance before this august body.

Anyway, you are welcome, and we will go with Harry Reid first, and then take questions for all of you later.

PANEL CONSISTING OF HON. HARRY M. REID, A U.S. SENATOR FROM THE STATE OF NEVADA; HON. JOHN S. McCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA; AND HON. JAMES H. BILBRAY, A U.S. REPRESENTATIVE FROM THE STATE OF NEVADA

Mr. REID. Thank you very much, Mr. Chairman. I would ask permission at this time that the testimony that was presented in the Senate last week of Governor Richard Bryan of the State of Nevada be admitted in the record, along with the testimony of Michael Brown, formerly the chairman of the New Jersey Gaming Control Commission.

The CHAIRMAN. We will be happy to have them, and they will be part of the official record of this hearing.

[Prepared statements of Governor Bryan and Mr. Brown follow:]

TESTIMONY OF

RICHARD H. BRYAN, GOVERNOR

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM RICHARD BRYAN, GOVERNOR OF THE STATE OF NEVADA. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE IN ORDER TO DISCUSS THE CONCERNS OF NEVADANS RELATIVE TO H.R. 964 AND H.R. 2507, THE INDIAN GAMING REGULATORY ACT OF 1987.

THE LEGALIZED GAMING INDUSTRY IS THE FOUNDATION OF NEVADA'S ECONOMY. TOURISM, GAMING, AND RECREATION EMPLOYMENT PROVIDE THIRTY PERCENT OF NEVADA JOBS. IN 1986, THE GROSS TAXABLE REVENUE GENERATED BY NEVADA GAMING BUSINESSES AMOUNTED TO $3.366 BILLION. TOTAL GAMING TAX COLLECTIONS FOR FISCAL YEAR 1986 WERE NEARLY $250 MILLION. THIS TAX REVENUE REPRESENTS ABOUT FORTY-THREE PERCENT OF NEVADA'S GENERAL FUND TAX COLLECTIONS FOR FISCAL YEAR 1986. AS YOU CAN UNDERSTAND, THE GAMING INDUSTRY IS, THEREFORE, A CRITICAL COMPONENT IN OUR ECONOMIC DIVERSIFICATION PLANS FOR NEVADA.

BECAUSE OF OUR STATE'S HISTORY OF LEGALIZED CASINO GAMBLING, NEVADANS ARE ESPECIALLY SYMPATHETIC TO THE INTEREST OF NATIVE AMERICANS IN UTILIZING GAMING AS A TOOL FOR ECONOMIC DEVELOPMENT. LIKEWISE, NEVADANS ARE PARTICULARLY SENSITIVE TO THE COMPLEX

PROBLEMS THAT ACCOMPANY THE LEGALIZED GAMING INDUSTRY.

WITH MORE THAN FIFTY YEARS OF EXPERIENCE, NEVADA CAN STRONGLY RECOMMEND THAT THE SINGLE MOST IMPORTANT MEASURE THAT CAN BE ADOPTED TO BENEFIT INDIAN GAMING IS A COMPREHENSIVE SYSTEM OF STRICT GAMING REGULATION.

WE BELIEVE THAT THE NEVADA GAMING CONTROL ACT PROVIDES THE COMPREHENSIVE REGULATORY STRUCTURE NECESSARY TO PROTECT OUR CITIZENS AND TOURISTS FROM THE DANGERS OTHERWISE ASSOCIATED WITH UNREGULATED AND UNCONTROLLED GAMBLING. ACCORDINGLY, I WOULD LIKE TO BRIEFLY DESCRIBE TO THE COMMITTEE SOME OF THE KEY ELEMENTS OF NEVADA'S REGULATORY SYSTEM.

UNDER NEVADA LAW, NO PERSON OR ENTITY CAN BE LICENSED TO CONDUCT GAMING OPERATIONS BEFORE COMPLETION OF AN EXHAUSTIVE BACKGROUND INVESTIGATION OF THE CHARACTER, ASSOCIATIONS, FINANCING, AND BUSINESS ACUMEN OF THE APPLICANT.

ADDITIONALLY, THE BOARD AND COMMISSION ARE EMPOWERED TO REQUIRE THE LICENSING OF <u>ANY</u> PERSON WHO MAY EXERT CONTROL OR HAVE A SIGNIFICANT INFLUENCE OVER THE OPERATIONS OF A LICENSED GAMING

ESTABLISHMENT. MANAGEMENT, VENDORS, LENDERS, FINANCIAL AND LEGAL ADVISORS OR CONSULTANTS MAY ALSO BE SUBJECTED TO AN INTENSIVE INVESTIGATION AND INQUIRY INTO THEIR SUITABILITY. EVEN OUR CASINO EMPLOYEES ARE REQUIRED TO OBTAIN WORK PERMITS IN ORDER TO BECOME EMPLOYED IN THE GAMING INDUSTRY.

NEVADA'S GAMING CONTROL BOARD IS CURRENTLY STAFFED WITH 364 FULL-TIME EMPLOYEES WHO NOT ONLY CONDUCT THESE INVESTIGATIONS, BUT ALSO EXAMINE THE ONGOING OPERATIONS OF GAMING LICENSEES. AUDITORS EMPLOYED BY THE BOARD CONTINUALLY EXAMINE THE FINANCIAL PRACTICES OF GAMING OPERATIONS TO PREVENT THE UNDERREPORTING OF TAXES AND UNLAWFUL CURRENCY TRANSACTIONS. IN ADDITION, OUR LICENSEES ARE SUBJECT TO ROUTINE AND UNSCHEDULED AUDITS BY THE STATE TO ENSURE STRICT COMPLIANCE WITH STATE IMPOSED INTERNAL ACCOUNTING SYSTEMS.

THE STATE GAMING CONTROL BOARD ALSO CONDUCTS SPECIAL INVESTIGATIONS AND COVERT OPERATIONS DESIGNED TO DETECT UNLAWFUL PRACTICES, HIDDEN OWNERSHIP, AND ANY INFILTRATION BY ORGANIZED CRIME WITHIN NEVADA'S GAMING INDUSTRY.

THIS REGULATORY SCHEME HAS BEEN ADMINISTERED BY NEVADANS FOR

NEARLY THREE DECADES. THE EFFECTIVENESS OF THIS SYSTEM OF REGULATION IS DEMONSTRATED BY THE VIBRANT CHARACTER OF THE GAMING INDUSTRY, AS WELL AS THE GROWTH AND PROSPERITY OF OUR STATE. STRICT GAMING CONTROL CAN PROVIDE A BUSINESS ENVIRONMENT THAT ENCOURAGES INVESTMENT IN THE INDUSTRY BY BOTH INDIVIDUAL ENTREPRENEURS AND LARGE PUBLICLY TRADED CORPORATIONS.

BASED UPON THIS EXPERIENCE, I WOULD LIKE TO SHARE OUR OBSERVATIONS CONCERNING H.R. 964 AND H.R. 2507. INITIALLY, I WOULD LIKE THE COMMITTEE TO KNOW THAT OF THE FOUR VERSIONS OF THE INDIAN GAMING REGULATORY ACT THAT HAVE BEEN INTRODUCED THIS SESSION, H.R. 964 AND S. 555, PROVIDE WHAT WE BELIEVE TO BE THE PREFERABLE SCHEME FOR REGULATING GAMING ON INDIAN RESERVATIONS. HOWEVER, WE STILL PERCEIVE SOME PROBLEMS THAT COULD DEVELOP UNDER THE PROVISIONS OF THE BILL.

H.R. 964 REQUIRES THAT AT LEAST THREE MEMBERS OF THE NATIONAL INDIAN GAMING COMMISSION MUST BE ENROLLED MEMBERS OF A FEDERALLY RECOGNIZED INDIAN TRIBE OR GROUP. UNDER THIS SECTION OF THE BILL, A MAJORITY OF THE COMMISSION WILL BE MEMBERS OF TRIBAL ENTITIES

THAT HAVE INDIRECT PECUNIARY INTERESTS IN NATIVE AMERICAN GAMING OPERATIONS. WHILE SECTION 5 OF THE LEGISLATION DISQUALIFIES INDIVIDUALS FROM COMMISSION MEMBERSHIP WHERE THEY HAVE A DIRECT FINANCIAL INTEREST IN GAMING ON A RESERVATION, AN INDIRECT INTEREST IN GAMING IS NOT PROHIBITED.

THE FACT THAT A REGULATOR MAY HAVE A PECUNIARY INTEREST IN AN ORGANIZATION THAT BENEFITS FROM GAMING PRESENTS A SERIOUS PROBLEM FOR THE ACT. IN NEVADA, GAMING REGULATORS AND ALL EMPLOYEES OF THE REGULATORY AGENCIES ARE PRECLUDED FROM HAVING ANY PECUNIARY INTEREST IN ANY ORGANIZATION HOLDING A GAMING LICENSE OR DOING BUSINESS WITH A PERSON OR ORGANIZATION THAT HAS SUCH AN INTEREST. WE BELIEVE THIS TYPE OF DETACHMENT FROM THE GAMING INDUSTRY IS ABSOLUTELY NECESSARY TO INSPIRE PUBLIC CONFIDENCE IN THE REGULATORS AND AVOID ANY APPEARANCE OF IMPROPRIETY FOR THE COMMISSION.

ANOTHER CONCERN WE HAVE INVOLVES THE DEFINITION OF CLASS II GAMING. SECTION 19(6)(B) OF H.R. 964 AND SECTION 21(5) OF H.R. 2507 PROVIDE THAT ELECTRONIC OR ELECTROMECHANICAL FACSIMILES OF

BINGO, LOTTO, AND OTHER SIMILAR GAMES ARE AUTHORIZED AS CLASS II GAMING. SIMILARLY, THIS SECTION GRANDFATHERS HIGH-STAKES CASINO GAMING OPERATIONS EXISTING ON JANUARY 1, 1987.

BOTH OF THESE DEFINITIONAL PROVISIONS SEEM INCONSISTENT WITH THE GENERAL PREMISE OF THE LEGISLATION THAT FULL-SCALE CASINO GAMING OPERATIONS SHOULD BE REGULATED BY THE RESPECTIVE STATES PURSUANT TO AN AGREEMENT WITH THE TRIBAL GOVERNMENTS. H.R. 2507, UNLIKE H.R. 964, DOES NOT PROVIDE FOR STATE REGULATORY OVERSIGHT OF CLASS III GAMING ENTERPRISES IN INDIAN COUNTRY. WE DO NOT BELIEVE THAT THIS APPROACH TO REGULATION OF INDIAN GAMING IS IN THE BEST INTERESTS OF NEVADANS OR OUR NATION. STATE GOVERNMENTAL AGENCIES ARE BEST EQUIPPED TO REGULATE GAMING AND ENFORCE THE CRIMINAL LAWS TO COMBAT ORGANIZED CRIME INFLUENCE WITHIN THEIR RESPECTIVE JURISDICTIONS.

ELECTRONIC AND ELECTROMECHANICAL GAMING DEVICES ARE PRIMARY TARGETS OF ORGANIZED CRIMINAL GANGS THAT EMPLOY SOPHISTICATED METHODS OF CHEATING THE MACHINES. NEVADA AND NEW JERSEY GAMING REGULATORS, GAMING DEVICE MANUFACTURERS, AND GAMING LICENSEES HAVE

INVESTED IN EXTREMELY EXPENSIVE SECURITY SYSTEMS TO THWART THESE CHEATERS. NEVERTHELESS, LITERALLY MILLIONS OF DOLLARS ARE LOST ANNUALLY TO THESE CRIMINALS. THERE IS NO REASON TO BELIEVE THAT CLASS II GAMING OPERATIONS ON INDIAN RESERVATIONS WILL HAVE THE FINANCIAL OR TECHNICAL RESOURCES TO EFFECTIVELY COMBAT THESE PROBLEMS.

FURTHERMORE, THE GRANDFATHERING PROVISIONS WILL PERMIT FULL-SCALE CASINO GAMING IN THOSE JURISDICTIONS WHERE THE TRIBES WERE OPERATING THIS TYPE OF GAMING ON JANUARY 1, 1987. THE REGULATORY PROBLEMS ASSOCIATED WITH THESE GAMING OPERATIONS ARE NO DIFFERENT THAN THOSE INVOLVED WITH CLASS III GAMING OPERATIONS THAT PURSUANT TO H.R. 964 ARE SUBJECT TO STATE REGULATORY OVERSIGHT.

H.R. 2507 APPEARS TO AUTHORIZE A MUCH BROADER ARRAY OF CARD GAMES WITHIN THE AREA OF CLASS II GAMING AND PERMITS ELECTRONIC AND ELECTROMECHANICAL FACSIMILES OF THESE GAMES. AS A RESULT, WE BELIEVE THAT H.R. 2507 IS A LESS DESIRABLE LEGISLATIVE APPROACH TO CONTROLLING AND REGULATING GAMING IN INDIAN COUNTRY. CONGRESS SHOULD NOT CREATE HAVENS WHERE STRICT GAMING CONTROL WILL NOT

APPLY WITH RESPECT TO FULL-SCALE CASINO GAMING.

SECTION 11 OF THE H.R. 964 PLACES CLASS II GAMING UNDER THE REGULATORY JURISDICTION OF THE INDIAN TRIBES. WHERE THESE OPERATIONS ARE CONDUCTED BY TRIBAL ORGANIZATIONS, THE ACT REQUIRES APPROVAL OF AN ORDINANCE THAT CONTAINS CERTAIN PROVISIONS. CLASS II GAMING OPERATIONS IN INDIAN COUNTRY BY NON-INDIANS MAY ALSO BE APPROVED IF THE TRIBAL ORDINANCE ADOPTS A REGULATORY SCHEME AS RESTRICTIVE AS THAT ESTABLISHED BY STATE LAW FOR SIMILAR GAMING WITHIN THE JURISDICTION OF THE STATE. THESE PROVISIONS PRESENT CONCERNS AS WELL.

AS TO CLASS II GAMING CONDUCTED BY TRIBAL MEMBERS, THE ACT SHOULD CONTAIN MORE STRINGENT REGULATORY OVERSIGHT BY THE INDIAN GAMING COMMISSION WITH RESPECT TO THE SOURCES OF FINANCING FOR THESE OPERATIONS, THE BUSINESS RELATIONSHIP BETWEEN TRIBAL GAMING OPERATORS AND THEIR CONTRACT SUPPLIERS, THE EMPLOYEES OF THE GAMING ESTABLISHMENT, AND THE IMPLEMENTATION OF ADEQUATE SECURITY AND INTERNAL CONTROL SYSTEMS WITHIN THE GAMING OPERATION.

IN INSTANCES WHERE CLASS II GAMING ON INDIAN RESERVATIONS

would be conducted by non-Indians, the Act should require state regulatory control IDENTICAL to that imposed by the proposed law for Class III gaming. Even though the expense of adopting and administering a regulatory system that is identical to the state regulatory apparatus would be burdensome for Native Americans, the protection provided to the public through strict control of gambling justifies such a burden.

If economic development is the aim of Indian gaming, then Class II gaming conducted by non-Indian businesses should be regulated by the states so that tribal organizations can realize the full value of the revenues from these enterprises. State regulation of these particular Class II gaming operations would also alleviate the problem of tribal governments attempting to apply the complex range of discretionary and judgmental factors involved in a regulatory process that is adopted with reference to state law, but which does not provide the necessary experience and expertise required of regulators in gaming matters.

Finally, we have concerns regarding the adequacy of funding

FOR THE COMMISSION. DURING FISCAL YEAR 1986, NEVADA'S COST OF GAMING CONTROL WAS OVER $13 MILLION. THE BUDGET FOR NEVADA GAMING CONTROL AGENCIES IN FISCAL YEAR 1987 WILL EXCEED $14 MILLION. THE ANNUAL FEES IMPOSED UPON TRIBAL GAMING ENTERPRISES PURSUANT TO H.R. 964 ARE BASED UPON A PERCENTAGE OF GROSS REVENUES. GROSS REVENUE IS DEFINED AS TOTAL WAGERED MONIES LESS PRIZE MONEY AND CAPITAL INVESTMENT COSTS. USE OF THIS FORMULA MAY SERIOUSLY DIMINISH THE REVENUE BASE FOR THE COMMISSION'S ASSESSMENTS. DURING THE DEVELOPMENTAL STAGES OF GAMING ENTERPRISES AND DURING PERIODS WHEN THESE BUSINESSES EXPAND OR REFURBISH THE GAMING PROPERTIES, CAPITAL INVESTMENT COSTS MAY FREQUENTLY EXCEED CURRENT PERIOD REVENUES. AS A RESULT OF THIS FACT, THE FEDERAL INDIAN GAMING COMMISSION MAY NOT OBTAIN SUFFICIENT FUNDING TO PERFORM THE CRITICAL FUNCTIONS OF A FEDERAL GAMING REGULATORY AGENCY.

LEGALIZED GAMING CAN BE A POWERFUL TOOL FOR THE ECONOMIC DEVELOPMENT OF INDIAN COUNTRY. INDIAN GAMING, HOWEVER, IS NOT A PANACEA FOR THE ECONOMIC DIFFICULTIES OF NATIVE AMERICANS. AS DEMONSTRATED BY THE EXPERIENCE OF NEVADANS, LEGALIZED GAMING IS AN

INDUSTRY THAT IS ATTENDED BY COMPLEX PROBLEMS THAT HAVE COSTLY SOLUTIONS REQUIRING STRINGENT GOVERNMENT OVERSIGHT.

WITHOUT A COMPREHENSIVE SCHEME FOR STRICT GOVERNMENT REGULATION, LEGALIZED GAMING ON THE RESERVATIONS WILL BE AN EMPTY PROMISE FOR ECOMONIC DEVELOPMENT. FEDERAL, STATE, AND TRIBAL LAW ENFORCEMENT AGENCIES MUST BE ASSURED THAT INDIAN RESERVATIONS WILL NOT BECOME SANCTUARIES FOR ORGANIZED CRIME. THE PUBLIC MUST BE CONFIDENT THAT INDIAN GAMING ENTERPRISES ARE CONDUCTED HONESTLY. FEDERAL OFFICIALS AND TRIBAL GOVERNMENTS MUST BE CONVINCED THAT GAMING TAX REVENUES ARE PROTECTED. MAJOR CORPORATIONS MUST BE CERTAIN THAT INVESTMENT IN GAMING RESORTS IN INDIAN COUNTRY IS A LEGITIMATE AND PROFITABLE ENDEAVOR.

THE ADOPTION OF A THOROUGH REGULATORY SYSTEM FOR GAMING ON INDIAN RESERVATIONS IS THE ONLY CERTAIN METHOD OF ACHIEVING THESE OBJECTIVES. A NATIONAL INDIAN GAMING COMMISSION MUST HAVE THE POWER AND RESOURCES TO ADMINISTER THIS TYPE OF A REGULATORY APPARATUS. PROPERLY DRAFTED, THE INDIAN GAMING REGULATORY ACT OF 1987 CAN PROVIDE THE LEGAL FRAMEWORK FOR THE COMMISSION TO PERFORM

THIS IMPORTANT TASK. IN PARTNERSHIP WITH THE STATES, NATIVE AMERICAN TRIBAL ORGANIZATIONS, THE COMMISSION AND OTHER FEDERAL AGENCIES, WE CAN PROMOTE A REGULATORY ENVIRONMENT FOR LEGALIZED GAMING IN INDIAN COUNTRY THAT WILL BALANCE THE ECONOMIC DEVELOPMENT GOALS OF THE TRIBES WITH THE LEGITIMATE CONCERNS OF LAW ENFORCEMENT, TAXING AUTHORITIES, AND BUSINESS. THANK YOU FOR YOUR ATTENTION TO MY REMARKS.

G. MICHAEL BROWN, ESQUIRE
1537 Atlantic Avenue
Atlantic City, New Jersey 08401

I am G. Michael Brown engaged in the private practice of law in Atlantic City, New Jersey. I appreciate the opportunity to address you today on the subject of casino regulation.

During the infancy of the casino industry in New Jersey, I served as the Director of the Division of Gaming Enforcement, participating in the supervision of the opening of seven (7) casino hotels within a twenty (20) month period and supervising the original license hearings of five (5) casino hotels before our Casino Control Commission.

I would like to share with you some of the concerns and experiences that we, in New Jersey, had to deal with while introducing a new form of tourist attraction into our State, while at the same time attempting to maintain the required public trust and confidence in the regulation of legalized casino gaming.

Casinos were approved by the voters of New Jersey when they passed a casino referendum in November of 1976, after some 200 years of constitutional prohibition and after one formal rejection by the voters of constitutional change, a casino referendum was defeated in 1974. In discussing this industry, we should not forget that 48 out of 50 states in this country still reject the idea of casinos within their boundaries.

The Casino Control Act, N.J.S.A. 5:12-1 et seq. which was signed into law on June 20, 1977, created two (2) new government agencies, the Division of Gaming Enforcement and the Casino

Control Commission. The Division of Gaming Enforcement was created within the Office of the Attorney General of New Jersey to investigate casino license applications by companies and individuals, to enforce regulations imposed upon the casino operations and to prosecute all regulatory violations before the Casino Control Commission, in addition to the investigation and prosecution of enumerated casino crimes. The Division of Gaming Enforcement is supervised by a Director, appointed by the Governor with the consent of the Senate and maintains a staff of approximately 450 men and women consisting of 20 attorneys, 150 agents with investigative and accounting backgrounds, 125 members of the New Jersey State Police directly assigned to the Division and support and administrative staff. During the fiscal year of 1987, the operating budget of the Division of Gaming Enforcement was approximately $34 million.

The Casino Control Commission approves and issues the licenses to casinos and individuals that work therein and ancillary businesses that provide gaming and non-gaming equipment and services to the casino industry. The Commission which is comprised of five (5) full-time members also promulgates the rules and regulations which control in great detail the operation of the casino facility along with the approval of gaming equipment. The Commission also hears violations of regulations and has the authority to suspend or revoke individual or company licenses. The Commission maintains a staff of inspectors who are always present on the casino floor, in uniform, to receive patron

complaints, observe gaming operations and provide the public with a continual reminder of government surveillance. The Commission maintains a staff of approximately 425 personnel and this year had an annual budget of approximately $24 million.

That's a lot of money and a lot of people to regulate 12 buildings in a small New Jersey shore town! Why?

Let me discuss with you briefly the gross casino revenues generated in this business. Gross casino revenue or "win" as it is called in the industry, represents what the casino wins from the patrons before taxes and expenses are deducted. During 1986, the casino industry in New Jersey realized a total win of $2.2 billion dollars. The total win for the leading individual casino in 1986 was $259.6 million dollars or an average of $710,000 a day for 365 days.

During the month of April, 1987, the twelve operating casinos had a gross win of $199 million including a record-setting win of $19.6 million by one casino during its first full month of operation.

In 1977, the year before the casinos opened in Atlantic City, there were approximately 3 million annual visitors. Last year, close to 30 million people visited this small ocean front community that has a permanent population of 39,000 residents.

I tell you all this in a sincere attempt to impress upon you the need to prepare for strict regulatory legislation implemented by well-staffed, well-trained regulatory personnel to administer and maintain a high level of integrity in casino licensing and operation.

Casino regulation, if it is to be effective, requires thorough investigation of individuals and companies, who wish to participate in the ownership and operation of casinos.

The public perception in many communities is that casinos are a problem. The roots of this public perception are not difficult to trace and are well deserved. The beginnings of casino gaming in this country do involve organized crime. The story of Bugsy Siegel and the Flamingo Hotel in Las Vegas has been told many times. It is a well established part, not of lore, but of fact. To a great degree, casinos <u>are</u> different. Casinos deal in many millions of dollars a day in cash transactions and record few of them. Chips for cash and wins paid without recordation, verified only by observation. There is no cash register on a craps table. Is the public wrong to perceive this situation as one ripe for misbehavior? In events which could hardly be termed historical, hidden organized crime interests and orchestrated criminal activity have been identified in large and small casinos in Las Vegas, including the Jolly Trolly, the Alladin, and others. But in the end analysis, the public's view of casinos cannot be attributed to any singularly identifiable factor. It results, I suppose, from a combination of all of these factors and from that which, for the lack of a better description, will have to be called "intangible." Casinos have no monopoly on bad press or on criminal revelations within their ranks. Yet, these factors seem simply to have a greater effect on casinos than they do on other forms of business.

No serious debate over the legalization of casinos in any jurisdiction exists without the idea of some form of strict governmental control. The debates may focus on degree, but no state or country should be ready to accept casinos without forming a strict regulatory body to administer them.

And so, the deserved and undeserved image which casinos possess, brings with it the need for elaborate systems of governmental control. But more than that, it brings with it the need to make sure that those systems are well-known and are publicly understood.

Casino regulation is the result of concern--concern over organized crime infiltration, concern over skimming, concern that the weak and unwary will be taken advantage of, fear of drugs, fear of prostitution, and a host of other concerns both real and unreal which arise in the collective public's mind when the topic of casino gambling is debated. An effective casino regulator must share many of those concerns. As effective casino regulator must understand what the public feels when the public is faced with a casino in its midst.

"Skimming", the truly blasphemous word of the casino industry, is the worldwide fear. In any state or country considering the introduction of casino gaming, the question arises. Most of the skeptical questions asked are based on an understandable lack of appreciation of internal controls. Questions like, "How can you really keep track of all that cash, in excess of $500,000 a day, in some casinos of $1 million a day?

Come on now", the skeptics says, "you can't control that much cash." This has consistently been the most difficult question to answer. The issue generates the most skepticism and the response must be systematic and thorough. In the past, we have begun our answer by describing the licensing process in place in New Jersey which thoroughly screens all prospective casino employees before they are allowed to enter the casino industry. One must then go on to describe the security systems employed by the operating casinos in New Jersey, both physical manpower and mechanical capabilities. Surveillance departments with access to catwalks and closed circuit television systems give some comfort to the questioner but the two most important attributes of the control process, appreciated by the novice, are the internal control systems employed in the cage area monitoring the movement of chips, fills, credits, openers, closers, multi-part documents, copies of which wind up in various departments of the casino and secondly, the physical presence and participation of the casino control inspectors, government officials, in the collection of the drop boxes and the observation of the count. Students of cash control are most impressed by government presence in the count room and supervision of the verification of the count. Presence of gaming officials, police and inspectors, during all operating hours is a condition which an emerging jurisdiction must require in their authorizing legislation.

Casinos are unique in the purpose they serve and in the threat they pose. Thus the need for casino regulation and thus the aims that casino regulation must serve.

Any assessment of the efficacy of a regulatory structure is obviously open to debate and dispute. I could stand here, for example, and say that, of the billions of dollars which have been wagered in Atlantic City casinos since May of 1978, we presently know of no improper diversion of funds which was management directed. I could attribute that, as I do, at least in part, to the present system of regulatory controls.

But some would say that no diversion of funds has been found because casino operators are honest, and therefore, no regulations are necessary to prevent such impropriety. Then there are others who would say that we have found no skims because our controls are not rigid enough to allow us to discover them.

I am not an advocate or opponent to the expansion of casino gaming. I respectfully suggest to the Members of the Committee, that if you decide to allow Class III gaming, including casino gaming and slot machines, you do so by including in the authorizing legislation, the requisite regulatory authority and provide with specificity, which agency of government is best suited to and will be responsible to maintain the high level of integrity which exists in the casino industry in the United States today. New Jersey learned from Nevada. Capitalizing on its successes and avoiding some of its history. We have shared that education with government regulatory agencies in Great Brittain, the Bahamas, the Caribbean, Australia and some European Countries. So long as there is a recognition of the

responsibility being accepted, existing in the casino regulatory agency, will work with whatever system of regulation you choose.

Thank you.

G. MICHAEL BROWN, ESQUIRE
BROWN & MICHAEL
1537 Atlantic Avenue
Atlantic City, New Jersey 08401
(609) 344-6445

G. Michael "Mickey" Brown is a partner in the law firm of Brown and Michael with offices in Atlantic City, New Jersey and Sea Girt, New Jersey. He was graduated from Seton Hall Law School in 1967 with a Juris Doctor degree and was admitted to practice the same year before the New Jersey and Federal Bar. In 1982, Mr. Brown was admitted to practice in the State of New York. Mr. Brown, his wife Sharon, and their three daughters reside in Sea Girt, New Jersey.

From July, 1980 through April, 1982 Mr. Brown served as the Director of the New Jersey Division of Gaming Enforcement after being appointed to that position by the then Governor Byrne. Between 1972 and 1980, Mr. Brown served in various capacities within the Division of Criminal Justice of the New Jersey Attorney General's Office. He served as Chief Trial Attorney and as Deputy Director of Operations for the Division of Criminal Justice.

During his tenure as the Director of Gaming Enforcement, he participated in the supervision of the opening of seven casino hotels within a twenty month period and supervised the original licensing hearings of five casino hotels before the Casino Control Commission.

Since leaving Government, Mr. Brown has served as counsel to the Board of Inquiry into Casinos in Melbourne, Australia; as a consultant to the Treasurer of Queensland, Australia, for the purpose of drafting and adopting casino legislation; as American counsel for Genting Berhad Casino Hotel Corporation of Kuala Lumpur, Malaysia. Mr. Brown has represented American casino interests in New Jersey, the Commonwealth of the Bahamas, London, Malta, Jamaica, Australia, and the Caribbean.

Mr. REID. We would also ask, and this is in elaboration of the statement of my colleague from the State of Nevada, Barbara Vucanovich, that the testimony that she requested of Don Hill be allowed, you have already allowed that, but in addition to that, the testimony given in the Senate by Phil Hanifin, formerly chairman of the Nevada Gaming Control Board, be made a part of the record; and also that of professor Jerry Scolnick, a professor at the University of California who is an expert on gaming, be made part of the record.

The CHAIRMAN. Without objection, glad to have these statements.

[EDITOR'S NOTE.—At time of printing the above-mentioned statements have not been received.]

Mr. REID. Mr. Chairman, as I told you on a personal basis, and I say so here publicly, I appreciate the opportunity to testify here, and certainly congratulate you for the interest that you have taken in this issue, and as usual, for your ability to be fair and open in your dealings with all parties to an issue.

I consider this issue, Mr. Chairman, members of the committee, to be of the utmost importance, both to the future of my State, the State of Nevada, and our very important industry, and also the integrity of the United States and to the well being, honor and safety of those who occupy Indian lands.

I am here to state a position that States regulate gaming on all lands within a State, and against any exception to that rule. I approach the question with a somewhat unique perspective, since I served as chairman of the Nevada Gaming Commission for 4 years.

The Nevada Gaming Commission is the ultimate policy maker for Nevada gaming. Based on that personal experience, I am convinced that regulation of gaming operations is at best an extremely complex, expensive and arduous task.

Even in a small State like Nevada, it requires commitments of literally millions of dollars and many hundreds and hundreds of employees, including investigators, surveillance personnel, accountants and attorneys, as well as a large and well trained clerical staff.

Between them—that is, between Nevada and New Jersey, there will be in excess of $100 million spent this year to regulate gaming operations. This does not include the many additional millions of dollars necessary for police, both Federal and State; prosecution, both Federal and State; and the like.

This is in contrast to the bill that is before us, that calls for $2 million, and so I would suggest, Mr. Chairman, that the presentation of legislation requesting $2 million to control this is nowhere near the mark, especially when you have the gaming in Nevada and in New Jersey in a geographical setting that makes control somewhat easier. The Indian reservations, of course, are spread all over this country.

Without those resources; that is, millions and millions and millions of dollars, effective regulation is not only difficult, it is impossible. Lack of that effective regulation is an open invitation to organized crime to move into lucrative areas where the commodity is cash, and corruption reaps tremendous profits.

Without adequate protection, not only the operator and the taxing and regulating authorities suffer, the consumer is also

denied a fair opportunity to win; games of chance become games without a chance for winning.

In Nevada, for over 50 years, we have repeatedly experienced the heavy baggage borne by those who assumed the duty of regulating gaming. We have seen mobsters move in and skim cash from casino accounting rooms, an operation which allows them to launder money and reap illicit profits at the same time.

We have seen attempts by organized crime to dominate gaming related unions and to obtain illegal control of casinos through improper loans, as well as threats and intimidation. We have seen onetime honest businessmen overwhelmed and corrupted by the ever probing tentacles of organized crime.

The battle has been continuous and all consuming. It is never won and completely over.

As chairman of the Nevada Gaming Commission, my commission took action on what we believed were casinos controlled by organized crime. We imposed what were at the time the largest administrative fines in the history of the United States. We fought with legions of attorneys to shut down subvertive casinos and to clean up their operations.

I experienced some personal discomfort, Mr. Chairman, as a result of those battles. My life was repeatedly threatened, and I was forced to obtain FBI and police protection on a continuing basis.

What really bothered me, however, were the threats and attempts against my family. My wife, as an example, discovered at one time a bomb attached to our car. My children constantly walked in fear to school many, many times under police protection.

And it hasn't been only me alone that has had these experiences. Other public officials feared for their lives. One man, who is well known to this committee, Bob Broadbent, who used to be Under Secretary of the Interior, when he was county commissioner in Clark County, Nevada, was a repeated target of threats, and as did I, he carried a gun for protection.

Commissioner George Schwartz, who served with me on the commission, also had a bomb placed on his car. Those are a few of the incidents during my short tenure.

As recently as last year, Ned Day, a Las Vegas columnist, who repeatedly challenged and exposed the mob, awoke one morning to discover his car had been torched. That, of course, was the bad news, Mr. Chairman. The good news is that he was not in the car when it was torched.

The mob, you see, well, they may appreciate constitutional protection when we catch them, but doesn't believe in freedom of the press. My job, and the job of the regulators in Nevada, was to protect the people of Nevada from the thugs and hoodlums who tried to muscle their way into Nevada gaming.

Today, our job before this committee is to protect the public and potential owners of gaming establishments on Indian lands from these same, what I believe to be dark forces. I cannot and do not believe that small tribal groups of 20, 50 or even a few hundred individuals, often living in isolated communities, will be able to withstand the physical and financial onslaught of the sophisticated or-

ganized crime syndicates and operatives, who are a constant threat against the integrity of Nevada gaming.

I want to urge this committee to leave the power of regulation of gaming where it should be, in the hands of the States, which have the resources of money and personnel to adequately and effectively control any gambling they care to make legal.

If States have not legalized some form of gaming, then the chances are they do not believe it should be permitted within their borders. The various legislatures are certainly most well fit to analyze their resources and reaction of their populace on a statewide basis. No small group, of whatever origin, should be permitted to undercut that fundamental legislative decision.

Some will tell you that this a question of Indian sovereignty, and that the Federal Government should do nothing which might imply a role for other governmental entities. That argument is at best disingenuous.

I would like to point that in the current United States Code, there are 13 chapters containing over 2,000 provisions governing State and Federal relations with Indian tribes and colonies.

In the first 6 months of this Congress, dozens of pieces of legislation which affect Indian peoples have been introduced. It also seems relevant that hundreds of millions of dollars a year are provided by the Federal Government to the same people who want nonregulated gaming, and those dollars are spent by the Federal Government on those same lands where the gaming would be permitted.

It hardly seems reasonable to argue on the one hand that we have a responsibility to fund those programs, and yet on the other, that we have no responsibility to protect their beneficiaries. This is in keeping with the statement made earlier by Mr. Marlenee.

Indeed, in this instance, even if there were a persuasive argument that Indian people should be free from gaming regulation in games played only by tribal members, I do not for a moment believe that it is the case before you.

I can guarantee you that gaming facilities proposed will be aimed at nontribal patrons, and if you doubt my analysis, I invite you to propose to the gaming proponents that gaming participation by nontribal members be prohibited as a condition of passage of this legislation.

Mr. Chairman, members of this committee, the Federal Government has the legal authority and moral obligation to ensure that tribal enclaves do not become sanctuaries for organized crime. It is our duty to prevent a situation where State authorities stand by impotently while their citizens are victimized, and that the mob flaunts its operations before their helpless gaze.

Mr. Chairman, I am not engaging in exaggeration or in hyperbole. Unless control of gaming remains with the States, the hope for controlling organized crime in this country will be lost forever.

Thank you very much.

[Prepared statement of Mr. Reid follows:]

Testimony of Senator Harry Reid before the House Committee on Interior and Insular Affairs regarding gaming on Indian lands, June 25, 1987.

Indian Gaming Testimony

Mr. Chairman, thank you for the opportunity to testify here today. I consider this issue to be of utmost importance both to the future of my State's most important industry, the integrity of the United States, and to the well-being, honor and safety of those who occupy Indian lands.

I am here to argue for State regulation of gaming on all lands within a State, and against any exception to that rule. I approach the question with a somewhat unique perspective, since I served as Chairman of the Nevada Gaming Commission for over four years. The Commission is the ultimate policy maker for Nevada gaming.

Based on that personal experience, I am convinced that regulation of gaming operations is, at best, an extremely complex, expensive, and arduous task. Even in a small State like Nevada, it requires committment of literally millions of dollars and many hundreds of employees, including investigators, surveillance personnel, accountants, and attorneys, as well as a large and well-trained clerical staff. Between them, Nevada and

New Jersey will spend almost $100 million this year to regulate their gaming operations.

Without those resources, effective regulation is not only difficult, it is impossible. Lack of that effective regulation is an open invitation to organized crime to move into a lucrative area where the commodity is cash, and corruption reaps tremendous profits. Without adequate protection, not only the operator and the taxing and regulating authorities suffer; the consumer is also denied a fair opportunity to win, and games of chance become games without a chance for winning.

In Nevada, for over fifty years we have repeatedly experienced the heavy baggage borne by those who assume the duty to regulate gaming. We have seen mobsters move in and skim cash from casino counting rooms; an operation which allows them to launder money and reap illicit profits at the same time. We have seen attempts by organized crime to dominate gaming related Unions, and to obtain illegal control of casinos through improper loans as well as threats and intimidation. We have seen one time honest businessmen overwhelmed and corrupted by the ever-probing tentacles of organized crime. The battle has been continuous and all-consuming;it is never won and completely over.

As Chairman of the Gaming Commission my commission took action on what we believed were mob-influenced casinos. We imposed what were at the time the largest administrative fines in the history of the United States. We fought with legions of attorneys to shut down subverted casinos, and to clean up their operations.

I experienced some personal discomfort as a result of those battles. My life was repeatedly threatened and I was forced to obtain FBI and Police protection on a continuing basis. What really bothered me, however, were the threats and attempts against my family. My wife discovered a crude bomb attached to our car; my children constantly walked in fear to school under police observation.

I have not been alone in those experiences. Other public officials feared for their lives. Bob Broadbent, when he was a County Commissioner, was the repeated target of threats, and as did I, he often carried a gun for protection. Commissioner George Swarts had a bomb placed in his car.

As recently as last year, Ned Day, a Las Vegas columnist who repeatedly challenged and exposed the mob, awoke one morning

to discover his car had been torched. The mob, you see, while they may appreciate Constitutional protection when we catch them, doesn't believe in freedom of the press.

My job was to protect the people of Nevada from the thugs and hoodlums who tried to muscle their way in to Nevada gaming. Today, our job is to protect the public and potential owners of gaming establishments on Indian lands from the same dark forces.

I can not and do not believe that small tribal groups of twenty, fifty, or even a few hundred individuals, often living in isolated communities, will be able to withstand the physical and financial onslaught of the sophisticated thugs and hoodlums who were a constant threat against the integrity of Nevada gaming. I want to urge this Committee to leave the power of regulation of gaming where it should be; in the hands of the States, which have the resources of money and personnel to adequately and effectively control any gambling they care to make legal.

If States have not legalized some form of gaming, then the chances are they do not believe it should be permitted within their borders. The various Legislatures are certainly most well fitted to analyze their resources and the reaction of their

populace on a statewide basis; no small group of whatever origin should be permitted to undercut that fundamental legislative decision.

Some will tell you that this is a question of Indian sovereignty, and that the Federal Government should do nothing which might imply a role for other government entities. That argument is, at best, disingenuous.

I would like to point out, that in the current U.S. Code there are 13 Chapters containing over 2000 provisions governing State and Federal relations with Indian Tribes and Colonies. In the first six months of this Congress, dozens of pieces of legislation which affect Indian peoples have been introduced.

It also seems relevant that hundreds of millions of dollars a year are provided by the federal government to the same people who want non-regulated gaming and those dollars are spent by the Federal Government on those same lands where the gaming would be permitted. It hardly seems reasonable to argue on the one hand that we have a responsibility to fund those programs, and yet on the other that we have no responsibility to protect their beneficiaries.

Indeed, in this instance, even if there were a persuasive argument that Indian people should be free from State gaming regulation in games played only by tribal members, I do not for a moment believe, that is not the case before you. I can guarantee you the gaming facilities proposed will be aimed at non-Tribal patrons, and if you doubt my analysis, I invite you to propose to the gaming proponents that gaming participation by non-Tribal members be prohibited as a condition of passage of this legislation.

Mr. Chairman, the Federal Government has the legal authority and moral obligation to ensure that Tribal enclaves do not became sanctuaries for organized crime. It is our duty to prevent a situation where State authorities stand by impotently while their citizens are victimized, and the mob flaunts its operations before their helpless gaze.

Mr. Chairman, I am neither exaggerating nor engaging in hyperbole. Unless control of gaming remains with the States, the hope for controlling organized crime in this country will be lost forever.

Thank you.

The CHAIRMAN. Thank you, Senator Reid.

John McCain was a member of this committee for 4 years, and a very powerful and effective voice on Indian matters, and we are glad to have him back here to give us the benefit of his counsel.

Mr. MCCAIN. Thank you, Mr. Chairman. I appreciate your kind introduction, and in allowing me to appear today. I would ask your permission, Mr. Chairman, to make my complete statement a part of the record, and I will try to summarize it as well as I can.

The CHAIRMAN. So ordered.

Mr. MCCAIN. I would also like to express my appreciation for the kind words of welcome from members of the committee. Congressman Campbell was kind enough, as you remember, Mr. Chairman, to come to Arizona to help us address a very important issue, the Phoenix Indian School; and Barbara Vucanovich, I miss a great deal her active involvement, not only the committee, but in Indian issues, and also I am pleased to see that Congressman Rhodes has taken on the task of being heavily involved in Indian issues; and of course, my old friend, Mr. Hansen it is—always glad to see you again.

Mr. Chairman, I will try to be as brief as it is possible for a member of the other body to be. I find myself surrounded on both sides by members of the State of Nevada, who have siphoned off a considerable portion of Arizona's economy in Las Vegas and Laughlin and other dens of inequity. I will try to be careful that I don't offend them, but I hope that,—under your leadership, we will consider some way of getting some of those much needed funds back to our State, but that is a subject for a different hearing, I am sure.

Mr. Chairman, I appreciate very much the involvement of my friend, Harry Reid, on this issue. I understand his concern, and I appreciate very much his background and experience with the evils that result from the penetration of organized crime into a gambling operation.

With all due respect, I would submit that S. 1303, which is the exact companion of H.R. 2507, which you introduced, is not a bill that has no regulation involved in it; in fact, just the opposite. The reason for our bills is a direct result of the hearings that this committee held in the last 2 years. And there is a need for regulation of Indian gaming.

The legislation would set up significant activity from the Federal level in order to ensure that both licensing, regulation and oversight of gaming operations is implemented.

I think, Mr. Chairman, the issue that we are addressing here today is the direction Congress decides to take which will have a direct bearing on tribal sovereignty. Those who say that tribal sovereignty is not an issue, I think fail to understand the historic relationship this country has had with Indian tribes, and it is the responsibility of the Congress, not the States. Imposing State jurisdiction on tribes, I believe, I am convinced, violates that responsibility and cuts across the grain of past Congressional policies, encouraging self-determination and self-government.

I believe the Congress must take a consistent approach in its relations with Indian tribes, and it is not the time now to go back and place restrictions on self-determination and self-government.

From time immemorial, tribes have been and will continue to be permanent governmental bodies exercising those basic powers of governments, as do Federal and State governments, to fulfill the needs of their members, and I think it would be very difficult, if indeed not unconstitutional, if we passed legislation which would impose State jurisdiction over the activities of tribal governments.

Mr. Chairman, there are minor disagreements, I believe, on class I and class II. As my colleague from New Mexico, Mr. Richardson, pointed out, the major differences here lie in class III gaming. I also believe that it is entirely possible that we could work together toward some compromise on this issue.

I know that one of the trademarks of the chairman's legislative activity, his record, is his ability to find some reasonable compromise, which usually is unsatisfactory to both parties, and therefore a good piece of legislation.

I certainly am willing to enter into discussions on the class III gaming issue, and I know the chairman is as well. But I don't believe that it is either fair and possibly unconstitutional for us to pass legislation which basically deprives the tribes of their ability to exercise tribal sovereignty, which has been put in place through solemn treaties between this Government and tribes since the very inception of this Nation.

Let me point out about criminal activity as well, Mr. Chairman. Criminal activity is a major concern I think all of us have. I would like to point out that the legislation that you and I have introduced indeed addresses it, that is why a commission would be set up in order to enforce existing regulations, as well as very stringent rules as to how tribes would be licensed in order to begin gaming activities.

It has been suggested somehow that I or other supporters of my legislation are neither in favor of regulation or enforcement. Indeed, the opposite is true. I think that that was brought out very clearly in the hearings that we have previously held.

There are some Members of Congress, including myself, who have stated that they would rather see tribes involved in other revenue raising activities. We would love to see them not have to turn to gaming activities. We would rather see enterprises that don't involve gambling or gaming in order to achieve the tribal economic health.

The fact is that this has been an area that tribes have been able to pursue in order to provide jobs, economic growth and funding for programs which this Congress and this administration has cut consistently over the last 6 years.

And if we deprive them of this ability to have their gaming operations on Indian reservations, we will eventually place a greater burden on ourselves and the taxpayers of America, because we would be depriving them of a significant means of tribal income.

Let me finally say, in all due respect to some of my colleagues, that occasionally the rhetoric on this issue smacks a bit of paternalism. Our relationship with Indian tribes should be a partnership and not paternalism. We don't always know exactly what is best for Indian tribes. Quite often, they know what is best for Indian tribes, and I would hope that the witnesses who will follow me,

who represent the Indian tribes, their testimony will be paid close attention to by the members of this committee.

Finally, Mr. Chairman, I would hope that we could join together in a reasonable compromise and shape a piece of legislation, because it is long overdue. There have been examples even in our own State of a tribe who has had five different management corporations of their bingo operation, and the tribe has not received a dime.

There is a case in California that had very serious implications to it of penetration of undesirable elements into their gaming activities, and I would suggest, Mr. Chairman, the time is during this legislative session where we could get a piece of legislation which will satisfy the concerns of all the members of this committee, and I thank you for, again, allowing me to appear before this very important group today.

Thank you, Mr. Chairman.

[Prepared statement of Mr. McCain follows:]

STATEMENT

OF

SENATOR JOHN McCAIN

BEFORE THE

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

ON

H.R. 2507 & H.R. 964

EARLIER THIS MONTH I INTRODUCED S. 1303, A BILL TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ON INDIAN RESERVATIONS AND LANDS. THIS BILL IS IDENTICAL TO H.R.2507, ONE OF TWO BILLS UNDER CONSIDERATION THIS MORNING.

THE DIRECTION CONGRESS DECIDES TO TAKE ON THIS ISSUE HAS A DIRECT BEARING ON TRIBAL SOVEREIGNTY. THOSE WHO SAY TRIBAL SOVEREIGNTY IS NOT AN ISSUE, FAIL TO UNDERSTAND THE HISTORIC RELATIONSHIP THIS COUNTRY HAS HAD WITH INDIAN TRIBES. THE U.S. CONSTITUTION DIRECTS THAT DEALINGS WITH INDIAN TRIBES IS A RESPONSIBILITY OF THE CONGRESS--NOT THE STATES. IMPOSING STATE JURISDICTION ON TRIBES VIOLATES THAT RESPONSIBILITY AND CUTS ACROSS THE GRAIN OF PAST CONGRESSIONAL POLICIES ENCOURAGING SELF-DETERMINATION AND SELF-GOVERNMENT. THE CONGRESS MUST TAKE A CONSISTENT APPROACH IN ITS RELATIONS WITH INDIAN TRIBES. WE MUST NOT <u>NOW</u> GO BACK AND PLACE RESTRICTIONS ON SELF-DETERMINATION AND SELF-GOVERNMENT. FROM TIME IMMEMORIAL, TRIBES HAVE BEEN AND WILL CONTINUE TO BE PERMANENT GOVERNMENTAL BODIES EXERCISING THOSE BASIC POWERS OF GOVERNMENT, AS DO FEDERAL AND STATE GOVERNMENTS, TO FULFILL THE NEEDS OF THEIR MEMBERS. I CANNOT SUPPORT ANY

LEGISLATION WHICH WILL IMPOSE STATE JURISDICTION OVER THE ACTIVITIES OF TRIBAL GOVERNMENTS.

A REVIEW OF H.R. 2507 AND H.R. 964 WILL FIND AGREEMENT ON CLASS I GAMES AND VIRTUAL AGREEMENT ON CLASS II GAMING ACTIVITIES. WHILE THE BILLS DIFFER AS TO THE STANDARDS AND REGULATIONS PLACED ON CLASS II GAMES, I BELIEVE THESE DIFFERENCES CAN AND WILL BE WORKED OUT. THE SAME HOLDS TRUE FOR S. 1303 AND S. 555. THE FUNDAMENTAL DIFFERENCE IS OVER CLASS III GAMING ACTIVITES.

H.R. 964 WOULD PROHIBIT CLASS III ACTIVITIES UNLESS A TRIBE AGREED TO TRANSFER ALL CIVIL AND CRIMINAL JURISDICTION TO THE STATE FOR REGULATION. H.R. 2507 PERMITS A TRIBE TO OPERATE A CLASS III GAME WHERE THE STATE PERMITS THAT PARTICULAR GAMING ACTIVITY AND IT IS NOT PROHIBITED IN INDIAN COUNTRY BY FEDERAL LAW. IT IS ALSO IMPORTANT TO NOTE THAT IF A TRIBE DOES CHOOSE TO ENGAGE IN CLASS III GAMES, H.R.2507 DICTATES THAT THESE ACTIVITES WOULD HAVE TO ABIDE BY THE IDENTICAL REGULATORY SCHEME PROVIDED FOR THAT SAME ACTIVITY IN THAT STATE, EXCLUDING ANY TAX, ASSESSMENT, FEE, OR OTHER FINANCIAL BURDEN. IN ADDITION, H.R. 2507 WOULD REQUIRE, AS DOES H.R. 964, THAT NET REVENUES COULD ONLY BE USED FOR : TRIBAL GOVERNMENTAL OPERATIONS, THE GENERAL WELFARE OF THE TRIBE AND ITS MEMBERS, OR TO PROMOTE ECONOMIC DEVELOPMENT.

THE REGULATIONS CONTAINED IN H.R. 2507 ARE IN PLACE TO ADDRESS A VERY LEGITIMATE CONCERN: THE POTENTIAL FOR INCREASED CRIMINAL ACTIVITY. THIS IS A CONCERN OF STATES AND TRIBES. AS MANY OF US ARE AWARE, TRIBES HAVE UTILIZED THEIR GAMING PROFITS

TO SUPPORT THEIR TRIBAL GOVERNMENTS AS WELL AS THE HEALTH, EDUCATION, SOCIAL AND ECONOMIC NEEDS OF THEIR MEMBERS. NO ONE NEEDS TO EXPLAIN TO TRIBES THE IMPORTANCE OF PROTECTING THESE REVENUES FROM CRIMINAL ELEMENTS. NO ONE NEEDS TO EXPLAIN TO TRIBES THE CRITICAL ROLE THESE REVENUES HAVE PLAYED IN LIGHT OF THE REDUCTIONS IN FEDERAL APPROPRIATIONS TO INDIAN PROGRAMS.

ONE ARGUMENT THE GAMING INDUSTRY WOULD HAVE YOU BELIEVE IS THAT INDIAN TRIBES ARE AT AN ADVANTAGE BECAUSE THEY ARE NOT REQUIRED TO PAY STATE TAXES. LET ME POINT OUT THAT UNDER BOTH BILLS, TRIBES WOULD HAVE TO PAY FEDERAL TAXES AS WELL AS ANY TRIBAL TAX, AND, AS I POINTED OUT, ALL REMAINING GAMING REVENUES ARE RESTRICTED FOR PURPOSES DEFINED UNDER THE BILLS. THIS SUGGESTS TO ME THAT THE GAMING INDUSTRY HAS THE ADVANTAGE. AFTER THE GAMING INDUSTRY PAYS OFF ALL STATE AND FEDERAL TAXES, THEY ARE FREE TO SPEND THE[illegible] REVENUES IN ANY MANNER THEY CHOOSE. MAYBE WE OUGHT TO TAKE THAT INDUSTRY ADVANTAGE AWAY AND RESTRICT THE USES OF THEIR REVENUES?

IT HAS ALSO BEEN SUGGESTED BY SOME STATES AND THE NON-INDIAN GAMING INDUSTRY THAT IF CLASS III GAMES ARE ALLOWED, TRIBES WOULD RUSH INTO SETTING UP CLASS III GAMES AND WOULD BE INFILTRATED BY ORGANIZED CRIME. THERE IS NO EVIDENCE THAT I AM AWARE OF TO SUPPORT THESE STATEMENTS. INDIAN GAMING HAS ENTERED ITS SECOND DECADE WITH NO EVIDENCE OF ORGANIZED CRIME. DURING THIS SAME PERIOD OF TIME, ONLY A FEW TRIBES HAVE EVEN EXPRESSED AN INTEREST IN CLASS III GAMING. NO TRIBES CURRENTLY OPERATE CLASS III GAMES. I BELIEVE THAT THOSE TRIBES NOW INVOLVED IN CLASS II GAMES WILL CHOOSE TO CONTINUE OPERATING CLASS II GAMES. YES, THERE WILL BE

TRIBES WHO WILL CONSIDER OPERATING CLASS III GAMES, BUT THESE TRIBES WILL HAVE TO MAKE SOME HARD DECISIONS: WILL THEY BE ABLE TO COMPETE WITH ESTABLISHED NON-INDIAN GAMES? WILL THEY BE ABLE TO RECAPTURE THEIR INVESTMENT? WILL THEY BE ABLE TO FIND A MANAGEMENT CONTRACTOR WILLING TO MAKE AN INVESTMENT FOR A CLASS III OPERATION? A MANAGEMENT CONTRACTOR WHO MUST FIRST PASS REVIEW BY THE NATIONAL INDIAN GAMING COMMISSION AND THEN BE REQUIRED TO OPERATE CLASS III GAMES UNDER THE IDENTICAL STATE REGULATORY SCHEME FOR THAT GAMING ACTIVITY.

ONE IMPORTANT ASPECT OF THIS DEBATE WHICH HAS RECEIVED VIRTUALLY NO ATTENTION IS THE NON-INDIAN GAMING INDUSTRY'S FEAR OF A NEW SOURCE OF ECONOMIC COMPETITION. TRIBES ARGUE, CORRECTLY IN MY OPINION, THAT PLACING THEM UNDER STATE JURISDICTION WILL ASSURE THAT THEY WILL BE UNABLE TO COMPETE. THIS MAY WELL BE THE REAL REASON THAT THE NON-INDIAN GAMING INDUSTRY IS PUSHING SO HARD FOR STATE JURISDICTION OVER CLASS III GAMES. FEAR OF INCREASED CRIMINAL ACTIVITY IS ONE THING; FEAR OF ECONOMIC COMPETITION IS ANOTHER.

FINALLY, SOME MEMBERS OF CONGRESS, INCLUDING MYSELF, HAVE STATED THAT THEY WOULD RATHER SEE TRIBES INVOLVED IN OTHER REVENUE RAISING ACTIVITIES. WE MUST ASK OURSELVES, HOWEVER, IF WE HAVE PROVIDED TRIBES WITH SUFFICIENT OPPORTUNITIES TO GENERATE REVENUE AND THEREBY ALLOW TRIBES TO INCREASE THEIR ECONOMIC SELF-SUFFICIENCY? MY ANSWER IS NO, WE HAVE NOT DONE ENOUGH. ONCE THE GAMING DEBATE IS OVER, I CHALLENGE THOSE INVOLVED IN THIS DEBATE TO DEVOTE OUR ENERGIES TOWARD INCREASING LONG-TERM ECONOMIC DEVELOPMENT OPPORTUNITIES FOR INDIAN TRIBES.

The CHAIRMAN. Thank you, Senator McCain.

Congressman Bilbray of Nevada.

Mr. BILBRAY. Yes, thank you, Mr. Chairman, for the opportunity to submit testimony regarding gaming on Indian lands.

We in Nevada have had over 55 years of legal gaming and wagering experience. We have, in fact, enjoyed many of the benefits, as well as the unpleasant side effects of legalized casino gaming.

Prior to serving in Congress, I served in both the legislative branch and the judicial branch in the Nevada government, and a member of the judiciary committee of our legislature, which handled almost all of the legislation involving gaming.

It is from this perspective that I wish to discuss various legislative measures concerning gaming on Indian lands. Indian tribes increasingly are seeking to supplement their limited resources through the exercise of their sovereign rights by inviting the general public to come onto their lands to participate in various forms of legalized wagering.

But because the special nature of legal gambling wagering, governmental regulation of such activity is necessary. The current question before Congress is whether this legal gaming wagering will be regulated by the Indian tribes, by the States where the tribal lands are located, or by the Federal Government, which retains authority over certain aspects of reservation life.

A recent decision of the Supreme Court, Cabazon Band of Mission Indians, reaffirmed that State laws may be applied to tribal Indians on their reservations if Congress expressly provides for just such application.

H.R. 964, introduced by the distinguished majority whip, seeks to balance the legitimate interests of the Indian tribes with the needs to regulate gaming on Indian lands in order to minimize or avoid the effects of the actions of unscrupulous operators.

This measure leaves to Indian control class I traditional tribal games of chance. Class II gaming, such as bingo and certain card games would come under substantial Indian control, possibly in conjunction with the National Indian Gaming Commission.

Supervision and control of class III gaming, which includes horse racing, dog racing, casino gambling including slot machines, j'ai alai, and similar activities, would be a State function under a transfer authority from the Indian tribes once the tribe has decided to offer class III games.

This is most appropriate, given the experience of State III gaming regulators on the oversight and control of this complex class of gaming. Because of the experience of the State of Nevada, I believe State supervision and control of class III gaming is imperative for the following reasons:

Class III are complex and easily corrupted without constant vigilance by trained and experienced regulators. For example I remember a few years ago one particular casino wanted to install a 100-year old roulette table. When they x-rayed it, in accordance with the requirements of the gaming control board, regulators found that this game over the century had been rigged. There was wiring throughout this particular machine, and the State ruled the machine be completely rebuilt so that some unscrupulous operator

could not continue in the activity as such wiring could potentially facilitate.

Those States that now permit such gaming already have in place tested regulatory programs and trained people. As Senator Reid has stated, the State of Nevada spends tens of millions of dollars a year to regulate gaming in our State.

The expertise and experience these States have acquired over the years cannot be readily duplicated by the Indian tribes or by the regulatory contractors to the tribes. Simply, there are just a certain few people that are well trained.

The Federal commission would not have the money, manpower or expertise necessary to regulate class III. Is this committee prepared to fund $100 million, $200 million, for this type of regulation? I don't think it is.

The States have a strong interest in regulating all class III gaming activities within their borders. The vast majority of consumers of such gaming on Indian lands would be non-Indian citizens of the State and tourists to the State.

Similarly, most operators of class III games would be non-Indians with previous experience in such gaming. The States have a constitutional responsibility to protect their citizens from harm, here in the form of fraudulent manipulation by the operators of games and the victimization by criminal elements that may infiltrate the legal games operating on the Indian lands.

A State's citizenry has a right to be treated fairly in commercial activity, whether provided by Indians or non-Indians, and you will hear a lot of testimony—believe me, some people say Nevada is overregulated.

Nevada gaming regulation is so stringent that many honest people can't be licensed. Yet it is better that way than to allow the unscrupulous elements to victimized this industry.

Disparate treatment of the same activities within a State would not only create tremendous strains between the tribes and State law enforcement officials, it would also accord preferential treatment to one group of gaming operators.

A single State entity to regulate all class III gaming within the State is the most efficient allocation of State resources.

The imposition of a State regulatory scheme on the Class III gamings operating on Indian lands would enhance both the appearance and the facts of integrity in the operation of the games.

Mr. Chairman, all of us agree that the tribes need new sources of revenue and to work and to be progressive. But without strict regulation, we may have a major scandal if this happens in the next few years. There may be major problems, one this Congress will regret 5 years from now, 10 years from now, or maybe 50 years from now, but one that we will regret for many years to come.

Again, I thank you.

[Prepared statement of Mr. Bilbray follows:]

PREPARED TESTIMONY OF THE HONORABLE JAMES H. BILBRAY, REPRESENTATIVE OF THE STATE OF NEVADA IN CONGRESS, BEFORE THE HOUSE SELECT COMMITTEE ON INDIAN AFFAIRS

Thursday, June 25, 1987

Mr. Chairman, thank you for this opportunity to submit testimony regarding gaming on Indian lands.

We in Nevada have over 55 years of legal gaming wagering experience, and we have in fact enjoyed many of the benefits as well as unpleasant side effects of legalized casino gaming. Prior to serving in the Congress, I served in both the legislative and judicial branches of Nevada government. It is from this perspective that I wish to discuss various legislative measures concerning gaming on Indian lands.

Indian tribes increasingly are seeking to supplement their limited resources through the exercise of their sovereign rights by inviting the general public to come onto their lands to participate in various forms of legal wagering. But because of the special nature of legal gaming wagering, governmental regulation of such activity is necessary. The current question before Congress is whether

this legal gaming wagering will be regulated by the Indian tribes, by the states where the tribal lands are located, or by the federal government, which retains authority over certain aspects of reservation life. A recent decision of the Supreme Court, Cabazon Band of Mission Indians, reaffirmed that state laws may be applied to tribal Indians on their reservations if Congress expressly provides for such application.

H.R. 964, introduced by the distinguished Majority Whip, seeks to balance the legitimate interest of the Indian tribes with the need to regulate gaming on Indian lands in order to minimize or avoid the effects of the actions of unscrupulous operators. This measure leaves to Indian control Class I traditional tribal games of chance. Class II gaming such as bingo and certain card games would come under substantial Indian control, possibly in conjunction with a national Indian gaming commission. Supervision and control of Class III gaming, which includes horse racing, dog racing, casino gaming including slot machines, jai alai and similar activities, would be a state function under a transfer of authority from the Indian tribe once the tribe had decided to offer Class III games. This is most appropriate given the expertise of state Class III gaming

regulators on the oversight and control of this complex Class of gaming.

Because of the experience of the State of Nevada, I believe state supervision and control of Class III gaming is imperative for the following reasons:

* Class III games are complex and easily corrupted without constant vigilance by trained and experienced regulators.

* Those states that now permit such gaming already have in place tested regulatory programs and trained programs.

* The expertise and experience these states have acquired over the years cannot be readily replicated by the Indian tribes or by regulatory contractors to the tribes.

* A federal commission would not have the money, manpower, or expertise necessary to regulate Class III games.

* The states have a strong interest in regulating all Class III gaming activities within their borders: The vast majority of consumers of such gaming on Indian lands would be non-Indian citizens of the state and tourists to the state. Similarly, most operators of the Class III games would be non-Indians with previous experience in such gaming.

* The states have a constitutional responsibility to protect their citizens from harm, here in the form of fraudulent manipulation by the operators of the games and of victimization by criminal elements that may infiltrate the legal games operated on Indian lands. A state's citizenry has a right to be treated fairly in any commercial activity, whether provided by Indians or non-Indians.

* Disparate treatment of the same activities within a state would not only create tremendous strains between the tribes and state law enforcement officials, it would also accord preferential treatment to one group of gaming operators.

* A single state entity to regulate all Class III gaming within the state is the most efficient allocation of scarce resources.

* The imposition of a state regulatory scheme on the Class III games operated on Indian lands would enhance both the appearance and the fact of integrity in the operation of the games.

Mr. Chairman, for all of these reasons, H.R. 964 deserves the support of this distinguished committee.

The CHAIRMAN. Thank you.

Mr. Lujan has a unanimous consent request.

Mr. LUJAN. Thank you, Mr. Chairman.

I ask unanimous consent that a statement that I have on grandfathering of previous contracts be included in the record.

The CHAIRMAN. Without objection.

[Prepared statement of Mr. Lujan follows:]

STATEMENT BY
THE HONORABLE MANUEL LUJAN, JR.

In recent years, Indian bingo has created substantial economic benefits for Indian tribes all across the country. For those tribes, bingo is an economic success story, and has provided employment, housing, medical and educational facilities.

However, it must be remembered that Indian bingo began in an atmosphere of uncertainty and faced extensive legal challenges all the way up to the Supreme Court. These risks were shared by private companies who were willing to manage the bingo facilities on behalf of the Indian tribes and to invest substantial economic resources in a risky, untried business. Several of these management companies entered into contracts with Indian tribes that were duly approved by the Secretary of the Interior pursuant to 25 U.S.C. Sec. 81.

Congress must give serious consideration to protecting the sanctity of these approved contracts by means of a grandfather clause. This protection would be in accordance with the Federal Indian policy of promoting tribal economic development, tribal self-sufficiency, and strong tribal government. Since these contracts were the result of extensive negotiations between the management companies and the Indian tribes, a grandfather clause upholds the right of Indian tribes to enter into contracts subject to approval by the Secretary of the Interior. This also sends a strong signal to companies willing to invest in tribal enterprises. If these approved contracts are not protected, the effect would be to punish management companies for doing business with Indian tribes in accordance with the laws and regulations established by Congress itself. In the future, few investors would be willing to enter into contracts approved by the Indian Gaming Commission if there is any questions that these contracts may later be impaired or set aside by further acts of Congress.

There is currently a review of management contracts approved by the Secretary of the Interior and I believe that these contracts will prove to be reasonable and do not place an undue burden upon Indian tribes. Many Indian tribes wish to continue their management contracts, and fully support their management companies. Therefore, these contracts should be protected by means of a grandfather clause.

The CHAIRMAN. Let me ask each you to philosophize on something that is at the heart of the debate we are having on this issue. I was kind of surprised at the testimony of Harry Reid, whom I greatly respect, but in most fields of endeavor, there is a general feeling in the United States that you are better off under Federal regulation than under State. I don't care whether it is strip mining or meat inspection or the FAA or whatever, you are nearly always better off in the hands of Uncle Sam and his courts and his legal apparatus and the FBI and all the rest. You are usually better off there than in the hands of the local folks.

You come here and tell me that, with this legislation, State regulation is best, that people who are picked by elected officials at the State and local level are better equipped and better fixed somehow to deal with organized crime and very powerful and difficult people.

How come, Harry?

Mr. REID. Mr. Chairman, first of all, I know that not only in this area, but all areas, that people in my State feel that control is better on a local State basis than by the Federal Government.

On this particular issue, directing our attention to this particular issue, I think as you will hear the testimony develop during the day, you will find that the experience that Nevada has had controlling gaming over 50-odd years indicates that it has best been handled on a State basis.

You have a situation, Mr. Chairman, where you must be concerned about the day-to-day affairs of what is going on. That can best be handled on a local basis, not only in the gaming area but in most all areas.

I would also suggest to the chairman and the members of the committee that we are not only concerned—when I say we, those people who will testify during the day—are not only concerned about class III type gambling, casino type gambling, but as, for example, the Whip, Mr. Coelho is very concerned about horse racing, because as an example, I have heard him talk about this and you best hear him talk about it, but I will paraphrase what he said, that horse racing in the various States is set up so that there are experts not only to take care to make sure that the horses, and the races are run properly, but so that the animals are treated well.

There is a large bureaucracy, for lack of a better word, set up in these horse racing States, and dog racing States, to make sure the animals are treated properly. And I would just end by saying, Mr. Chairman, that I am not an expert on Arizona like you and Senator McCain, but from the little bit that I know about Arizona, they, in many instances, also feel that the Federal Government doesn't do as well at controlling a particular aspect of government as does the local governments.

The CHAIRMAN. The one thing that we are going to have to decide and get some compromise on if we are ever going to get a bill, is who appoints the regulators. On one hand, we have our bill, which says we are going to have a five-man commission appointed, one by the President of the United States, one by the Secretary of the Interior, and then three by the Secretary of the Interior on the recommendation of the Indian tribe.

Mr. REID. Yes, but Mr. Chairman——

The CHAIRMAN. Let me finish.

Mr. REID. I am sorry.

The CHAIRMAN. Well, I had my thoughts organized reasonably. You have these people backed up by the FBI and the Federal Courts and the Justice Department and all the apparatus that is available, backing up these people. You say that is not as good as a commission appointed by the Governor. Is that your case in Nevada?

You know, if I were going to try to corrupt a gaming enterprise on the Indian reservations or someplace else, I think I would like to get a friend at the Capitol building and some friends in the legislature, maybe a mayor or a county supervisor or two in my hip pocket, but I think it would be much easier to do that than to take on the Federal establishment, which with all its shortcomings, does a pretty good job.

Now, go ahead, and then I will ask Jim Bilbray to get in on it.

Mr. REID. Mr. Chairman, first of all, the governing body, that is important, but who is going to conduct the day-to-day affairs, oversee the day-to-day affairs of a gambling operation, that is important.

And we already recognize that in the Federal system, we have a shortage of prosecutors. People are not being prosecuted simply because they are too busy. We don't have enough Federal Judges. We don't have enough in Nevada, I know we don't have enough in Arizona, we certainly don't have enough FBI agents. FBI agents, it is clear from the oversight hearings that I have been involved in, there is a tremendous shortage of agents to do the things that need to be done right now, notwithstanding the fact that they would——

The CHAIRMAN. There is no argument there. Whoever, State of Federal, has to have adequate personnel, and I am sure it takes a lot of people.

Mr. REID. And in addition to it being totally understaffed, you are going to have people that are certainly not trained, and take only the State of Nevada as an example, and this doesn't include the horse racing and the other things that I passed on. You have people who are experts in auditing, people who are experts in the surveillance aspect of the gaming operation, and investigative arm.

The CHAIRMAN. No one advocates widespread Indian gambling. My guess is if we passed our bill or yours, that we will have a couple of dozen reservations with a take in dollars that may be 1 percent of what you do in Nevada every week at these huge casinos with all their operations. The Indians with their bingo in a few isolated places in some of the States, can't really touch that.

Mr. REID. Mr. Chairman, I respectfully disagree. I am convinced that no matter how well meaning you are, and everyone knows that you have a lifetime of doing good works, that you and many people who are proponents of this legislation understand the impact of organized crime in gambling, and I again respectfully submit that you would have more than 12 gaming operations; that it wouldn't be long until you would have widespread gaming all over this country, because the commodity is cash, and anytime the commodity is cash, organized crime, which does exist, is going to get involved in it.

Well, these are complicated matters, and you are certainly one of the main people in the country, you probably know more about it than anyone in the country, and that is why I wanted your frank reaction to some of the questions I have asked.

The CHAIRMAN. John McCain and then Mr. Bilbray.

Mr. MCCAIN. Thank you, Mr. Chairman. I will try to summarize my feelings, and that is that my reading of history of criminal involvement in gaming, whether it was in New Jersey or Nevada, when things got real though, they had to call in the Feds. They had to plant a bug in the basement of a gangster in Kansas City to apprehend perhaps one of the worst offenders in the corrupting of gambling in the history of the State of Nevada; there have been Federal Strike Forces that have been involved in Federal prosecution of the criminal elements that were—not State prosecution, although I am sure that was as well—but the Federal enforcement agencies have played a major role, because widespread gambling, which is described by my colleagues on my right and left, have been interstate operations, they haven't been confined to Nevada, they haven't been confined to Atlantic City, the connections of that gambling spread across this country.

I would also like to point out that when we talk about gaming spreading all over this country, let's not forget that no tribe will be allowed to have gaming operations which exceed that which is already allowed in the State.

So, let's not paint the picture, let's not say that casinos are going to spring up all over this Nation; they are not. No gaming will be allowed which exceeds the gaming which is allowed for non-Indians in that State.

I would also like to—when we bring up issues like smoke shops, I don't know why the State legislature in Nevada wasted time. It is very clear that smoke shops are allowed under the Constitution, they are not subject to State taxes, and I don't think the Indians had to threaten you with making people tribal members. All they had to do was read to you the Constitution of the United States.

But I think it is very important that we understand that indeed, there can be some State involvement in this issue, but to exclude the Federal Government from the overall regulation of this activity, I think would be doing a great disservice to the effort that we all make.

Let me also point out again, Mr. Chairman, if I might, that gaming operations have existed on Indian reservations, they have existed for several years. And the incidence of the penetration of organized crime, although there is always the potential, and that is why we are seeking this legislation, so far has not taken place.

The CHAIRMAN. Jim Bilbray, what are your thoughts on this?

Mr. BILBRAY. Yes, Mr. Chairman, first of all, I guess I haven't been here long enough to believe that the Federal Government can do it better than the States. I am still, I guess, a States' righter in the sense that I think States are closer to that particular item and can do it better.

I know for instance in our State, Nevada Gaming Control Board agents go to different casinos. They pick up samples of dice. They pick up samples of cards being used. It takes constant vigilance to protect the consumer as well as the casinos from unscrupulous ac-

tivities. It takes hundreds and hundreds of agents to regulate gaming in Nevada. I wonder how many Federal agents will have to be hired to control Federal gaming throughout the United States.

Are we willing to spend thousands upon thousands of dollars for FBI agents that are going to be sent to Nevada for no other purpose but to go to casino after casino and check them as we in Nevada do our casinos? Are we going to do that in every place in the country? Are we going to do it in North Dakota, where you have blackjack? Are we going to do it in California, where you have poker parlors throughout the State?

In these times of budgetary constraints, the money is not there unless we are going to charge the tribes tremendous amounts of money for this.

The CHAIRMAN. Let me interrupt you on one point. Mr. McCain pointed out that one of the basic things in our bill, as long as we have been involved in this, is that Indians are not going to get any better treatment than anybody else, but they are going to get as good treatment as anybody else, and if you have j'ai alai and poker parlors and whatnot in California, you can have j'ai alai and poker parlors in a Navajo reservation or wherever else.

Mr. BILBRAY. Mr. Chairman, if an Indian reservation wants to build a casino, they file their applications and they will get them just as well as a non-Indian area would get.

The CHAIRMAN. I understand that, but the States, with the exception of Nevada and New Jersey, have not gone to casino gambling. Bingo is about as far as most States go. We are saying if you go further than this and have all these class III types of gaming for non-Indians then the Indian tribes who see the States going into lotteries and having all kinds of revenues from gambling are not going to be very happy. They, frankly don't think the States are the guardians looking out for them very much.

Mr. BILBRAY. I think our tribes in the State of Nevada have never felt that they have been second-class citizens in the State of Nevada. They certainly are not, and they are not treated that way, and we have worked with them very well. I have been a real proponent of Indian sovereignty. We do not object to gaming on Indian lands—none of us here do. All we object to is the lack of State control of activities within its borders under H. R. 2507.

We think that within the State we can work with Nevada and the Indians in gaming. But we don't think the Federal Government should come in and regulate our internal affairs. We think that States' rights should prevail. Each State should be able to govern its own destiny. And I think the majority of the members here probably feel the same way.

The CHAIRMAN. We are going to have to move on.

Mr. Marlenee?

Mr. MARLENEE. Thank you, Mr. Chairman, and I will be very brief. I think the array of opinions expressed by the witnesses we have, and by the esteemed chairman, who has been very sensitive to Indian affair matters, only emphasizes the fact that the passage of yet another piece of legislation is wrong without first addressing the basic underlying problems that we have at the Bureau of Indian Affairs with tribal sovereignty, with tribal taxation of non-Indians, and those issues surrounding the reservations.

McCain, on the one hand, says the direction of Congress decides to take on this issue has a direct bearing on tribal sovereignty. Those who say that tribal sovereignty is not an issue fail to understand the historical relationships this country had with Indian tribes.

And on the other hand, we have our esteemed Senator, our former colleague, Harry Reid, who advocates—and Jim Bilbray—who advocates the State ruling of it, and yet, on the other hand, we have the Bureau of Indian Affairs, which is incapable, incapable of policing, enforcing the laws and the regulations we now have.

Let me quote to you out of the newspaper a couple of articles. This one is from Montana:

> Before the teepees at Crowfair were pulled down, where there was horse racing last August, checks issued on tribal accounts begin bouncing from Crow Agency to Oklahoma. When the magnitude of the shortfall became obvious, the FBI was called to investigate. Agent's report was turned over the U.S. Attorney. The U.S. Attorney determined it could not be prosecuted.

How do you have the BIA, the FBI for that matter, the U.S. Attorney, sit there and say, "we can't prosecute", when $15,000 to one payee, and that check bounced. Now, how do you have law enforcement in those cases?

Here is a very recent one from Florida:

> Seminole bingo draws criticism as giant new hall opens today. Doris Fry has some advice for dozens of ordinary folks who will reap riches totaling $1 million at today's grand opening of the world's biggest bingo hall, 62 miles west of Fort Lauderdale. Demand cash on the spot. Fry won $125,000, a jackpot, last September 5 at the Red Rock, Oklahoma bingo game, has managed to collect $35,000 so far.

The CHAIRMAN. Let me interrupt just a minute. I am told that Senator McCain has another engagement he has to get to. Any objection to turning him loose?

Mr. MCCAIN. Not from us.

Let me just say, I don't know of any State lottery that takes checks. They are demanding cash at the Indian gaming operations, I think that is eminently understandable. State lotteries have had a lot of problems, and again, in due respect to the honest difference of opinion we have here on this issue, Mr. Chairman, my distinguished and very experienced colleague said, we don't want the Federal Government interfering in our State affairs.

Well, I suggest that gets back to this constitutional issue you are talking about. The States do not regulate Indians. There are solemn treaties that say that the States do not do that.

Mr. MARLENEE. Well, then, my dear colleague from Arizona——

Mr. MCCAIN. They have this relationship between them, and I would suggest that we are going to have a situation where the States now control the affairs of the Indian tribes, that will be a dramatic demarcation.

Mr. MARLENEE. Then if we have the degree of tribal sovereignty that you are advocating, that means that they can open up any type of gaming parlor within the State or within that sovereign State within a Nation—it certainly does, because you are advocating total sovereignty and jurisdiction by the tribes within the boundaries of those reservations, and we by passing legislation without——

Mr. MCCAIN. Thank you for interrupting my remarks, but that is not how I said it. Thank you. That is not what I was saying, nor do I believe the intent of this legislation nor do I believe that we have introduced such legislation.

The CHAIRMAN. Thank you for being with us——

Mr. MARLENEE. If I may continue——

Mr. MCCAIN. I have to go.

The CHAIRMAN. Mr. Marlenee, you have got another minute left on your 5 minutes.

Mr. MARLENEE. What I am saying here is that when we continue to pass patchwork legislation without addressing the underlying problems, we are opening the floodgates to abuse, the floodgates to problems for the tribes themselves. And I would say that that has to be addressed before we ever pass any kind of gaming legislation out of this committee.

And I would only submit for the record another article yet, that fires and shooting destroy much of Red Lake Indian Reservation, a little town up there, where the BIA again did not have the control, the law enforcement of the tribes did not have the control. How do we expect to grant authority to these people when much smaller incidences of crime are occurring leaving the people, the Indian people themselves in fear of their very lives?

[EDITOR'S NOTE.—Mr. Marlenee subsequently supplied the following newspaper articles.]

No one knows where Crow Fair money went

JUN 14 1981

BILLINGS GAZETTE

By LORNA THACKERAY
Of The Gazette Staff

Before the tepees at Crow Fair were pulled down last August, checks issued on tribal accounts began bouncing from Crow Agency to Oklahoma.

Rodeo and horse race winners went home with rubber checks for hundreds of dollars. A sanitation contractor paid thousands of dollars in bills, believing a $30,000 check issued by the Fair Board would be good. A Billings beverage supplier didn't even receive a check for $1,600 worth of pop sold at the fair.

Thousands of dollars were wasted or tossed up raising. The fair board spent $27,000 on a concert that never came off. About 2,000 $5 raffle tickets couldn't be found.

When the few receipts and records kept by fair officials were examined by the FBI, the bad checks totalled about $50,000. Another $40,000 is unaccounted for.

Crow Fair, an event looked forward to all year by the Crow people and thousands of Indian and non-Indian guests, had turned into a financial disaster of major proportions. More money is missing than the tribe actually budgeted for the fair in the first place.

When the magnitude of the shortfall became obvious, the FBI was called in to investigate. The agents' report was eventually turned over to Assistant U.S. Attorney Robert Zimmerman to determine if anyone should be prosecuted.

Zimmerman has now decided he won't file charges.

"The money in question was tribal money and given to a tribal member to organize and pay expenses for Crow Fair," Zimmerman told the Gazette. "It appears few, if any, restrictions or guidelines were given to the individuals to whom the money was given in terms of how to spend the money or account for any expenditures made. Under the circumstances, I believe that it is a matter for the tribe."

That was not welcome news for Thurman Hornbuckle, who provided the sanitation services on the sprawling fairgrounds southeast of Crow Agency. He has a rubber check for $15,000 and several protest, but unpaid subcontractors to show for his efforts.

Hornbuckle, who had provided sanitation services for Crow Fair in 1979 as well as 1980, said he had received his check in advance. The check, however was post-dated.

He took it to the Hardin bank where the tribal fair accounts were kept and asked if the check were good. A bank official told him it was covered and gave him check blanks to pay his subcontractors.

On the last day of the fair, he was told there was not enough money in the account to cover his checks.

He is still waiting to be paid. So are his subcontractors. Hornbuckle said he was approached about providing sanitation services for the 1981 Crow Fair.

Gazette photo by Larry Mayer

The 1980 Crow Fair was a financial disaster — an unexplained disaster.

"If anyone falls for that, they're welcome to it," was his reply.

Ken Wheeler of Wy-Most Beverages, Inc. of Billings never got any payment for $1,600 worth of pop the Crows charged during the fair. Despite repeated visits to tribal and fair board officials, he hasn't collected a cent.

"You see one and he says 'I don't have the money, but I'm going to take care of it,'" Wheeler said.

(More on Fair, Page 8A)

BILLINGS GAZETTE

JUN 14 1981

Fair

(FROM PAGE 1)

He said he had been dealing with the Crows for 10 years prior to the 1980 fair and "never lost a penny before."

Now he says he won't supply anymore pop until the bill is paid and all business transactions must be handled in cash.

How did it happen?

Tribal politics and greed, according to Carson Walks Over Ice, general manager of the 1980 fair.

Mismanagement, according to Randy Real Bird, 1980 Crow Fair Rodeo director.

Walks Over Ice and Real Bird were in charge of thousands of dollars it took to run the five-day extravaganza. Walks Over Ice, however, didn't sign any of the checks. Real Bird estimates his name is on about $30,000 worth.

It all started when the tribe failed to allocate enough money to run the fair, Walks Over Ice said. His budget was for $80,000. (That figure, however, did not include expected income from entry fees, raffles, pari-mutuel horse racing, concessions and gate fees which added tens of thousands more.)

Then when fair officials discovered they were several thousand dollars short of meeting the bills, the tribal administration refused to help them out, Walks Over Ice said.

"I was on the wrong side," he said. "Everything down there is politics. Even if I had made money there would have been charges that I pocketed money."

Next to the size of his budget, country-western star Merle Haggard was his biggest problem, Walks Over Ice said. He said Haggard was given $10,000 in advance money for a concert on opening night, but the concert didn't come off and Haggard got to keep the money.

There were several different versions of why Haggard never did the concert, including one that he had never confirmed the booking, and another that he didn't show because the Crows couldn't line up an indoor arena. The FBI and Walks Over Ice said the $10,000 was a non-refundable deposit.

Walks Over Ice said another $8,000 in non-refundable deposit was given to a landowner near Red Lodge for a concert site. Promoting the concert cost $2,500, he said.

In addition, $10,000 was paid to another musical group that also did not perform, Walks Over Ice said.

The money problems were compounded by the fact that there was so much of it floating around. "Everybody dealt in cash," Walks Over Ice said. "We tried to set up an accounting system, but there were too many people involved and it just didn't work. There were a hell of a lot of hands in the till and nobody knows where the money went."

On top of these money problems there were lots of unexpected bills that kept adding up. Someone had told the tribe's only good racing gate to the Northern Cheyenne. The tribe had to spend several thousand to repair an old one. No one was ever prosecuted for the theft of the gate.

Then stalls had to be rented for the horses because the existing stalls were in such poor shape, Walks Over Ice continued. New wiring was needed in the arbor area.

"It was just one thing after another."

Raffle tickets on a new pickup were given to several people to sell, Walks Over Ice said, and he didn't get all the tickets back. Investigators believe 2,000 are missing.

Gate receipts from the rodeo weren't accounted for. Sources said the rodeo takes in about $3,000 a day.

Normal expenses piled up as well. Dance prizes totalled nearly $10,000, Walks Over Ice said, and another $10,000 went to the winners in the daily parades. All these people were paid in cash.

About the only ones who were not paid in cash were the rodeo and horse race winners. They got checks.

Real Bird said his budget for the rodeos was in excess of $40,000. He received about $8,000 to start with and it turned out to be all he got.

He said he asked fair officials if there was enough money to write the checks and was told he had plenty. The day after the fair ended, he found out differently.

Real Bird said the money for the rodeo had already been spent on the pow wows and parades "without my knowledge." In addition, he said, part of the money was invested in the ill-fated concert.

He said he simply did not know his account was bare since he had been told he had the money.

His biggest lament is the damage to his credibility and rodeo career. Real Bird, a team roper, said he has been blacklisted from several Indian rodeo associations. During the summer months, he normally takes in two rodeos a weekend. He hasn't been out yet this year.

Will the bills be paid?

Walks Over Ice said he offered to pay a few of the bills but was advised by his attorney that if he paid even one he could be liable for all of them.

Ted Hogan, tribal secretary, said the tribal council will probably investigate and deal with the problem at its July meeting.

"We are going to deal with this as soon as we can," Hogan said. "We are going to find out what happened. If we feel the people are innocent we will do the right thing. If they did wrong, they will have to answer for it."

He said the tribe will probably make the checks good if the investigation proves it was an honest mistake.

To prevent future financial disasters, a certified public accountant will be hired to keep track of the money at this years fair, scheduled as usual for the third week in August.

For those who want to start the ball rolling on the bad checks, the Crow Tribal Court is the place to begin.

Tribal Judge Tommy Roundface said the tribal court has jurisdiction and will handle checks issued to non-Indians as well as Indians. No one, as yet, has filed anything with the court, he added.

Fires, shootings destroy much of Red Lake

By George White
Staff Writer

Red Lake, Minn.

A "wild night of shooting and burning" virtually reduced the small community of Red Lake to rubble Sunday as an angry mob burned the only two stores in the town plus three government buildings, a laundromat, about 45 vehicles and three private homes including the home of Tribal Chairman Roger Jourdain.

Two young boys were killed — perhaps accidentally — and two other people were injured as law and order broke down completely on the Red Lake Reservation in northern Minnesota.

The chaos began early Saturday as a political protest against Jourdain. By late Sunday night, the dissidents had won a major concession.

The Bureau of Indian Affairs (B A) agreed to remove its superintendent at Red Lake and replace him with a BIA employee who has supported the dissidents' claim that Jourdain has exceeded his authority in runnin, the reservation. Jourdain has run the reservation for 21 years.

The superintendent, Celestine Maus, has long backed Jourdain's actions. He will be replaced immediately, officials said.

Saturday's protest began with nine dissidents taking over the jail but soon escalated as they were joined by 50 to 75 others. The dissidents handed out guns and, later, beer and liquor that had previously been confiscated by police and stored in the jail.

They used four fire trucks for target practice. The engine blocks were smashed, the tires sliced and the upholstery ripped out. After the fire rigs were ruined, several blazes were set and burned out of control.

Jourdain's new $40,000 house was reduced to a chimney and a 50-foot shortwave radio antenna that hung limply toward the ground. His 1979 Cadillac sat in front of the house. It was gutted. His Chevrolet Blazer was smashed and inoperable.

A grocery and nearby home owned by a white family burned to the ground. An adjoining grocery-gas station owned by one of the political dissidents burned, too. It was apparently set

Red Lake contin[illegible] on page 4A

Staff Photos by Mike Zerby

Don Cook, left, was the owner of a grocery store, above right, which was burned down at Red Lake Reservation. With him was his son Don Jr., 9. (More pictures, page 2B.)

Fans warned as bingo hall opens today

BINGO/*from 1A*

said they accepted take-it-or-leave-it partial settlements from the Seminoles' attorney. The Otoe-Missouria, the Oklahoma tribe that owned the bingo hall the Seminoles ran, say the Seminoles still owe them $280,000.

"Sour grapes," declared Blad, a blue-eyed, dimple-cheeked promoter whose showmanship and hard-sell marketing methods in Oklahoma won him the job as general manager and master of ceremonies for Big Cypress Bingo.

The rotund, rapid-fire Blad became a celebrity and the Seminoles heroes among the nation's big-time bingo enthusiasts during their stint in Red Rock, which ended last September. Thousands won cars, cash, furs, jewelry and cruises worth, in Blad's estimation, $25 million to $30 million.

Many players, such as Marilyn Bird of Fort Worth, Texas, won big in Oklahoma and will come today to the Seminole's rural Big Cypress reservation confident of a good time and, for the lucky, big jackpots from Blad.

"If there was something bad, wrong, these people wouldn't be coming, especially this far. I know I wouldn't come," said Bird, who said she traveled to Oklahoma to play bingo with Blad 71 times, and last year alone won $15,000 plus a pickup truck.

"Everybody's gotten their money," said Bird, who arrived Friday at the home of a friend's son in Tamarac for today's 10-hour bingo session. "I didn't hear any rumors otherwise, and I probably would have because I know everybody, just about."

Blad says the Otoes are miffed because the Seminoles pulled out — and took him and his following of bingo aficionados with them.

"They sure loved us when we were there," Blad said.

The Otoe-Missourias began managing their own games after Seminole Chairman James Billie decided last fall to terminate all dealings with the Otoes. Billie has admitted that the Seminoles lost $1 million during the year they ran the Red Rock games. The Otoes refused to reduce the $100,000 monthly fee the Seminoles paid the Otoes out of the winnings, and the only way to cut their losses was to pull out, Billie said.

The enmity lingers: Each tribe claims the other stiffed it. The Otoes complain they've suffered the ire of vendors left with overdue balances from the Seminoles. The tribes criticize each other for not honoring free passes awarded in Oklahoma during Blad's tenure, and the Seminoles say the Otoes are spreading malicious rumors in an attempt to sabotage today's grand opening.

"It's an emotional thing," Blad said.

The Otoes say the Seminoles owe them $120,000 in unpaid monthly fees and $160,000 on a promissory note the Seminoles signed in 1985 as a consideration for winning the bingo management contract.

Seminole accountant Carol Emery said the Otoes owe the Seminoles about $2,000, which she said is the difference between the unpaid fees and the value of equipment the Seminoles owned but left behind.

Who will settle the spat? Probably not the courts, because sovereign immunity would prevent the tribes from successfully suing one another. Certainly not the federal government, because the U.S. Bureau of Indian Affairs never approved their management contract, as required by the secretary of the interior, said Bob Walker, public affairs officer for the bureau.

Nor will any angry merchants likely find relief in the courts, because of the immunity issue.

Since they left in September, the Seminoles have paid off $502,426 worth of unpaid bills from the Oklahoma operation, Emery said. The Seminoles' attorney in Oklahoma, Melissa Delacerda, has arranged partial settlements with other vendors totalling $143,926, Emery said. The Seminoles still owe various merchants $15,000 to $20,000, and plan to pay up, Emery said.

Seminole general counsel Jim Shore said he sees nothing illegitimate about negotiating such settlements.

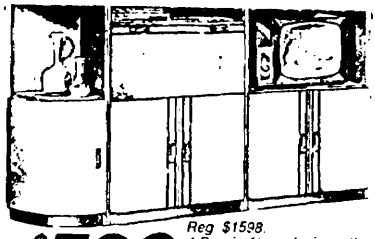
"All these bills were incurred when the operation was doing business as Otoe Bingo and it's no longer in existence," Shore said. "If that's not in business then we're trying to make sure the vendors are taken care of in some form or fashion."

Emery said the Seminoles would gain nothing by reneging on prizes.

"It's my position that the Seminoles are the professionals in the bingo business," Emery said. "Are we going to allow one black mark to ruin our reputation? It would be insane."

300 Seats Left

BY Friday afternoon, about 5,300 tickets had been sold to today's Seminole bingo hall opening, and only 300 seats were available. Any tickets not sold by this morning would be sold at the door, but promoters said they expected few to be left. Tickets cost $99 to $249. To find out whether any tickets are left, Floridians can call: 1-800-872-4561 or collect (305) 565-6773. People from outside the state can call 1-800-247-9761.



$599

Reg. $1598.
4 Pcs. in Almond mica with l
Brass, Rounded Corners & L
ed Interiors. First time a:
price!

WALL UNITS

2 Door Cabinet in Walnut. Reg. $159 ..... Now
One-of-a-kind Wall Units in Walnut. Reg. $399..Now $11.
2 Pcs. in Walnut finish. Reg. $799..... Now $
Bar System in Walnut. Reg. $899..... Now $
3 Pcs. in Rosewood. Reg. $899..... Now $
3 Pcs. in Almond finish. Reg. $899..... Now $
3 Pcs. in Sunshine Oak. Reg. $999 ..... Now $
3 Pcs. in Lacquer finish. Reg. $1498..... Now $
3 Pcs. in Lacquer finish. Reg. $1598 ..... Now $
4 Pcs. with Corners. Reg. $2352..... Now $
3 Pcs in Almond finish Reg. $1649..... Now $
3 Pcs in Grey, Black or Alm. Lacquer Reg. $1099. Now $
2 Pcs. in Almond or Black Lacquer. Reg. $1749.. Now $
4 Pcs in Almond or Black. Reg. $2398..... Now $
3 Pcs. in Almond or Black Reg. $3998..... Now $
4 Pcs in Black or Almond. Reg. $4898..... Now $
Electronic Wall Unit. Reg. $9999..... Now $

DINING TABLES

Rect in Alm or Bl Lacquer. 44x73 Reg $2308. Now $
Oval in Almond or Black Lacquer. 40x72." Extends t.
Reg. $1788..... Now
42" Round in Black only. Ext. to 58" Reg $658... Now
42" Round. Extends to 58". Reg. $558 ..... Now
Black or Almond. 40x72". Reg. $1218..... Now
Black or Almond 36x60". Reg. $1068..... Now
Black or Almond. 42x74". Reg. $1968..... Now
Black or Almond 40x72". Reg. $1148..... Now

DINING CHAIRS

Black or Almond Lacquer. Reg. $158..... Now
Black or Almond Lacquer. Reg. $198 ..... Now
Upholstered Seat & Back, Lacquer. Reg. $228..... Now
Black or Almond Lacquer. Reg. $278..... Now
High back. Almond or Black Lacquer. Reg $298....Now
Black or Almond Lacquer. Reg. $298..... Now
Almond or Black Lacquer & Gold. Reg. $328..... Now
Black or Almond Lacquer. Reg. $388..... Now

BEDROOMS

4 Pcs. Queen Head board, 1 Night stand, Mirror and Dr
Reg. $898..... Now
4 Pcs. Queen Head board, 1 Night stand, Mirror and Dr
Reg. $998..... Now
5 Pcs Twin Head board, 2 Night stands, Mirror and D
Reg. $1098..... Now
5 Pcs. Queen Head board, 2 Night stands, Mirror & D
Reg. $1198 ..... Now
5 Pcs. in Polyester Lacquer. Imported from Italy ....Now

W.O.W. FURNITURE IMPORTS 826 W. Pa
Mon.-Fri.
LEATHER

Staff Photo by Mike Zerby

Stephanie Hanson, left, was the tribal treasurer who questioned the way money was being spent. Her husband, Harry Hanson, led the takeover at the jail Saturday.

Red Lake Continued from page 1A

afire by the uncontrolled flames.

The jail, part of a new $1.2 million Law Enforcement Center, was destroyed Saturday. Two other buildings — one a warehouse for building supplies and the other a metal office building used by the tribe — were heavily damaged.

The home of Francis (Chunky) Brun was burned and a laundromat he owned was gutted. Brun used to be one of Jourdain's most vocal critics, but in recent years he has supported the 56-year-old chairman.

Jourdain was believed to be in the heavily guarded Bureau of Indian Affairs (BIA) building yesterday, but he would not come out to speak to reporters or talk to them on the phone.

By mid-day yesterday, the community of 1,500 was quiet except for an occasional aimless gun shot, and there were no incidences reported elsewhere on the 663,000-acre reservation, which has a total population of about 4,000.

The BIA reportedly brought in about a dozen police from reservations in North Dakota and South Dakota plus sheriff's deputies from Hubbard County. They were guarding the BIA's office building, however, and did not appear to have reasserted police control in the community. Residents said that violence might flare again.

The damage will total "at least $2 million, maybe $3 million," said one former tribal council member.

No one was reported injured in any of the fires, but the indiscriminate shooting and the careless use of firearms may have killed two boys.

Authorities said yesterday that 15-year-old Vernon Lussier apparently shot himself. He died at the Red Lake hospital as did 12-year-old Alan Cloud. Officials said they had no information on how Cloud was injured, but he died from a gunshot wound.

Another 15 year old, Vernon McGraw, apparently shot himself in the leg, officials said. Another person was injured during the night, but the victim's name and the severity of his injuries were unknown.

The takeover at the jail was led by Harry Hanson, a former council member and long-time critic of Jourdain.

Hanson said that the takeover was a protest against Jourdain's "dictatorial control of the reservation" and was an attempt to get the FBI to investigate Jourdain's administration.

"The people want new tribal elections," Hanson said, "but someone must keep Jourdain's people away from the voters (if there is an election). Otherwise, it will not be a fair election."

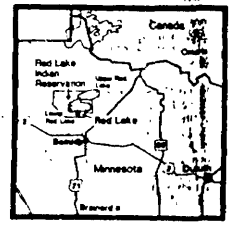
Utilities workers end strike in Virginia

Associated Press

Virginia, Minn.
Striking employees of the Virginia Public Utilities Department reached agreement with the utilities commission Saturday night and returned to work.

Roger Jourdain 1985 photo

David Brumble



council members get $400 for each monthly meeting, but Hanson said they weren't entitled to the money because the monthly meeting hadn't been held.

Jourdain called that an "unauthorized denial of compensation" and ordered other officials to make the payments by using funds the tribe had received for administering a federally financed health program.

Hanson challenged other actions by Jourdain and the council, which usually supports the chairman. She questioned the council's decisions

Fatig

Continued fro

them from s
friends and co

As a result of
tion, legislato
doing things t
they were res
folks in the ou

Occasionally,
legislator will
something by
passed by a
session.

Over the ye
drome has ma
ways.

In the final ho
members of t
legislative pay
pension bill c
then shipped
where the an
approval.

The result, w
sands of outr
gan calling th
ner in which
enacted. Wor
"unscrupulous

Although bot
trolled by Bis
Wendell And
had to veto th

Senate Majo
Coleman, DFL
tol early that
reasons. But
thought he h
from membe
they would no
that manner."

Coleman loo
change of h
ness."

Although Cole
ery session of
1963, he has
occasional
"dumbness."

The most dra
1976, when C
of his caucus
House accept
tax rebate. H
had been bro
some of Cole
cave in again

On the final
after conced
Irishman sta
chambers "a
When he four
locked capito
the door so
tered the cha

Ted Spitrit, chairman of the commission, said the two sides resolved their differences late Saturday, with the employees receiving wage increases and a cost-of-living adjustment to be computed every 90 days.

The commission is to vote on the agreement at its regular meeting Thursday night. The employees, who left work at about noon Friday, returned to their jobs as soon as the agreement was reached about 9 p.m.

Arthritis group endows professorship at 'U'

The Arthritis Foundation has endowed a professorship at the University of Minnesota Medical School and a New Mexico arthritis expert has been named to fill the post.

Dr. Ronald P. Messner, director of the Division of Rheumatology at the University of New Mexico School of Medicine in Albuquerque, will assume the professorship July 1.

Messner was an assistant professor at the University of Minnesota Medical School in 1968-69. The endowment, authorized by the board of the Arthritis Foundation's Minnesota chapter, will provide $120,000 in the first year and $40,000 in each of the next five years.

Rice motorist dies in collision with train

United Press International

Rice, Minn.

An 18-year-old Rice woman was killed Saturday when her car collided with a freight train at a crossing 3 miles south of Rice.

Authorities said Joyce Dingman died in the 3:30 p.m. crash involving a Burlington Northern train.

Hassod met with FBI officials and with Ed Demery, the Minneapolis area director for the BIA and his legal adviser. No agreement was reached on the demand for a tribal election and the FBI reportedly made no promises about investigating Jourdain or his administration.

But Demery did agree to remove Celestine Maus from the reservation, according to officials who were involved in the negotiations. He will be replaced by Nathan (Joe) Head, who works for the tribe.

Two months ago, Head was reprimanded by Maus for openly questioning the legality of a tribal council resolution that censured tribal treasurer, Stephanie Hanson, the wife of Harry Hanson.

Stephanie Hanson was suspended by the council for "disrupting the peace and tranquility" of the reservation. She and her husband had been going to meeetings in communities on the reservation and criticizing Jourdain's handling of tribally controlled funds. As the tribe's operations officer, Head is supposed to advise the tribal council on matters involving the tribal constitution.

Maus then reprimanded Head for becoming involved in tribal politics although Head maintained that giving a legal opinion had nothing to do with politics.

Although that ensnarled Head in the political debate, the real battle has been between the Hansons and Jourdain.

Stephanie Hanson, 34, ran for the treasurer's post a year ago on an anti-Jourdain platform. She accused him of misusing tribal funds, of nepotism and of keeping poor records of the millions of federal dollars that the reservation receives every year.

She was elected in November and three months later openly questioned the paying of $400 to each member of the tribal council. The

[illegible] questioned the council's decisions, and on three occasions Jourdain's unilateral decision to authorize some $170,000 in bonuses for tribal officers and council members.

Jourdain, who makes $35,000 a year, got $20,000 of the bonus money, which was given out over a 2-year period.

After the Hansons started speaking at various meetings on the reservation, Harry Hanson was put under a quasi-house arrest by the tribal court. He was ordered not to attend any meetings. The order was so broad that it appeared to preclude him from attending any gathering, political or otherwise.

The Hansons contacted the office of U.S. Sen. Rudy Boschwitz in hopes that the new Minnesota senator would intervene. Boschwitz's staff has been looking into the situation for several weeks.

The FBI will probably get into the act now, although it may be only to investigate the incidents of the last two days.

David Brumble, head of the FBI office in Minneapolis, had 25 agents near the reservation yesterday but was awaiting word from the U.S. Department of Justice before going on the reservation.

The FBI has the responsibility of investigating major crimes on the reservation, but Brumble was apparently being careful to avoid his agents from becoming policemen trying to handle a civil disturbance.

That is the legal responsibility of the BIA.

Brumble said yesterday that no federal arrests have been made for the events of the last two days and that no federal arrest warrants have been issued.

[illegible] tered the [illegible]

It was an embarrassing [illegible] the urbane 52-year-old executive, and one he [illegible] to discuss.

"That was my most pub[illegible] Coleman said, "but my take was keeping the Se[illegible] til Sunday morning on [illegible] bonding bill."

He was referring to a bonding measure for b[illegible] mass transit that was t[illegible] by the Anderson admi[illegible] 1973. On the final nigh[illegible] sion, the governor and h[illegible] allies resorted to ex[illegible] measures in an effort to [illegible]

In the House, DFL Spe[illegible] Sabo, now a congressma[illegible] neapolis, kept the voting [illegible] for 35 minutes while a [illegible] governor roamed free [illegible] House floor trying to get [illegible] vote for the bill. Finall[illegible] with 81 votes, the bare [illegible] needed for House appro[illegible] ing.

The bill then went to [illegible] where aides of governo[illegible] legislative allies tried t[illegible] the feat. Normally, mem[illegible] en no more than a few [illegible] cast their vote. But on th[illegible] the voting board was ke[illegible] three hours as proponent[illegible] tried to get senators to s[illegible] votes.

Finally, at 6:30 a.m., Col[illegible] up and adjourned the Sen.

"It was not our finest h[illegible] man said in reflection. "[illegible] did it for OUR GOVERN[illegible] was A MISTAKE."

During the last several y[illegible] man has made a concerte[illegible] get more work done ear[illegible] session and to avoid late

Advertisement

Important News For

BACKACHE SUFFERERS!

Momentum® Tablets are 50% stronger than Doan's.

Before you take Doan's Pills for your muscular backache, remember this: Momentum Tablets are 50% stronger than Doan's Pills. That means Momentum gives you 50% more pain reliever per dose to relieve backaches.

For pain, inflammation, and stiffness of muscular backache, there's no stronger medication you can buy than Momentum Muscular Backache Formula.

Momentum does more than reduce pain and soothe inflammation: it has a calmative, too, to help relax tension that can cause muscles to tighten. Doan's has none. As pain is reduced, stiffness eases, you move more freely in minutes.

If you are taking Doan's you are not getting all the pain reliever you get in Momentum Tablets. For relief of backache pain just 2 Momentum Tablets give you the strongest medicine possible without a prescription. Take only as directed.

Advertisement

Call for special rates

$100,000 MINIMUM

Federal regulations require a penalty for early withdrawal from certificates.

Offer may be changed or withdrawn without notice.

Call our money desk for quotes.

370-8095

(Money desk)

HOME SAVINGS

We're your kind of Home

President Reagan shakes hands with Afghan resistance leader Mohammad Galani at the White House Friday. Proclaiming today "Afghanistan Day," the president met with four Afghan resistance leaders, including Mohammad Saleh, center. Looking on is Sen. Bill Bradley, D-N.J.

Clinical
the satisfac
Administra
AIDS suffe

Thousands poisoned in China

Toxic-spill report cites no deaths

Los Angeles Times Service

BEIJING — In one of the worst environmental disasters on record in China, an estimated 20,000 people were poisoned in January when a fertilizer factory dumped toxic chemicals into a river and contaminated the source of water for thousands of people.

The incident occurred Jan. 2, near the city of Changzhi in Shanxi province, but was not made public until Thursday, when The Chinese Environmental News published a front-page account. It did not mention any deaths and did not say how many people were hospitalized.

Most of the victims reportedly suffered from stomachache, diarrhea, headache, dizziness and nausea. Those who bathed in the contaminated water reported a stinging sensation and ulcerated skin.

An official Chinese report, the basis of the Environmental News report, suggested that people who already had health problems suffered the most. It said that 81

Please turn to DUMP / *14A*

Pallbearers carry the gun-metal-colored casket of reputed underworl

Alleged mob lord Traffica

By MARTIN MERZER
Herald Senior Writer

TAMPA — His boys called him "The Old Man." The law called him suspect No. 482531B. Both were out in force Friday as Santo Trafficante Jr., reputed lord of Florida's underworld, was laid to rest.

Borne by 10 pallbearers, Trafficante's gun-metal-colored casket was slipped into a marble mausoleum at the La Unione Italiana Cemetery in a deteriorating neighborhood of Tampa.

Trafficante, said to be the Mafia don who ran Florida's organized crime syndicate, died Tuesday night after undergoing heart surgery at the Texas Heart Institute in Houston. He was 72 years old and had been ailing for years.

Seminole bingo draws criticism as giant new hall opens today

By COLLEEN GALLAGHER
Herald Staff Writer

Doris Frye has some advice for the dozens of ordinary folks who will reap riches totaling $1 million at today's grand opening of the world's biggest bingo hall, about 62 miles west of Fort Lauderdale: Demand cash on the spot.

Frye won a $125,000 jackpot last Sept. 5 at a Red Rock, Okla., bingo game managed by the Seminole Indians, who own the bingo hall that opens today on their Big Cypress Reservation in parts of Broward, Hendry, Palm Beach and Collier counties. But Frye says so far she has been able to collect only $35,000.

She sued the tribe and its flamboyant bingo manager, Steven Blad, when she didn't get the rest of her prize in January as promised, and recently settled out of court to accept $10,000-a-month payments.

"I'll never get ripped off like that again," Frye said in a telephone interview Friday from her home in Ada, Okla. "I'll take my cash."

Others are bitter, too, over their experiences with Seminole bingo in Oklahoma.

Like Frye, an Illinois bingo player says she still hasn't gotten a trip to Las Vegas that she won last April. Also, dozens of Oklahoma merchants were left with unpaid bills when the Seminoles left, and some

Please turn to BINGO / *8A*

Blad

$14 mi

Palm Beach

By AVIE SCHNEIDER
Herald Business Writer

Casa Apava, an oce
built in the early 1920
$14 million — shatte
record for a single ho

The 18-acre estate h
a saltwater pool, a ter
and 800 feet along bot
Worth.

But if the new ow
system, he or she will
is sans AC.

The name of the bu
the closing, which is

The Miami Herald 3-21-87

The CHAIRMAN. Are there other questions for these witnesses? Mr. Campbell was here first.

Mr. CAMPBELL. Mr. Chairman, maybe not a question, but since other people are making short statement, could I do that, based on what I have heard and the notes I have taken?

The CHAIRMAN. The gentleman is recognized for five minutes for whatever purposes.

Mr. CAMPBELL. Thank you, Mr. Chairman.

First of all, just a couple of comments. I have to in concept disagree with my colleague from Montana. I think there is probably more crime in one night in this city than there is in Indian country all year long, if you want to talk about relative crime.

And I might say to our distinguished colleague from the Senate, Senator Reid, I don't know if you saw the CBS special about 2 years ago about horse racing, but I raced for about 5 years, and one of the reasons I got out of it is because of the insensitivity to the horses.

There are statistics that now indicate over 2,500 horses a year are intentionally killed when they break down from being run too much, so that says something about the irresponsibility of the State Racing Commissions who look after the health of the animals.

Mr. REID. Well, but Mr. Campbell, I think in fairness, in response to that, there is no question but that the present operations: Horse racing, dog racing, and other types of games of chance are imperfect, but I think the point that I was trying to make is that there is a history of involvement, and that is what Tony Coelho has been concerned about.

Take the State of California, for example. Lots and lots of money is spent on making sure that the animals are taken care of, and they might not do a perfect job, but certainly there is already a bureaucracy set up there, and why set up another one is the point.

Mr. CAMPBELL. Thank you. He wasn't on my time, was he, Mr. Chairman? We are not deducting that from my 5 minutes, are we?

The CHAIRMAN. The gentleman has about 3 minutes.

Mr. CAMPBELL. OK, and maybe in response to my friend and colleague on the House side, I don't know how much time he has spent on Indian reservations, but I might mention that one of the exact reasons why Indians are afraid of State control is because they have had a tremendous erosion of what they see as the network that was set in place with the old treaties.

You might be interested to know there are groups right now within States, in the Western States primarily, who are trying to totally do away with reservations as the end result of doing away with any Indian rights that they received from this Congress years ago.

I think the single most important thing I wanted to say, Mr. Chairman, was that we are looking at this problem from an either/or kind of a standpoint. We have to have the State regulation, or we have to have the Federal regulation. I just wanted to say that I ran a tribal racetrack for a number of years for the Southern Utes in Colorado, and subsequent to that was in the State legislature and dealt with the State Racing Commission, so I think I saw a

little bit of both sides, and from my perspective, we are not considering that there are other options.

I don't know of anything that prevents tribes right now from entering into contractual agreements, and that is exactly what the Southern Utes tribe did with the State of Colorado, by getting recognition for their tribal racetrack as a county fair, and then negotiated with the State to actually do the management of it, and peripherally the enforcement of it, too.

The reason that they decided not to, they declined, not to, was the cost the State would charge them. I cannot believe that if we put these controls within the State, they are going to do all these things for the tribes, the control, the management, the enforcement or whatever, out of the goodness of their heart.

They are going to exact some money. It is going to cost the tribe some money. And that is why the Southern Utes could not race, because they couldn't afford to race in there.—

Mr. REID. Mr. Campbell? Oh, I am sorry.

Mr. CAMPBELL [continuing]. A couple of things, if I could.

So it seems to me that we are taking the approach, number one, that they don't have the option of entering into a contractual agreement if they can't do it, whether it is enforced or not, but also, I think it is somewhat insulting for Indian people to hear that—or to have it assumed that they wouldn't have enough intelligence to call for help if they needed help. Certainly Nevada did that. If they got in trouble, they would call for some Federal help. Well, tribes will do that, too. They are not going to sit there and be decimated, and I can't believe they would.

But it seems to me that since States have that option—or excuse me, tribes have that option anyway, to go into contractual agreements, that we don't need a regulation that says States should be in control of the gaming.

The CHAIRMAN. Will the gentleman yield to me?

Mr. CAMPBELL. Yes, sir.

The CHAIRMAN. There is a feeling that I get in this legislation of condescension on the part of some of the non-Indian people—that we really know best and big brother will take care of you. The Indian tribes in modern years don't feel that way anymore. They don't feel that the State government is their friend and, rightly or wrongly, they don't go to the county government or the State for help when something goes wrong. They look to the Federal Government.

I don't think we understand totally how this feels to our Indian friends.

Mr. BILBRAY. Mr. Chairman?

The CHAIRMAN. The gentleman's time has about expired. Harry, you wanted to comment?

Mr. REID. Yes, I did briefly, Mr. Chairman. First of all, if there were in fact Indian gaming operations in the State of Nevada, the State of Nevada would have to treat them like anyone else, and of course, they could not be charged for, in effect, overseeing that operation.

I would also, because there have been two comments now about the State of Nevada on not being able to control what goes on, and they have called for the Federal Government. I think you will hear

testimony today, because one of the former members of the Strike Force is on the witness list, I think you will find that there, in fact, were times when the Federal Government came in and prosecuted, for a number of reasons.

One is the fact that they had wiretap authority. The State of Nevada doesn't. But all during that whole period of time, there was cooperation between the State and the Federal Government, and you couldn't have done one without the other.

So, in summary, and I would just say that I would hope that none of my remarks are condescending in nature. I have tried to approach this on a legalistic basis, and I think my legislative record speaks for itself.

The CHAIRMAN. I didn't have you in mind, I know of nobody who is more fiercely concerned about the Indian problems than you have been.

Mr. REID. Thank you.

The CHAIRMAN. All right, we have got a long witness list——

Mr. BILBRAY. May I make one response to a couple of questions?

The CHAIRMAN. Sure.

Mr. BILBRAY. I think you are going to see the kind of problems that the Representative from Montana mentioned constantly happening on Indian gaming because you need that kind of control. It is not condescending just to Indians, it is to anyone that enters the gaming business.

Gaming is a tough, tough business, a business that you can lose as well as win. Although casinos are not built by winners, I can guarantee you that, the fact is that there are people that do win huge amounts of money, people that win hundreds of thousands, win millions when they come through on one trip.

And a lot of times, these smaller casinos don't have the adequate bank roll to pay it off. I can see the tribes running into serious trouble over this sort of situation. They need Nevada as well as Nevada needs them under our control.

Mr. CAMPBELL. Mr. Chairman?

The CHAIRMAN. The gentleman on my right.

Mr. CAMPBELL. Mr. Chairman, may I ask Mr. Bilbray, if that is how all that beautiful city got built, by the people that won the money?

Mr. BILBRAY. We have several casinos under chapter 11 right now. Some have not been winners since they opened.

Mr. REID. Mr. Chairman, could I be excused?

The CHAIRMAN. If the Senator would yield?

Mr. REID. The one thing I would like to say before I leave is I am sure happy that George Miller didn't ask me any questions.

The CHAIRMAN. He was going to be the next questioner. Do you want to go now, George?

Mr. MILLER. Mr. Chairman, I'll be brief. I just want to say that I share Senator Reid's concern. Congressman Bilbray, I am deeply concerned with the bill of our chairman.

I am concerned that there is a notion that, because these activities take place on Indian land, we have no right to scrutinize them. I think we do, especially when the activities provide an open invitation to non-Indian and, in fact, depend upon bringing non-Indians on that land to engage in those activities.

Senator Reid and I earlier last year were deeply involved in the welfare of children brought onto Indian lands in Nevada and badly abused. In the name of sovereignty, nobody had a right to license or to take care of those children. Those were non-Indian children that were brought from my State.

In the case of racing, the allocation of racing days is something that must be very deliberate. This is for the protection of the patrons, the racetrack, and the animals, as well as the local economies.

If you want to try to destroy a local economy, try year-round racing. We have an infrastructure in the various States that allows various levels of gambling. Now we come along and substitute a brand new bureaucracy. We are going to rebuild from the bottom up, but we think that, if the States get into trouble, they will have the same ability and expertise to handle that trouble as they have today.

True, if they get into interstate organized crime, they can call in the FBI. They can call in anybody they want; they have that same right. And I think there is clear recognition that class III gambling needs regulation. But I am deeply concerned about whether we now have to provide a whole new method of that regulation when we discuss a method of setting up a dramatic commerce on Indian reservations for the purposes of gambling.

I am concerned from the racing aspect. I don't know a lot about the casinos, but I know a little bit about the implications of expanded racing days and how those are allocated. I know in a State like mine what it means to fairs, what it means to the local organizations to have fairs—whether they have racing or they don't—what it means to the major tracks, and what it means to the horse owners.

There was a time in California when you didn't have enough horses to run on those tracks, and people started abusing animals because of the inability to keep track of closely falling racing days. I just don't think that that is what we want to do. I hope we consider this legislation fully before moving it forward, and I think that many of these concerns are also outlined in a letter to the chairman from Congressman Coelho.

The CHAIRMAN. All right.

Any questions on my right of these witnesses? Comments? Sermons?

Mr. RHODES. A comment. I haven't yet decided which of these bills I intend to support, although I will have to confess I am rapidly getting a tilt. But I just think I need to observe, Mr. Chairman, that I consider it to be no less condescending to take the position that the Federal Government is a better brother for tribal gambling than a State government is.

I think what we are doing here is picking which level of government is going to be the regulator, not whether or not there is going to be regulation. And I don't find a statement of support for the level of regulation at the State level to be any more or less condescending than to suggest that the Federal Government could do it better.

The CHAIRMAN. Sorry I used the term. Before you run, Harry, would you tell me for the record, what is the Nevada Gaming Commission, how many members and who appoints them?

Mr. REID. We have the Nevada Gaming Commission, which consists of five members appointed by the Governor. And they are statutory, one has to be an accountant, you know, it is set up like that.

The CHAIRMAN. Confirmed by the Senate?

Mr. REID. Pardon me?

The CHAIRMAN. Confirmed by the Senate?

Mr. REID. No, no.

The CHAIRMAN. Appointed by the Governor.

Mr. REID. Yes. And then you have a three-member gaming control board that is also appointed by the Governor. They handle the day-to-day affairs of the Nevada regulating body. They do the police work, so to speak. The commission is the policymaking body; it is a bicameral, for lack of a better word, it is a two party control commission.

The CHAIRMAN. Thank you. We have got to turn these two witnesses loose.

Mr. REID. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, you have been very helpful.

The CHAIRMAN. We will hear now from the Assistant Secretary, Ross Swimmer, the head of the BIA, with Ms. Toensing, the Deputy Assistant Attorney General from the Department of Justice.

Secretary Swimmer, we are happy to have you with us this morning. We await your judgment and instructions on how we can solve this difficult problem.

PANEL CONSISTING OF ROSS O. SWIMMER, ASSISTANT SECRETARY, INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; AND VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. SWIMMER. Thank you, Mr. Chairman. I appreciate the confidence that you have in me. I am afraid it might be misplaced in this case. I am not sure that we have a solvable problem here, but at least we can work toward some possible solutions.

Mr. Chairman, members of the committee, I have a prepared statement I would like to submit, and make a very brief oral statement.

I think that, from what I have heard from the previous testimony, the committee is interested in asking a lot of questions and perhaps we can spend our time answering the questions that you have on your mind, instead of listening to what is on my mind.

So, with the statement being submitted for the record, I simply would like to say that the Department, the Secretary of the Interior before my coming to the Department, has issued a statement supporting the concept of Indian bingo as a viable, profitmaking enterprise in Indian country.

He made such a statement at a time when Indian bingo was just getting off the ground. Few tribes were involved in it, and we felt

that perhaps there would be a way of ultimately controlling it. I think our concern now is that as it has grown, we still see it as a viable economic enterprise, but we continue to observe serious problems in the operations of it.

We are concerned, both for the welfare of the tribes, the public also, and the people operating the games, and we believe that some form of regulation is absolutely necessary in high stakes bingo.

We believe that that regulation should be at a Federal level for bingo, because there is no appropriate State regulation of bingo now. Most of the States permit a form of charitable bingo. They do not have a regulated, they are not equipped to regulate Indian bingo as it is played now, in a high stakes manner.

Our preference as to the so-called class III or what we call hardcore gaming is one of two options, either not be allowed in Indian country, or that if it is allowed in Indian country, it should be regulated by the State that has the appropriate regulatory body already in place to do it. I can go into many reasons for that, but primarily because of starting a Federal bureaucracy to try and regulate that form of gaming in Indian country would be very difficult, and take many years perhaps to get to the point of it being effective and efficient.

As a result of that, we do support H.R. 964 and its companion bill in the Senate, and would hope that we can proceed with that and have some kind of a regulatory bill come out of this session very soon.

I can't emphasize enough how important it is that we reach a form of regulation quickly, because the problems I believe are growing exponentially.

We have been into this process for a few years now, games are proliferating following the Cabazon case, there is virtually no regulation or oversight of high stakes Indian bingo, it is now bringing in we believe in excess of $100 million a year, played in 28-plus States, and is certain to, we believe, create some very serious problems if regulation isn't provided to the tribes by the Federal Government so that it can operate in an atmosphere of sense and control and know where we are going in this particular business.

So, with that, I would like to end my statement and give it to my colleague over here from the Justice Department. She has, I think, also some things to say.

[Prepared statement of Mr. Swimmer follows:]

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE INTERIOR AND INSULAR AFFAIRS COMMITTEE, UNITED STATES HOUSE OF REPRESENTATIVES ON H.R. 1079, H.R. 2507, and H.R. 964, ALL ENTITLED "INDIAN GAMING REGULATORY ACT"

June 25, 1987

Mr. Chairman, I am pleased to testify today on H.R. 1079, H.R. 2507, and H.R. 964 which are bills providing for the regulation of gaming in Indian country.

Although each of the bills introduced contain provisions we support, H.R. 964 is the significantly better of the three from our view point and we will work with the Committee and the Department of Justice on amendments to improve the bill. Of course, the bill proposed to the 99th Congress on May 20, 1986 by the Departments of Interior and Justice and intoduced as S. 2557 would also be acceptable.

As the Committee is aware, on February 25, 1987, the U.S. Supreme Court in California v. Cabazon Band of Mission Indians held that State and local regulation of bingo and card rooms on Indian reservations is preempted by Federal law.

Notwithstanding the Supreme Court's decision in Cabazon, Federal legislation on Indian gaming is, in our view, still necessary. We believe that it is essential that the Congress enact legislation which provides adequate authorities for the regulation of gaming in Indian country in order to protect the tribes and the gaming customers. Because of the relatively large amounts of cash involved and the important source of revenue that bingo provides for some tribes, effective regulation is vitally important.

We have no more current information concerning the gaming in Indian country than we provided in our testimony to this Committee in the 99th Congress. At

that time we reported that there were some 108 gaming facilities on Indian land and that 104 of those had bingo, 93 had pull tabs or punch boards, 15 had card games, 4 had casino gaming, and 15 had other gambling activities. We estimated that a national estimate of $100 million in gross receipts from these activities would not be excessive and that one tribe reported a gross annual receipts from gaming of $15.5 million.

The authorities available to the Department of the Interior are of limited use in connection with gaming. The Court made note of our use of the tribal contract approval requirement provision in 25 U.S.C. 81 in connection with contracts tribes have entered into for the management of gaming activities. A related criminal provision is in 18 U.S.C. 438 but the penalties are relatively minor. Other authorities which might be used in the absence of the enactment of new Federal legislation are the so called Indian traders laws in 25 U.S.C. 261, 262, and 264. However, these provisions are also inadequate to deal with the specific problems of gaming.

The only Federal law specifically relating to gaming in Indian country is the provision in 15 U.S.C. 1175 prohibiting the possession or use of gaming devices within Indian country. In addition, sections 1301-1307 of title 18, U.S. Code prohibit advertising of lotteries, including bingo, through the mail or on radio or TV, with exceptions for State-run lotteries.

The Department of Justice has available to it the criminal laws that would apply to crimes that might occur in connection with a gaming activity, including embezzlement or theft from a tribal or Federally-funded organization under 18 U.S.C. 1163 or 666. It should be noted that the Court in the Cabazon decision specifically did not decide whether, or under what circumstances, the provision of the Organized Crime Control Act in 18 U.S.C. 1955 could be used by the Federal Government to prosecute bingo or other gaming in Indian country which "is a violation of the law of the State or

political subdivision in which it is conducted" and meets certain other requirements.

President Reagan's Indian Policy includes the following passages which should be kept in mind in developing the Federal policy on Indian gaming:

> It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This administration pledges to assist tribes in strengthening their governments by removing the Federal impediments to tribal self-government and tribal resource development...This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs...
>
> It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.
>
> Since tribal governments have primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed...

With the foregoing in mind, we have developed our view on legislation for the regulation of gaming in Indian country. The various bills in this and the 99th Congress address three categories of gaming: (1) social and Indian ceremonials; (2) bingo; and (3) all other forms of gaming.

Social and ceremonial gambling is not operated for profit and involves only small stakes and only the Indian community. Therefore, we believe that no regulation need be imposed on these activities and we support section 11(a)(1) of H.R. 1079, section 10(a) of H.R. 2507, and section 11(a)(1) of H.R. 964.

We oppose State control over bingo because it would drive Indian bingo out of business by subjecting it to the days, hours, prize and other restrictions of the States. Some States limit bingo to charitable organizations and at least

one prohibits the payment of compensation to employees operating the games. We believe that the Federal and tribal law enforcement problems involved with bingo are manageable, that such enforcement can be financed by the proceeds of the games, and that State regulation is not warranted. However, we believe that the cost of Federal regulation should be paid by the gaming enterprises with no burden on the Federal taxpayer. In that connection, I note that all three House bills require or authorize the Federal Government to pay a substantial portion of the regulatory cost. We would prefer, however, that the entire cost of regulation be funded by fees levied against Indian gaming operations.

All other forms of gaming (such as pari-mutuel and casino gaming) could be economically beneficial, but the potential law enforcement problems are much greater than bingo. The cost of providing the necessary Federal and tribal regulation would be substantial and thus outweigh the economic benefits to the tribes. We recognize the importance of tribal sovereignty, but believe that either the states should be empowered to regulate such hard core gaming on Indian land or the approach in section 11(b) of H.R 964 should be adopted to condition such gaming on a tribe's decision to consent to state jurisdiction of that gaming because of (1) the significant need for law enforcement oversight; and (2) of the significant additional law enforcement burden involved in Federal and tribal regulation of an area where the States are already regulating such gaming. In line with this view, We oppose the Federal and tribal regulation of such gaming proposed in H.R. 2507 and 1079. We also oppose making such gaming a Federal crime on Indian land where the tribe and the State choose to permit the activity.

We have received requests that land be taken into trust for gaming and other purposes. In some cases the land is away from the tribe's reservation and nearer population centers or highways in order to have greater access to non-Indian customers. Although we have the authority to do so, we intend to

publish a proposed rule that we will not take off-reservation land in trust for the purpose of establishing a gaming operation. Either section 4(a)(1) and (2) in H.R 946, or section 4(a) and (b) of H.R. 1079 or section 4(a)(1) and (2) of H.R. 2507 would be desirable statutory provisions to deal with this problem.

We urge the Congress to enact sound Indian gaming legislation because gaming enterprises in Indian country provides economic benefit to many of the tribes involved, especially those with no valuable natural resources or other significant sources of income. Tribes have used their gaming income for a variety of purposes relating to the welfare of their members, including supplementing activities that are financed by the federal Government. Examples include the Creek Nation's payment of contract medical expenses for tribal members; the Sycuan Band's use of funds for emergency loans, home repairs, fuel for homes, fire department equipment and operation, road repairs, and flood control repairs; the San Juan Pueblo's funding of a senior citizens program; the Fond du Lac Band's use of the funds to supplement the Head Start and other programs and to aid the construction of a health facility, and maintain and improve school and other public facilities and roads; and the Shakopee or Prior Lake Sioux Community's use of the funds to build a community center, dental clinic and health facility, and purchase a fire truck.

This concludes my statement and I will be pleased to answer any questions the Committee may have.

The CHAIRMAN. Ms. Toensing, glad to hear from you.

Ms. TOENSING. Thank you so much, Mr. Chairman. I, too, have a much more complete statement for the record. I ask that it be submitted. I will be much briefer.

We look forward to balancing what we consider these very important concerns of law enforcement and what we also are sensitive to, and that is the very real needs of the Indians on the Indian reservations.

But let me point out that presently, there are absolutely no regulations or rules for gambling on Indian reservations, except those that the Indian tribes who are presently in control of gambling choose to pass for themselves. So we have those who are conducting the activity regulating themselves, and that is the extent of it.

There are no pot limits, no rules for how the games are to be played, no agency whatsoever to present the important checks and balances that are needed in this area, that Las Vegas, Nevada and New Jersey have seen as necessary, absolutely necessary to stem corruption.

Moreover, to a very large extent, we approach Indian gaming with a disturbing lack of information about its extent and its scope. Assistant Secretary Swimmer last week, when we testified in the Senate, talked about the fact that there is no authority in the Federal Government to find out from the Indian tribes how much money is being brought in by gambling, how much money is being returned to the customer, or how much money is being reserved for the tribes.

In sum, we have a situation where the customer can be defrauded in the games. We have a grave potential for money laundering, and we in the Justice Department are very concerned about that, especially in light of the fact that we have cracked down on the banks lately, and this would be the place to go now, to the unregulated money flowing in and out of Indian reservations.

And also, most importantly, there is the potential for the Indians themselves being defrauded by unscrupulous contract managers. I believe we already have testimony about that that is on the record, and Senator McCain referred to it in his testimony.

Therefore, the Department feels that it has a duty to ask for legislation which has strong regulations, particularly in the area of class III gambling, and it is for that reason that we do not find H.R. 2507 a particularly good vehicle for working out our concerns.

In H.R. 2507, class II gambling is defined so broadly that it is just not bingo, but it also can be construed to be lotteries. We have a concern about the commission. It would have jurisdiction over class III gambling, and we oppose that vigorously.

The legislation is not clear about what really is allowed in the States. I think it was Senator McCain who testified that it cannot exceed what is allowed in the State, but we don't feel the legislation is clear on that issue.

For example, if the State allows one track of pari-mutuel horse racing, does that then allow the Indians to have pari-mutuel dog racing and horse racing and many different tracks? Is that in excess of what is allowed in the States? We are not clear.

Also, in H.R. 2507, there is no specific requirement that the criminal law be applied to violations on the reservations. The word-

ing is very, very murky, and I think it could be argued otherwise, and that is something that we have to make clear.

The Department of Justice thinks permitting the States to control class III gambling is a proper method of addressing these competing interests of federalism and the concern for proper law enforcement.

There is also something else that I would like to clear up on the record, concerning H.R. 964. We do not feel that it is your intent to have, for example, casino gambling permitted in States where there is legislation allowing a Las Vegas night in a church, and we would hate to see a situation where, if three nights a year, churches or charitable organizations are permitted to have a casino night, that be translated into, Indian tribes in all of those States being permitted to have casino gambling in any way whatsoever on the reservations.

I asked Senator Inouye about that last week, and he said that in his Senate bill, that that was not his intent. And I would hope that that is also not the intent of H.R. 964.

The CHAIRMAN. Speaking for myself only, I would agree with Senator Inouye, and we can very quickly make changes in the language to have it do what we say we want to do.

Ms. TOENSING. Thank you, Mr. Chairman. I just had two other quick points, and then I, like Secretary Swimmer, will be glad to answer questions.

We are also concerned about the fact that both bills appear to have a commission where the majority could be tribal members who are not prohibited under the legislation, and therefore could be permitted to receive per capita net revenues from tribal gambling. I think that should be looked into. I don't think anybody who is regulating gambling should be permitted to receive any of the revenues from the gambling.

The Department also has a very grave concern about the fact that tax money is being used for the regulation. We feel that if there is going to be Indian gaming and regulation, that those who are participating in it, those who are deriving all the monetary benefits from it should then pay for that regulation.

[Prepared statement of Ms. Toensing follows:]

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Mr. Chairman and Members of the Committee --

I welcome the opportunity to appear today to present the views of the Department of Justice on legislation to regulate gaming on Indian lands. We appreciate the continuing deep interest of this Committee in fashioning appropriate legislation to regulate tribal gaming and hope that we will be able to work with you and your staff closely in the weeks ahead to develop a bill that will properly balance the competing interests involved in this difficult issue.

BACKGROUND

At the outset, I should note that this issue is not a new one either to the Committee or to the Administration. Nevertheless, to a large extent we still approach Indian gaming with a disturbing lack of hard information about its extent and scope. As Assistant Secretary of the Interior for Indian Affairs Ross O. Swimmer testified before the Senate Select Committee on Indian Affairs just last week, information as to how much money is generated by tribal gaming and the extent to which the tribes are the ultimate beneficiaries is available only as the tribes themselves make it known. Neither Interior nor Justice can compel the production of this data without which the legislative process is conducted in a relative vacuum.

Nevertheless, as you will recall when I and a know, when I and a representative of the Department of the Interior testified

before the Committee in the Fall of 1985 both Departments agreed to draft legislation that would ensure the tribes' rights to operate bingo free of State regulation but under some degree of Federal supervision. Based on the information available, we prepared what we thought then, and still believe now, was an excellent bill, one that permitted the tribes to continue the forms of gaming they were then operating but under a regulatory structure sufficiently strong to provide reasonable protection against abuse. However, as you know, gaming regulation is a complex problem and one that had not previously been addressed by the Federal government. Consequently, the drafting of the bill took some time. By the time we submitted it, the Committee had reported out and the House had passed H.R. 1920, and our bill, introduced in the Senate as S. 2557, was not considered in the House.

Then, as you know, Mr. Chairman, on February 25, 1987, the Supreme Court handed down its decision in California et al. v. Cabazon Band of Mission Indians et al. ___ U.S. ___ (No. 85-1708) and in essence held that where a State regulates but does not prohibit a gaming activity, those laws and regulations are civil/regulatory not criminal/prohibitory and as such are not applicable in Indian country even though they may be enforced by criminal penalties. In light of Cabazon, we believe that it is more necessary than ever to fashion appropriate legislation governing tribal gaming. Rather than resubmitting our bill at this time, we are willing to work with this and other appropriate Committees of the Congress to develop a legislative proposal that

will adequately balance tribal needs for gaming revenue with our very real law enforcement and federalism concerns and arrive at an agreeable solution. As I will note more fully in a moment, however, the fact that we have not formally resubmitted our bill at this time should not be seen as an abandonment of the basic principles and concepts which motivated this proposal.

GUIDING CONSIDERATIONS

Two basic considerations guide us in our approach to this issue. First, the Department of Justice is the nation's chief law enforcement agency and, as such, we are duty bound to oppose any gaming regulatory measure which, in our judgment, cannot reasonably be expected to curb the potential for the types of criminal activity and abuse which have historically been so closely associated with gaming. For this reason, therefore, we cannot and will not endorse legislation which proposes to authorize tribes to engage in pari-mutuel and casino gaming subject only to a weak federal regulatory structure which cannot realistically be expected to control abuse.

I should note that the Department of Justice has had first-hand experience with organized crime infiltration of gaming operations and that we thus know the potential for such activity. We have also, in recent years, prosecuted cases in which laundering of illegally derived money was conducted through gaming operations. Because gaming involves such large volumes of cash, it is a veritable magnet for all forms of criminal activity, in

addition to those individuals who would like to use gaming operations as part of a larger money laundering scheme. The law enforcement aspects of this issue, therefore, should be kept foremost in mind at all times. We respectfully suggest that at least one of the bills which are the subject of this hearing, H.R. 2507, as presently drafted proposes such an ineffective regulatory structure that we are not optimistic that an acceptable compromise can be developed if it is to serve as the drafting vehicle.

Second, this Department of Justice assigns great importance to principles of federalism which, in our view, require respect for the authority of the States, to the greatest extent possible, to regulate activities within their borders. We recognize that our federalism interests will often be at odds with the important principle of tribal sovereignty, but we are optimistic that these competing principles can be balanced appropriately. In this connection, there are certain aspects of the other bill presently before the Committee, H.R. 964, which are preferable in terms of recognizing the States' traditional role in regulating gaming, without taking away from the tribes the right to operate the type of gaming at issue in Cabazon

TOWARD A WORKABLE COMPROMISE

What we will do now is set forth some general comments about both bills, noting the basic areas of agreement and areas requiring further analysis and discussion.

Both bills define Class III gaming in a way that would include casino gambling and pari-mutuel wagering on horse and dog racing and on jai-alai. (As I will describe later, H.R. 2507 would also include many casino gambling games in its definition of Class II gaming.) Casino gaming and pari-mutuel wagering require rigorous regulation in order to protect against criminal activities and other abuses. In fact, such gaming operations are so attractive to the criminal element that no regulatory scheme can provide fail-safe protection against abuse.

If such trouble-prone enterprises are to be sanctioned, therefore, an appropriate regard for law enforcement considerations suggests that they be operated subject to the regulatory systems which have been established by those States which permit such activities within their borders. We believe that the approach of H.R. 964 comes closer to a proper resolution of the competing considerations of tribal sovereignty, State sovereignty, and law enforcement than does H.R. 2507, which we believe strays from the balance for the reasons described below.

Casinos, Lotteries, and Pari-mutuel Wagering

Both bills would allow the tribes to run bingo, which both define as Class II gaming, free of State jurisdiction but subject to some regulation by a Federal Commission. But as we all know, bingo is not the only form of gaming and the extent to which the tribes must comply with State laws on other types of gaming is deserving of careful scrutiny.

Both bills define Class I gaming as social games for minimal prizes or traditional forms of Indian gaming engaged in by individuals "as part of or in connection with tribal ceremonies or celebrations." Since control of Class I gaming is to be left to the tribes without State or Federal supervision, this definition could appear to allow a tribe for which betting among tribal members on horse races was part of a traditional celebration, to use the tribal celebration as a justification for conducting several days of pari-mutuel wagering on horse racing open to the general public free of any obligation to comply with State law. We doubt if that is the intent of either bill, but the point should be clarified.

Casinos

The bills define Class II gaming quite differently. Both include traditional bingo but from there they differ drastically. H.R. 2507 includes "card games" in the definition of Class II gaming. Card games would include all forms of poker and blackjack, one of the most popular casino games. Thus, H.R. 2507 would allow the tribes to run blackjack in Nevada, where blackjack certainly is a part of casino gaming. In that State, tribes could run a "blackjack only" casino without complying with its elaborate casino control statutes and regulations. By contrast, the apparent intent of H.R. 964 is to include only card games operated by tribes in four States -- California, Michigan, North Dakota, and Montana -- on January 1, 1987, in the definition of "card games." While we understand the desire of the tribes

profiting from these games to continue to do so, card games present different types of regulatory problems than does bingo. Nevertheless, to the extent that these card games could be effectively regulated by a relatively lean Federal commission and to the extent that the same type of card game is regulated and not prohibited by the State in which the tribe is located, we would not unalterably oppose such games.

H.R. 2507 defines bingo to include "the use of electronic or electromechanical facsimiles." That would allow the operation of slot-machine type devices even in the States where such devices are illegal. H.R. 964, by contrast, allows "electronic or electromechanical facsimiles" but only where devices of such types are legal under State law.

Thus, the definition of Class II gaming employed in H.R. 2507 would allow the tribes much greater latitude than would H.R. 964 in running blackjack and slot machines -- two important aspects of casino gaming -- without complying with State law. In addition to blackjack and slot machines, as I have just described, H.R. 2507 includes the phrase "other games similar to bingo" in its definition of Class II gaming. Arguably, even craps and roulette are similar to bingo in that they both involve an element of chance.

In addition to its much narrower definition of what is included in Class II gaming which excludes most casino gaming, H.R. 964's treatment of Class III gaming recognizes the States' legitimate concern for controlling such gaming. In essence it requires any tribe that wants to conduct casino gaming to place

itself under State jurisdiction for this purpose. We strongly concur with that apparent goal but would suggest it could be clarified. Clarification is needed because subsection 11(c)(1) states that, except as provided in 11(c)(2), Class III gaming is unlawful under 18 U.S.C. 1166. (That new section in title 18 is added by section 22 of the bill and provides in essence that state licensing, regulatory and prohibitory laws pertaining to the type of gaming defined as Class III, including criminal sanctions applicable thereto, are assimilated as federal statutes and shall be enforced by the United States.)

However, subsection 11(c)(2) provides that a gaming activity on Indian lands "that is otherwise legal within the State where such lands are located" is exempt from the operation of 11(c)(1) if the tribe transfers criminal and civil jurisdiction over the enterprise to the State. The "otherwise legal within the State" phrase would prevent tribes in most States from transferring jurisdiction over casino gaming since casino gaming is legal in only a few States. We note, however, that subsection 11(c)(2) would arguably allow tribes in States where charitable organizations are allowed to run "Las Vegas Nights" with casino games for small cash prizes, to ask the State to take jurisdiction over them for the purposes of unlimited casino gaming. We hope this is not the intent of subsections 11(c)(1) and (2), and think that the provision should be clarified to ensure that casino gaming is conducted only in accordance with State law.

H.R. 2507 adopts quite a different approach with respect to those aspects of casino gaming, if any, which it would include in

Class III gaming. It would require a tribe wishing to operate such gaming to apply for a license from the Commission. The Commission would review the application and, in the course of the review, the Chairman would have to adopt a comprehensive regulatory scheme and regulations identical to those provided by the State in which the activity is to be conducted, except for those aspects of the scheme which impose a tax or other financial burden on the tribe. This is a prodigious task which would essentially duplicate the work of State agencies, while simultaneously creating a nightmarishly complex regulatory scheme to administer.

Lotteries

H.R. 2507 includes in the definition of Class II gaming "instant bingo." That in effect authorizes the tribes to run lotteries. What is apparently contemplated is the sale of tickets designed so that the purchaser scratches off a portion of it to reveal a hidden number or symbol which may entitle the holder thereof to a cash prize. These tickets are usually sold at multiple locations and such a game has little or nothing in common with traditional bingo which is played by a gathering of people. In short, H.R. 2507 would appear to authorize lotteries in States that do not authorize them and to allow other unauthorized forms of lotteries in lottery States.

By contrast, H.R. 964 does not include instant bingo in its definition of Class II gaming and allows the similar games of

pull-tabs, punch boards, tip jars, and other bingo type games "where otherwise legal under State law."

Pari-Mutuel Wagering

The chief impact of H.R. 964's treatment of Class III gaming is on pari-mutuel operations. The thrust of the scheme is that a tribe wishing to conduct a pari-mutuel operation in a State where such an operation is legal -- for example, thoroughbred horse racing in a state where pari-mutuel wagering on thoroughbreds is legal -- would ask the Secretary of the Interior to consent to a transfer of "all civil and criminal jurisdiction, except for taxing authority, pertaining to the licensing and regulations of gaming over the proposed gaming enterprise to the State." It is provided that the transfer shall empower the State with the authority to assess the tribe or its management contractor the State's costs of investigating, licensing, and regulating the enterprise, but may not exceed its actual costs. In practical terms, this means that if a State imposes a tax of nine percent on the pari- mutuel "handle" -- the total of all money wagered -- at thoroughbred tracks but its costs of licensing and inspecting the tribe's track comes to only, say, two percent, the State may not take and the tribe gets to retain the additional seven percent.

A State that concludes this is unfair -- for example, if it does not want to license and inspect tribal thoroughbred racing that generates no revenue for the State's treasury -- need not

accept the proffered transfer of jurisdiction. If a tribe believes such a refusal on the part of the State to accept jurisdiction violates a legal right of the tribe, such as the right generally to be free of State taxing authority, it is apparently contemplated that the tribe will bring suit against the State. Subsection 11(c)(2)(C) provides that for purposes of subsection 11(c) "an Indian tribe shall be considered a person as defined in section 1 of title I, United States Code, and shall have the same rights and remedies as does any person or citizen of the United States, and any State or Federal court of competent jurisdiction shall have jurisdiction and authority to issue such orders as may be necessary to enforce the rights granted under this subsection." Since this provision appears merely to state existing law, it is unobjectionable. We read this provision as consistent with such law, including 28 U.S.C. 1362, which provides that federal district courts "shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with the governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, law, or treaties of the United States."

By contrast, H.R. 2507 would require a tribe that wanted to run a pari-mutuel operation to obtain a license to do so from the Commission. In the course of approving the license, the Chairman of the Commission would have to adopt a comprehensive regulatory scheme that would incorporate State regulations, except those imposing a tax or other financial burden on the tribe. As indicated, this would be a Herculean task, particularly with

respect to horse and dog racing where the States have developed considerable expertise over the years.

In sum, both bills exempt certain traditional games from any State or Federal regulation (the Class 1 Games), and both expand permitted but Federally regulated games beyond the game of bingo as defined in the Administration's bill submitted in the last Congress. Nevertheless, for the reasons stated, we think that the provisions of H.R. 964 are preferable. While we do not oppose its exemptions or expansions in principle we note that to the extent any Federal regulatory scheme is unduly weak or ineffective to prevent infiltration and abuse by organized crime, it might be necessary to consider some form of dollar limitations on prizes as an alternative to such regulation.

AREAS FOR DISCUSSION

Having said that H.R. 964 is preferable in these respect to H.R. 2507, there are at least three critical areas in which H.R. 964 differs from the Administration bill: the nature of the Commission which will have regulatory responsibility for the Class II games, the scope of power of that Commission, and its funding.

The commission structure as proposed in H.R. 964 raises important administrative law questions. More specifically, H.R. 964 contemplates a five-member commission, the chairman of which is appointed by the President with the advice and consent

of the Senate. The remaining four members are to be appointed by the Secretary of Interior, yet the votes of the four secretarial appointees apparently have the same weight as that of the Presidential appointee. While there is a requirement that one member be appointed from a list of names submitted by the National Association of Attorneys General, there is no requirement that either this member or one of the three members who must be enrolled members of Indian tribes have any law enforcement experience. We suggest that further consideration be given to our proposal last year that the commission consist of three members, two appointed by the Secretary of Interior and one by the Attorney General. To the extent that it is felt that tribal representation on the commission should be guaranteed by statute, we could accept a requirement that at least one of the three commissioners be a member of a recognized tribe, or two of five, if a five member Commission is to be utilized instead.

More important, it is essential that this Commission have the fundamental authority necessary to regulate gaming effectively, and such regulatory authority must therefore include some form of pro-active powers like the authority to exclude certain known criminals from gaming. At large dollar levels, the possibility of organized crime infiltration is just as great with Class II games as Class III games. H.R. 964, while setting forth general and some specific standards, relies primarily on self-regulation by the tribes with respect to a subject area that our States have often found difficulty in regulating effectively.

We would like to work closely with you to develop a regulatory scheme combining the best features of H.R. 964 and our bill.

Finally, in the area of funding of the Commission, we strongly believe that the cost of Federal regulation should not be borne by Federal taxpayers but should be a responsibility of the gaming tribes themselves. In this connection, I note that H.R. 964 would allow up to one half of the regulatory cost to be paid by the taxpayers. Moreover, I understand that OPM would raise objections to the provision in subsection 8(b) of H.R. 964 that exempts the Commission staff from normal civil service laws.

CONCLUSION

In sum, Mr. Chairman, we recognize that the law enforcement community is sometimes perceived as inflexible on the subject of gambling. This reflects, however, the very difficult task which law enforcement faces. Most law enforcement professionals are opposed to gambling because their experience has shown the many abuses and crimes associated with gambling. At the same time, we recognize that many in society do not share our view on gaming and that the trend among increasing numbers of States is to turn to gaming as a means of raising public revenue. In any event, I cannot emphasize sufficiently that wherever gaming is conducted, it is carried out under a very strong regulatory scheme, and even the most sophisticated regulatory structure is no absolute guarantee against abuses. For this reason, we are prepared to work with you in an effort to address this Indian gaming issue.

For some it may be tempting to cast aside law enforcement considerations in favor of quick short-term solutions to this complex issue, but we hope that you will take advantage of the experience and wisdom which exists in both the Federal and State law enforcement community. I believe that we can, working together, produce legislation which will perform the difficult task of permitting tribal gaming operations in a manner that will effectively protect the public interest in an ordered society.

Thank you.

The CHAIRMAN. Any questions on my right here?

Mr. Marlenee?

Mr. MARLENEE. Thank you, Mr. Chairman. Let me understand Mr. Swimmer, exactly—and welcome to the committee; I have long sought this opportunity to meet you face to face in this situation.

Mr. SWIMMER. Thank you.

Mr. MARLENEE. Do you support Indian bingo without limit on reservations?

Mr. SWIMMER. We have supported Indian bingo without pot limits, if that is what you are saying.

Mr. MARLENEE. With high stakes bingo?

Mr. SWIMMER. High stakes bingo. We have supported that as an economic enterprise on reservations, but our support of that was and is still——

Mr. MARLENEE. Whether that bingo is run by Indians or non-Indians. Are you saying you support it, whether that is run by Indians or contracted out to non-Indians? You support it either way; is that correct?

Mr. SWIMMER. We would support it on the reservation——

Mr. MARLENEE. However they want to run it?

Mr. SWIMMER. That is right, however they want to run it, under the jurisdiction of the tribe, however they want to run it.

Mr. MARLENEE. Under the jurisdiction of the tribe. What about the law enforcement on the reservation and the jurisdiction that they have? Do you support tribal sovereignty?

Mr. SWIMMER. Yes.

Mr. MARLENEE. You support tribal sovereignty. Do you think that the tribes are capable of governing their own law enforcement within the reservation, particularly as it applies to Indian gaming?

Mr. SWIMMER. No.

Mr. MARLENEE. You do not?

Mr. SWIMMER. No.

Mr. MARLENEE. Isn't that a contradiction?

Mr. SWIMMER. Not necessarily. We don't believe——

Mr. MARLENEE. I would like an explanation.

Mr. SWIMMER. We don't believe that the tribes at this point are capable of providing adequate law enforcement and everything that that entails, doing the investigative work and what have you, to ferret out illegal operations in Indian gaming on reservations, and that is why we have supported the Federal——

Mr. MARLENEE. All right. In your opinion, can Congress pass legislation, and the President sign a bill into law, that restricts or gives limits as to what can or cannot be done on reservations?

Mr. SWIMMER. Certainly.

Mr. MARLENEE. You do? Yet, you say that you support tribal sovereignty entirely for the reservation.

Mr. SWIMMER. Yes.

Mr. MARLENEE. Isn't that a contradiction?

Mr. SWIMMER. No, sir.

Mr. MARLENEE. It is not?

Mr. SWIMMER. Tribal sovereignty ends here. Tribal sovereignty is subject to the will of the Congress of the United States. It is not subject to the will of the States.

Mr. MARLENEE. Oh, then we can pass laws.

Mr. SWIMMER. Yes.

Mr. MARLENEE. We can pass laws in Congress regarding taxation, the rights of the tribes to tax Indians and non-Indians?

Mr. SWIMMER. Yes.

Mr. MARLENEE. We can do that. Well, I am glad you concede that we can do that. I note that you oppose on many instances our opportunity to do that when we think it is in the best interests of cooperation and coordination of Indians and non-Indians.

How many—let's turn to the enforcement itself. And I might ask Victoria Toensing——

Ms. TOENSING. Toensing.

Mr. MARLENEE. Toensing. Thank you, Victoria. Taking into consideration a reasonable estimate of the number of tribes, and that may be involved in some type of gaming operation at different locations, and I believe this question was asked last year, the last time we considered this legislation:

How many inspectors would be needed, do you know, by the Federal Government? Do you have any estimate?

Ms. TOENSING. No, there is no way to estimate that, because we don't know how many tribes are going to indulge in what kind of gambling. Are you saying with all the class III proliferation that could occur?

Mr. MARLENEE. So, you have no idea how many inspectors will be needed. How many auditors would be needed?

Ms. TOENSING. Many, many, I mean more than we could certainly afford.

Mr. MARLENEE. More than we could afford. How many investigators, how many offices and field offices, how much travel, how much travel time, how much per diem by the Justice Department, by the BIA, by the law enforcement agency; you have no estimates on that?

I think there were some figures that were roughly estimated the last time the Justice Department was up here and testified on it.

Ms. TOENSING. I was the person who testified, and I don't recall those figures, but I will ask my lawyers and find out if we have those for you.

Mr. MARLENEE. But Mr. Swimmer, you still endorse the Federal Government being the enforcement arm of gambling on reservations?

Mr. SWIMMER. Yes.

Mr. MARLENEE. Even though we don't know how much it will cost? Have you come up with any kind of a recommendation as to some type of user fee, if you will, inasmuch as this—your administration, our administration, and this Congress has been very inclined to have user fees? Is this going to be a self-liquidating kind of a cost?

Mr. SWIMMER. We would expect it to be. We would hope it would be, that the games, the bingo games would finance the regulation of them. We believe that because we are limiting the operation of gaming on reservations, the high stakes bingo, that it is the kind of a thing that even though it is spread across the country, could be regulated by a gaming commission.

They are dedicated to bingo, they can learn about it, and they should be able to go out and have inspectors work on it. Our belief

is that bingo has been of an economic help to these tribes, and that it is an enterprise that could be continued, if federally regulated, but we also believe that Federal regulation should be paid for by those same tribes that are receiving the benefits.

Mr. MARLENEE. You don't feel that this opens the floodgate for every reservation within the Nation to have some type of gaming operation?

Mr. SWIMMER. If some controls aren't put on it by the Congress, it is very possible. As the law stands now, whatever is permitted at any level in any State where there is a tribe may be done on a reservation without regulation.

So, any State, California, Arizona, New Mexico——

Mr. MARLENEE. But you have stated that you are in favor of gaming on the reservation——

Mr. SWIMMER. Bingo.

Mr. MARLENEE [continuing]. With regulation. Do you think that every reservation ought to consider it as an economic enterprise?

Mr. SWIMMER. No, sir.

Mr. MARLENEE. Well, let me ask two final questions.

Do you think that the present law enforcement of BIA, that BIA provides on the reservations is adequate?

Mr. SWIMMER. For this, to monitor the bingo operations?

Mr. MARLENEE. No, no, no. I am just talking about—I said present law enforcement activity, and enforcement is adequate. You heard me make the case about the $15,000 check bouncing, et cetera, and you read the newspapers as well as I do. Do you think that the present law enforcement provided by both the Justice Department and the BIA is adequate?

Mr. SWIMMER. To answer the question broadly, it is not adequate, because not every crime on the reservation is handled——

Mr. MARLENEE. Very high level of homicides per capita?

Mr. SWIMMER. There is a high level of crime on the reservation in those kinds of situations. We have homicides, we have a lot of alcoholism-related crimes. We have adequate law enforcement now, I believe, to handle—if you were to compare it with the ability of States or the Federal Government in other areas, we have an equal amount of law enforcement.

Now, one could say that law enforcement isn't satisfactory unless every crime is investigated timely and somebody is prosecuted and eventually incarcerated. We can't do that, obviously. We have high crimes that are committed that must be referred to the FBI, and we have to impose on their workload.

We have——

Mr. MARLENEE. Well, I might say, in that regard, Mr. Swimmer—and to our representative from the Justice Department—we have seven reservations in Montana, and law enforcement is not adequate. The Indians themselves are complaining about it, and crimes go unprosecuted, and your Department is advocating taking the regional office from Montana and moving it to Salt Lake City, putting that one step further from enforcement on Montana reservations.

I thank the both of you for your patience and indulgence with this member from Montana.

Mr. CAMPBELL [presiding]. Secretary Swimmer, let me ask you a couple of things.

First of all, is the BIA now proposing working on regulations for a commission to control bingo?

Mr. SWIMMER. No, sir. We are working on a regulatory framework for section 81, 25 U.S.C. section 81, which gets us in at the very beginning, if there is a contractor involved, and presently, under section 81, it is an 1871 statute that essentially says the Secretary is supposed to approve contracts between tribes and outside folks.

We are attempting to use that authority, however to monitor and approve contracts with outside parties, between the tribe and an outside contractor coming in. We have had some success, but very limited. Our success also stops once we have made the approval, or not made the approval. We don't have any way of following up to see what ultimately happens in a bingo game.

We also, because we don't have a framework yet around which to reject an 81 proposal, that is why we are developing the regulations, and that would give us, under the proposed regulations, a few things like looking into the background of an individual contractor and reviewing the contract to see if, in our opinion, it gives a fair split to the folks.

That is about the extent of it now, and as I say, it is very difficult to use that statute in any meaningful way.

Mr. CAMPBELL. OK. May I ask you what kind of tribal input you are having on developing regulations?

Mr. SWIMMER. We have, I think we are in the proposal stage. We have not sent them out for consultation yet. We are trying to use the standards as guidelines, and all we are doing is implementing those standards as regulations, so the tribes are aware of the standards that we have gone by in the past.

Mr. CAMPBELL. But you intend to include them in the development of the regulations; is that your intention?

Mr. SWIMMER. Yes, sir, when we have the opportunity to review the regulations and make comments, and we would regard those comments very highly. Again, it is minimal, however, in that kind of enforcement.

Mr. CAMPBELL. Are there any more questions?

Mrs. VUCANOVICH. Thank you. I would like to ask a couple of questions of Secretary Swimmer and also of Ms. Toensing.

Secretary Swimmer, what authority does the BIA or the Department of the Interior have to audit existing gaming operations on Indian lands?

Mr. SWIMMER. We don't have any.

Mrs. VUCANOVICH. You have no way to audit what happens?

Mr. SWIMMER. Not as it involves nontrust income or income from non-Federal programs. The tribes conducting an operation such as bingo, that is their income, they run it through their books however they want, we do not have a mechanism for demanding, we cannot go in and seek an accounting.

If we are advised, of course, that there is some kind of fraud or possible criminal violation, embezzlement by a tribal member or by an outside contractor, we have the appropriate Federal criminal

statutes, that we can sent Inspector General or call on Justice to go in and investigate.

But as far as an accounting, we have no way of conducting accountings now.

Mrs. VUCANOVICH. That is unbelievable. What kind of audits or oversight inquiries have you performed on non-Indian personnel or agreements, and so forth, that deal with Indian gaming operations? Do you have any kind of oversight or audit on any of those activities?

Mr. SWIMMER. Only if they were to come in as a contractor, only if a tribe told us that they were going to hire a contractor to operate a game, we then, under section 81, have, as I said, proposed some guidelines, and one of those is to review the background.

Well, presently, that is pretty limited also. All we can do is ask the FBI to compare their list with the list of undesirable characters, and see if they match. But even at that point, I am not sure that we can refuse. We have stalled in a number of cases, knowing that there are people that are certainly undesirable, and some of the contractors, but even in those cases, the tribe can simply say, well, we have changed our mind, we are not going with the contractor, we are going to hire the individual directly. Once they put him on the payroll, we don't have any control at all.

They could go out and hire the same people that are doing the contracts and give——

Mrs. VUCANOVICH. Hire them as employees then?

Mr. SWIMMER. Sure.

Section 81 is only where there is an arm's length contract, and that is the only time we get involved with a contractor.

Mrs. VUCANOVICH. And would you do this in your BIA Regional Offices? Where would you do this?

Mr. SWIMMER. A review, a background review or something? We would do it out of the area offices, and we have attempted, in doing those, and I would say they have been very limited so far, because of resources.

We try to do them through the FBI or the Inspector General or the Office of Personnel Management.

Mrs. VUCANOVICH. Has the BIA consulted with any States on these guidelines or contracts?

Mr. SWIMMER. Yes, we have. We have visited with the State of Nevada, and I think we have reviewed, I don't know who has been talked to in New Jersey, but we have looked at some of the guidelines, regulations that they use, and some of the laws.

But we don't really have a way of incorporating those. We have just looked to see what level of review we could do under the current laws that we have access to.

Mrs. VUCANOVICH. Mr. Swimmer, there was a May 4, 1987 article that was in Forbes Magazine indicating that the Fort McDowell Reservation in Arizona offered keno and slot machines under the name of bingo.

Do you know if that is true? I have a copy of the article.

Mr. SWIMMER. I have not personally observed it. I have heard the same reports, and that happens in several areas that I am told about. It is bingo by a lot of other names.

Mrs. VUCANOVICH. Well, assuming that that is so, and we are talking about gaming being allowed in States where this is allowed. Does Arizona law allow slot machines and keno games?

Mr. SWIMMER. I am not aware whether they do or not.

Mrs. VUCANOVICH. Then—would you assume that this is so, and that that might be a violation of Federal law?

Mr. SWIMMER. In that case, it would be a violation of Federal law, if the State does not permit it and the tribe is playing it. Now, the issue is, who defines bingo? We don't have any laws that define bingo, and if the tribe says a slot machine is a bingo slot machine, that is what we are faced with.

We can turn it over to the Justice Department, and they can go in and determine whether it is a bingo slot machine or a regular slot machine. But it is called bingo, and that has been done in a number of instances that we are told about, but we do refer to Justice those kinds of cases.

We have had two problems in Arizona and New Mexico involving dog racing and j'ai alai. The States both permit pari-mutuel, but they limit it to certain kinds of pari-mutuel betting. A recent case that was just decided in the Secretary's favor was where we, I believe the issue was we rejected dog racing, even though the State permitted horse racing.

We said that because the Attorney General said that dog racing was not a permissible activity, we supported the Attorney General and said that the tribe couldn't do it. And we went to court and enjoined them. Well, the court did hold in our favor and say that you have to stick with horse racing if the tribe is going to do it.

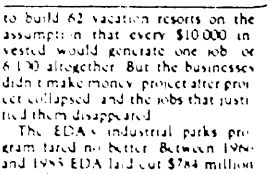
Mrs. VUCANOVICH. I would like to submit this Forbes Magazine for the record, if that would be appropriate, Mr. Chairman.

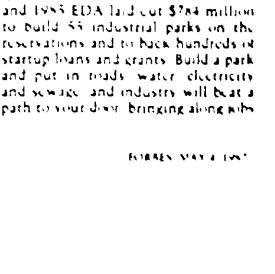
[EDITOR'S NOTE.—Mrs. Vucanovich subsequently supplied the following magazine article:]

see p. 70

For generations, schemes to build an economy on America's 300-odd Indian reservations have failed. Throwing money at the problem hasn't helped. What will

Help wanted—work, not handouts





By James Cook

TWELVE MILES beyond the east entrance of the Rockies where the peaks of Glacier National Park give way to the high plains sprawls the town of Browning, Mont., altitude 4,360 feet, population 2,500. Browning looks like the trash can of the West: a low-lying jumble of trailers, cinder-block houses and peeling frame buildings, its streets so rutted and potholed that its current mayor was elected on a platform for filling them in.

At 10:30 of a late summer morning Browning is still half asleep. You see a few pickup trucks pulled up in front of the Circle K convenience store, a line of Indians returning last night's videocassettes at the local theater and a falling-down drunk trying to cross the street half a block away. Business is so slack that Browning's only bank folded four years ago.

Browning is not just another back-country western town. It symbolizes the failure of a $30 billion experiment in social engineering, an experiment that failed—as all such experiments seem doomed to fail.

Browning is the headquarters of the 1.5 million acre Blackfeet Indian reservation. For generations the Blackfeet were horsemen, hunters and fighters, nomads who burst out of the Canadian shield 200 years ago and drove the resident Salish and Kootenai tribes westward beyond what is now Glacier National Park. The most obvious reminders of the Blackfeet's past is the Museum of the Plains Indian in the western edge of town and a cowboy keeper on Main Street.

The Blackfeet have struggling for them than most tribes. There is oil and gas on the reservation, yielding maybe $3 million a year; some timber and cattle ranching; a fair amount of farming: barley, wheat and hay—at least when water is plentiful—an industrial park and even a major tribal enterprise, the Blackfeet Indian Writing Co. The Blackfeet were well enough off that the council distributed nearly $8,000,000 last year to its members—$60 apiece, that is.

That's one of the things people look forward to. Chief Earl Old Person says. They have little else to look forward to.

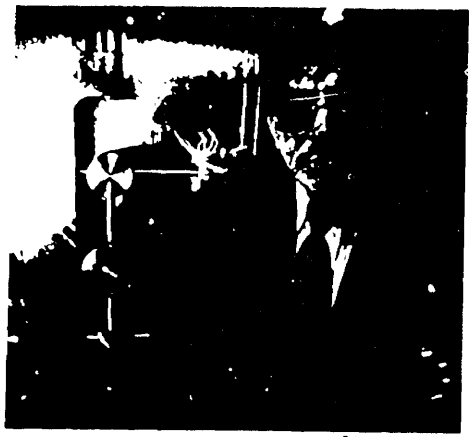
The truth is the U.S. 1.4 million Indians are among America's most disadvantaged minorities—ill educated, unhealthy and poor—and so for at least 15 years now the federal and tribal governments have launched one well-intentioned scheme after another, designed to provide jobs and job opportunities on the reservations and invariably failed. What has gone wrong? The answers are instructive—if frightening—for those who worry about job creation and about economic development in undeveloped countries all over the world.

In the 1960s, for example, the Department of Commerce's Economic Development Administration had the idea of building vacation resorts throughout Indian country and putting the Indians to work in them. All told it laid out $61 million to build 62 vacation resorts on the assumption that every $10,000 invested would generate one job or 6,130 altogether. But the businesses didn't make money, project after project collapsed, and the jobs that justified them disappeared.

The EDA's industrial parks program fared no better. Between 1966 and 1985 EDA laid out $784 million to build 55 industrial parks on the reservations and to back hundreds of startup loans and grants. Build a park and put in roads, water, electricity and sewage, and industry will beat a path to your door, bringing along jobs

Better off than most tribes but not better off enough

BEST AVAILABLE COPY



An economy too feeble to support even its own bank

Low cost labor couldn't offset weak management.

[illegible] Unfortunately the money [illegible] big enough to attract everybody from fast buck promoters [illegible] tribesmen to organized crime.

Talk about innocents! In California one outside management company financed a $3 million hall for one of the local tribes, reportedly took an estimated $1 million a month—$24 million to $30 million over a 2½-year period—and by terms of the contract turned over only $500 [illegible] to the tribe. [illegible]

They are learning, for example, that there is more to earning than bingo. Arizona's Fort McDowell reservation [illegible] keno and slot [illegible] under the name [illegible] bingo. New Mexico's San [illegible] pueblo wants to get into greyhound racing. The Gila River reservation [illegible] jai alai with a $20 million fronton near Phoenix. Some tribes have even talked about going for casino gambling. In places like Palm Springs [illegible] or Las Vegas casino gambling could move the tribes lucky enough to be there into the really big money.

Unfortunately, while gambling brings in revenue, it doesn't bring in many jobs for Indians. As San Diego's tribal investment consultant Mike Sanipar points out, "Having money is not the same thing as having a job."

As for the $30 billion the federal government poured into the reservations over the last ten years [illegible] billions such tribal enterprises as oil, gas and timber have generated [illegible] out again [illegible] businesses [illegible] reservation [illegible] that provide the goods and services the reservations themselves need. The Flatheads spend $9 million with the businessmen of nearby [illegible] and $5 million in nearby [illegible] and [illegible] and Winnebago tribes discovered they were spending $3.3 million a year [illegible] food and [illegible] gasoline [illegible] $5 [illegible]

According to a Rensselaer Polytechnic Institute study, what the reservations lack most is not capital but entrepreneurs, the spark plugs, as Institute President Harold Williams calls them, that make businesses go and, in the long run, set economies hum[illegible]

[illegible] Harold Williams says [illegible]

[illegible] than plans and budgets. Under Swimmer the Bureau of Indian Affairs is trying to do just that. A few months ago it hired three firms, Williams' Rensselaer Polytechnic Institute among them, to create a series of business development centers [illegible] more than a thousand [illegible] over the next three years [illegible]

What sets the present program apart is that its emphasis will be individual and entrepreneurial rather than bureaucratic, whether it's helping a tribal business find financing or a computer service [illegible] operating [illegible] existing businesses.

[illegible] out and [illegible] develop small business on [illegible] reservations, says David Gor[illegible] who heads up [illegible] business opportunity centers for [illegible] Our objective is to [illegible] jobs. We want [illegible] with the idea of a business [illegible] dependent on sub[illegible] We're not saying a group of [illegible] a business and [illegible] successfully. What we're [illegible] to have some [illegible] in charge."

Are Indians [illegible] entrepreneurs? [illegible] Indian business[illegible] in the U.S. found [illegible] reservations, and Swimmer is [illegible] Indian college graduates as prospective entrepreneurs [illegible] tribal [illegible] a fair number may be willing to come back to the reservation—assuming the grip of the tribal bureaucracy can be broken.

"I would argue," says Robert Nelson, who headed up the Interior Department's Task Force on Indian Economic Development last year, "that it is the bureaucracy at the tribal level as much as in Washington that has been a barrier to the entrepreneurial spirit, and if you remove that barrier you may find the historic roots of some kinds of entrepreneurial endeavor are very much present." According to Nelson, "the attitude the Task Force Report took was to try to create opportunities for things to happen—enterprise zones, preferential contracting and financial aid. You need to take a lot of action in the area of education, training centers, preference. There's just not going to be a spontaneous burst of entrepreneurship."

"All the entrepreneurs on the reservations have been co-opted by federal programs," Ross Swimmer complained. "The [illegible] a business says to heck with that, and he'll go off the reservation. We want to bring those people back. There's an entrepreneurial class of Indians in this country someplace."

Just another cruel hope? Maybe, but one thing is clear: Indian backwardness, like all the other intractable social problems, doesn't yield to massive assaults by dollars. ■

[illegible]
The trick is to get out and sell the reservation.

Mrs. VUCANOVICH. I have a couple of more questions, and I am concerned about definitions and so forth.

Within the definition of class II gaming in both the bills that we have in front of us, there are provisions for electromechanical video machines, and electronic facsimile machines. Now, in layman's terms, aren't these really in essence slot machines?

Mr. SWIMMER. I am not that familiar with the gaming devices. Bingo, to me, is where you have a card in front of you, and you put covers on it when they call the number. Beyond that, I am not sure what these devices would do and how they would—

Mrs. VUCANOVICH. Have you seen them set up in Nevada, for instance?

Mr. SWIMMER. Nothing but roulette wheels, slot machines and things like that in the casinos, but——

Mrs. VUCANOVICH. Well, in the casinos we now have machines, video machines and electronic facsimile machines that look as if they are poker or video displays of gaming, and they are slot machines——

Mr. SWIMMER. I have not seen them, but that is——

Ms. TOENSING. I am being told that they are slot machines——

Mrs. VUCANOVICH. They are slot machines.

Ms. TOENSING. Those are to be considered as slot machines.

Mrs. VUCANOVICH. Yes, I have a couple of other questions I want to ask you here.

Do you think the idea of a tribal referendum is appropriate for determining whether or not gaming operations should be allowed on tribal lands?

Mr. SWIMMER. I think it is. I suggested that as an amendment to the bill when I testified before the Senate.

Mrs. VUCANOVICH. Would you explain why you think that?

Mr. SWIMMER. There are a couple of things that have troubled this country for a long time, prohibition and gambling. They are generally considered devices, and when States, most States at one time or another, even the Federal Government at one time, had constitutional prohibitions at least against the liquor sales; it is not unusual at all for us in this country, whether it is suggesting a statewide lottery, for instance, or legalizing pari-mutuel, to put that to a vote of people.

In my own State of Oklahoma, we voted recently on the pari-mutuel, and even took it another step to make it country option, so that not only did you vote statewide, but if you really didn't want it in your county, you had a second chance to vote against it.

It would appear to me that, in my visits around Indian country, I have had several comments made by Indian people, individual people not associated with the government directly, that have indicated their lack of desire for bingo or gambling on the reservations, and said they really don't have any say about it, since the tribal council decided to do it on their own.

I think that, in those two instances, when we are talking about devices, so to speak, it is an appropriate thing that all people should be able to have an option as to whether they want that in their county, in their town, on the reservation.

So, from my perspective, I think that it is appropriate that we should ask tribes to seek referendums on those things when they

pass them. Because it is bringing an element onto the reservation that is going to cause some problems eventually, one way or the other. And it is going to impact the reservation's resources.

In my own tribe, I chose not to have bingo in Oklahoma in the Cherokee Nation, because I believed that the resources it would take from the tribe to manage it, to appropriately manage it and oversee it and all, would be far greater than what we could gain from it in terms of revenue, and that it would be better to focus those resources on more private sector manufacturing business type operations.

Mrs. VUCANOVICH. Thank you.

Ms. Toensing, I understand that you mentioned in the Senate hearings that there are ongoing criminal investigations involving existing Indian gaming operations. Is this true, and——

Ms. TOENSING. That is correct.

Mrs. VUCANOVICH. At an appropriate time, will Justice make a detailed report to Congress?

Ms. TOENSING. I don't know that we would make a detailed report, but if members would like some information that we could go out of the public view in an in-camera kind of session. We would provide what we could without violating any kind of laws that we are obliged to uphold.

Mrs. VUCANOVICH. Wouldn't this have some impact on the legislation before us if we had that knowledge, even if there——

Ms. TOENSING. Well, sure, but we can't violate the things that we have to uphold to get the legislation we want.

Mrs. VUCANOVICH. I think most of us who represent the State of Nevada understand the implications of gaming on Indian lands, and I think it would be very helpful in this determination.

Mr CAMPBELL. Would the gentlewoman from Nevada yield for a minute?

Mrs. VUCANOVICH. Certainly.

Mr. CAMPBELL. Congressman Marlenee has to make a 1 minute——

Mr. MARLENEE. I need to go to the Floor of the House, and I apologize for interrupting.

Mrs. VUCANOVICH. That is all right.

Mr. MARLENEE. I would like to ask the representative of the Justice Department, when there are crimes that occur over an area of two or three States, interstate crimes, what law allows the Justice Department to investigate those crimes? Federal law?

Ms. TOENSING. I am sorry, I don't understand your question.

Mr. MARLENEE. We have statutes governing the commission of crimes that occur over lines, interstate crime.

Ms. TOENSING. There are various——

Mr. MARLENEE. Pardon?

Ms. TOENSING. We use the basis of the commerce clause for being able to go over State lines; is that what you are asking?

Mr. MARLENEE. Do you have any other statutes that deal with that?

Ms. TOENSING. We have numerous statutes that allow us to go into the States and uphold laws that cross State lines.

Mr. MARLENEE. Correct.

Ms. TOENSING. There are many of them. But if you are talking about gambling, there is also 1955, which incorporates State law, gambling activities which violate State, it is an organized crime statute. And if it is done in a certain way with a certain pattern and repeated a certain number of times, we can go in and use that.

Mr. MARLENEE. We have a situation where an Oklahoma tribe and a Florida tribe are involved with each other, one of them claiming that they have been defrauded out of $280,000; an individual in Florida or Oklahoma who claims that she had participated in gambling, had not received some $100,000 plus that she had won; is this a crime?

Ms. TOENSING. Well, I would have to know more. I don't think there are any laws that apply now on the Indian reservation to get that money back, it would probably be civil liability there, or some kind of civil basis.

Mr. MARLENEE. All right, let me ask one specific question. Have you investigated any crime, to this date, of that nature, the Justice Department? Please provide that for me, and the details surrounding that.

Ms. TOENSING. Yes, I will.

Mr. MARLENEE. Thank you.

[EDITOR'S NOTE.—At time of printing the above-mentioned information had not been received.]

The CHAIRMAN [presiding]. Mrs. Vucanovich?

Mrs. VUCANOVICH. Thank you. I have just a couple of more questions, if I may, Mr. Chairman?

I would like to ask Ms. Toensing, if H.R. 2507 is enacted into law, what increase in manpower and funds will the FBI need to handle the projected increase in responsibilities?

Ms. TOENSING. That is very speculative. It is very difficult to determine right now. I was asked that in the State last week, and we are working on it. The problem is, we have no way of anticipating or determining right now what kind of proliferation is going to take place.

But I can tell you the factors that we will be looking at, and that is that it would open up the door to all different kinds of gambling in States so that we would have dog racing occurring, card games occurring, horse racing, pari-mutuel horse racing; and you see that as you get more gambling and then varied games, you get a factor that goes off the wall as far as having to have expertise in these various areas.

Mrs. VUCANOVICH. So, it is really almost infinite until you know how many people are going to be doing this?

Ms. TOENSING. Yes.

Mrs. VUCANOVICH. I would like to ask Mr. Swimmer one other question. Do you believe that Indian gaming operations could be financially viable without non-Indian customers?

Mr. SWIMMER. No.

Mrs. VUCANOVICH. So that it would be important, then, from our point of view, that the consumer who would be a non-Indian, would be protected in some way, and I think that is some of the concern that we have in our concerns about these bills——

Mr. SWIMMER. Yes.

Mrs. VUCANOVICH [continuing]. that the customers would be, in most cases, non-Indians.

Mr. SWIMMER. Yes.

Mrs. VUCANOVICH. I have several other questions, but I am sure that the chairman would like to get on with the hearing, so I would like to thank both members of the panel, and if we have any further questions, we will submit them.

Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Campbell?

Mr. CAMPBELL. Thank you, Mr. Chairman.

Mr. Secretary, you and I have been on the same side a couple of times, and on the opposite side a couple of times, and had some talks about it, but I think I understand your mission as the Under Secretary, and that is really to try to protect the trust responsibility, and I was introduced on page 3 of your testimony, the President's Indian policy.

And I won't read the whole thing, but a couple of lines just stood right out at me, one of them: "The administration affirms the right of tribes to determine the best way to meet the needs of their members, and to establish and run programs which best meet those needs."

So, it seems to me that your positions in some areas aren't in keeping with, you know, the administration's.

But the second line that really stood out to me was the last line, and that is, pertaining to Indian communities: "They must be allowed the chance to succeed."

I have to tell you, when I read that statement, judging from some of the past performance and some of the things that may be impending, it reminds me of the guy who says his young child should learn to swim. So he takes him down to the lake and throws him in, and I think that in this instance, that what we are saying in effect is that some will learn to swim if the process of learning doesn't kill them.

And I just have to say that when I read that statement of the philosophy of the administration, I can't say that the performance of Interior has been in keeping with it. But I don't have any questions, thank you.

Mr. SWIMMER. I would be happy to address that, if you wanted that, sir.

Mr. CAMPBELL. I would like you to.

Mr. SWIMMER. I think that there are at least attempts at performing the administration's policy, are valid and have been vigorous. To use your analogy, I suppose we could say that the safest thing is not to take the child to the river at all.

And if we fail in doing that, and we never teach the child to swim, then obviously, when he gets near the water, he is going to drown, or she. And I think that is a problem we are faced with in the regard of a chance to succeed.

The administration policy that you quoted reiterates the policy of self-determination in 638 contracting, and that is to let the tribes determine how this $3 billion a year is going to be spent on Indian reservations instead of us trying to dictate to them what is the best way of spending the money.

As regards the issue of gambling in that statement, I think there are certainly some overriding concerns on our part that we not regress in the progress that has been made by many of the tribes, and show them, or attempt to show them that gambling is a panacea or a way of economic development that is going to be there for all times.

We are already seeing numerous games that are going out of business because of competition. Obviously, if it is lucrative in one area, it is going to be taken over by others, too.

And a State that does not permit charitable—or permits only charitable gaming sees many Indian tribes developing high-stakes bingo and taking those funds, pretty soon there would be no reason why the State should not simply legalize high-stakes bingo.

When that happens, then you will see a tremendous dry up of bingo in Indian country, because in many areas, it is remote, people travel hundreds of miles to go to the games, and if there is going to be that kind of competition, people will go to the games that are closest to them.

What I am concerned about is that we are sort of putting our eggs in a basket and saying, Indian bingo is it, and look at all the money, the hundreds of millions, it is bringing in, and I think we have experienced an oil crisis and other things in this country that some States thought was going to be their salvation forever and ever, and it didn't happen.

So, mine is simply an alert, and it is to say that yes, gambling is one of those areas that can be an industry. It is a highly regulated industry, it is not something to be taken lightly. It is dealing with fire. It is putting the child at the edge of the stream, and saying, "Don't jump, but if you do, make sure that you swim your best."

We certainly in the BIA don't have the experience. No State that I am aware of, except the two gaming States, have any experience in high stakes bingo, and yet, we have seen now high stakes bingo proliferate throughout this country.

So, we are facing a really difficult, serious issue that can't be taken lightly.

Mr. CAMPBELL. One last question. You mentioned your own tribe, the Cherokees of Oklahoma. I don't know of any tribe, and I think probably the Cherokees, too, that want State jurisdiction over their affairs.

I wanted to know about the gaming on Cherokee country. They have bingo now? Or do they not?

Mr. SWIMMER. In Oklahoma?

Mr. CAMPBELL. Yes. Where you are from.

Mr. SWIMMER. Yes. The Cherokee tribe does not have bingo.

Mr. CAMPBELL. They do not have bingo?

Mr. SWIMMER. No.

Mr. CAMPBELL. Was that tribe given the right of referendum, or did you make that decision when you were the President of it?

Mr. SWIMMER. I made the decision. I vetoed the council's proposal to allow a game of bingo.

Mr. CAMPBELL. I see. OK.

Mr. SWIMMER. I listened to my constituents.

Mr. CAMPBELL. OK. Thank you.

The CHAIRMAN. Thank you very much.

Mr. SWIMMER. Thank you.

The CHAIRMAN. We will now proceed to the National Indian Gaming Association with Mr. William Houle.

Mr. Houle, we have your prepared statement. It looks like about half a pound. I hope you can summarize it and make the points you wish to make.

STATEMENT OF WILLIAM HOULE, CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION, AND CHAIRMAN OF THE FOND DU LAC BAND OF CHIPPEWA INDIANS TRIBE OF MINNESOTA, ACCOMPANIED BY JOSEPHINE JACKSON AND PURCELL POWLESS

Mr. HOULE. Well, thank you, Mr. Chairman. I would like to take this first opportunity to introduce the gentleman on my right, chairman Purcell Powless, chairman of the Oneida tribe in Wisconsin; and to my immediate left, Josephine Jackson from the Saginaw Chippewas of Michigan, also both members of the National Indian Gaming Association.

As you suggested, Mr. Chairman, I do have a prepared statement that I would like to submit to the record, and I will indeed as suggested also summarize those statements.

The CHAIRMAN. Fine.

Mr. HOULE. Mr. Chairman, and members of the committee, I am William Houle, chairman of the Fond du Lac band of Chippewa. I am appearing here today in my capacity as chairman of the National Indian Gaming Association. We have submitted a prepared statement, sir, for the hearing record, and with your permission, I would like to summarize our testimony.

The CHAIRMAN. Very well.

Mr. HOULE. The National Indian Gaming Association is an outgrowth of the BIA's effort in the 98th Congress to consult with tribes. In developing its own position on Indian gaming, a so-called Indian Gaming Task Force was set up.

The gaming tribes soon found ourselves at odds with the Bureau of Indian Affairs, and we set up an organization, the National Indian Gaming Association. Although the association tries to consult and coordinate with other gaming industry, as well as nongaming tribes, we do not claim to speak for all gaming tribes.

As the record demonstrates, there are many viewpoints in Indian country concerning the need for legislation approach as well as the specifics of the different legislative proposals.

The association membership, which is described in our prepared testimony, is sizable and geographical diverse. We are, however, exclusively composed of tribes that have bingo or card game operations.

To date, the association has supported the legislative approach for Indian gaming. In the 99th Congress, we supported Chairman Udall's bill, H.R. 1920, as reported by this committee. We actively oppose Congressman Coelho's proposal to place class III under State control and regulation.

We reluctantly supported the memorandum compromise on class III gaming that was eventually negotiated between Chairman Udall and Congressman Coelho. H.R. 1920, as so amended, then was passed by the House of Representatives.

On June 10, 1986, the U.S. Supreme Court determined that it would review the decision of the *9th Circuit in California* v. *Cabazon Band of Mission Indians.* Up to that point, all Federal Courts had addressed the issue, had held that tribes were able to operate gaming enterprises free from State jurisdiction.

The Supreme Court had previously declined to review the decision of two separate Federal Circuit Courts that had upheld tribal gaming rights. Given the Supreme Court's discretionary decision to review this issue, the predominant thought, though not universal view, was that there was a significant danger of the Supreme Court reversing Cabazon.

Briefly put, we were afraid that Indian bingo would be lost. The Supreme Court's decision to address Indian gaming strongly influences the course of events in the Second Session of the 99th Congress. The association, along with organizations and individual tribes engaged in an extensive negotiation with representatives of non-Indian gaming industry and representatives of States.

These discussions were long and hard. An underlying problem in these discussions that has never been fully resolved is the completely unfounded viewpoint that Indian gaming is unregulated gaming. This viewpoint does not recognize that tribes are governments and capable governments at that.

States are presumed to be inherently competent. On the other hand, tribes are assumed to be incapable of controlling their games. The fact that tribes are running a nationwide gaming industry involving some 140 games, an industry that will soon enter its second decade with relatively minimum problems relative to criminal activity, and apparently no problems relative to organized crime, seems to have no impact on assumptions or presumptions of tribal competency.

In any effect, the waning days of the 99th Congress produced an extremely fragile compromise. The association, with the utter most reluctance and only in the face of what appeared to be a probable Supreme Court defeat, did not oppose the compromise. This compromise failed to pass the Senate.

When the 100th Congress began, and the Supreme Court still had not decided Cabazon, discussions and negotiations to find the legislative solution, to some extent those efforts are imperfectly reflected in H.R. 964 and S. 555.

On February 25, 1987, the Supreme Court of the United States, in a 6-3 opinion, squarely upheld the rights of tribes to operate gaming, free from State control, where such gaming is not criminally prohibited by State law. It is important, too, that both cards and games were upheld by the court in the Cabazon case.

Following this Supreme Court decision, the members of National Indian Gaming Association reevaluated their legislative position and determined that although the need for legislation had clearly diminished, legislation could still be helpful to tribal interests.

The association only supports legislation, however, that does not transfer any jurisdiction to State governments over Indian people, their activities or their lands. The positive goals that could be achieved in legislation were set out in an April 27, 1987 letter, and I quote:

Legislation could codify the Federal posture that gaming is a legitimate aspect of Federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system and standards for regulating management contracts as well as provide for uniform national standards for executive branch action with respect to gaming.

Well-crafted legislation could also insulate tribal gaming from what we expect will be a new onslaught of challenges from States, as well as challenges from some quarters of the Department of Justice.

Since that time, *Santa Ana* v. *Hodel* was decided by a Federal District Court here in Washington, DC. Santa Ana adopts the principles of Cabazon with respect to class III gaming.

As the courts continue to recognize and support Indian rights, the reasons for protective legislation grow fewer. As indicated in our letter, some positive goals can perhaps still be achieved.

What is clear now, however, is the proverbial shoe is on the other foot, that tribes will not be held hostage, so to speak, by the fear of losing our valuable gaming industry. At this point, it is the non-Indian gaming interests and States who are more strongly wanting legislation.

What they want is legislation to take rights away from tribes, legislation that would protect or enhance their economic interests to the detriment of Indian interests. It always seems to be the same issues. Whenever Indians have something of value, non-Indian interests, under many different guises, mount major efforts to deprive Indians of those assets.

We will oppose all such efforts.

I want to briefly address some of the theories being put forth to support removing jurisdiction from tribes and the Federal Government.

First off, we have pointed out too frequently to recount tribal gaming is not unregulated gaming. We could argue over the scope of Congressional power, the so-called plenary power of Congress over Indian affairs, but we will not.

I will point out, however, that even though it borders on rhetoric and overlooks certain historic realities, the power of Congress over Indian affairs, whatever its breadth, should be used for the benefit of Indians and not to their detriment.

The same State interests that were held to be insufficient to justify State jurisdiction in Cabazon are being asserted as justification to Congress. From our point of view, the Supreme Court's evaluation of these interests, mostly smoke and little substance, is compelling.

To these arguments, the proponents of State jurisdiction have added a new and somewhat curious argument: Class III gaming is complex and only States are capable of regulating it. Presumably, the States do what everybody else is capable of doing. They set up a regulatory scheme, finance it, hire people to operate it, something that is clearly doable at all levels of government.

This takes us back to the old problem of seeming inability to recognize that tribes are government. Complexity has not precluded tribes, large and small, from functioning as governments in other areas.

In any event, the legislative proposal that we are willing to support, H.R. 2507, has the Federal Government as the primary regulator of class III. Two of the primary reasons for continuing to see

some benefit from legislation would be, one, the insulation of gaming from continuous attack; two, the provision of an effective and enhanced system for dealing with management contracts and contractors with respect to the insulation of Indian gaming; the adoption of adequate gaming definitions clearly pre-empting State law would be helpful.

The association strongly supports the management contract provisions of the bill. The Department of the Interior got off to a slow start developing its standards for its 25 U.S.C. section 81 responsibilities, and still today, Interior standards are short of those contained in any of the legislative proposals before Congress.

We all have played a very active role in developing these proposed legislative standards. The provisions have come from our experience in negotiating management contracts and operating under those contracts.

Many of the elements were suggested in tribal testimony before this committee at its June 1985 hearing. The limitations on years for management contracts was recommended in tribal testimony, and its purpose was and is to foster Indian self-determination, to provide tribes with reasonable time during which they could develop their own expertise and then be able to evaluate how they wish to proceed with their gaming enterprises.

These and other specific limitations on management contract requirements are far from being the arbitrary standards that are suggested. They derive from tribal experience and reflect Congress' concern that Indian self-determination and economic self-sufficiency be fostered in the gaming area.

The association supports the most stringent standards possible in S. 555. This reflects our position. The association believes that contracts should be held to the proposed statutory standards, and opposes the grandfather provision in H.R. 964.

It is beyond our understanding, given the concern over criminal infiltration that any management contractor should be held to none other than the full background investigation called for in all the proposed bills.

A real problem with the BIA's existing procedure is that potential contractors only screen by computer records check, and not in a full field investigation. Other problems with the BIA process is that although its standards have continued to improve, early standards were meager, ineffective and even the current BIA standards are not equivalent to those contemplated in any of the legislative proposals.

We will be submitting for the record our analysis of Congress' power and authority to require modifications in existing gaming management contracts. Congress has the ability to modify contracts generally when Congress is acting reasonably to pursue overriding public policy.

In addition, Congressional power in Indian affairs is extensive, particularly when acting to protect Indians from unscrupulous non-Indians gaming. Generally, it is often viewed as a privilege and not a right, and as such is generally afforded less due process protection than any property or contract obligations.

Combining these three factors more than adequately sustains Congress' ability to enact section 14 of H.R. 2507 or S. 1303.

In closing, I want to thank the committee for soliciting our views and urge you to proceed expeditiously. I want to take this opportunity on behalf of the association, and I am sure the gaming tribes nationwide, to commend Chairman Udall for his unfailing support. Chairman Udall personifies the commitment made by the people of the United States to Indian people a long time ago, 1787, in the Northwest Ordinance, and I quote in part:

> The utmost good faith shall always be observed towards Indians. Their lands, their properties shall never be taken from them without their consent. Laws founded in justice, humanity, shall from time to time be made for preventing wrongs done to them and for preserving peace, friendship with them.

I stand ready to answer any questions that you may have.

[Prepared statement of Mr. Houle follows:]

STATEMENT OF THE NATIONAL INDIAN GAMING ASSOCIATION,
WILLIAM J. HOULE, CHAIRMAN
ON H.R. 2507, H.R.964, S. 555 & S.1303,
[THE INDIAN GAMING REGULATORY ACT]
BEFORE
THE HOUSE INTERIOR & INSULAR AFFAIRS COMMITTEE

June 25,1987

I wish to thank the Committee for the opportunity to appear and testify on the different versions of the proposed Indian Gaming Regulatory Act.

SUMMARY OF NIGA POSITION

Although in many ways the various bills before Congress are very similar, there are important differences between the bills. A most critical difference is the treatment of Class III gaming. This is the issue that resulted in protracted conflict over H.R. 1920 in the 99th Congress. The National Indian Gaming Association's position on this issue was most recently related to Chairman Inouye in a April 27, 1987 letter which stated "Class III gaming should be licensed and regulated by the federal Commission." Our position has not changed; we are opposed to any State jurisdiction over Indian gaming. H.R. 2507 and its companion bill, S.1303 come the closest to our view on this issue. There are a number of legal, policy, and factual reasons underlying our position which we will detail in latter portions of our testimony.

There also are other important differences between the bills, issues such as costs, definitions, management contracts, and composition of the Commission. We support the provisions of S. 555 (and to a lesser extent H.R. 964) on many of these issues. In a few areas we find all of the bills deficient and make specific recommendations for the Committee's consideration.

BACKGROUND

It is important first to tell you something about National Indian Gaming Association (NIGA), the role we have played and to address what we perceive to be misconceptions concerning the tribal role in gaming. I am the Chairman of the National Indian Gaming Association, we are an organization made up of over twenty Indian tribes that are actively involved in Indian Gaming. My own tribe is the Fond du Lac Band of Lake Superior Chippewa Indians; the Tribe has a joint venture 1000 person capacity Bingo operation in Duluth, Minnesota and tribally operated 500 person capacity gaming enterprise at Cloquet on the reservation. Some of the other members of the Association are the Tulalip Tribe (Washington) which has a tribally managed 1400 person capacity gaming enterprise; the Seminole Tribe of Florida, which has 3 gaming enterprises, with capacities of 1200, 1200, and 5000 persons respectively, all operated with management contracts; the Saginaw Chippewa Tribe (Michigan) which has tribally managed gaming enterprise with a 400 person capacity; the Oneida Tribe of Wisconsin which has a tribally managed 1200 person capacity gaming enterprise; the Sault Ste.

Marie Tribe (Michigan) which has a tribally mansged 1000 person capacity gaming enterprise; the Shakopee Mdenakanton Sioux Community (Minnesota) which has a 1000 person capacity tribally managed gaming enterprise; The Creek Nation of Oklahoma, which has 2 gaming operations with capacities of 450 and 1150 persons respectively, operated with management contracts; the Seneca-Cayuga Tribe (Oklahoma) which has a 500 person capacity tribally managed gaming enterprise; the Puyallup Tribe (Washington) which has 3 individually operated games under tribal license; the Bristol Indian Community (Oklahoma) which is also part of the Creek Nation, has a tribally managed 300 person capacity gaming enterprise; the Hannahville Tribe (Michigan) which has a tribally managed 500 person capacity gaming enterprise; the Kickapoo Tribe (Kansas) which has a tribally managed 300 person capacity gaming enterprise; the Delevare Tribe of Oklahoma which has a 1200 person capacity gaming enterprise, operated with a management contract; the Pascua Yaqui Tribe (Arizona) which has a 1000 person capacity gaming enterprise, operated with a management contract; the Iowa Tribe of Oklahoma which has a 500 person capacity gaming enterprise, operated with a management contract; and the Lac Du Flambeau Tribe (Wisconsin) which has a tribally managed 600 person capacity gaming enterprise.

The National Indian Gaming Association (NIGA) is an outgrowth of efforts that began in the 98th Congress by the BIA to consult with tribes in developing its position on Indian gaming. A so-called Indian Gaming Task Force was set up. The gaming tribes soon found themselves at odds with the BIA and ultimately set up our own organization. Although NIGA endeavors to consult and coordinate with other gaming tribes, as well as non-gaming tribes, we do not claim to speak for all gaming tribes. As the record demonstrates, there are many viewpoints in Indian country on the desirability of any legislative approach.

Our membership, as described above, is geographically divergent and represents different size games and different types of games; we are however, exclusively composed of tribes that have bingo or card game operations. To date, NIGA has supported a legislative approach for Indian Gaming. In the 99th Congress, we supported Chairman Udall's bill H.R. 1920 as reported by the House Interior and Insular Affairs Committee. We actively opposed the Congressman Coehlo's efforts to place Class III gaming under State control and regulation.

We reluctantly supported the moratorium compromise on Class III gaming that was eventually negotiated between Chairman Udall and Congressman Coehlo. H.R. 1920, as so amended, then was passed by the House of Representatives. Shortly thereafter, an Administration bill, S. 2557, was introduced in the Senate by Senator Laxalt. S. 2557 would have created a 3 member Commission dominated by federal bureaucrats who would have broad and unfettered power over Indian gaming; Class III gaming would have transfered to State control. Hearings were held in the Senate on

H.R. 1920, S. 902, Senator DeConcini's bill which was similar to H.R. 1920, and S.2557. NIGA strongly opposed the Administration bill and supported the thrust of H.R. 1920 and S. 902.

At about the same time, June 10, 1986, the United States Supreme Court determined that it would review the decision of the 9th Circuit in California et al. v. Cabazon Band of Mission Indians, et al. Up to that point, all federal courts that addressed the issue had held that Tribes were able to operate gaming enterprises free from state jurisdiction. The Supreme Court had previously declined to review the decisions of the two separate federal circuit courts that had upheld tribal gaming rights. Given this legal setting, the predominant, though not universal opinion, was that there was a significant danger of the Supreme Court reversing Cabazon.

The pendency of a Supreme Court decision strongly influenced the course of events in the second session of the 99th Congress. NIGA, along with other tribes and organizations, engaged in extensive negotiations with "the other side" --gaming industry representatives and representatives of the States.

These discussions were protracted and extremely conflictual. An underlying problem that has never been fully resolved, is the completely unfounded viewpoint that Indian gaming is unregulated gaming. This viewpoint does not recognize that tribes are governments, and capable governments at that. In spite of the years of scandals relating to state regulated gaming, e.g. the extensive indictments of government officials following the introduction of Jai Alai in Connecticut, States are presumed to be inherently competent. On the other hand, Tribes are assumed to be incapable of controlling their gaming. The fact that Tribes are running a nationwide gaming industry involving some 140 games, an industry that will soon enter its second decade, with relatively minimal problems relative to criminal activity and apparently no problems relative to organized crime, seems to have no impact on assumptions or presumptions of tribal competency.

In any event, the waning days of the 99th Congress produced a extremely fragile compromise. NIGA with the uttermost reluctance, and only in face of what appeared to be a probable Supreme Court defeat, did not oppose the compromise. This compromise, Senator Andrews amendment in-the-nature-of-a-substitute to H.R. 1920, which barred Class III gaming, but permitted State jurisdiction if a tribe consented, failed to pass the Senate. Apparently sure of a Supreme Court victory, the Nevada Resort Association and the Gaming Industry Association of Nevada spearheaded opposition to the bill.

When the 100th Congress began and the Supreme Court still had not decided Cabazon, discussions and negotiations to find a legislative solution continued. To some extent those efforts are imperfectly reflected in S. 555 and H.R. 964.

On February 25, 1987, the Supreme Court of the United States, in a surprise 6-3 opinion squarely upheld the rights of

tribes to operate gaming where, such gaming is not criminally prohibited by state law, free from any state control. It is important to note that two forms of gaming were before the Court in the consolidated Cabazon case: the Cabazon Band operates a card parlor; and the Morongo Band of Mission Indians operates a large scale Bingo enterprise.

At this point in the legislative process, six hearings have been held and an extensive record exists. There are several points upon which all sides seem to agree, primarily among these is the employment and economic benefit provided by tribal gaming to reservation and adjacent communities. There also seems to be general agreement that this economic benefit is sorely needed and has not been provided by other past or current economic development activities. There is also recognition that Tribes like States and local governments are utilizing gaming revenues to provide basic services to their people. Agreement also appears to exist concerning bingo, and, given the Supreme Court's refusal to distinguish bingo from cards, presumably cards are also acceptable gaming enterprises for tribes.

Following the Supreme Court decision, the members of NIGA re-evaluated their legislative position and determined that although the need for legislation had obviously diminished, legislation could still be helpful to tribal interests. NIGA only supports legislation, however, that does not transfer any jurisdiction to State governments over Indian people, their activities, or their lands. The positive goals that could be achieved in legislation were set out in our April 27, 1987 letter to Chairman Inouye (in response to his March 5, 1987 inquiry to tribes):

> Legislation at this juncture, however could still achieve desirable results. Legislation could codify the federal posture that gaming is a legitimate aspect of the federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system and standards for regulating management contracts, as well as provide for uniform national standards for Executive Branch action with respect to gaming. Well crafted legislation could also insulate tribal gaming from what we expect will be a new onslaught of challenges from states, as well as challenges from some quarters of the Department of Justice.

THE LEGAL SETTING

It could be naively hoped that after Cabazon, a major Supreme Court decision, which has as part of its analytical basis a fairly detailed review of the role of tribes in the jurisdictional arrangement, that the case would be understood to stand for more than a proposition supporting:

> "the right of Congress to impose controls over unregulated gaming on Indian lands... ." (May 22, 1987 Letter to the

Honorable Morris K. Udall from the American Horse Council, the American Greyhound Track Operators Association, the Nevada Resort Association, the Gaming Industry Association of Nevada, and the National Association Jai Alai Frontons).

First off, as we have pointed out too frequently to recount, tribal gaming is not unregulated gaming.

We could argue over the scope of Congressional power --the so-called plenary power of Congress in Indian affairs. Rather than debating the scope of Congressional power over Indian affairs, we will focus on the the legal and policy issues that must be addressed in any Congressional decision to change the law and to take from tribes rights we now possess.

It borders on rhetoric and ignores historical reality to point out that the power of Congress over Indian Affairs, whatever its breathe, should be used for the benefit of Indians and not for their detriment.

The Cabazon decision recognized that State laws are not generally applicable to Indians and their lands. Indian lands or Indian country are distinct geographic units, where the governmental unit with primary responsibility is the Indian tribe. Some have argued that it is somehow inappropriate for a citizen of a state to be subject to one of set laws when in his or her state and other laws when they are on Indian lands within the boundaries of that state. However, unique that situation may seem, it is part of the essence of the Federal-Indian relationship. When the framers of the Constitution determined to recognize Tribes as distinct governments and to place the responsibility for Indian Affairs with the Federal Government; it was a knowing decision -- a decision to exclude the States from Indian Affairs. States were then, and unfortunately are periodically now "enemies" of Indian interests. Much of the protective role of the Federal government has derived from the responsibility to protect Tribes from States and the economic interests States represent.

Cabazon also recognizes that there are exceptions to rule of no jurisdiction. A primary exception is where Congress has provided a State or States with jurisdiction. The Courts will will not lightly infer a transfer of jurisdiction. This is in part because Congress as the legislative arm of the Federal government also has a trust obligation to Indian tribes, and unless there is clear evidence to the contrary, legislation will be interpreted for the benefit of the Indian Tribes.

In determining that Congress has not granted states jurisdiction over Indian gaming, the Cabazon Court focused on P.L. 83-280 which is the primary legislative vehicle for allowing States to obtain jurisdiction over Indian lands. P.L. 83-280, a product of the termination era of the 1950's, transferred Federal jurisdiction to specific States in delineated areas over Indian country and provided a mechanism for other States to achieve similar transfers of jurisdiction from the Federal Government. In general this jurisdictional

transfer has been determined to be applicable to criminal law matters and not civil matters. The Cabazon Court held that the gaming in the case was civil matter and that no jurisdiction had been transferred to California by P.L. 83-280. Not directly pertinent to Cabazon but extremely critical to the current debate about Indian gaming, are the 1968 amendments to P.L. 83-280. These amendments, as part of Congress' over-all rejection of "termination" added the requirement of tribal consent to the process for jurisdictional transfers. The requirement of tribal consent has for the past twenty years been one of the main stays of the Federal policy of Indian self-determination.

Cabazon, did recognize that even absent Congressional consent, States in some situations do have an interest in activities that occur in Indian country. Quoting, Mescalero,(462 U.S. 324 (1980)),the Court stated :

> [U]nder certain circumstances a State may validly assert authority over the activities of nonmember on a reservation, and ... in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members."

Although some may argue that gaming is an activity of non-Indians entering a reservation, that is simply not an accurate reading of the law. Indian gaming is an on reservation activity of a Tribe or tribal members. The test that the Court followed in making its judgement is known as the "balancing test." It is essentially a policy judgment that weighs a state interest against "traditional notions of Indian sovereignty and the Congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." (Cabazon at 13). Economic competition and the fear of organized crime were held to be insufficiently compelling State interests to justify assertions of jurisdiction.

These same asserted state interests, however, are the interests, now being asserted before Congress, to justify Congressional action for Class III. From our point of view the Supreme Court's rejection of these interests is compelling. First off no matter how phrased, hidden, or distorted, Congress has no business insulating non-Indian gaming interests for whom you have no fiduciary relationship from competition from Indian interests for whom you do have a constitutional and moral responsibility. Secondly, it has been nearly ten years since Seminole revitalized Indian gaming through commercial bingo, and for the most part Indian tribes have a superb record; better than any State that we are aware of in a comparable start-up period. To these arguments the proponents of State jurisdiction have added a new and somewhat curious argument -- Class III gaming is complex and only the States are capable of regulating it. Presumably the States, do what everybody else is capable of doing, they set a regulatory scheme, finance it and

hire people to operate it. Something that is clearly doable at all levels of Government. This takes us back to the old problem of the seeming inability to recognize that Tribes are governments. Complexity has not precluded Tribes from functioning as Governments in other areas. In any event, the legislative proposal is for the Federal government to regulate Class III. The complexity argument has no conceptual validity. We, however, would have an open mind to any constructive suggestions to improve or perfect the the federal scheme that has been recommended in S. 1303 and H.R. 2507.

The Cabazon analysis has been specifically adopted and followed in a Class III gaming case, Santa Ana Pueblo v. Hodell. This case recently decided in the federal district Court (D.C. Circuit) held that dog racing was a criminally prohibited activity in the State of New Mexico and therefore illegal under the Assimilated Crimes Act on reservations in New Mexico. The Court made clear in its analysis that other gaming in New Mexico, i.e, horse racing was clearly a regulated activity and therefore not illegal under the Assimilated Crimes Act.

We have reviewed aspects of Cabazon because they are pertinent to the policy issues that Congress must address in the legislative proposals. As noted, we support H.R.2507 and S. 1303 with respect to Class III. I think our review gives credence to our position. One further point about Class III is probably necessary. Throughout the discussions with the various parties of interest, there seems to be a perception that since only a few tribes have even pursued any concrete Class III plans, a Class III jurisdiction transfer to States should not be a concern. This perception does not take into account that jurisdiction, maintaining tribal governmental authority, whether exercised or not, is critical to Tribal survival. While a commercial enterprise may make its decisions solely on the basis of economic facts, Tribes, as governments, with responsibility to assure survival, can not.

RECOMMENDATIONS

Findings:

All of the proposed bills are fairly similar; however, the specificity in S. 555, related to the jurisdiction situation, appropriately updated to reflect Cabazon is somewhat clearer.

Newly acquired lands:

NIGA objects to placing restrictions on the uses to which newly acquired trust lands may be put. The Secretary of the Interior has sufficient discretionary powers to guard against the fears that have been expressed concerning potential lands outside of a tribe's traditional areas. Of the various proposed provisions, H.R 2507 is the most clearly drafted, however, section 20 (b) of S. 555 relating to procedures for waiving the restrictions, in

appropriate circumstances, is the most equitable of the waiver provisions.

National Indian Gaming Commission:

NIGA supports the majority Indian Commission provided for in S. 1303, H.R. 2507, and H.R. 964. The principle of Indian Self-determination requires significant Indian participation on the Commission.

Powers of the Chairman:
NIGA supports the provisions of Section 6 of S.555 which provide for a better division of powers between the Chairman and the Commission than the other bills. Of course, section 6 would require modifications to account for Class III gaming.

Jurisdiction:

As noted NIGA supports the Class III approach of S. 1303 and H.R. 2507.

Individual games:

NIGA supports the grandfathering in of individually operated Indian games as provided for in S.555.

Management Contracts:

NIGA strongly supports the management contract provisions of the bills. The Department of the Interior got off to a slow start in the development of standards for its 25 U.S.C. section 81 responsibilities and still today its standards are short of those contained in the legislative proposals before the Congress. The tribes, individually, and through organizations such as NIGA, have played a very active role in developing these legislative standards. These provisions have come from our experience in operating under and negotiating management contracts. Many of the items were contained in tribal testimony before the House Interior Committee , at its June 1985 hearing. The year limitation on management contracts was recommended in testimony of the Morongo Band of Mission Indians. Its purpose was to foster Indian self-determination -- to provide a reasonable time in which a tribe could develop expertise and evaluate how it wished to proceed with its gaming enterprise. Chairman Martin's statement provided:

> In addition, a provision that prohibits management contracts from running more than five years would go far in assisting tribes to develop their own expertise and protect against some of the problems that have been so apparent in land and natural resource leasing.

These and other specific limitations in the management contract requirements are far from being the arbitrary standards that some have suggested. They derive from tribal experience and reflect Congress' concern that Indian self-determination and economic sufficiency be fostered in the gaming area. NIGA supports the most stringent standards possible; S. 555 best reflects our position. One caution is that the auditing requirements should not duplicate existing adequate tribal auditing systems.

Review of existing management contracts:

NIGA believes that all contracts should be held to the proposed statutory standards, and opposes the grandfather provision in H.R. 964. It is beyond contemplation that given the concern over criminal infiltration that any potential management contractor should be held to other than the full background investigation contemplated in the proposed legislation. A real problem with the BIA's existing procedures is that potential contractors are only screened by a records check and not a full field investigation. Another problem with the BIA process is that although its standards have continued to improve, early standards were ineffective and meager, and current standards are not equivalent to those contemplated in the proposed legislation.

NIGA will be submitting for the record our analysis of Congress' power and authority to require modifications in existing gaming management contracts. Congress has the ability to modify contracts generally when it is acting reasonably to pursue over-riding public policy. In addition, Congressional power in Indian Affairs when acting as trustee, to protect Indians from unscrupulous Non-Indians, such as it did in creating 25 U.S.C. section 81, is extensive. Gaming, generically, is often viewed as a privilege and not a right, and as such is generally afforded less due process protections than other property or contract obligations. Combining these three factors more than adequately sustains Congresses' ability to enact section 14 of H.R. 2507 and S. 1303.

Definitions:

Consistent with the view of the Court in Cabazon, that where Bingo and card games are permitted at all, the State can neither prohibit nor regulate, such games, we recommend a modification of the definition of Class II, as follows:

> H.R. 2507, sec. 20 (b)(5)(B) "Class II gaming" which shall include card games, and the games of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn from a receptacle or electronically determined,

and the game won by the person first covering a previously designated arrangement of numbers or designations on such card, and shall include as part of bingo, pull tabs, punch boards, tip jars, instant bingos, other such games similar to bingo, including the use of electronic or electromechanical facsimiles.

Assessment:

NIGA questions whether a percentage assessment is the appropriate mechanism for funding the tribal share of the costs of the Commission. We realize that an accurate data base would be necessary in order to develop a flat fee system and that such data is not yet available. We urge the Committee to explore options in this area. A recommended approach would be a two year period for the assessment and then have the Commission establish the lowest flat fee system possible. In any event we believe that a 50 percent share and a 1 percent assessment are the maximum that should be permitted.

Self-regulating Tribes
NIGA supports this provision of H.R. 2507 and S. 1303 as consistent with Indian self-determination.

New Federal Crimes:

S.555 creates 3 new federal crimes pertaining to Indian gaming. We believe that existing laws are adequate to protect the tribes and the public. Our issue has consistently been getting the U.S. Attorneys to enforce the laws that are on the books when such crimes have low DOJ national priority, not adding new laws.

The CHAIRMAN. Well, first, thank you, Mr. Houle, for those kind remarks. I hope when my career is over that people will say that I was a friend of the Indian and took their side when they were right, which was most of the time.

I have no questions. I hope the hearings turn out well from your standpoint. I have a lot of people who want additional hearings. We will have to see what we can do about that. But, certainly we are not going to go ahead without knowing where we are going and why.

Ms. JACKSON. Mr. Chairman? I am Josephine Jackson from the Saginaw Chippewa tribe of Michigan, and I also want to indicate that as a member of this National Indian Gaming Association, we have worked hard, we have spent a lot of tribal money, and it was through bingo and the revenues that we earn that we are able to be here today to fight for what we think is right, what we think we need to survive on our reservation.

Even though some of the people think that our games are unregulated, we have tribal ordinances, we have rules that we have to abide by. Our tribe runs a business like any business. We have financial statements. We have procedures to operate by.

And as far as Mr. Swimmer's statement in regards to a referendum is concerned, on the reservation, if it came to that, it would be a flat, outright yes, because every tribal member on our reservation that can and is capable of working is working with our tribal enterprise.

I also want to indicate that we have not just sat back and done nothing about our self-determination. We have been trying to be self-supporting as many tribes have across the States, with bingo. We have expanded into the card business, has been good for us, good for our area in the Mount Pleasant area, the State of Michigan.

We also have had money to deal with the BIA, and as some of you will recall that legislation that was fought for, for our docket money that the tribe now has in trust and will never be spent, $10 million. Had it been the BIA's way of doing things, would have been paid per-capita payment, would have been gone through the hands of our Indian people into the non-Indian people's hands today.

But through bingo money, and that was one of the things we were able to do, is stand up and fight for our rights as opposed to having to rely on the BIA.

The other thing I want to mention is that people here that say that all these millions of dollars every year are allocated to Indian people because you have a responsibility to them, but by the time that money has fallen down to the tribes, there is barely nothing.

We need bingo and fundraising to continue to be self-supporting. I thank you.

The CHAIRMAN. Thank you for that statement.

Mr. POWLESS. Mr. Chairman, from the Oneida Tribe, I would just like to say thank you for allowing us to appear here, and we support H.R. 2507 with a few revisions in there, and hopefully it will come out in favor of everyone here. So, I would like to thank you again.

The CHAIRMAN. Thank you, sir.

Anything? Thank you, gentlemen.

The CHAIRMAN. We will now hear from the National Association of Attorneys General, Mr. Roger Tellinghuisen, the attorney general for the State of South Dakota, and we have Mr. Nicholas Spaeth, the attorney general for the State of North Dakota.

PANEL CONSISTING OF NICHOLAS SPAETH, ATTORNEY GENERAL FOR THE STATE OF NORTH DAKOTA; AND ROGER A. TELLINGHUISEN, ATTORNEY GENERAL FOR THE STATE OF SOUTH DAKOTA, BOTH REPRESENTING THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. SPAETH. Mr. Chairman, my name is Nicholas Spaeth, and I am the attorney general of North Dakota, and with the committee's permission, I would like to speak before Mr. Tellinghuisen.

We are in support of H.R. 964 and in opposition to Mr. Chairman's bill, H.R. 2507. I am a Democrat; my colleague, Mr. Tellinghuisen, suffers from the twin handicaps of not only being from South Dakota but also being a Republican.

The CHAIRMAN. Shameful.

Mr. SPAETH. North Dakota has four Indian reservations of substantial size. The State also authorizes a large number of different forms of gambling, including bingo, pull tabs, punch boards, blackjack or 21, raffles, poker and pari-mutuel betting on horses.

All of the games in North Dakota are conducting by charities, and all of the proceeds must be devoted to charitable causes. In fact, the largest gaming organizations in the State are operated by the public television station, the Special Olympics, Red River Human Services, which is a human service organization, and the Plains Art Museum.

The games are heavily regulated. The stakes are kept very low by the legislature, to prevent casino style gambling. The maximum bet in poker is $1, the maximum bet in blackjack is $2.

The tribes have been getting involved in recent years in this. They have experimented with bingo so far, and in the wake of the Cabazon decision, the tribes are beginning to negotiate to set up high stakes casino gambling in the State.

Of course, Cabazon took the limits off, and in the sense of State regulation, limiting the quantity of bets. But even prior to that decision, one reservation in the State has permitted high stakes illegal gambling, poker, craps, roulette, games that are illegal under State law and thereby illegal under Federal law are going on in one of the reservations in our State with the acquiescence of the tribal council.

We have received dozens of complaints about it. We forwarded them to Federal officials. Nothing has been done so far. We believe, and I speak for all of the attorneys general, that H.R. 964 is the best one, because it does continue State control of class III, which is very serious forms of gambling, but just as important, with respect to class II gambling, although it regulates it on the Federal level, it requires that Indian gambling conform to State limits. That is very important in North Dakota, and I want to refer to a comment the chairman made earlier about, isn't your bill simply giving the

tribes the same rights that State gaming organizations would otherwise have? And that is not true.

In North Dakota, if your bill passed, we could have $1,000, $2,000, unlimited stakes blackjack under your class II provision. Elsewhere in the State, it would be $2 blackjack. So what you are suggesting is quite different than our present State law permits, and what you would do in our State is open it up to high stakes casino style gambling, which is not present at this time, something the voters have resoundly rejected every time they face the question.

Equally disturbing, I think, about your bill is it basically provides for self-regulation after a period of time, after a 4-year period of time, for all practical purposes, it seems that this Federal committee being set up would be phased out of existence and the tribes would be free to regulate themselves.

Indeed, the provisions that don't apply anymore include the right of the Federal commission to do even the most basic investigation after the 4-year period passes and self-regulation kicks in.

I think H.R. 964, which would basically be agreed by everybody involved in this before Cabazon is clearly the best compromise of all the bills. I also mean no disrespect to Senator McCain. There is no authority for the assertion he made that regulating Indian gambling, even on the State level, would be unconstitutional.

Congress has plenary authority in this area and can delegate that regulatory authority to the States if it passes statutes. Moreover, there is no apparent authority for the suggestions that there are treaties that prevent it. None do.

Indeed, right now, both the Federal and the States have heavily regulated the tribes in areas that are sensitive, such as this one.

For example, in my State, the Federal criminal code applies to the tribes, not the tribal criminal code, for serious crimes. Alcohol is regulated by the State. Any sensitive area that borders on vices traditionally have been regulated by either the Federal or the State government.

Thus, it is clearly within the congressional authority to add gambling to that list if it wants to.

I urge then that the committee adopt H.R. 964, keep high stakes gambling out of my State. We don't want it, and your bill would permit it, and keep gambling honest and tightly regulated, and right now I am afraid the tribes are not doing a very good job of that, indeed they are tolerating illegal high stakes gambling in my State.

You asked another question: Why should it be regulated at the State level rather than the Federal level? Isn't the Federal regulatory system historically better, and don't people prefer it? I think that is wrong, because your bill ultimately would provide for no Federal regulation, would provide for Federal regulation—self-regulation by the tribes.

Second, the track record of Federal regulators in my State has not been good, in spite of repeated complaints about our office, about violations of criminal law and illegal gambling on the reservation, nothing has been done. Indeed, it is easy to understand, given that the State in any given time has only from two to four FBI agents to cover the entire State.

Third, Federal regulation works fine where you are working with the uniform set of standards to apply across the country, but that is not the way gambling exists in the country. There are no two States alike in the entire Union that have the same forms of gambling and operate under the same rules. It is all done on a State-by-State basis with widespread differences, and that is why State regulation is peculiarly appropriate for gambling.

With that, Mr. Chairman, I would like to submit my written statement. In addition, I would like your permission to submit statements by the John Van de Camp, attorney general of California, and Brian McKay, attorney general of Nevada.

The CHAIRMAN. Pleased to have them as a part of the permanent record.

[Prepared statements of Mr. Spaeth, with attachment, Mr. Van de Camp and Mr. McKay, with attachments, follow:]

NICHOLAS J. SPAETH
ATTORNEY GENERAL
STATE OF NORTH DAKOTA

My name is Nicholas Spaeth, Attorney General of the state of North Dakota.

Thank you for the opportunity to testify before you on the important legislation, H.R. 2507 and H.R. 964, being considered today regarding gaming on Indian lands. I commend the committee for its effort in addressing this long-standing, complex, and sensitive issue.

North Dakota has four Indian reservations -- Fort Berthold, Fort Totten, Standing Rock, and Turtle Mountain. These reservations have always and will continue to enjoy some measure of sovereignty. The issue before us is not whether that sovereignty is being challenged; rather, the issue before us is how can tribal governments and the states best achieve harmony through a certain level of government regulation and alleviation of public concerns as they apply to gaming on Indian lands.

Since 1977, North Dakota has legalized the games of bingo, raffles, pull-tabs, professional sports pools, twenty-one, and as of July 1, 1987, poker and parimutuel horse racing. State law requires that all gambling activities be operated by licensed charities and fraternal organizations and that all net proceeds be devoted to charitable purposes. The largest charitable gaming operations in the state are operated by Public Television, Special Olympics, Red River Human Services Foundation, North Dakota Association for the Disabled, and Plains Art Museum. Gaming gross proceeds for the fiscal year ended June 30, 1987, will approximate $180,000,000. Gaming is also one of the largest industries in my state, involving 563 gaming sites, about 4,500 gaming employees, and annual growth conservatively projected at 7.7%.

Presently, legalized types of games of chance are played on three of the reservations and on the fourth reservation, we have been notified that certain games not legal in North Dakota are being played, with no limits. Although federal authorities have been notified of this violation of the law, no action has been taken.

The gaming industry involves an incredibly inventive array of crooks and cheating schemes, skimming, organized crime infiltration, kickbacks, bribes, and uncertain employee loyalties. As all of us know, human beings sometimes succumb to the lure of cash. The participants in this industry -- management companies, tribal governments, employees, and players need to be both protected and controlled in the interests of a vision of a civilized society.

I support H.R. 964 as the best proposed legislation being considered. H.R. 964 is a compromise that was essentially agreed to by the various interested parties prior to the Supreme Court's ruling in California v. Cabazon Band of Mission Indians.

In Cabazon, handed down on February 25, 1987, the Supreme Court ruled that states cannot regulate gaming on Indian lands. The case has left a regulatory vacuum and it is clearly necessary for the Congress to fill that void by enacting some legislation.

Meanwhile, Indian gambling is proliferating rapidly. An Indian tribe in the state of Minnesota is currently planning to erect a $4 - 5,000,000 bingo facility and arrange for bus transportation of players from North Dakota's largest city to the bingo facility on tribal land, and back. Almost 100% of the players participating in gaming on Indian lands are non-Indians. On at least one of the reservations in North Dakota, plans are underway

to develop casino gambling with unlimited stakes. The other reservations can be expected to follow shortly.

The citizens of the state of North Dakota legalized gaming for charitable purposes only. The citizens intentionally placed certain betting limits on gaming to avoid high stakes casino gaming with its accompanying socioeconomic hardships, and to preserve the moral character of the people. For example, in regard to the game of twenty-one, often referred to as "blackjack," the maximum betting limit is $2.00. In regard to the game of poker, the maximum betting limit is $1.00, with not more than three raises per round. The Cabazon case has determined that the state-legislated betting limits or any other limitations may not now be applied to gambling on Indian reservations, thereby enabling the tribes in North Dakota to allow employment of unlimited betting in full scale casinos.

The citizens I represent and I are greatly concerned about the gaming on Indian lands. The complaints to my office voice resentment at the availability of unlimited and unregulated gaming on Indian lands.

A basic principle of regulatory justice related to proposed class II and class III gaming is that it must be a fair and equal application. As long as tribal governments and gaming players are required to abide by the same rules so as not to provide tribal government with ineffective regulation or competitive advantage, justice is being served. We must achieve responsibility by providing this industry with adequate regulatory control on the front end through legislation of H.R. 964. This proposed legislation would best serve the interests of tribal governments and states. Each entity's vested interest will not be subordinated. H.R. 964

achieves goals common to tribal governments and states, including:

1. Establishment of a five-member commission with three members representing federally recognized tribes, and one member representing the National Association of Attorneys General.
2. Establishment and implementation of standards, guidelines, and regulations.
3. Adoption of existing state regulation on class II gaming (card games grandfathered as of January 1, 1987, bingo, pull-tabs, punchboards, tip jars, and electronic facsimiles of these games) on Indian lands.
4. Adoption of state civil and criminal jurisdiction, with tribal government consent, of states that have class III gaming (horse racing, dog racing, casino gaming, jai alai, and other similar games) on Indian lands.
5. Provision for the commission chairman approval of management contracts.

Opponents of H.R. 964 may claim that Indian governments themselves can set up a regulatory scheme, finance it, and employ persons to operate it in a form parallel to that of the states. However, proper regulation deserves substance, not form. Regulation of gaming on Indian lands by respective tribal governments has not proven effective nor will it be. This is evidenced by the myriad of problems encountered by tribal governments in high stakes bingo games and other forms of gambling across our nation. From personal experience in North Dakota, I can tell you that there is little or no regulation by the tribes of gaming on the reservations in North Dakota and an apparent tolerance on at least one reservation of illegal gambling.

96-693 O - 93 - 9

By having tribal governments operate class II gaming under state regulations, the tribal government would be assured of continued economic self-sufficiency and economic development and yet would satisfy public concerns. Gaming represents a vital source of employment and revenue to Indian tribes. The importance of proper regulation, like Indian gaming, however, must not be overlooked.

State jurisdiction of class III gaming will provide tribal governments with the states' financial expertise in the areas of regulation conduct of financial and compliance audits. The scope of the regulation of class III gaming is beyond the capability of those persons, including tribal governments, who have not been associated with it. Nevada's and Atlantic City's experience in regulating casino gaming should not be casually minimized.

This legislation is very important to law enforcement officials as evidenced by the resolution of the National Association of Attorneys General regarding gaming on Indian reservations, which provides, in part:

> That the National Association of Attorneys General urges the 100th Congress to enact appropriate legislation to provide the necessary regulatory scheme governing gaming activities on Indian reservations, specifically adopting the existing state regulatory schemes to govern class II gaming operations on Indian lands, and recognizing the jurisdiction and expertise of the states over class III gaming operations on Indian lands consistent with existing state and federal law; . . .

Mr. Chairman, with your concurrence I would like to submit this resolution into the record.

There are several basic problems with H.R. 2507:

1. H.R. 2507 would allow class II bingo, lotto, card games and slot facsimiles regardless of any restrictive regulatory provisions of state law.

2. H.R. 2507 does not allow any state or its law enforcement agencies to intercede in any gaming activities on tribal lands. This would allow tribal governments to autonomously regulate and control all class III gaming activity.

3. H.R. 2507 does not require tribal governments to follow state regulations if such regulations should impose a financial burden on the gaming activity or unreasonably impair the ability of the Indian tribes to conduct class III games of chance. In essence, the tribal governments will independently decide the scope of its own regulation.

H.R. 964 represents a reasonable compromise between the different views. This bill addresses the essential issue of gaming on Indian lands -- defining which particular games of chance should be legalized and how they should be regulated.

North Dakota should have regulatory jurisdiction over class III gaming on Indian lands. This would be most effective since states already have regulatory compliance and financial mechanisms in place. Although H.R. 964 does not have all the regulatory controls desired by law enforcement, it is a compromise that allows us to perform our mandated and moral responsibility to all of the citizens of our state, Indians and non-Indians.

In closing, I wish to again thank this committee for the opportunity to testify. I will be happy to answer any questions.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Summer Meeting
June 8-11, 1987
Coeur d'Alene, Idaho

VII

RESOLUTION

GAMING ON INDIAN RESERVATIONS

WHEREAS, unregulated gaming on Indian reservations presents a threat to the public welfare of the Nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gaming; and

WHEREAS, unregulated gaming on Indian reservations presents a threat to the welfare of the various Indian tribes because this activity may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, on February 25, 1987, the Supreme Court of the United States decided in the case of *California v. Cabazon Band of Mission Indians* that despite legitimate concerns regarding organized crime infiltration, the states did not have the legal authority to enforce gaming laws on Indian reservations because of the traditional notions of Indian sovereignty and the important federal interest of economic development in Indian country; and

WHEREAS, the 100th Congress is considering various federal regulatory schemes for gaming on Indian reservations proposed by S.555, H.R.964, and H.R.1079, and these legislative proposals inadequately address the problem of infiltration and control of gaming operations on Indian reservations by organized crime; and

WHEREAS, the several states have traditionally regulated gaming and state regulatory schemes provide the best means of addressing the threats posed by unregulated gaming on Indian reservations;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General urges the 100th Congress to enact appropriate legislation to provide the necessary regulatory scheme governing gaming activities on Indian reservations, specifically adopting the existing state regulatory schemes to govern Class II gaming operations on Indian lands, and recognizing the jurisdiction and expertise of the states over Class III gaming operations on Indian lands consistent with existing state and federal law; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General authorizes the Executive Director and General Counsel of the Association to transmit these views to the Administration, the Congress, and other interested parties.

87sr07.msc

1515 K Street, Suite 800
Sacramento, California 95814
(916) 324-5437

3660 Wilshire Boulevard, Suite 800
Los Angeles, California 90010
(213) 736-2873

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

June 24, 1987

Honorable Morris K. Udall
Chairman
Committee on Internal and
Insular Affairs
House of Representatives
1324 Longworth Building
Washington, D.C. 20515-6201

Dear Representative Udall:

INDIAN GAMING REGULATORY ACT

I write in support of S. 555 and H.R. 964, and in opposition to H.R. 2507.

I believe S. 555 and H.R. 964 advance the desire of Indian tribes to become more independent and self-supporting. These bills also address the concerns of law enforcement that Indian gambling operations are vulnerable to infiltration by organized crime. On the other hand, H.R. 2507 would, I regret, increase the spread of commercial gambling and, as a result, the breeding grounds of organized crime.

Proliferation of gambling activities on Indian reservations in recent years is a great concern to law enforcement agencies. Last year, my office successfully prosecuted a case on facts indicating an individual linked to organized crime was running an illegal skimming operation in his position as manager of a bingo parlor located on an Indian reservation.

California v. Cabazon Band of Mission Indians (1987) ___ U.S. ___ [94 L.Ed.2d 244] established that California and other Public Law 280 states cannot regulate bingo and card parlors otherwise permitted under state law on Indian reservations. Although the question was not presented, the opinion also suggests that the states cannot

regulate other forms of permitted gambling such as lotteries and parimutuel betting. Grounded on the preemption doctrine, the opinion holds that states may not regulate gambling on Indian reservations, and that ". . . the Federal Government has the authority to forbid Indian gambling enterprises." (Id., at p. 262.) While the opinion makes clear that Congress may regulate gambling on Indian reservations, Congress has not passed any federal legislation and, thus, gambling on Indian reservations is now virtually unregulated.

Regulation is badly needed. A patchwork of nearly 150 separate "Indian Country" regions can be found in Arizona, California and Nevada alone. The potential for gambling activities in open violation of state criminal laws and regulatory measures governing the gaming at these locations is of grave concern to local law enforcement. Lucrative gambling operations attract organized crime. The potential for skimming and laundering is enormous in such cash business. These are legitimate, and traditional, state concerns.

Historically, the states have had the primary responsibility for establishing and enforcing public policies regarding liquor and gambling because these matters have such a particularly localized impact. As the New Mexico Attorney General testified before the Senate Select Committee on Indian Affairs on June 17, 1986, Indian gambling is not a tribal sovereignty issue. To the extent that such gambling is contrived to bring nontribal members to the reservation -- to avoid state law -- its impact is almost exclusively off the reservation.

Distinctions between competing legislation in this subject area are particularly important. Though the regulation of bingo on reservations would not be subject to state gambling laws in any of the bills, the provision of each for a federal commission to license and regulate games should reduce the danger of infiltration by criminal elements.

However, H.R. 2507 would also permit other forms of commercial gambling under federal control. S. 555 and H.R. 964 would prohibit such gaming except as permitted and regulated by the states. We believe that Class II gambling

should be under the control of a strong federal commission and that Class III gambling should be prohibited absent the state's decision to allow such activity. We feel it is important to prohibit Class III gaming except as permitted and regulated by the states because we fear that budget and personnel limitations will not permit effective regulation by the federal commission.

High-stakes bingo, no matter how well regulated, presents a risk of criminal infiltration. That risk is magnified if other forms of commercial gambling are conducted outside of state control. The compromise tendered by S. 555 and H.R. 964 meets the interests of the Indian tribes while alleviating the law enforcement concerns created by H.R. 2507.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

lb

PREPARED STATEMENT OF

BRIAN McKAY, ATTORNEY GENERAL

STATE OF NEVADA

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS BRIAN McKAY. SINCE 1983, I HAVE SERVED AS THE ATTORNEY GENERAL OF NEVADA. AS THE CHIEF LAW ENFORCEMENT OFFICER OF NEVADA, I AM RESPECTFULLY SUBMITTING THIS PREPARED STATEMENT IN ORDER TO ADDRESS THE COMMITTEE CONCERNING IMPORTANT LAW ENFORCEMENT ISSUES IMPLICATED BY GAMING ON INDIAN RESERVATIONS.

ON FEBRUARY 25, 1987, THE SUPREME COURT OF THE UNITED STATES ANNOUNCED THE DECISION IN CALIFORNIA V. CABAZON BAND OF MISSION INDIANS.[1] UNLIKE SOME STATES, NEVADA WAS NOT A CASUAL OBSERVER OF THE CONTROVERSY BETWEEN CALIFORNIA LAW ENFORCEMENT OFFICIALS AND THE CABAZON AND MORONGO BANDS OF MISSION INDIANS. NEVADA, ARIZONA, AND NEW MEXICO WERE AMICUS CURIAE IN SUPPORT OF THE STATE OF CALIFORNIA.[2] THE AMICUS CURIAE STATES ARE OF THE OPINION THAT WITHIN OUR FEDERAL SYSTEM OF GOVERNMENT, THE STATES HAVE IMPORTANT LAW ENFORCEMENT RIGHTS AND DUTIES IMPLICATED BY THE PRESENCE OF UNREGULATED GAMING ON INDIAN LANDS.[3]

IN THE CABAZON DECISION, THE COURT HELD THAT THE LEGITIMATE INTEREST OF THE STATES IN PREVENTING ORGANIZED CRIME INFILTRATION

OF INDIAN GAMING ENTERPRISES WAS INSUFFICIENT TO SUPPORT STATE REGULATORY AUTHORITY OVER THIS ACTIVITY.[4] THIS CONCLUSION WAS BASED UPON THE IMPORTANT FEDERAL INTERESTS OF INDIAN SOVEREIGNTY AND ECONOMIC DEVELOPMENT IN INDIAN COUNTRY.[5]

AS AN ATTORNEY GENERAL OF A WESTERN STATE, I AM POIGNANTLY AWARE OF THE ISSUES OF NATIVE AMERICAN SOVEREIGNTY AND THE NEED FOR ECONOMIC DEVELOPMENT OF TRIBAL LANDS. IN NEVADA, NATIVE AMERICANS ARE POLITICALLY AND ECONOMICALLY ACTIVE.[6] MY OFFICE IS FREQUENTLY INVOLVED IN MATTERS WHERE PAIUTE AND SHOSHONE TRIBAL GROUPS ADVOCATE THEIR INTERESTS REGARDING WATER, HUNTING, AND FISHING RIGHTS, AS WELL AS ISSUES RELATED TO LAW ENFORCEMENT JURISDICTION ON THEIR RESERVATIONS. CONSEQUENTLY, NEVADANS HAVE A HEALTHY RESPECT FOR THE DESIRE OF NATIVE AMERICANS TO BUILD FOR THE FUTURE.

NEVADANS ALSO HAVE A VERY UNDERSTANDABLE CONCERN FOR THEIR STATE SHOULD UNREGULATED OR UNDERREGULATED GAMING BE PERMITTED IN INDIAN COUNTRY. LICENSED GAMING HAS BEEN LEGAL IN NEVADA FOR OVER FIFTY-FIVE YEARS.[7] A COMPREHENSIVE SYSTEM FOR REGULATORY CONTROL

OF THE GAMING INDUSTRY BY A SINGLE STATE AGENCY HAS EXISTED IN NEVADA SINCE 1959.[8] THIS REGULATORY SCHEME WAS ADOPTED BY NEVADANS IN RESPONSE TO THE CRIME AND CORRUPTION THAT PLAGUED THE STATE IN THE EARLY DECADES OF LEGALIZED GAMING.[9] OBVIOUSLY, ENACTING A REGULATORY SCHEME DID NOT INSTANTLY ERADICATE ORGANIZED CRIME INFLUENCE WITHIN THE GAMING INDUSTRY. NEVADANS, HOWEVER, HAVE PATIENTLY LABORED TO REMOVE THE TAINT OF LAWLESSNESS FROM LEGALIZED GAMING THROUGH VIGILENT REGULATION.[10]

ACCORDINGLY, WE WERE DISAPPOINTED WITH THE DECISION OF THE COURT IN THE CABAZON CASE. THAT DECISION WAS UNDOUBTEDLY RECEIVED BY ORGANIZED CRIME SYNDICATES THROUGHOUT THE UNITED STATES AS AN INVITATION TO EXPLOIT GAMING IN INDIAN COUNTRY. THE LURE OF UNREGULATED OR UNDERREGULATED GAMING, LIKE ILLICIT DRUG TRAFFICKING, IS ALMOST IMPOSSIBLE TO FOREBEAR WHEN ORGANIZED CRIME CAN PROFIT. MONEY LAUNDERING AND SKIMMING, THE PRACTICE OF UNDERREPORTING GROSS GAMING REVENUE TO AVOID PAYMENT OF LICENSE FEES AND TAXES, ARE ATTRACTIVE AVOCATIONS FOR ORGANIZED CRIME IN THE GAMING INDUSTRY.[11]

DESPITE THE RESULT OF THE CABAZON DECISION, INDIAN GAMING ENTERPRISES NEED NOT BECOME SANCTUARIES FOR ORGANIZED CRIME. THE CABAZON DECISION RECOGNIZED THAT "STATE LAWS MAY BE APPLIED TO TRIBAL INDIANS ON THEIR RESERVATIONS IF CONGRESS HAS EXPRESSLY SO PROVIDED."[12]

H.R. 964, THE INDIAN GAMING REGULATORY ACT OF 1987, CONTAINS THE NECESSARY EXPRESSION OF CONGRESSIONAL INTENT THAT HIGH-STAKES CASINO GAMING IS UNLAWFUL IN INDIAN COUNTRY UNLESS OPERATED UNDER THE REGULATORY JURISDICTION OF THE SEVERAL STATES.[13] IN CONTRAST, H.R. 2507 PROHIBITS ANY STATE REGULATORY OVERSIGHT OF GAMING ENTERPRISES IN INDIAN COUNTRY.

NOTWITHSTANDING THE RULING OF THE COURT IN THE CABAZON DECISION, EXCLUDING HIGH-STAKES INDIAN GAMING FROM STATE REGULATION IS IMPRUDENT LAW ENFORCEMENT. STATE AGENCIES CAN BEST POLICE GAMING OPERATIONS, A TRADITIONAL FUNCTION PERFORMED BY THESE AGENCIES. STATE LAW ENFORCEMENT AND REGULATORY AGENCIES ARE MORE INTIMATELY ACQUAINTED WITH LOCAL COMMUNITIES AND CRIMINAL ELEMENTS. WITH FEW EXCEPTIONS, THESE AGENCIES POSSESS SIGNIFICANT

LOCAL PHYSICAL AND MANPOWER RESOURCES. THESE STATE AGENCIES LIKEWISE HAVE THE EXPERTISE AND EXPERIENCE OF ADMINISTERING EXISTING STATE REGULATORY SCHEME. IN OUR SYSTEM OF FEDERALISM, STATE AGENCIES ARE THE MOST APPROPRIATE ENTITIES TO PROVIDE REGULATORY OVERSIGHT OF HIGH-STAKES INDIAN GAMING OPERATIONS.

FOR THESE REASONS, H.R. 964 CAN PROVIDE THE FRAMEWORK FOR EFFECTIVE GAMING CONTROL IN INDIAN COUNTRY BY BALANCING STATE LAW ENFORCEMENT AND PUBLIC POLICY CONCERNS WITH PRINCIPLES OF NATIVE AMERICAN SOVEREIGNTY AND THE OBJECTIVE OF ECONOMIC DEVELOPMENT OF TRIBAL RESERVATIONS. IN REVIEWING H.R. 964, WE HAVE IDENTIFIED FOUR AREAS OF CONCERN. BASED UPON THE EXPERIENCE OF MY OFFICE IN INTERPRETING AND APPLYING GAMING LAW, WE WOULD MAKE THE FOLLOWING RECOMMENDATIONS.

FIRST, THIS COMMITTEE SHOULD SCRUTINIZE CERTAIN PROVISIONS OF SECTION 11(B) REGARDING THE OPERATION OF CLASS II GAMING ON INDIAN RESERVATIONS BY NON-INDIANS. UNDER SECTION 11(B)(3)(A), A TRIBAL ORDINANCE MAY PROVIDE FOR THE LICENSING OR REGULATION OF CLASS II GAMING OPERATIONS BY NON-INDIANS IF THE TRIBAL LICENSING

REQUIREMENTS ARE AS RESTRICTIVE AS COMPARABLE STATE LAW.

THIS SECTION OF THE INDIAN GAMING REGULATORY ACT WILL RESULT IN THE CREATION OF PARALLEL REGULATORY SYSTEMS UNDER STATE AND TRIBAL JURISDICTION. A REGULATORY SCHEME COMPRISED OF PARALLEL SYSTEMS IS AN UNNECESSARY AND BURDENSOME GOVERNMENTAL EXPENSE FOR NATIVE AMERICANS. DURING FISCAL YEAR 1987, NEVADA'S GAMING CONTROL AGENCY WILL EXPEND IN EXCESS OF $14 MILLION IN BUDGETED FUNDS. EVEN IF TRIBAL GOVERNMENTS EXPEND A SMALL FRACTION OF THIS AMOUNT OF MONEY, THESE EXPENSES ARE A WASTEFUL DIVERSION OF REVENUE AWAY FROM NATIVE AMERICAN ECONOMIC DEVELOPMENT PROJECTS.

MOREOVER, THE EXISTENCE OF TWO REGULATORY SCHEMES GOVERNING NON-INDIAN GAMING OPERATIONS ON INDIAN LANDS IS DESTINED TO RESULT IN INFERIOR GAMING CONTROL. AS A PRACTICAL MATTER, LEGITIMATE NON-INDIAN GAMING ENTREPRENEURS WILL BE RELUCTANT TO INVEST IN GAMING RESORTS IN INDIAN COUNTRY THAT OFFER ONLY CLASS II GAMING TO PROSPECTIVE PATRONS. THESE SAME BUSINESSES WILL BE DETERRED FROM INVESTING IN INDIAN GAMING ENTERPRISES IF DUPLICATIVE STATE AND TRIBAL REGULATION EXISTS. CONVERSELY, THE FEDERAL GOVERNMENT,

THE STATES, AND TRIBAL GROUPS SHOULD NOT BE DESIROUS OF ATTRACTING NON-INDIAN GAMING OPERATORS WHO ARE FEARFUL OF STATE REGULATION BUT NOT TRIBAL JURISDICTION. CONSEQUENTLY, CLASS II GAMING OPERATIONS CONDUCTED BY NON-INDIANS SHOULD BE WITHIN THE JURISDICTION OF THE SAME STATE AGENCY THAT WOULD REGULATE CLASS III GAMING ACTIVITIES ON INDIAN LANDS.

THE CABAZON DECISION NOTED THAT AS A MATTER OF FEDERAL LAW, THE COURTS HAVE LONG RECOGNIZED THE POWER OF CONGRESS TO ALLOW A STATE TO ASSERT AUTHORITY OVER THE ACTIVITIES OF NON-INDIANS ON THE RESERVATION.[14] IN ORDER TO PROMOTE UNIFORM REGULATION OF NON-INDIANS AND PREVENT THE UNNECESSARY CREATION OF PARALLEL REGULATORY SCHEMES, CONGRESS SHOULD GRANT THE STATES REGULATORY OVERSIGHT OF NON-INDIAN CLASS II GAMING OPERATORS.

SECOND, IN SECTION 19(6)(B) OF H.R. 964, CLASS II GAMING IS DEFINED TO INCLUDE ELECTRONIC AND ELECTROMECHANICAL FACSIMILES OF BINGO, LOTTO, AND OTHER SIMILAR GAMES. MOREOVER, H.R. 964 AND H.R. 2507 APPARENTLY AUTHORIZE THE USE OF SUCH FACSIMILES OF CARD GAMES. THIS COMMITTEE SHOULD BE CONCERNED ABOUT THE LAW

ENFORCEMENT IMPLICATIONS OF PERMITTING THESE GAMING DEVICES AS CLASS II GAMING ON INDIAN RESERVATIONS.

BOTH NEVADA AND FEDERAL GOVERNMENT LAW ENFORCEMENT AGENCIES HAVE EXTENSIVE EXPERIENCE WITH MANY ORGANIZED CRIME SYNDICATES THAT FOCUS THEIR EFFORTS ON MANIPULATING THESE DEVICES IN ORDER TO OBTAIN FRAUDULENT GAMING WINNINGS. AS AN EXAMPLE, A RECENT FEDERAL CRIMINAL TRIAL IN RENO, NEVADA, RESULTED IN CONVICTION OF SEVERAL INDIVIDUALS FOR PARTICIPATING IN THIS TYPE OF A CRIMINAL ENTERPRISE. EVIDENCE IN THAT CASE INDICATED THAT THIS PARTICULAR GROUP OF CRIMINALS HAD OBTAINED OVER $10,000,000.00 BY RIGGING AT LEAST 1,500 GAMING DEVICES BETWEEN 1980 AND 1983.

NEVADA AND NEW JERSEY GAMING REGULATORS, CASINO OPERATORS AND GAMING DEVICE MANUFACTURERS HAVE BEEN UNSUCCESSFUL IN HALTING THIS TYPE OF FRAUD DESPITE EXPENSIVE AND SOPHISTICATED SECURITY SYSTEMS. BEFORE AUTHORIZING THE USE OF THESE GAMING DEVICES IN CLASS II GAMING ENTERPRISES ON INDIAN LAND, THE COMMITTEE MUST BE CERTAIN THAT NATIVE AMERICAN GAMING ENTERPRISES WILL HAVE THE FINANCIAL AND TECHNICAL RESOURCES TO ADDRESS THIS PROBLEM.

THIRD, THE COMMITTEE SHOULD CONSIDER THE WISDOM OF GRANDFATHERING TRIBAL CARD GAMES IN EXISTENCE ON JANUARY 1, 1987, WHERE CONSISTENT WITH STATE LAW. SECTION 19(6)(B) OF H.R. 964 ALSO DEFINES THESE CARD GAMES AS CLASS II GAMING. H.R. 2507 CONTAINS AN EVEN BROADER DEFINITION OF CLASS II GAMING IN SECTION 21(5)(B) WHICH INCLUDES "CARD GAMES" IN THE SAME REGULATORY CATEGORY AS BINGO. THE EFFECT OF THESE PROVISIONS IN THE INDIAN GAMING REGULATORY ACT WILL BE TO AUTHORIZE HIGH-STAKES CASINO GAMING ON CERTAIN RESERVATIONS WITHOUT THE BENEFIT OF THE STATE REGULATORY OVERSIGHT CONSIDERED IMPERATIVE BY THE PROVISIONS OF H.R. 964 REGARDING CLASS III GAMING ON INDIAN RESERVATIONS.

AS A MATTER OF GAMING LAW AND LAW ENFORCEMENT POLICY, THERE IS NO BASIS FOR INCONSISTENT REGULATORY OVERSIGHT OF THE CARD GAMES GRANDFATHERED UNDER SECTION 19(6)(B) OF H.R. 964 AND THE SAME OR SIMILAR GAMES CATEGORIZED AS CLASS II GAMING UNDER SECTION 19(6)(C) OF THAT BILL. GRANDFATHERING CERTAIN CARD GAMES WILL CREATE POTENTIAL HAVENS FOR ORGANIZED CRIME INFILTRATION BECAUSE OF A DIMINISHED LEVEL OF REGULATION. THIS SITUATION WILL

ALSO RESULT IN UNWARRANTED COMPETITIVE ADVANTAGES FOR CERTAIN TRIBAL GROUPS CONTRARY TO THE LEGALLY RECOGNIZED FAIRNESS PRINCIPLES IN OUR FREE ENTERPRISE SYSTEM.

FOURTH, THE COMMITTEE SHOULD CAREFULLY CONSIDER THE COMPOSITION OF THE PROPOSED NATIONAL INDIAN GAMING COMMISSION. H.R. 964 PROVIDES THAT "[A]T LEAST THREE MEMBERS [OF THE COMMISSION] SHALL BE ENROLLED MEMBERS OF FEDERALLY RECOGNIZED TRIBES."[15] SECTION 5(B)(1)(C) OF H.R. 2507 CONTAINS SIMILAR LANGUAGE. UNDER THIS SECTION OF THE BILL, A MAJORITY OF THE COMMISSION WILL BE TRIBAL MEMBERS WHO MAY BE ENTITLED TO RECEIVE PER CAPITA PAYMENTS OF NET REVENUES FROM TRIBAL GAMING.[16] SECTION 5(B)(6) OF H.R. 964 DOES NOT DISQUALIFY A COMMISSION MEMBER FROM MAINTAINING AN INTEREST IN THE REVENUE OF THE GAMING OPERATIONS THAT THEY MUST REGULATE.

THIS TYPE OF POTENTIAL CONFLICT OF INTEREST WOULD SERIOUSLY IMPAIR THE INTEGRITY OF AND PUBLIC CONFIDENCE IN FEDERAL GAMING CONTROL. I SUGGEST THAT SECTION 5(B)(6) OF H.R. 964 INCLUDE LANGUAGE SIMILAR TO THAT CONTAINED IN NEVADA LAW WHICH DECLARES

THAT A GAMING REGULATOR "SHALL NOT BE PECUNIARILY INTERESTED IN ANY BUSINESS OR ORGANIZATION HOLDING A GAMING LICENSE . . . OR DOING BUSINESS WITH ANY PERSON OR ORGANIZATION LICENSED."[17]

EARLIER THIS MONTH THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL UNANIMOUSLY ADOPTED A RESOLUTION URGING THE 100TH CONGRESS TO ENACT LEGISLATION THAT WOULD PROVIDE FOR A REGULATORY SCHEME GOVERNING GAMING ACTIVITIES ON INDIAN RESERVATIONS.[18] THIS RESOLUTION SPECIFICALLY REQUESTED THE CONGRESS TO ADOPT EXISTING STATE REGULATORY SCHEMES TO GOVERN CLASS II GAMING OPERATIONS ON INDIAN LANDS. THE RESOLUTION ALSO URGED THE CONGRESS TO RECOGNIZE THE JURISDICTION AND THE EXPERTISE OF THE STATES OVER CLASS III GAMING OPERATIONS IN INDIAN COUNTRY.

H.R. 964 CONTAINS THE ASPECTS OF GAMING CONTROL FOR INDIAN RESERVATIONS THAT ARE VITAL TO THE LAW ENFORCEMENT INTERESTS OF THE SEVERAL STATES AND THE NATION. WITH THE MODIFICATIONS TO THE INDIAN GAMING REGULATORY ACT SUGGESTED ABOVE, H.R. 964 CAN PROVIDE APPROPRIATE LEGISLATION THAT ONCE ENACTED WILL ENSURE STRICT AND FAIR GAMING CONTROL IN INDIAN COUNTRY. THANK YOU FOR YOUR KIND

CONSIDERATION OF MY REMARKS.

FOOTNOTES

1. 94 L. Ed. 2d 244 (1987).

2. See California v. Cabazon Band of Mission Indians, No. 85-1708, Brief of the States of Arizona, Nevada, and New Mexico as Amicus Curiae in Support of Petitioner [illegible] California (U.S. filed Aug. 1986).

3. Id. at [illegible], 29-31.

4. California v. Cabazon Band of Mission Indians, 94 L. Ed. 2d 244, 262- [illegible] (1987).

5. Id. at 262-63.

6. See, e.g., R. Elliott, History of Nevada 383-87 (1973); J. Bailey, Life in Reno, Nevada: A History 271-72 (5 th ed. 1981).

7. See, e.g., Nev. [illegible], 1931 Nev. Stats. ch. 99, §§ 1-16, at 168-83.

8. See, e.g., [illegible] Nev. Stats. ch. 318, §§ 1-33, at 492-97.

9. See, e.g., Ralli [illegible] Bulletin of Nevada 12-18, 326-27 (1973); G. Stewart, Nevada [illegible] Great Rotten Borough 1659-1964 207-19 (1967).

10. See, e.g., R. [illegible] History of Nevada 328-37 (1973).

11. Id. at 334-37.

12. California v. Cabazon Band of Mission Indians, 94 L. Ed. 2d 244, 250- [illegible] (1987).

13. See H.R. [illegible] 100th Cong., 1st Sess. § 11(a).

14. California v. Cabazon Band of Mission Indians, 94 L. Ed. 2d 244 258-59 (1987).

15. See H.R. 964, 100th Cong., 1st Sess. § 5(b)(2).

16. See H.R. 964, 100th Cong., 1st Sess. § 11(b)(2)(B).

17. See [illegible] Rev. Stat. § 463.060 (1985).

18. See Exhibit A, infra.

BEST AVAILABLE COPY

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Summer Meeting
June 8-11, 1987
Coeur d'Alene, Idaho

IX

RESOLUTION

GAMING ON INDIAN RESERVATIONS

WHEREAS, unregulated gaming on Indian reservations presents a threat to the public welfare of the Nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gaming, and

WHEREAS, unregulated gaming on Indian reservations presents a threat to the welfare of the various Indian tribes because this activity may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, on February 25, 1987, the Supreme Court of the United States decided in the case of *California v. Cabazon Band of Mission Indians* that despite legitimate concerns regarding organized crime infiltration, the states did not have the legal authority to enforce gaming laws on Indian reservations because of the traditional notions of Indian sovereignty and the important federal interest of economic development in Indian country, and

WHEREAS, the 100th Congress is considering various federal regulatory schemes for gaming on Indian reservations prepared by S.555, S.1303, H.R.964, H.R.2507 and H.R.1079, and these legislative proposals inadequately address the problem of infiltration and control of gaming operations on Indian reservations by organized crime; and

WHEREAS, the several states have traditionally regulated gaming, and state regulatory schemes provide the best means of addressing the threats posed by unregulated gaming on Indian reservations,

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General urges the 100th Congress to enact appropriate legislation to provide the necessary regulatory scheme governing gaming activities on Indian reservations, specifically adopting the existing state regulatory schemes to govern Class II gaming operations on Indian lands, and recognizing the jurisdiction and expertise of the states over Class III gaming operations on Indian lands consistent with existing state and federal law; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General authorizes the Executive Director and General Counsel of the Association to transmit these views to the Administration, the Congress, and other interested parties.

BEST AVAILABLE COPY

The CHAIRMAN. Mr. Tellinghuisen?

Mr. TELLINGHUISEN. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before the committee today and express my views concerning H.R. 2507 and H.R. 964, dealing with the issue of gambling on Indian lands. I am a new attorney general for South Dakota. I have been in office for approximately 6 months.

Prior to that, I was a State's attorney on the county level, and I come from the western end of South Dakota, relatively close proximity to one of the nine reservations or former reservations that we have in South Dakota, which encompasses or affects a total of 13 counties.

Today, tribal gambling activities in South Dakota have been limited in scope, consisting primarily of tribal bingo facilities, and on an occasional basis tribal lotteries. And although in the past, those activities have not generated law enforcement problems, as chief law enforcement officer for South Dakota, I am highly concerned about the implications of unregulated gaming on the reservation for both the Indian and non-Indian citizens of South Dakota.

I fully appreciate the Indian people's desire and right to control their own destiny on the reservation. Our courts have long recognized the right of Indian tribes to make their own laws and be governed by them.

In recent times, Congress has encouraged tribal self-sufficiency and I do not doubt that the potential revenues and employment opportunities generated by tribal gaming activities will go a long ways towards promoting that self-reliance.

However, the issue before this committee is not one of political gamesmanship between competing sovereign entities. The issue goes far beyond the questions of tribal sovereignty. The tribal right to govern its membership must be weighed in the balance against the right of the larger society in the State to control its own destiny as well.

The issue before the committee is not limited to tribes and tribal members. Everyone realizes that for tribal gaming activities to have any significant impact on the promotion of tribal self-sufficiency, those gaming activities must cater to the off reservation, non-Indian citizens of the State.

Only by offering gaming activities with stakes in excess of those permitted by State law will tribes be able to attract sufficient numbers of non-Indians to generate the revenues which make the activity worth their while.

And to that extent, the impact of tribal gaming activities is solely an off reservation impact. And that is where my concern comes in. In the context of tribal high stakes bingo games, the off reservation impact to date has been one which is tolerable.

Although many non-Indian citizens of our State have expressed resentment for the dual standard in existence that such games represent.

Gambling is prohibited by our State Constitution, with the exception of those games that our legislature will permit by State law, which at this point in time non-profit organizations, charitable organizations, religious organizations, are permitted to engage in

bingo and lottery type games, as well as hold casino games to raise revenues.

The only other type of gaming that we have in South Dakota is the highly regulated horse racing and dog racing in South Dakota. We do not or allow any casino type gambling at this time. In fact, we just recently, through our last election, the State approved for the first time a State run lottery. And as recently as 1982, the people of South Dakota rejected even the local option for counties or municipalities to engage in other forms of gambling.

Gambling is still a highly moral issue in South Dakota, and it is particularly outside the context of charitable, civic, educational or religious uses of the funds generated by the limited forms of authorized gambling.

Quite naturally, people are resentful when fellow State citizens are permitted to act in contravention of laws which they feel should govern all the people of South Dakota.

Gambling operations have historically, as this committee I am sure is aware, been a target for the criminal element in this country. And that is a significant concern to me, as the chief law enforcement officer for South Dakota. We are a rural State. We don't have a lot of resources, but I can assure you that if high stakes gambling and casino type gambling is allowed to come into South Dakota, we, too, will be a target for organized crime.

I don't think that we are being naive at all to suggest that South Dakota stands a very real possibility with its number of reservations and its high interest in the Indian people to engage in some type of revenue producing economy, to suggest that organized crime could very well take a serious and hard look at South Dakota, and that troubles me, not only from the context of the non-Indian people, but for the Indian people as well.

And I think it is also naive to assume that once it is discovered, it can immediately be ferreted out and removed. It is very difficult to remove organized crime once it has had an opportunity to set hold.

I realize that neither H.R. 2507 nor H.R. 964 would provide for State involvement in regulation of high stakes bingo or other gaming activities defined as class II gaming.

Nonetheless, given the state of the economy in the reservations in South Dakota, and the emphasis that the Federal Government has already placed on high stakes bingo is a step towards tribal self-sufficiency, together with the lack of problems, those activities have caused in South Dakota, from a law enforcement standpoint.

I believe that the treatment afforded class II gaming under both bills represents a fair compromise between competing tribal and State interests. And this is particularly true in light of the provisions in both bills calling for licensing and regulation of those gaming activities pursuant to federally approved tribal requirements, which are at least as restrictive as those established by State law.

Where the two bills before this committee most significantly differ, and where I am compelled to disagree with H.R. 2507 is in the treatment of class III gaming. And I have prepared a written statement which I furnished to this committee, and I would sin-

cerely request that the committee address my comments that I make in regards to class III gaming.

I would like to leave the opportunity open for discussion, but I just like to close—because I realize I am taking a little longer than maybe I was entitled to. Class III gaming, high stakes casino type gambling is not allowed in South Dakota, except in the context of charitable, nonprofit or educational religious type organizations.

Under the Cabazon decision, I believe there are serious questions as to whether or not the State could prohibit the tribal government from engaging in high stakes casino type gambling, even though it be as a profit making venture and not for the limited charitable, nonprofit type situations that our State law currently recognizes.

That concerns me. That type of activity is just purely ripe for criminal activity to get involved and not only jeopardize the fundraising abilities of that type of gaming in and of itself, but it also subjects the Indian people as well as the non-Indian people to an element that we currently don't have to put up with in South Dakota, and quite frankly, we sincerely hope that we never have to put up with it.

And I would hope that this committee would seriously look at the impact of this legislation and the possibilities that it presents to a State such as South Dakota and North Dakota, in terms of exposing us to the types of criminal activity that so far we have been immune from, but certainly would be subjected to or at least be in a position of having to deal with should high stakes casino or class III type gaming be permitted without sufficient State regulation.

We already have the regulatory mechanisms in place. And we are not asking that we receive any type of revenue from the tribes or reservations' gaming activities. We are willing to regulate that for the cost that is incurred by the State in doing so, and nothing more.

We think that the interests of South Dakota, as well as the reservations within South Dakota, warrant such an arrangement and such a regulatory scheme.

With that, I would just be happy to answer any questions that the committee might have.

[Prepared statement of Mr. Tellinghuisen follows:]

HONORABLE ROGER A. TELLINGHUISEN
ATTORNEY GENERAL OF SOUTH DAKOTA

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Roger A. Tellinghuisen, Attorney General of the State of South Dakota. I appreciate the opportunity to appear before you today to express my views concerning H.R. 2507 and H.R. 964 dealing with the issue of gambling on Indian lands. South Dakota has 9 present or former Indian reservations within its boundaries which encompass all or a portion of 13 counties. To date tribal gaming activities in South Dakota have been limited in scope, consisting primarily of tribal bingo facilities and an occasional tribal lottery. Although in the past those activities have not generated law enforcement problems, as chief law enforcement officer for the State I am highly concerned about the implications of unregulated gaming on the reservation, for both the Native American and non-Indian citizens of South Dakota.

I fully appreciate the right of Indian people to control their own destiny on their reservations. Our courts have long recognized the right of Indian Tribes to make their own laws and be governed by them. In recent times, Congress has encouraged tribal self-sufficiency, and I do not doubt that the potential revenues and employment opportunities generated by tribal gaming activities will go a long ways toward promoting that self-reliance.

However, the issue before this Committee is not one of political gamesmanship between competing sovereign

entities. The issue goes far beyond questions of tribal sovereignty. The tribal right to govern its members must be weighed in the balance against the right of the larger society in the state to control its own destiny as well. The issue before the Committee is not limited to tribes and tribal members. Everyone realizes that for tribal gaming activities to have any significant impact on the promotion of tribal self-sufficiency, those gaming activities must cater to the off-reservation, non-Indian citizens of the State. Only by offering gaming activities with stakes in excess of those permitted by state law will tribes be able to attract sufficient numbers of non-Indians to generate the revenues which make the activity worth their while. To that extent, the impact of tribal gaming activities is solely an off-reservation impact.

In the context of tribal high stakes bingo games, that off-reservation impact to date has been one which is tolerable, although many non-Indian citizens of my state resent the dual standard the existence of such games represents. Gambling is prohibited by our state constitution except as the Legislature may authorize games of chance for "bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire departments or such other public spirited organizations." Our Legislature has in fact authorized bingo and lotteries by such groups, but only within certain restrictions, including price limits.

However, as recently as 1982 the people of South Dakota rejected a proposed constitutional amendment which would have authorized local option gambling activities by a 58% vote. Gambling is still a highly moral issue in South Dakota, especially outside the context of charitable, civic, educational, and religious uses of the funds generated by the limited forms of authorized gambling. Quite naturally, people are resentful when fellow state citizens are permitted to act in contravention of laws which they feel should govern all citizens of the State.

Furthermore, gambling operations have historically been a target for the criminal element in this country. The risk of organized criminal involvement in gambling activities increases with the amount of money involved in the gambling activity. That risk is compounded if large sums of cash are involved and there is inexperienced, ineffectual, or a total lack of regulation of the gambling activity. Organized crime, once it gains a local foothold, is very difficult to dislodge. It would be naive of me to believe that if that foothold is gained on the reservations, the impact could be restricted to the reservations. Obviously, I do not want any of the citizens of South Dakota to be subjected to the risk of criminal manipulation. It is not acceptable to me to foist off the very real threat posed by organized crime as someone else's problem. Regulation of gambling activities, whether conducted on or off the reservation, is absolutely essential, as both measures

before this Committee recognize. This Committee is undoubtedly familiar with the need through testimony presented over the last couple of years on similar bills, so I will not belabor the point.

I realize that neither H.R. 2507 nor H.R. 964 would provide for state involvement in regulation of high stakes bingo or other gaming activities defined as "Class II gaming." Nonetheless, given the dismal state of the economy on the Indian reservations in South Dakota and the emphasis the federal government has already placed on high stakes bingo as a step toward tribal self-sufficiency, together with the lack of problems those activities have caused in South Dakota from a law enforcement standpoint, I believe that the treatment afforded Class II gaming under both bills represents a fair compromise between competing tribal and state interests. This is especially true in light of the provisions in both bills which call for licensing and regulation of those gaming activities pursuant to federally approved tribal requirements which are at least as restrictive as those established by state law.

Where the two bills before this committee most significantly differ and where I am compelled to disagree with H.R. 2507 is in the treatment of Class III gaming. H.R. 2507, as I read it, would allow Class III gaming, within tribal jurisdiction, if the state permitted such gaming activity, subject to the restriction that the tribal jurisdiction would be subject to a comprehensive regulatory

scheme adopted by the Chairman of the Commission. That regulatory scheme is for the most part required to be identical to state regulations covering the same activity off the reservation. State criminal law and regulation would be enforceable, in South Dakota, by way of federal prosecution under the Assimilative Crimes Act. No provision is made for state jurisdiction or enforcement activities at all, notwithstanding the off-reservation impact of the gaming activities, and the obvious interest the state has in protecting its citizens.

In South Dakota this would permit the tribe to conduct pari-mutual horse racing and dog racing, activities which have been extensively regulated by the State of South Dakota since the 1930's. We have the regulatory scheme in place to prevent criminal activity in conjunction with this form of gaming already, and we have experienced personnel who are familiar with the criminal devices employed for illicit gain to enforce that regulatory scheme. Tribal regulatory personnel on the other hand would not have that practical experience essential to making a regulatory scheme work. Further, given federal budget constraints, it seems doubtful that sufficient federal funding is readily available to ensure that there would not be an enforcement gap, whether enforcement is by the tribe or by Commission employees.

Accordingly, I would urge your adoption of the approach taken in H.R. 964 with reference to Class III

gaming. Such gaming activity would only be allowed on the reservation if the tribe requests the Secretary of the Interior to transfer civil and criminal jurisdiction pertaining to licensing and regulation of the activity to the State. That would prevent any regulatory gap which could occur under H.R. 2507, and would deny criminal elements of an opportunity to infiltrate the system. The Tribe would have the opportunity to generate revenue and the State could prevent negative impacts both on and off the reservation. Not only would the same regulations then apply statewide, enforcement would also be uniform. It should save costs for the Commission and the federal government, as well as for the tribes, by avoiding unnecessary duplication and providing a proven, efficient enforcement scheme.

I fully appreciate the distaste that tribal governments will have for the arrangement in H.R. 964. However, when viewed as a whole package, a package which includes tribal regulation of Class II gaming, H.R. 964 seems to me a fair compromise which addresses both tribal and state interests.

I am further concerned about Section 12(f)(2) of H.R. 2507. The United States Supreme Court in U.S. v. Wheeler has recognized that the double jeopardy clause does not apply to the imposition of criminal penalties by the tribal and federal courts. It seems to me that the preservation of this arrangement is especially important in the gambling context. One can easily imagine a situation in

which the federal interest in punishing a gambling related crime is much greater than the tribal interest in prosecuting a particular gambling crime; the federal interest reaches across the nation, the tribal interest might be more narrow. It therefore seems to me that both sovereigns should remain able to prosecute for gambling related crimes. I would therefore recommend the deletion of Section 12(f)(2) of H.R. 2507.

In the alternative, I would recommend at least the clarification of Section 12(f)(2) to eliminate ambiguity, if the bill is to be enacted. In particular, I would recommend that the section clearly indicate that it does not extend the power of the tribal court to impose penalties in excess of those allowed under the Indian Civil Rights Act. Tribes need not supply appointed counsel to an Indian defendant and it is therefore appropriate that the penalties which might be imposed by tribal court remain as provided in federal law. I would also recommend that the legislation clearly indicate that the section does not extend tribal court criminal jurisdiction over non-Indians in opposition to the Supreme Court's ruling in the Oliphant case. I do not believe that this section should be read to drastically expand the jurisdiction of the tribal criminal courts in this manner but, to avoid that particular argument, a clarification should be made.

Finally, I wish to indicate my support of the approach taken in H.R. 964 in terms of composition of the

Commission. Just as tribal representation on the Commission is a must in terms of a nationwide regulatory approach, so too is it essential to have at least one voice who can represent the law enforcement perspective of the states involved. Although these gaming activities will occur on the reservations, the reach of those activities will not be similarly restricted. Legitimate state interests are at stake and should be heard at the policy making/regulatory level.

In summary I would reiterate my support for H.R. 964 as the bill which represents an equitable balance between tribal self-government and self-sufficiency on the one hand and state law enforcement concerns and the state's historic role in regulation of gambling on the other. As the chief legal officer of a state which is extensively involved in Indian jurisdiction matters governing a wide variety of subjects, I am very cognizant of the efforts that went into drafting these two bills and want to commend those involved. I thank you for inviting me to express my views on this important matter and hope this has been useful in your search for a fair solution. I will be happy to answer any questions you might have.

The CHAIRMAN. You have dogs or just horses?

Mr. TELLINGHUISEN. We have both.

The CHAIRMAN. What would be your objection, if the State and non-Indians can have pari-mutuel horse and dog racing, to Indians having the same racing?

Mr. TELLINGHUISEN. Sir, we have no objection to the Indians having that, provided that the regulatory mechanism that would oversee that operation ensures its honesty, its fairness, and its integrity is of the same level that we have already in our State.

The CHAIRMAN. Well, that is what I was trying to do. My language may not have been sufficient. Mr Spaeth touched on a couple of points. The basic philosophy John McCain and I had when we introduced this legislation 2 years ago was that the Indians weren't going to be any better off than non-Indians, but they weren't going to be any worse off, either. If we allowed bingo for churches, we allow it for the Indian tribe.

Mr. TELLINGHUISEN. Sir, if I may just respond to that momentarily. I guess it really comes back to the premise of whether or not the Federal Government, with all of its good intentions, can adequately address the needs of the individual reservations as they are spread out throughout this country.

Every State is different, as General Spaeth has noted, in terms of its gaming laws. And I have to be quite honest with you and very candid in saying that of those people that I have talked to in South Dakota, and in a State of only 700,000, it is easy to talk to an awful lot of them——

The CHAIRMAN. I tried it once.

Mr. TELLINGHUISEN. There is a general distrust in terms of the Federal Government's ability to regulate State activities that are of a local nature and of a local concern. Now, I am not suggesting that the relationship at this point in time between the reservations and South Dakota State government are all that we would like to see them be. We are working on that, and we hope to address that over the course of the next few years, to reach a point where we can work together.

But what I am suggesting is that we have the mechanism in place, and to now establish another level or layer of bureaucracy, if you will, to come in and do something that is already effectively and fairly being done in South Dakota seems to be a waste of taxpayers' dollars.

The CHAIRMAN. What size is your Racing Commission, and who appoints it?

Mr. TELLINGHUISEN. They are appointed by the Governor, but they are also—I have to back off and I will provide that to the committee, a detailed description of our Racing Commission. There is also a representative from my office that works with the Racing Commission, and if I might, I would like to provide that information to you and the committee.

The CHAIRMAN. Sure. Glad to have it.

[EDITOR'S NOTE.—The above-mentioned information may be found on page 288.]

The CHAIRMAN. Mr. Spaeth, what is your structure?

Mr. SPAETH. Mr. Chairman, I regulate all charitable gambling within the State, simply by virtue of the powers of my office, and

set all the rules and regulations subject to State limitations, and State statutes set the amount of bets, and most of the really important things are established by legislation.

The CHAIRMAN. Sounds like a dictatorial arrangement.

Mr. SPAETH. It is very benevolent, though. And, you know, our office has had a very, very good relationship with the tribes, and I would hasten to add that the objections I have to your legislation is that you are going to create a whole new class of gambling in my State that has not been known, and it would create some social problems in our State.

The CHAIRMAN. Do you think the legislation necessarily creates a new class of gambling?

Mr. SPAETH. Well, I already pointed out that we already permit blackjack for a maximum of a $2 bet, and that would be, under your definition of class II, that would be permitted on the reservations without respect to any State limitations, so they can set up as high a stake blackjack as they wanted under your legislation.

The CHAIRMAN. Well, that is certainly not what we intend.

Mr. SPAETH. And I also would like to add that we have not a good experience with the tribes regulating themselves or with the Federal Government when we have called them to complain about the dozens of complains we have received about high stakes craps and poker and other illegal forms of gambling that are already going on in my State.

The CHAIRMAN. Well, I agree with something that was said here earlier, that—I lost my point and the bell saved me.

They have got some amendments up in a few moments dealing with cutting back on programs for Indians, Indian Health Service. I think what we better do is to conclude these witnesses. Do you have a short question or two? And then I am going to recess until 2:30—2:00, I think we can do that.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

I would just like to ask each one of the attorneys general the same question. General Spaeth, could your State's present law enforcement assets help regulate and ensure the integrity of gaming operations on Indian lands?

Mr. SPAETH. I think it would mean some expansion, because at least the kind of gambling contemplated by Representative Udall's legislation would be bigger in scale than we have ever seen, and we would obviously have to hire more people and devote additional resources to it.

Mrs. VUCANOVICH. What is the population of your State?

Mr. SPAETH. We have about 680,000, only one Congressman, although he is really one of the best.

Mrs. VUCANOVICH. Well, we have had that, too, for a while. Now we have two. I know for a small State, it is very difficult, because we don't have the manpower to take care of those things.

Can your State oversight be done so as not to discriminate against Indian operations in favor of non-Indian operations, if this were the case?

Mr. SPAETH. We have never done that. Indeed, all the tribes are currently eligible as charitable organizations themselves to conduct gaming within the limits set by State law right now.

BEST AVAILABLE COPY

Mrs. VUCANOVICH. How many reservations do you have in your State?

Mr. SPAETH. We have four reservations, and they encompass a very large land mass within the State, and it is the only significant minority group we have within the State of North Dakota.

Mrs. VUCANOVICH. And are they economically in pretty good shape, or——

Mr. SPAETH. No, I would have to say that the areas of the abject poverty that I have ever seen in my life are the Indian reservations in my State, and I would be the first to say that any money we can generate for the tribes is well deserved.

Mrs. VUCANOVICH. Your feeling is probably the same as ours, that is of gaming of whatever nature were allowed, it should be under State control. Is that what you are concerned about?

Mr. SPAETH. That is right. And in accordance with State limitations.

Mrs. VUCANOVICH. And that also includes tax on how much was paid out and so forth.

Mr. SPAETH. That is right. We don't want to become another Nevada.

Mrs. VUCANOVICH. Well, we don't want you to, you are too close.

Mr. SPAETH. We don't want to compete with you.

Mrs. VUCANOVICH. Well, that is fine with me.

I would just like to ask attorney general Tellinghuisen the same question. Can your State's present law enforcement assets help regulate and ensure the integrity of gaming operations?

Mr. TELLINGHUISEN. We would have the same situation in that we would have beef up our forces that presently exist. Our law enforcement resources are, depending on which person you talk to, stretched to the limit as it stands right now. But I don't believe that it is something that we could not overcome.

Mrs. VUCANOVICH. And if you were able to do this, would you be able to do so without discrimination against the Indians?

Mr. TELLINGHUISEN. Yes, I believe we could, and as attorney general, I would certainly demand that we made every effort to not show any prejudice or bias one way or the other.

Mrs. VUCANOVICH. Do you have any idea what the budget is to oversee what gaming operations you do have?

Mr. TELLINGHUISEN. No, I do not. Unlike General Spaeth, the Gaming Commission is out of the Governor's office, and I am sorry I am not prepared to give you that figure. I will include that, though, with my additional written materials.

Mrs. VUCANOVICH. You probably don't know the number of people that would be involved?

Mr. TELLINGHUISEN. No. I will provide a more detailed description of how our Gaming Commission is set up, its funding mechanism, its budget, as well as any other material that I can think of or locate that I think would be pertinent.

[EDITOR'S NOTE.—Mr. Tellinghuisen subsequently supplied the following information:]

STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
Pierre, South Dakota 57501 5080
Phone (605) 773-3215

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

September 2, 1987

House Interior and
Insular Affairs Committee
U.S. House of Representatives
Attn: Mr. Frank Ducheneaux
1324 Longworth
House Office Building
Washington, D.C. 20515

RE: HR 2507; HR 964

Dear Mr. Ducheneaux:

After my testimony concerning HR 2507 and HR 964 on June 25, 1987, the Committee requested I provide you with a summary of South Dakota's statutes and administrative rules governing pari-mutual horse racing and dog racing.

After several attempts to condense the substance of twenty-two pages of statutes and three hundred ten pages of administrative rules into meaningful summary form, I decided the most accurate account would be provided if I simply provided you with copies of the pertinent information. Accordingly, enclosed is a copy of SDCL Chapter 42-7 on horse and dog racing, and copies of Article 20:04, Administrative Rules of South Dakota, promulgated by the South Dakota Racing Commission.

Also enclosed for your review is a copy of SDCL 1-7-9, which would apply to nominees for appointment to the Racing Commission, as well as SDCL Chapter 3-1A on financial disclosures by public officials.

I trust this information will be of assistance to the Committee. If you have any questions, please let me know.

Sincerely,

Roger A. Tellinghuisen

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

RAT:HHD:do
Enclosure

TITLE 42

RECREATION AND SPORTS

Chapter
42-7. Horse and dog racing.
42-7A. State lottery.

CHAPTER 42-7

HORSE AND DOG RACING

Section
42-7-56 Powers and responsibilities of racing commission.
42-7-58.1 Satellite facilities of dog track licensees.
42-7-58.2. Wagering on televised races — Request and reciprocal agreement.
42-7-58.3. Approved simulcast races conducted on day assigned by commission.
42-7-58.4. Distribution of contributions.
42-7-58.5. Simulcast wagering in compliance with federal laws.
42-7-76. Contributions by win bettors — Minors prohibited from participating — Interest acquired — Certificates issued.
42-7-76.1. Accepting of large bets by persons other than licensee as felony.
42-7-76.2. Accepting of medium bets as misdemeanor.
42-7-76.3. Accepting of small bets as misdemeanor.
42-7-79.1. Additional deduction from some pools on dog races — Distribution.

42-7-49. Racing commission created — Appointment and terms of members — Political and geographic representation.

Cross-References.

Administrative rules and rule-making authority of commission reestablished, § 1-26A-17.

Information required to be submitted concerning gubernatorial nominee upon submission of nomination to the Senate, § 1-7-9.

Statement of financial interest required before senate confirmation of gubernatorial appointments, § 3-1A-3.

42-7-56. Powers and responsibilities of racing commission. The racing commission shall:

(1) Provide for racing under the certificate system;

(2) Perform quasi-legislative, quasi-judicial and advisory functions excluding special budgetary functions as defined in § 1-32-1;

(3) Set racing dates;

(4) Promulgate rules pursuant to chapter 1-26 for effectively preventing the use of any substance, compound items or combination thereof of any medicine, narcotic, stimulant, depressant or anesthetic which could alter the normal performance of a racing animal unless specifically authorized by the commission;

(5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines and equipment used within the state;

(6) Promulgate rules pursuant to chapter 1-26 governing, restricting or regulating bids on licensees' concessions and leases on equipment;

(7) Approve all proposed extensions, additions or improvements to the buildings, stables or tracts upon property owned or leased by a licensee;

(8) Exclude from race courses or other pari-mutuel facilities any person who intentionally violates the racing laws or any rule, regulation or order of the commission or any law of the United States or of this state;

(9) Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records shall be kept;

(10) Investigate the operations of any licensee and cause the various places where the certificate system is operated to be visited and inspected at reasonable intervals for the purpose of satisfying itself that the rules and regulations are strictly complied with;

(11) Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants and animals that are lawfully on the race track;

(12) License all participants in the racing industry and to require and obtain such information as the commission deems necessary from licensed applicants;

(13) Promulgate and enforce additional rules pursuant to chapter 1-26, and conditions under which all horse and dog races held shall be conducted;

(14) To license all facilities at which money is collected or disbursed under the certificate system.

Source: SL 1933 (SS), ch 9, § 5; SDC 1939, § 53.0502; SL 1949, ch 213; SDCL, § 42-7-7; SL 1978, ch 302, § 9; 1985, ch 331, §§ 2, 5; 1986, ch 22, § 20.

Amendments.

The 1986 amendment, in subdivision (4), inserted "pursuant to chapter 1-26" after "Promulgate rules"; at the beginning of subdivision (6), substituted "Promulgate rules pursuant to chapter 1-26" for "Make rules"; at the beginning of subdivision (13), substituted "Promulgate and enforce additional rules pursuant to chapter 1-26" for "Prescribe and enforce additional rules, regulations"; and made minor changes in punctuation.

42-7-58.1. Satellite facilities of dog track licensees. Notwithstanding any other provisions of this chapter, the racing commission may allow a licensee of a dog track to collect and disburse money under the certificate system at locations other than where licensed races are conducted if such satellite locations are more than fifty miles away from any pari-mutuel horse track or dog track licensed by the commission which is conducting a race meet at that time. The licensee shall combine the amount contributed at the satellite location with the contribution contributed at the track and such amount shall be combined with the amount withheld by the licensee as provided in §§ 42-7-79 and 42-7-79.1. The state shall receive one and one-half percent of the total amount contributed from the satellite location, and the special racing revolving fund in the office of the state treasurer and the South Dakota bred racing fund shall each receive one and one-half percent of the total

amount contributed, with the remaining amount of the contribution withheld at the satellite location to be retained by the licensee. No other deductions may be made from the amount withheld by the licensee at the satellite location. Satellite facilities may receive contributions between the hours of 9:00 a.m. and 1:00 a.m.

Source: SL 1985, ch 331, § 1; 1987, ch 309. **Amendments.** The 1987 amendment substituted "one and one-half percent" for "four percent" in the third sentence and added the last sentence.

42-7-58.2. Wagering on televised races — Request and reciprocal agreement. Upon written request of a licensee, the commission may approve wagering on races televised to South Dakota from another licensed racing jurisdiction. The request shall be made not less than seven days prior to the race to be televised. The request shall be accompanied by a signed reciprocal agreement between the racetrack originating the broadcast and the South Dakota racetrack receiving the broadcast.

Source: SL 1987, ch 310, § 1.

42-7-58.3. Approved simulcast races conducted on day assigned by commission. All approved simulcast races shall be conducted at the licensed racetrack on a racing day assigned by the commission. Racing shall be conducted on that racing day pursuant to this chapter.

Source: SL 1987, ch 310, § 2.

42-7-58.4. Distribution of contributions. All contributions received pursuant to §§ 42-7-58.2 to 42-7-58.5 shall be distributed pursuant to § 42-7-58.1.

Source: SL 1987, ch 310, § 3.

42-7-58.5. Simulcast wagering in compliance with federal laws. In addition to all state laws and applicable rules of the commission, simulcast wagering shall be in compliance with the United States Code, Title 15, Section 3001, et seq., as in effect on December 31, 1986.

Source: SL 1987, ch 310, § 4.

42-7-76. Contributions by win bettors — Minors prohibited from participating — Interest acquired — Certificates issued. The certificate system shall expressly authorize the right of a licensee to collect and receive contributions of money from any person eighteen years or older toward the entry of any horse or dog in such race selected by such person to run first in the race, and the person contributing such money shall acquire an interest in the total money contributed on all horses and dogs in the race as first winner

in proportion to the amount of money contributed by such person. The licensee shall receive such contributions of money and issue to the contributors thereof certificates on which shall be shown the number of the race, the amount contributed, and the number or name of the horse or dog selected by such person as first winner.

Source: SL 1933 (SS), ch 9, § 6; SDC 1939, § 53.0503; SL 1949, ch 213; 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-19, SL 1969, ch 201; 1972, ch 230, § 1; 1974, ch 281, § 3; 1975, ch 266; 1978, ch 302, § 24; 1985, ch 331, § 4; 1987, ch 29, § 97.

Amendments.
The 1987 amendment reenacted this section without change.

42-7-76.1. Accepting of large bets by persons other than licensee as felony. Any person who accepts bets in excess of two hundred dollars by any other persons, other than the licensee, on the outcome of any horse or dog race conducted pursuant to this chapter is guilty of a Class 6 felony.

Source: SL 1987, ch 311, § 1.

Cross-References.
Penalty for classified felonies, § 22-6-1.

42-7-76.2. Accepting of medium bets as misdemeanor. Any person who accepts bets of one hundred to two hundred dollars from any other persons on the outcome of any horse or dog race conducted pursuant to this chapter is guilty of a Class 1 misdemeanor.

Source: SL 1987, ch 311, § 2.

Cross-References.
Penalties for classified misdemeanors, § 22-6-2.

42-7-76.3. Accepting of small bets as misdemeanor. Any person who accepts bets of less than one hundred dollars from any other persons on the outcome of any horse or dog race conducted pursuant to this chapter is guilty of a Class 2 misdemeanor.

Source: SL 1987, ch 311, § 3.

Cross-References.
Penalties for classified misdemeanors, § 22-6-2.

42-7-79.1. Additional deduction from some pools on dog races — Distribution. In addition to the deductions authorized by § 42-7-79, the dog racing licensees shall deduct from the total sum contributed on dog races, except contributions on dog races in the win, place and show pool, an additional three and three-quarters percent on the first eight million dollars contributed and two and three-quarters percent on all sums contributed in excess of eight million dollars. The licensee will retain one-quarter of one percent for capital improvements on all amounts contributed and an additional two and three-quarters percent on the first eight million dollars and one and three-

quarters percent on all sums contributed in excess of eight million dollars will be retained by the licensee for discretionary use. The remainder of the funds shall be divided with three-eighths of the one percent being transferred on a weekly basis to the South Dakota-bred racing fund as provided for in § 42-7-71 and the remaining three-eighths of the one percent being remitted on a weekly basis to a special racing revolving fund in the office of the state treasurer to be disbursed by the racing commission to increase purses or for operations. Such funds shall be disbursed by the commission on warrants drawn by the state auditor on vouchers approved by the commission and such funds shall be disbursed without authority of appropriation acts. The amounts deducted and disbursed hereunder shall not be subject to the provisions of §§ 42-7-86 to 42-7-87, inclusive.

Source: SL 1981, ch 305, § 2; 1985, ch 332, § 1; 1987, ch 312, § 1.

Amendments.

The 1987 amendment substituted "three and three-quarters percent on the first eight million dollars contributed and two and three-quarters percent on all sums contributed in excess of eight million dollars" for "two percent" at the end of the first sentence; substituted "one-quarter of one percent for capital improvements on all amounts contributed and an additional two and three-quarters percent on the first eight million dollars and one and three-quarters percent on all sums contributed in excess of eight million dollars" for "one-quarter of said one percent for capital improvements and an additional one and one-quarter percent" in the second sentence; and substituted "three-eighths of the one percent" for "one-quarter of the one percent" in two places in the third sentence.

CHAPTER 42-7A

STATE LOTTERY

by the Governor. Such statement shall be filed with the Governor and with the Internal Revenue Service prior to the end of the applicable calendar year in accordance with Section 146(f) of the Code and the regulations promulgated thereunder. An Issuer may elect to carryforward such allocation only for qualified mortgage bonds, mortgage credit certificates, qualified student loan bonds, qualified redevelopment bonds (as such terms are defined in Sections 142, 143, and 144 of the Code) or for bonds to finance a project described in Section 141(d)(1)(A) of the Code. In no event shall such carryforward be effective for a period longer than permitted by Section 146(f) of the Code and the regulations promulgated thereunder.

"Section 7. This Executive Order and the allocation procedure specified herein are effective immediately and applied to Private Activity Bonds subject to the State Ceiling issued in 1987 and 1988.

"Section 8. On or prior to the date of issuance of any Private Activity Bonds for which an approved allocation has not expired or been relinquished, the Governor shall provide to the Issuer a certification, in substantially the form of Exhibit A attached hereto, within ten days after written request from the Issuer therefor, which request must be accompanied by a statement containing the information required to be filed with the Secretary of State under South Dakota Codified Laws, Section 6-8B-19, and the following information:

A. The date and principal amount of allocation made by the Governor with respect to the issue of Private Activity Bonds;

B. If the principal amount of Private Activity Bonds issued is less than the principal amount of allocation made with respect to such Bonds or a project, whether the Issuer relinquishes the balance of said allocation for reallocation by the Governor pursuant to this Order; and

C. Such other information as may be required by the Governor.

"Section 9. No further allocation shall be made to an Issuer and any outstanding allocation granted to an Issuer hereunder shall be revocable by the Governor if, within five calendar days following the date of issuance of the Private Activity Bonds for which an allocation was granted, the Issuer does not file with the Governor a copy of the Information Return for Tax-Exempt Private Activity Bond Issues filed or to be filed with the Secretary of the United States Department of Treasury as required by Section 149(e) of the Code."

Federal References.

Section 103(n) of the Internal Revenue Code of 1954, 26 U.S.C., § 103(n).

1-7-9. Submission of nomination from Governor — Financial statement of nominee. Any nomination from the governor, which is required by statute to be confirmed by the Senate, shall be sumbitted in such a manner as to inform the Senate as to the statutory conditions and requirements of the nomination and the qualifications of the nominee, including residence, occupation or profession, political affiliation, service on any other board or commission, experience and whether the nominee is a registered lobbyist. The nominee shall file a financial interest statement with the Senate which shall include any source of income which contributes either more than ten percent of, or more than two thousand dollars to, the gross income of the nominee or any member of his immediate family, or an enterprise in which such nominee or any member of his immediate family control more than ten percent of the capital or stock.

Source: SL 1987, ch 26.

CROSS-REFERENCES

Candidates for public office, statements of financial interest required of, §§ 12-25-27 to 12-25-34.

3-1A-1. Definition of terms. As used in this chapter, unless the context otherwise requires:

(1) "Close economic interest" means any enterprise that, in the calendar year preceding filing of a statement under this chapter, contributes either more than ten percent of or more than two thousand dollars, to the gross income of the family which shall include the individual required to file the statement and any member of his immediate family, or an enterprise in which such individual or any member of his immediate family control more than ten percent of the capital or stock;

(2) "Any member of his immediate family" means a spouse or minor children living at home;

(3) "Enterprise" means any business or economic relationship;

(4) "Statement of financial interest" means a description of the type of financial activity and the nature of the association with the enterprise as provided in subdivision (1) of this section.

Source: SL 1974, ch 121, § 1.

Collateral References.

Officers and Public Employees ⇦ 110.

63A Am Jur 2d, Public Officers and Employees, §§ 36, 39, 202, 207.

Validity and construction of enactments requiring public officers or candidates for office to disclose financial condition and relationships, 22 ALR 4th 237.

3-1A-2. Additions and corrections filed on assumption of elective state office. Persons assuming the office of Governor, lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, commissioner of school and public lands, public utilities commissioner, Supreme Court justice, circuit court judge, and state legislator shall, within fifteen days thereafter, file a statement setting forth additions and corrections, if any, to their previous statement of financial interest filed pursuant to § 12-25-28 or § 12-25-29.

Source: SL 1974, ch 121, § 5.

3-1A-3. Statements required of appointive state officers. All gubernatorial appointees which require senate confirmation shall file with the secretary of state a statement of financial interest prior to said confirmation.

Source: SL 1974, ch 121, § 6.

3-1A-4. Additions and corrections filed on assumption of elective local office. Each person assuming the office of county commissioner, school board member of a school district with a total enrollment of more than two thousand students, or commissioner, councilman or mayor in cities of the first class, shall within fifteen days thereafter file a statement setting forth the additions and corrections to the previous statement of financial interest filed pursuant to § 12-25-30, if any.

Source: SL 1974, ch 121, § 7; 1977, ch 68, § 13

3-1A-5. Forms provided — Value not required — Verification — Open to public inspection. The secretary of state shall prescribe and provide forms for the reporting of close economic interest. The value of a close economic interest need not be reported. Each individual filing a statement of financial interest shall subscribe to an oath or affirmation verifying the contents of such statement. All statements of financial interest shall be open to public inspection.

Source: SL 1974, ch 121, §§ 8 to 10.

3-1A-6. Violation as misdemeanor or petty offense. Any person who violates any of the provisions of this chapter commits a petty offense, provided, however, that any person intentionally violating any of the provisions of this chapter is guilty of a Class 2 misdemeanor.

Source: SL 1974, ch 121, § 11; 1980, ch 24, § 32.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

Petty offense procedure, Chapter 23-1A.

CHAPTER 3-2

DEPUTIES AND ASSISTANTS

Section

3-2-1. Appointment of deputy to be in writing — Revocation — Filing. The appointment of every deputy must be in writing and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal.

Source: SL 1872-3, ch 49, § 1; 1874-5, ch 27, § 37; PolC 1877, ch 6, § 1; CL 1887, § 1397; SL 1891, ch 108, § 1; RPolC 1903, § 1816; RC 1919, § 7045; SDC 1939, § 48.0401.

Failure to File Appointment.

Service of process by deputy sheriff was valid, even though deputy was mere de

dance hall at any time and may remove therefrom any person found to be in an intoxicated condition or offending against morality or decency or violating any state law or any of the provisions of this chapter.

Source: SL 1921, ch 334, § 9; SDC 1939, § 53.0209.

Commission Note.

The code commission substituted "circuit court" for "county court" near the beginning of this section, to reflect the change made by ch 130, SL 1973. See §§ 16-6-9 and 16-6-9.1.

42-4-16. Municipal powers not impaired. Nothing in this chapter contained shall be construed as limiting the powers conferred by law upon municipalities in the licensing and regulating of public dances or dance halls within the jurisdiction of such municipalities, or within one mile of the limits of such municipalities.

Source: SL 1921, ch 334, § 10; SDC 1939, § 53.0210.

Cross-References.

Municipal regulation of public dance halls, § 9-34-15.

Opinions of Attorney General.

Municipal ordinance regulating operation of dance halls, validity of, Report 1921-22, pp. 308-310.

CHAPTER 42-5

ENDURANCE CONTESTS

[Repealed by SL 1977, ch 190, § 620]

CHAPTER 42-6

BOXING AND WRESTLING

[Repealed by SL 1977, ch 3, § 2 (3)]

COMMISSION NOTE

Section 2, ch 3, SL 1977, read: "The following agencies shall terminate, and any statutes which relate to them shall be void insofar as they relate to the organization, existence, authority or function of such agencies, on June 30, 1978: * * * (3) The athletic commission created by chapter 42-6; * * * " The code commission considers this language to have repealed this entire chapter.

CHAPTER 42-7

HORSE AND DOG RACING

Section
42-7-1 to 42-7-13. Repealed.
42-7-14. Obsolete.
42-7-15 to 42-7-16. Repealed.
42-7-47. State policy in exercise of police powers.

COMMISSION NOTE

Section 2, ch 3, SL 1977, read "The following agencies shall terminate, and any statutes which relate to them shall be void in so far as they relate to the organization, existence, authority or function of such agencies, on June 30, 1978: * * * (4) The racing commission created by chapter 42-7; * * *." The code commission considers this language to have repealed this entire chapter as it stood in 1977.

Section 26, ch 351, SL 1979 (Ex Ord 79-1) changed the name of the department of commerce and consumer affairs to department of commerce. Section 36, ch 17, SL 1982 changed the name of the department of commerce to department of tourism and commerce. Section 18, ch 358, SL 1983 (Ex Ord 83-1), changed the name of the department to department of commerce and regulation. See § 1-35-1.

CROSS-REFERENCES

Games of chance prohibited, exceptions,
Const. art. III, § 25; Chapter 22-25.

42-7-1. Composition and appointment of racing commission — Terms of members — Vacancies — Officers — Removal from office. Repealed by SL 1977, ch 3, § 2 (4).

42-7-1.1. Functions of state racing commission. Repealed by SL 1977, ch 3, § 2 (4).

42-7-2. Geographic representation on commission — Residence of members. Repealed by SL 1977, ch 3, § 2 (4).

42-7-3. Financial interest in racing disqualifying for appointment or employment. Repealed by SL 1977, ch 3, § 2 (4).

42-7-4. Per diem and expenses of commission members. Repealed by SL 1971, ch 23, § 2.

42-7-5. Quorum of commission. Repealed by SL 1977, ch 3, § 2 (4).

42-7-6. Employment and compensation of secretary and other personnel — Location of commission office. Repealed by SL 1977, ch 3, § 2 (4).

42-7-7. Rules and regulations for conduct of racing. Repealed by SL 1977, ch 3, § 2 (4).

42-7-8. Use of certificate system authorized — Issuance of licenses. Repealed by SL 1977, ch 3, § 2 (4).

42-7-9. Racing under certificate system without license as misdemeanor. Repealed by SL 1977, ch 3, § 2 (4).

42-7-10. Application for license to race under certificate system — Time of action by commission — Contents and verification of application. Repealed by SL 1977, ch 3, § 2 (4).

42-7-11. Bond required for license — Amount and terms. Repealed by SL 1977, ch 3, § 2 (4).

42-7-12. Application for new site referred to county — Notice to neighboring counties — Submission to vote at general election. Repealed by SL 1977, ch 3, § 2 (4).

42-7-13. Certification and determination of votes on new racing site — Application and certificate transmitted to commission if approved by voters. Repealed by SL 1977, ch 3, § 2 (4).

42-7-14. Obsolete.

Commission Note.

This section, providing for disposition of applications for racing sites submitted to the racing commission prior to January 1, 1961, is omitted as obsolete.

42-7-15. Showing of facilities and good standing by applicant for license. Repealed by SL 1977, ch 3, § 2 (4).

42-7-16. Fee for issuance of racing license — Deposit in racing fund. Repealed by SL 1977, ch 3, § 2 (4).

42-7-17. Allotment of racing days to licensees — Right to dates used in past — Contents and duration of license — Hours when racing permitted. Repealed by SL 1977, ch 3, § 2 (4).

42-7-17.1. Additional racing day for scholarship trust fund. Repealed by SL 1977, ch 3, § 2 (4).

42-7-18. Exclusion from participation in racing for failure to comply with rules. Repealed by SL 1977, ch 3, § 2 (4).

42-7-18.1. Women jockeys — Discrimination as misdemeanor. Repealed by SL 1977, ch 3, § 2 (4).

42-7-19. Contributions and distributions under certificate system — Percentage deducted by licensee — Win, place and show contributions — Combination of races. Repealed by SL 1977, ch 3, § 2 (4).

42-7-19.1. Changes allowed in distribution formula between races. Repealed by SL 1977, ch 3, § 2 (4).

42-7-20. Breakage deducted in making distributions — Excess paid to state. Repealed by SL 1977, ch 3, § 2 (4).

42-7-21. Certificate system limited to track — Restricted to horse and dog races. Repealed by SL 1977, ch 3, § 2 (4).

42-7-22. Time limit on claims to distributions. Repealed by SL 1977, ch 3, § 2 (4).

42-7-23. Portion of licensee's compensation paid to county and state — Provision in license. Repealed by SL 1977, ch 3, § 2 (4).

42-7-23.1. Flat percentage license fee for track with small pools. Repealed by SL 1977, ch 3, § 2 (1).

42-7-24. Payments to state in lieu of other taxes. Repealed by SL 1977, ch 3, § 2 (1).

42-7-25. Business records required of licensees — Availability for inspection — State representatives to supervise operations. Repealed by SL 1977, ch 3, § 2 (4).

42-7-26. Portion of tax proceeds retained in South Dakota-bred racing fund — Purposes for which used. Repealed by SL 1977, ch 3, § 2 (4).

42-7-27. Running of special races for South Dakota horses — Additions to purse. Repealed by SL 1977, ch 3, § 2 (4).

42-7-28. One South Dakota-bred race per day — Horses eligible. Repealed by SL 1977, ch 3, § 2 (4).

42-7-29. Terms and conditions of South Dakota horse races — Approval by commission. Repealed by SL 1977, ch 3, § 2 (4).

42-7-30. Purses payable from South Dakota-bred racing fund. Repealed by SL 1977, ch 3, § 2 (4).

42-7-31. Percentage of South Dakota-bred purse to be paid to breeder. Repealed by SL 1977, ch 3, § 2 (4).

42-7-32. Cancellation of South Dakota horse race not attracting sufficient entries. Repealed by SL 1977, ch 3, § 2 (4).

42-7-33. Tax proceeds paid into special racing fund — Compensation and expenses payable from fund. Repealed by SL 1977, ch 3, § 2 (4).

42-7-34. Annual distribution of surplus in special racing fund. Repealed by SL 1977, ch 3, § 2 (4).

42-7-35. Cancellation of license for violation — Notice and hearing — Waiting period before new license. Repealed by SL 1977, ch 3, § 2 (4).

42-7-35.1. Suspension by panel of racing judges or stewards — Notice and hearing. Repealed by SL 1977, ch 3, § 2 (4).

42-7-35.2. Appeal from racing judges or stewards — Alternative methods — Hearing and decision by commission — Time for filing petition. Repealed by SL 1977, ch 3, § 2 (4).

42-7-36. Signature and filing of commission orders — Service on person affected. Repealed by SL 1977, ch 3, § 2 (4).

42-7-37. Appeal to circuit court from commission decision. Repealed by SL 1977, ch 3, § 2 (4).

42-7-38. Bringing appeal on hearing. Repealed by SL 1977, ch 3, § 2 (4).

42-7-39. Appeal to Supreme Court. Repealed by SL 1977, ch 3, § 2 (4).

42-7-40. Provisions inapplicable when certificate system not used. Repealed by SL 1977, ch 3, § 2 (4).

42-7-41. Misrepresentation or concealment of horse's past performance as misdemeanor. Repealed by SL 1977, ch 3, § 2 (4).

42-7-42. Change of horse's name prohibited except as provided. Repealed by SL 1977, ch 3, § 2 (4).

42-7-43. Entry of horse under assumed name or out of proper class as misdemeanor. Repealed by SL 1977, ch 3, § 2 (4).

42-7-44. Classification of horses for racing purposes. Repealed by SL 1977, ch 3, § 2 (1).

42-7-45. Violation of horse racing rules as misdemeanor. Repealed by SL 1977, ch 190, § 626.

42-7-46. Privilege against self-incrimination abrogated in fraudulent racing prosecutions — Immunity from prosecution. Repealed by SL 1977, ch 3, § 2 (1).

42-7-47. State policy in exercise of police powers. It is the policy of the state of South Dakota to utilize its police powers to provide forceful and honest state-wide regulation of racing in order to foster honest and fair racing practices, to ensure that all funds contributed are properly distributed and to provide for the health and safety of persons and animals lawfully on the premises of licensed racing facilities.

Source: SL 1978, ch 302, § 1.

Collateral References.

4 Am Jur 2d, Amusements and Exhibits, § 30; 38 Am Jur 2d, Gambling, §§ 16-18.

38 CJS, Gaming, § 8.

Liability for injury or death of participant in automobile or horse race at public track, 13 ALR 4th 623.

Propriety of exclusion of persons from horse racing tracks for reasons other than color or race, 90 ALR 3d 1361.

42-7-48. Definition of terms. Terms as used in this chapter, unless the context otherwise requires, mean:

(1) "Commission," the South Dakota racing commission;

(2) "Director," the director of the South Dakota racing commission;

(3) "Racing," horse and dog racing under the certificate system;

(4) "Horse racing day," a period of twenty-four hours, beginning at midnight, during which period of time a license has been granted by the commission to an association to conduct a contest between horses for purse, stakes, premium, wager for money or entrance fees on a course.

(5) "Dog racing day," a period of twenty-four hours, beginning at midnight, during which period of time a license has been granted by the commission to an association to conduct a contest between dogs for purse, stakes, premium, wager for money or entrance fees on a course.

Source: SL 1978, ch 302, § 2; 1985, ch 330, § 1.

42-7-49. Racing commission created — Appointment and terms of members — Political and geographic representation. There is hereby created a South Dakota racing commission within the department of commerce and regulation. The commission shall consist of

five members, each appointed by the Governor with the consent of the Senate, for a term of five years or until a successor is appointed and qualified. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term. The terms of the commissioners shall be staggered so that one term shall expire each July first. The new members of the commission shall be appointed at the expiration of the five year term of each incumbent member of the predecessor commission. No more than three members of the commission shall be of the same political party. Not more than three members of the commission shall be appointed from either east or west of the Missouri river.

Source: SL 1933 (SS), ch 9, § 1; 1937, ch 139, § 1; SDC 1939, § 53.0501; SL 1947, ch 238; 1955, ch 229, § 1; 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, § 42-7-2; SL 1975, ch 5, § 6; SDCL Supp, § 42-7-1; SL 1975, ch 268 (1), (2); 1978, ch 302, §§ 3, 4.

42-7-50. Residence and character required for appointment to commission — Financial interest in racing prohibited — Removal on disqualification. No person may be eligible for appointment to the racing commission who shall not have been a resident of this state for at least two years prior to the date of appointment and is not of such character and reputation as to promote public confidence in the administration of racing within the state. No person who has a financial interest in racing may be a member of the commission or employed by the commission. Failure to maintain compliance with the provisions of this section shall be grounds for removal from the commission or from employment with the commission.

Source: SL 1933 (SS), ch 9, § 1; 1937, ch 139, § 1; SDC 1939, § 53.0501; SL 1947, ch 238; 1955, ch 229, § 1; 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, §§ 42-7-2, 42-7-3; SL 1975, ch 268 (1) to (3); 1978, ch 302, § 5.

42-7-51. Compensation of commission members — Quorum — Procedures — Election of officers. The members of the racing commission shall receive per diem compensation and such allowable expense reimbursement as provided for in § 4-7-10.4. Three members of the commission shall constitute a quorum with authority to act. The commission's hearings, practice and rule making procedures are as provided in chapter 1-26. The commissioners shall annually elect their officers.

Source: SL 1933 (SS), ch 9, § 1; 1937, ch 139, § 1; SDC 1939, § 53.0501; SL 1947, ch 238; 1955, ch 229, § 1; 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, § 42-7-5; SL 1975, ch 5, § 6; SDCL Supp, § 42-7-1; SL 1975, ch 268 (4); 1978, ch 302, § 3.

42-7-52. Administrative functions performed by department — Reports by commission to department. The department of commerce and regulation shall, under the direction and control of the secretary of commerce and regulation, perform all administrative functions of the racing commission except personnel matters. Upon request, the

alter the normal performance of a racing animal unless specifically authorized by the commission;

(5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines and equipment used within the state;

(6) Make rules governing, restricting or regulating bids on licensees' concessions and leases on equipment;

(7) Approve all proposed extensions, additions or improvements to the buildings, stables or tracts upon property owned or leased by a licensee;

(8) Exclude from race courses or other pari-mutuel facilities any person who intentionally violates the racing laws or any rule, regulation or order of the commission or any law of the United States or of this state;

(9) Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records shall be kept;

(10) Investigate the operations of any licensee and cause the various places where the certificate system is operated to be visited and inspected at reasonable intervals for the purpose of satisfying itself that the rules and regulations are strictly complied with;

(11) Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants and animals that are lawfully on the race track;

(12) License all participants in the racing industry and to require and obtain such information as the commission deems necessary from licensed applicants;

(13) Prescribe and enforce additional rules, regulations, and conditions under which all horse and dog races held shall be conducted;

(14) To license all facilities at which money is collected or disbursed under the certificate system.

Source: SL 1933 (SS), ch 9, § 5; SDC 1939, § 53.0502; SL 1949, ch 213; SDCL, § 42-7-7; SL 1978, ch 302, § 9; 1985, ch 331, §§ 2, 5.

Cross-References.
Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

42-7-57. License required for racing under certificate system — Violation as misdemeanor. No person shall hold any racing meeting under the certificate system without having first obtained and having in full force and effect a license issued by the racing commission. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

Source: SL 1933 (SS), ch 9, § 18; SDC 1939, § 53.9902; SDCL, § 42-7-9, SL 1977, ch 190, § 622; 1978, ch 302, § 13.

Cross-References.
Penalties for classified misdemeanors, § 22-6-2.

commission shall furnish such reports as are required by the secretary of the department of commerce and regulation.

Source: SL 1975, ch 5, §§ 1, 5; SDCL, § 42-7-1.1; SL 1978, ch 302, §§ 3, 7.

Cross-References.

Department of commerce and regulation performing functions of racing commission, § 1-35-12.1.

42-7-53. Appointment of director of racing — Qualifications. The secretary of commerce and regulation shall appoint a director of racing from a list of three qualified candidates submitted by the racing commission. The director shall have such qualifications as the commission may determine.

Source: SL 1937, ch 139, § 2; SDC 1939, § 53.0501; SL 1947, ch 238; 1955, ch 229, § 1; 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, § 42-7-6; SL 1978, ch 302, § 7.

42-7-54. Director full time — Salary — Duties of director. The director shall devote his full time to the duties of the office. The racing commission shall establish the salary of the director subject to the approval of the Governor. The director shall be the executive officer of the commission. The director shall enforce the rules, regulations and orders of the commission, and he shall perform such other duties as the commission prescribes.

Source: SL 1937, ch 139, § 2; SDC 1939, § 53.0501; SL 1947, ch 238; 1955, ch 229, § 1; 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, § 42-7-6; SL 1978, ch 302, § 7.

Commission Note.

The code commission deleted "and under such conditions as are set forth in § 4-7-10.1" at the end of the first sentence to reflect the amendment of that section by SL 1981, ch 30, § 1, which made it inapplicable to the director of racing.

Cross-References.

Director and part-time employees of commission excluded from personnel management system, § 3-6A-13

42-7-55. Employment of other personnel. The racing commission may employ such other employees as it deems necessary.

Source: SL 1955, ch 229, § 1; SDC Supp 1960, § 53.0501; SL 1957, ch 273, § 1; 1963, ch 296, § 1; SDCL, § 42-7-6; SL 1978, ch 302, § 8.

42-7-56. Powers and responsibilities of racing commission. The racing commission shall:

(1) Provide for racing under the certificate system;

(2) Perform quasi-legislative, quasi-judicial and advisory functions excluding special budgetary functions as defined in § 1-32-1;

(3) Set racing dates;

(4) Promulgate rules for effectively preventing the use of any substance, compound items or combination thereof of any medicine, narcotic, stimulant, depressant or anesthetic which could

42-7-58. Authority for racing under certificate system — Issuance of license. The racing commission may permit and authorize the racing of horses and dogs under what is here designated the "certificate system." The commission may issue, on compliance of an applicant with the requirements of this chapter, a license to conduct races under the certificate system.

Source: SL 1933 (SS), ch 9, § 6; SDC 1939, § 53.0503; SL 1949, ch 213; 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-8; SL 1969, ch 201; 1978, ch 302, § 12.

42-7-58.1. Satellite facilities of dog track licensees. Notwithstanding any other provisions of this chapter, the racing commission may allow a licensee of a dog track to collect and disburse money under the certificate system at locations other than where licensed races are conducted if such satellite locations are more than fifty miles away from any pari-mutuel horse track or dog track licensed by the commission which is conducting a race meet at that time. The licensee shall combine the amount contributed at the satellite location with the contribution contributed at the track and such amount shall be combined with the amount withheld by the licensee as provided in §§ 42-7-79 and 42-7-79.1. The state shall receive four percent of the total amount contributed from the satellite location, and the special racing revolving fund in the office of the state treasurer and the South Dakota bred racing fund shall each receive one and one-half percent of the total amount contributed, with the remaining amount of the contribution withheld at the satellite location to be retained by the licensee. No other deductions may be made from the amount withheld by the licensee at the satellite location.

Source: SL 1985, ch 331, § 1.

42-7-59. Filing of application for racing license — Contents. The application for a license to hold or conduct a racing meeting shall be signed under oath and filed with the racing commission on or before a day prescribed in this chapter. The application shall state:

(1) The full name and address of the applicant. If the applicant for a license is a corporation, the names of all officers, directors, or stockholders of the corporation or any of its holding corporations shall be disclosed individually to the commission. The commission may require disclosure of any person or group of persons holding directly, indirectly or beneficially an interest of any nature whatsoever in the corporation or any of its holding corporations, whether financial, administrative, policy-making or supervising;

(2) The location of its racetrack or other facility and whether it is owned or leased. If leased, state the names and addresses of the lessors;

(3) A statement of the assets and liabilities of such applicant;

(4) A description of the qualifications and experience of the applicant, if an individual, or of its officers and directors, if a corporation, in the conduct of racing establishments in the five years preceding the filing of such application;
(5) The time, place and number of days such racing meet is proposed to be conducted;
(6) The type of racing to be conducted;
(7) Such other information as the commission may require.

Source: SL 1933 (SS), ch 9, § 13; 1935, ch 130, § 3; 1937, ch 139, § 5; SDC 1939, § 53.0506; SL 1949, ch 213; 1961, ch 265, § 2; 1963, ch 296, § 3; SDCL, § 42-7-10; SL 1969, ch 201; 1978, ch 302, § 14; 1985, ch 331, § 3.

42-7-60. Bond required of applicant for racing license — Waiver — Revocation or suspension of license on nonpayment of fees or taxes. Every person applying for a license under the certificate system shall give bond payable to the state of South Dakota with good security to be approved by the racing commission. The bond shall be the amount which the commission determines will adequately protect the amount normally due and owing to the state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.

The commission may waive the bond and in such event, the amount of taxes and fees due and owing the state shall be a lien on the license to operate. The lack of timely payment shall be cause for revocation or suspension of the license to operate.

Source: SL 1933 (SS), ch 9, § 11; SDC 1939, § 53.0504; SDCL, § 42-7-11; SL 1978, ch 302, § 16.

42-7-61. Application for new site submitted to county commissioners — Notice to county auditors — Provision for vote. An application for a license to conduct the racing of horses or dogs on any new site which has not before July 1, 1967, been utilized for the conduct of racing horses or dogs, shall first be submitted, not less than ninety days prior to the next general election, to the board of county commissioners of the county where the site is to be located. The board of county commissioners shall notify the county auditor of each county which has any portion of its border within fifteen miles of the proposed site. Upon receipt of such notice, the county auditor of each county shall take the necessary action to provide that a vote shall be conducted at the next general election for the purpose of approving or disapproving such proposed site.

Source: SDC 1939, § 53.0506 as added by SL 1967, ch 244; SDCL, § 42-7-12; SL 1969, ch 201; 1978, ch 302, § 21.

42-7-62. Certification of votes on new racing site — Application forwarded to racing commission if approved by voters. The county

auditor of each county voting on the question provided for in § 42-7-61 shall submit a certified statement of the total votes cast for approval and disapproval to the board of county commissioners of the proposed-site county within sixty days after the general election. The board of county commissioners of the proposed-site county shall add the total votes cast for approval and disapproval from all such counties voting. If a majority of all votes cast approves such proposed site, the application for a license shall be further submitted by the county auditor of the proposed-site county together with a certificate indicating such approval to the racing commission for their consideration and action.

Source: SDC 1939, § 53.0506 as added by SL 1967, ch 244; SDCL, § 42-7-13; SL 1969, ch 201, 1978, ch 302, § 22.

42-7-63. Daily license fee for racing meetings — Disposition. The racing commission may charge a fee for licenses to conduct racing of horses or dogs under the certificate system commensurate with the size and attendance of such race meet, but no charge less than ten dollars nor in excess of one hundred dollars per day shall be made. The license fees shall be remitted to the state treasurer and placed in the special racing fund.

Source: SL 1933 (SS), ch 9, § 16; 1935, ch 130, § 6; SDC 1939, § 53.0509; SDCL, § 42-7-16; SL 1978, ch 302, § 19.

42-7-64. Contents of license for racing under certificate system — Days and hours of racing specified. Each license issued under the certificate system shall describe the place and track or race course at which the licensee may hold such meetings. The authority conferred in any one license shall be limited to the calendar year for which it is issued. Every license shall specify the number of days the licensed meet shall continue, the hours during which racing is to be conducted and the number of races to be held per day. Races authorized under this chapter may be held only between the hours of 9:00 a.m. and 12:00 midnight.

Source: SL 1933 (SS), ch 9, §§ 9, 13; 1935, ch 130, § 3; 1937, ch 139, § 5; SDC 1939, §§ 53.0503, 53.0506; SL 1949, ch 213; 1961, ch 265, §§ 1, 2; 1963, ch 296, §§ 2, 3; SDCL, § 42 7-17; SL 1969, ch 201; 1970, ch 246; 1978, ch 302, § 17.

42-7-65. Transfer of license or stock ownership subject to approval — Standards applied. All transfers of licenses to operate a meet under the certificate system or transfers of stock in a corporation holding a license shall be subject to prior review and approval by the racing commission, and the disclosure requirements as provided in § 42-7-59. The commission may approve minor transfers of stock without a hearing. The commission shall apply the standards provided in § 42-7-91 in determining whether it shall permit a transfer of stock.

Source: SL 1978, ch 302, § 18.

42-7-66. Investigation of stock ownership — Failure to disclose. The racing commission may conduct investigations to ascertain if any capital stock of any corporate applicant is held for an undisclosed principal. Failure to disclose a principal is a material false statement.

Source: SL 1978, ch 302, § 18

42-7-67. Licensing of participants and track personnel — Duration and privileges conferred — Fine, suspension or revocation. The racing commission may grant, refuse, suspend or withdraw licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise boys, veterinarians, valets, platers, concessionaires, or anyone licensed pursuant to this chapter or any rules and regulations the commission adopts and upon the payment of a license fee as fixed pursuant to this chapter. No license shall be valid for more than one calendar year, but a license issued pursuant to this chapter is valid at all race meetings in the state during the one year period.

The commission, upon proof of violation of any provision of this chapter or any rule or regulation adopted by the commission, may fine, suspend or revoke any license granted pursuant to this section.

Source: SL 1978, ch 302, § 38

Collateral References.

Disciplinary proceedings against horse trainer or jockey, 52 ALR 3d 206

42-7-68. Allotment of racing days to applicants — Preference to past users — Annual scheduling. If an applicant is eligible to receive a license under the provisions of this chapter, the racing commission shall fix the racing days allotted to the applicant and issue a license for the holding of such meetings. Any racing association, agriculture, livestock or fair exposition which has adopted and used regular or approximate regular dates for their events for the past two years shall be allotted those dates if such association or organization requests them.

Written applications for racing dates for the next calendar year shall be submitted to the commission prior to October thirty-first of the preceding year. Allotment of the racing dates for the next calendar year shall be made by the commission by December thirty-first of the preceding year.

The commission may grant additional racing days to any currently licensed racing association upon a written application for additional racing dates for the current calendar year.

Source: SL 1933 (SS), ch 9, § 13; 1935, ch 130, § 3; 1937, ch 139, § 5; SDC 1939, § 53.0506; SL 1949, ch 213, 1961, ch 265, § 2, 1963, ch 296, § 3, SDCL, § 42-2-17, SL 1969, ch 201; 1970, ch 246; 1978, ch 302, § 20, 1985, ch 330, § 2.

42-7-69. Additional racing day for scholarship fund — Expenses deductible in computing profit. The racing commission

may grant one additional day of racing during the race meeting period granted to any track, upon application and agreement by any track in which one specific day of any meet shall be set aside, and all profit and all taxes payable to the state or any state agency for such day's operation, less actual operating costs, from such specific day's operations of such track, shall be paid into the state treasury for a scholarship trust fund. Actual operating costs of any track conducting such additional day of racing shall not include constant day to day expenses which would have been incurred had the day of racing not been held. Nondeductible expenses include, but are not limited to, such items as capital expenditures, interest on debts, real estate taxes, annual license fees, donations, bad debts, and such other items of daily or prorated expense as the commission may by rule prescribe.

Source: SL 1969, ch 201, SDCL Supp, § 42-7-17.1; SL 1978, ch 302, § 23.

42-7-70. Administration of scholarship fund by board of regents — Use. The fund described in § 42-7-69 shall be administered by the state board of regents upon such terms and conditions as the board may from time to time prescribe. Moneys in the fund shall be used for scholarships for students who attend state institutions of higher learning supported by the state.

Source: SL 1969, ch 201, SDCL Supp, § 42-7-17.1; SL 1978, ch 302, § 23.

42-7-71. South Dakota-bred racing fund — Use of fund. One-fourth of all money received by the state treasurer under this chapter from licensees operating horse racing tracks shall be placed in a special revenue fund to be known as the "South Dakota-bred racing fund." The fund shall be used by the racing commission to encourage the raising and breeding of horses in South Dakota and may be used only for the purpose of providing compensation to South Dakota-bred horses by providing funds to all horsetracks licensed in South Dakota.

Source: SDC 1939, § 53.0508 as enacted by SL 1963, ch 290, § 5; SDCL, § 42-7-26; SL 1978, ch 302, § 31; 1984, ch 301, § 1.

42-7-72. Daily South Dakota-bred race to be scheduled. Repealed by SL 1983, ch 301, § 2.

42-7-73. Bonus paid to breeder of winner of South Dakota-bred race — Registration of qualifying horses. A sum equal to five percent of the first money of every purse won by a "South Dakota-bred" horse shall be paid by the licensee conducting the horse racing meeting to the breeder of such animal. The racing commission shall by rule

provide for the definition and registration of all "South Dakota-bred" horses.

Source: SDC 1939, § 53.0508 as enacted by SL 1963, ch 296, § 5; SDCL, § 42-7-31; SL 1978, ch 302, § 34.

42-7-74. South Dakota horse races to be scheduled. Repealed by SL 1983, ch 301, § 3.

42-7-75. Cancellation of South Dakota race if entries insufficient — Purse not paid from special fund. Repealed by SL 1983, ch 301, § 4.

42-7-76. Contributions by win bettors — Interest acquired — Certificates issued. The certificate system shall expressly authorize the right of a licensee to collect and receive contributions of money from any person eighteen years or older toward the entry of any horse or dog in such race selected by such person to run first in the race, and the person contributing such money shall acquire an interest in the total money contributed on all horses and dogs in the race as first winner in proportion to the amount of money contributed by such person. The licensee shall receive such contributions of money and issue to the contributors thereof certificates on which shall be shown the number of the race, the amount contributed, and the number or name of the horse or dog selected by such person as first winner.

Source: SL 1933 (SS), ch 9, § 6; SDC 1939, § 53.0503; SL 1949, ch 213; 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-19; SL 1969, ch 201; 1972, ch 230, § 1; 1974, ch 281, § 3; 1975, ch 266; 1978, ch 302, § 24; 1985, ch 331, § 4.

42-7-77. Place and show betting — Combinations of races for betting. The licensee shall receive such contributions on horses or dogs selected to run second, third, or both, the method and procedure and the right of the licensee to be as specified in §§ 42-7-76, 42-7-78 and 42-7-79, with reference to selection of a horse or dog to run first. Any contributions collected or received under the provisions of this chapter may apply to one or more races or to any combination of races.

Source: SL 1933 (SS), ch 9, § 7; SDC 1939, § 53.0503; SL 1949, ch 213; 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-19; SL 1969, ch 201; 1972, ch 230, § 1; 1974, ch 281, § 3; 1975, ch 266; 1978, ch 302, § 24.

42-7-78. Deduction from pari-mutuel pool on horse race — Payments to winners. As each horse race is run the licensee shall be authorized to deduct from the total sum contributed on all horses as first winners eighteen and one-quarter percent and the balance remaining on hand after deducting such percentage shall be paid out to the holders of certificates on the winning horse equally in proportion as the amount contributed by such person bears to the total

amount contributed toward the entry of all horses in such race to run first.

Source: SL 1933 (SS), ch 9, § 6; SDC 1939, § 53.0503; SL 1949, ch 213; 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-19; SL 1969, ch 201; 1972, ch 230, § 1; 1974, ch 281, § 3; 1975, ch 266; 1978, ch 302, § 24.

42-7-78.1. Additional deduction from pools on horse races — Distribution. In addition to the deductions authorized by § 42-7-78, a licensee of a horse track may deduct from the total sum contributed on horse races, except contributions on horse races in the win, place or show pool, an additional three percent, which shall be retained by the licensee as additional compensation, to be used only by the licensee for capital improvements, increases in purses, or for such other purpose which has been approved by the racing commission. Such deduction is not subject to the provisions of § 42-7-85.

Source: SL 1981, ch 305, § 1.

42-7-79. Deduction from pari-mutuel pool on dog race — Payments to winners. As each dog race is run, the licensee shall deduct from the total sum contributed on all dogs as first winners sixteen and one-quarter percent of the amount thus contributed up to eight million dollars and thereafter the sum of seventeen and one-quarter percent, and the balance remaining on hand after deducting such sixteen and one-quarter percent or seventeen and one-quarter percent shall be paid out to the holders of certificates on the winning dog equally in proportion as the amount contributed by such person bears to the total amount contributed toward the entry of all dogs in such race to run first.

Source: SL 1949, ch 213; SDC Supp 1960, § 53.0503; SL 1961, ch 265, § 1; 1963, ch 296, § 2; SDCL, § 42-7-19; SL 1969, ch 201; 1972, ch 230, § 1; 1974, ch 281, §§ 3, 5; 1975, ch 266; 1976, ch 263; 1978, ch 302, § 24.

42-7-79.1. Additional deduction from some pools on dog races — Distribution. In addition to the deductions authorized by § 42-7-79, the dog racing licensees shall deduct from the total sum contributed on dog races, except contributions on dog races in the win, place and show pool, an additional two percent. The licensee will retain one-quarter of said one percent for capital improvements and an additional one and one-quarter percent will be retained by the licensee for discretionary use. The remainder of the funds shall be divided with one-quarter of the one percent being transferred on a weekly basis to the South Dakota-bred racing fund as provided for in § 42-7-71 and the remaining one-quarter of the one percent being remitted on a weekly basis to a special racing revolving fund in the office of the state treasurer to be disbursed by the racing commission to increase purses or for operations. Such funds shall be disbursed by the commission on

warrants drawn by the state auditor on vouchers approved by the commission and such funds shall be disbursed without authority of appropriation acts. The amounts deducted and disbursed hereunder shall not be subject to the provisions of §§ 42-7-86 to 42-7-87, inclusive.

Source: SL 1981, ch 305, § 2; 1985, ch 332, § 1.

42-7-80. Change in payment formula when dollar cutoff reached. A licensee may make the necessary changes in the formulas for the distribution of the contributions, breakage and other payments following the race during which the prescribed dollar cutoff mark was reached, so that contributions relating to any subsequent race shall be the first to be subject to the changed distribution formula.

Source: SL 1974, ch 280, SDCL Supp, § 42-7-19.1; SL 1978, ch 302, § 25.

42-7-81. Deduction of breakage from pari-mutuel payments — Payment to state treasurer. Before any payment is made to a person who has contributed to a pari-mutuel pool, the licensee shall deduct the odd cents by which the amount payable to such person exceeds a multiple of ten cents, which shall be known as "breakage." Each licensee shall remit to the state treasurer at the end of each week of racing, all money retained as breakage on all contributions received in excess of eight million dollars in any one year.

Source: SDC 1939, § 53.0503 as added by SL 1963, ch 296, § 2; SDCL, § 42-7-20; SL 1969, ch 201; 1970, ch 245, § 2; 1978, ch 302, § 26.

42-7-82. Time for claiming payments from pari-mutuel pool. Claims for any part of a redistribution from a pari-mutuel pool shall be made within sixty days from the end of the meet or be forever barred. Any sums so barred shall become the property of the licensee conducting the meet.

Source: SDC 1939, § 53.0507 as added by SL 1963, ch 296, § 4; SDCL, § 42-7-22; SL 1978, ch 302, § 27.

42-7-83. Portion of pari-mutuel pool retained as compensation by licensee. A license to conduct racing under the certificate system shall expressly provide that the licensee shall retain as compensation one and one-quarter percent of the total sum contributed up to eight million dollars of the total sum contributed annually.

Source: SL 1974, ch 281, § 2; SDCL Supp, § 42-7-23; SL 1977, ch 338; 1978, ch 302, § 28; 1983, ch 302, § 1.

42-7-84. Additional withholding by licensees — Remission to state by dog licensees — Distribution — Retention by horse licensees. The licensee of each dog track shall withhold and remit to the

state treasurer at the end of each week of racing, one and one-quarter percent of the total sum contributed annually in excess of eight million dollars and such funds shall be distributed by the state treasurer on a weekly basis in equal shares to the South Dakota-bred racing fund as provided for in § 42-7-71 and to the special racing revolving fund as provided for in § 42-7-79.1.

The licensee of each horse racing track shall withhold and retain at the end of each week of racing, as additional compensation to the licensee, one and one-quarter percent of the total sum contributed in excess of eight million dollars annually, and none of this money shall be remitted to the state pursuant of § 42-7-85.

Source: SL 1972, ch 230, § 2; SDCL Supp, § 42-7-23; SL 1974, ch 281, §§ 2, 5; 1976, ch 263; 1977, ch 338; 1978, ch 302, § 28; 1982, ch 295; 1983, ch 302, § 2; 1985, ch 332, § 2.

42-7-85. Portion of horse-racing pari-mutuel pool paid to state. A license to conduct racing under the certificate system shall further expressly provide that the licensee of any horse racing track shall remit to the state treasurer at the end of each week of racing, four-seventeenths of the total of all money retained as compensation by the licensee as authorized by this chapter which is in excess of the one and one-quarter percent retained by the licensee or remitted to the county treasurer wherein the site is located except breakage.

Source: SL 1933 (SS), ch 9, § 13; 1935, ch 130, § 3; 1937, ch 139, § 5; SDC 1939, § 53.0506; SL 1949, ch 213; 1961, ch 265, § 2; 1963, ch 296, § 3; SDCL, § 42-7-23; SL 1969, ch 201; 1972, ch 230, § 2; 1974, ch 281, §§ 2, 5; 1976, ch 263; 1977, ch 338; 1978, ch 302, § 28.

42-7-86. Portion of dog-racing pari-mutuel pool paid to state. A license shall expressly provide that the licensee of any dog racing track shall remit to the state treasurer at the end of each week of racing, four-fifteenths of the total of all money retained as compensation on the first million dollars of contribution received which is in excess of the one and one-quarter percent retained by the licensee except breakage and six-fifteenths of the total of all compensation on all contributions received except breakage in excess of one million dollars and is in excess of the one and one-quarter percent retained by the licensee.

Source: SL 1949, ch 213; SDC Supp 1960, § 53.0506; SL 1961, ch 265, § 2; 1963, ch 296, § 3; SDCL, § 42-7-23; SL 1969, ch 201; 1972, ch 230, § 2; 1974, ch 281, §§ 2, 5; 1976, ch 263; 1977, ch 338; 1978, ch 302, § 28; 1983, ch 302, § 3.

42-7-87. Portion of dog-racing pari-mutuel pools paid to state after eight million dollars. All licenses issued to applicants for tracks or race courses where the total contributions received have equaled or exceed eight million dollars in any one year shall expressly provide

that the licensee of any dog racing track shall remit to the state treasurer at the end of each week seven-sixteenths of all money retained as compensation on all contributions received in excess of eight million dollars, except breakage, and is in excess of the one and one-quarter percent retained by the licensee or remitted as provided in § 42-7-84.

Source: SL 1969, ch 201; SDCL Supp, § 42-7-23; SL 1972, ch 230, § 2; 1974, ch 281, §§ 2, 5; 1976, ch 263; 1977, ch 338; 1978, ch 302, § 28; 1983, ch 302, § 4.

42-7-88. Fixed percentage in lieu of other payments to state authorized for small tracks. Any licensed dog racing track having a daily contribution in its pari-mutuel pool of less than twenty-five thousand dollars or any licensed horse racing track having a daily contribution in its pari-mutuel pool of less than one hundred thousand dollars may, in lieu of remitting to the state treasurer as provided in §§ 42-7-85 to 42-7-87, inclusive, be permitted to operate on the basis of a fixed daily license fee, which shall be three percent of the total contributions received each day.

Source: SL 1974, ch 281, § 4; SDCL Supp, § 42-7-23.1; SL 1978, ch 302, § 29; 1980, ch 291, § 1.

42-7-89. Payments to state in lieu of other taxes. The payments required in §§ 42-7-63 and 42-7-85 to 42-7-88, inclusive, to be made by the licensee to the state treasurer are in lieu of all other or further excise or occupational taxes to the state or any county, municipality or other political subdivision.

Source: SL 1933 (SS), ch 9, § 17; SDC 1939, § 53.0510; SDCL, § 42-7-24; SL 1978, ch 302, § 30.

42-7-90. Audit of licensee by auditor-general — Reimbursement of expense. The auditor-general shall, when requested by the racing commission, executive board of the legislative research council or the Governor, conduct audits and investigate the operations of any licensee. The commission shall reimburse the department of legislative audit for all services rendered.

Source: SL 1935, ch 130, § 2; 1937, ch 139, § 4; SDC 1939, § 53.0505; SL 1955, ch 229, § 2; 1957, ch 273, § 2; SDCL, § 42-7-25; SL 1978, ch 302, § 11.

42-7-91. Grounds for refusal, suspension or withdrawal of license. The racing commission may refuse, suspend or withdraw licenses under the certificate system and privileges granted by it or terminate racing privileges for just cause. Those things constituting just cause are:

(1) Any action or attempted action by a person contrary to the provisions of this chapter and law;

(2) Corrupt practices, which include but are not limited to:
   (a) Prearranging or attempting to prearrange the order of finish of a race;
   (b) Failing to properly pay the winnings to a bettor or to properly return change to a bettor upon purchasing a ticket;
   (c) Falsifying or manipulating the odds on any entrant in a race;
(3) Any violation of the rules of racing adopted by the commission;
(4) Willful falsification or misstatement of fact in an application for racing privileges;
(5) Material false statement to a racing official or to the commission;
(6) Willful disobedience of a commission order or of a lawful order of a racing official other than a commissioner;
(7) Continued failure or inability to meet financial obligations connected with the licensee's business, occupation or profession performed or engaged on the track grounds;
(8) Failure or inability to maintain properly a race track.

Source: SL 1978, ch 302, § 15.

42-7-92. Legal representation of commission — Prosecution of violations. The attorney general shall represent the state in all hearings before the racing commission and shall prosecute all criminal proceedings arising from violations of this chapter. The commission shall reimburse the attorney general for all services rendered. The commission may employ private counsel for rule promulgation and to ensure that all its hearings are conducted fairly.

Source: SL 1978, ch 302, § 10.

42-7-93. Fine, revocation or suspension of license after notice and hearing — Waiting period for new license after revocation. The racing commission, upon proof of violation by a licensee, or his agents or employees, of any provision of this chapter or any rule promulgated by the commission, may on reasonable notice to the licensee and after giving the licensee an opportunity to be heard, fine him or revoke or suspend his license. In the event of revocation, the licensee is not eligible to apply for another license within twelve months from the date of the revocation.

Source: SL 1933 (SS), ch 9, § 19; SDC 1939, § 53.0511; SDCL, § 42-7-35; SL 1978, ch 302, § 40; 1985, ch 330, § 3.

Cross-References.
Procedure in licensing matters, §§ 1-26-27 to 1-26-29.

42-7-94. Decisions and orders in writing — Service on person affected. Every decision or order of the racing commission shall be made in writing and filed with the director and preserved as a permanent record of the commission. Such decisions shall be signed by the

chairman and attested by the director and dated. No decision or order of the commission shall be effective as to any person until a certified copy has been personally served or sent by certified mail to such person.

Source: SDC 1939, § 53.0512; SDCL, § 42-7-36; SL 1978, ch 302, § 39.

42-7-95. Judicial review of commission actions — Cost bond. If any licensee is dissatisfied with the decision of the racing commission, he may have such decision reviewed by the circuit court in the manner provided by chapter 1-26, by furnishing a bond to the commission to be approved by the clerk of the court to which the appeal is taken, in the penal sum of two hundred fifty dollars conditioned for the payment of the costs.

Source: SL 1933 (SS), ch 9, § 20; SDC 1939, § 53.0513; SDCL, § 42-7-37; SL 1978, ch 302, § 43.

Cross-References.
Appeals from administrative agencies, §§ 1-26-30 to 1-26-37.

42-7-96. Suspensions and fines by racing judges or stewards — Notice and hearing — Appeals — Reference to commission. The commission shall promulgate rules permitting a panel of three racing judges or stewards to impose suspensions not to exceed four horse racing days or twelve dog racing days and any intervening calendar days and a fine not to exceed five hundred dollars on persons violating this chapter or the rules of the commission after notice and hearing pursuant to chapter 1-26.

An appeal from the order of the racing judges or stewards shall be made to the commission only and not to the circuit court and shall operate as a stay of all proceedings under such order until the commission renders its decision which shall be final agency action.

If the racing judges or stewards find that a penalty which exceeds their limits to impose should be rendered, they may not impose any penalty and shall forward their findings and conclusions and recommendations to the commission for final agency action.

If a matter is not appealed to the commission by the person upon whom a penalty was imposed by the stewards or judges within seven days of the date of service of the judges' or stewards' order, the decision and penalty of the judges or stewards shall be final in that the appeal time to the commission has lapsed.

Source: SL 1977, ch 337, § 1; SDCL Supp, § 42-7-35.1; SL 1978, ch 302, § 41; 1985, ch 330, § 4.

Collateral References.
Disciplinary proceedings against horse trainer or jockey, 52 ALR 3d 206.

42-7-97. Superseded.

Commission Note.
This section, which provided that a person penalized under § 42-7-96 could, at his option, appeal to the racing commission or treat the penalty as a final agency action,

was superseded by SL 1985, ch 330, § 4, which amended § 42-7-96 to provide that appeal from such a penalty must be to the racing commission.

42-7-97.1. Suspensions or revocations exceeding racing season. If a suspension or revocation of racing privileges is levied by the racing commission or by a panel of three racing judges or stewards the horse racing days or dog racing days that the license is suspended for or revoked for shall be served in the next racing season if there are not sufficient horse racing days or dog racing days in the season when the penalty is carried out.

Source: SL 1985, ch 330, § 6.

42-7-98. Receipts retained in special racing fund — Expenses paid from fund. All moneys received by the state treasurer except for those moneys in the South Dakota-bred racing fund shall be retained by him in a special racing fund. The compensation and expense of the racing commission, director and employees, and the representatives of the attorney general's office and the department of legislative audit shall be paid from this fund.

Source: SL 1933 (SS), ch 9, § 14, 1935, ch 130, § 4, 1937, ch 139, § 6; SDC 1939, § 53.0507; SL 1949, ch 213, 1955, ch 229, § 3; 1957, ch 273, § 3; 1959, ch 284; 1963, ch 296, § 4; SDCL, § 42-7-33; SL 1978, ch 302, § 36.

42-7-99. Budget and appropriations for expenditures — Vouchers and warrants. All expenditures of moneys authorized pursuant to this chapter and drawn from the state treasury, shall be made under the authority of appropriation acts, which shall be based upon a budget as provided in § 4-8-1. All funds expended pursuant to this chapter shall be paid on warrants drawn by the state auditor on vouchers approved by the racing commission.

Source: SL 1978, ch 302, § 44.

42-7-100. Annual distribution of surplus from special racing fund. On the first of July of each year all moneys in the special racing fund in excess of ten thousand dollars shall be allocated by the state treasurer as follows:

(1) There shall be transferred to the county treasurer of each county where the certificate system is licensed to operate, a sum equivalent to ten percent of the total amount which the licensee in such county paid into the state treasury as a result of the operation of the certificate system during the preceding fiscal year, but in no case more than twenty thousand dollars, which shall be deposited in the county general fund;

(2) There shall then be transferred to the state fair commission, the sum of one hundred fifty thousand dollars for administrative expenses and maintenance of buildings and grounds;

(3) There shall then be transferred to any operating school district wherein a dog track is located which has total contributions under the certificate system in excess of twelve million dollars annually, the sum of one hundred thousand dollars;

(4) All sums remaining shall be transferred to the state general fund.

Source: SL 1935, ch 130, § 14; 1937, ch 139, § 6; SDC 1939, § 53.0507; SL 1949, ch 213; 1955, ch 229, § 3; 1957, ch 273, § 3; 1959, ch 284; 1963, ch 296, § 4; SDCL, § 42-7-34; SL 1969, ch 202; 1978, ch 302, § 37; 1985, ch 332, § 2A.

Cross-References.

State fair commission, Chapter 1-21.

42-7-101. Devices or expedients to increase horse's speed prohibited. No person may have in his possession an electrical device, mechanical device, or other expedient designed to increase the speed of a horse other than an ordinary whip at anytime on the grounds of a race track licensed by the South Dakota racing commission. A violation of this section is a Class 1 misdemeanor. A subsequent violation of this section is a Class 6 felony.

Source: SL 1985, ch 330, § 5.

CHAPTER 42-8

WATERCRAFT

Section

[EDITOR'S NOTE.—Additional materials may be found in the committee's files of today's hearing.]

Mrs. VUCANOVICH. Do you have any idea, General Spaeth, what it costs to do any oversight from your standpoint?

Mr. SPAETH. Right. Right now, the State of North Dakota is spending approximately $2 million a year in regulating gambling. About half of that effort is at State level, half is at the local level. We generate more than sufficient revenue to regulate by virtue of a tax on gaming operations at 5 percent of the net, and that is how we fund it.

Mrs. VUCANOVICH. And in our State, for instance, most of the money that comes to us in taxes, or a good portion of it, is used to help education in our State. Do you have yours earmarked in any way?

Mr. SPAETH. It is not earmarked in that sense, although a majority of it goes into the general fund. In North Dakota, we fund the majority of elementary education, including a substantial portion of the cost in the tribes as well, at the State level, through foundation aid payments, which this year approximate $1,500 per pupil in the State. That money goes directly from the State to each school district and is used to fund education, elementary and secondary.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

The CHAIRMAN. We will reconvene at 2:00.

Mr. TELLINGHUISEN. Thank you, Mr. Chairman.

Mr. SPAETH. Thank you, Mr. Chairman, and members of the committee.

[Whereupon, at 12:49 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

AFTER RECESS

The CHAIRMAN. We have got a few minutes to finish up our hearing. Is Terry Martin here?

Mr. MARTIN. Yes.

The CHAIRMAN. OK, you are next. We would be glad to hear you. We have your statement. In fairness to the other witnesses, there may be another vote on some of these Indian appropriations, so I would like to finish this up in 10 to 15 minutes.

If you could give us a short summary of your statement, it would probably be best.

PANEL CONSISTING OF TERRY MARTIN, BOARD MEMBER OF THE UNITED SOUTH AND EASTERN TRIBES, INC., ALSO COUNCILMAN OF THE CHITIMACHA TRIBE OF LOUISIANA; AND CARL FRANKE, FRANKE AND ASSOCIATES

Mr. MARTIN. OK, Mr. Chairman, good afternoon, and members of the committee and staff. My name is Terry Martin. I am a board member of the United South and Eastern Tribes, Inc., and also a council member of the Chitimacha Tribe of Louisiana.

I will make my presentation brief as possible. I would also like to introduce, to my left, Mr. Carl Franke of Franke and Associates.

USET is an intertribal organization composed of 16 member tribes, located in nine States along the South and eastern seaboards from Florida in the South to Maine in the North. USET,

headquartered in Nashville, Tennessee, was founded in 1968 and is dedicated to promoting the economic and social welfare of its member tribes.

Currently, seven of our member tribes are actively engaged in gaming at this time. Three additional members will be engaged in gaming within the next year. In addition to their own games, two of our member tribes act as contract managers for other tribal gaming operations.

All of our gaming operations involve bingo and pull tabs and are 100 percent owned by the respective tribes. Establishment of Federal standards, we think, for gaming activities within Indian reservations and on Indian lands is necessary to meet the concerns which have been raised about such activities, and to protect such activities as a means of generating needed tribal revenues.

It is common knowledge that the current administration's policy is to cut back on Federal spending, including Indian programs. Whether it is trust responsibility related or not, the administration has made clear that Indian tribes can no longer expect the BIA to finance tribal governments and their operations, but that economic development and private sector initiatives will be the current trend for tribal development and operations.

"It is important the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government; without sound reservation economies, the concept of self-government has little meaning.

"This administration intends to remove impediments to economic development and to encourage cooperative efforts among the tribes, the Federal Government and the private sector in developing reservation economies."

The USET tribes suggest that this Congress encourage and abide by the administration's policy of tribal economic development by removing those impediments and maintaining the government-to-government relationship.

Tribal governments that have had as much responsibility to provide essential services as other governments and the same or greater need to raise revenue to fund the needed services.

Based upon experience of the gaming tribes of USET, we feel that both H.R. 964 and H.R. 2507 are well balanced legislative measures to ensure that any gaming operations are conducted with accountability, honestly and without involvement of unscrupulous or criminal elements from within or outside the respective tribes.

Both bills establish all of the essential standards and safeguards and provide for essential sanctions for any violations of those standards which might be necessary for the proper operation of gaming activities on the Indian reservations.

The legislation would not authorize any tribe to engage in any gaming activity which is prohibited by State law. They merely recognize the sovereign rights of tribes to regulate their own gaming activities if such activities are not otherwise prohibited by State or Federal law.

Obviously, the major difference of concern to USET is the difference in which class III gaming would be regulated under the respective bills. We adamantly oppose any legislation which would di-

rectly or coercively require that tribes come under the civil and criminal jurisdiction of a State.

While none of the USET member tribes are operating class III gaming, there are a number of tribes who do. There has been no demonstration that these games are not professionally, competently and honestly operated. We, therefore, favor the provisions of H.R. 2507 over H.R. 964 in this regard.

We would also like to state that we favor the definition of class II gaming in H.R. 2507 over H.R. 964, and that USET has unanimously passed a resolution in support of the provisions of section 23 of H.R. 2507.

Given the close similarity of most of the other provisions of the respective bills, our recommended amendments herein refer to H.R. 2507. If I could just take a moment, Mr. Chairman, I would like to identify some of our proposed amendments in regards to the bill you have offered.

I think we will hit on the major—what we consider as our major concerns. In section 4, we ask that it be amended to delete any requirement that tribes withhold any Federal taxes from a person's winnings.

While we have no objections to reporting winnings in accordance with IRS regulations, we do not wish to act as the tax collector for the Internal Revenue Service.

To move on to another one, we strongly recommend that section 9, on page 11, be stricken entirely from the bill. We strongly object to permitting the Secretary of the Interior to provide interim regulation of the act for two primary reasons.

First, regulations are critical to whether an act is carried out as intended or sabotaged by unworkable and overreaching regulations. While the Secretary's regulation would be interim, regulations, whether interim or not, have a way of becoming permanent and precedent setting.

The Indian Self-Determination Act is a classic example of a good law encumbered and abused by bad and excessive regulation.

Second, there is no set date or time frame by which a commission itself would have to be appointed and functioning. The Secretary could interim regulate for 5 years. We would therefore also urge that the section 5 of the bill be amended to require appointment and establishment of this commission within 180 days following enactment of this bill.

We also recommend that section 11 be amended to permit class II gaming to be conducted without regard to State regulatory laws by individuals or other entities licensed by the tribe, in accordance with tribal law and this act. While none of our member tribes currently do so, some tribes have licensed individuals to run class II operations. Rather than being burdened with running their own games, some tribes prefer to generate income by taxing non-tribally owned gaming operations.

One of our member tribes which has its own bingo operation also licenses the community fire department to conduct their own bingo operations, which pays for the cost of those fire departments.

We also recommend that section 13 be amended to provide a grace period permitting employees of a gaming operation who are employed in a management capacity to begin and continue to be

employed during the pendancy of their license application. Key employees periodically change, sometimes with little or no advanced notice, therefore the gaming operation should not be forced to close or reduce operations pending licensing review of key employees.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Martin, with attachments, follow:]

STATEMENT OF TERRY MARTIN

Good morning, Mr. Chairman, members of the Committee and staff. My name is Terry Martin. I am the representative of the United South and Eastern Tribes, Inc. and a Council member of the Chitimacha Tribe of Louisiana.

USET is an inter-tribal organization composed of sixteen member tribes located in nine states along the south and eastern seaboard from Florida in the south to Maine in the north. USET, headquartered in Nashville, Tennessee, was founded in 1968 and is dedicated to promoting the economic and social welfare of its member tribes.

Currently seven of our member tribes are actively engaged in gaming. Three additional member tribes will be engaged in gaming within the year. In addition to their own games, two of our member tribes act as contract managers for other tribal gaming operations. All of our gaming operations involve BINGO and Pull Tabs and are 100% owned by the respective tribes.

Establishment of federal standards for gaming activities within Indian reservations and on Indian lands is necessary to meet the concerns which have been raised about such activities and to protect such activities as a means of generating needed tribal revenues.

It is common knowledge that the current administration policy is to cut back on federal spending, including Indian programs, whether it's trust responsibility-related or not. The Administration has made clear that Indian tribes can no longer expect the BIA to finance tribal government operations but that economic development and private sector initiatives will be the current trend for tribal development and operations.

"It is important to concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Without sound reservation economies, the concept of self-government has little meaning...This administration intends to remove the impediements to economic development and to encourage cooperative efforts among the tribes, the Federal Government, and the private sector in developing reservation economies."

The USET Tribes suggest that Congress encourage and abide by the Administration policy of Tribal economic development by removing impediments and maintaining government-to-government relationships. Tribal governments have as much responsibility to provide essential services as other governments and the same or greater need to raise revenue to fund the needed services.

H.R. 964 and H.R. 2507 provide that the net revenue generated by tribal gaming operations be used for essential tribal programs and operations. Without the revenue generated

by gaming, many tribes would be bankrupt and unable to provide the essential and critical services that are normally provided by governments to their citizens. Tribes, just like states, are responsible for providing a broad range of services. Unlike states, however, tribes do not have the tax base nor economic infrastructure to raise the essential revenue to support such services. Given the large cutbacks in federal assistance in recent years, the lack of a tax base, economic infrastructure or sufficient exploitable natural resources, many tribes found themselves in a situation of having to eliminate or drastically cut back critically needed services. Many tribes were facing high deficits and bankruptcy. Gaming revenue was the only viable revenue generating activity that many tribes could turn to in order to remain solvent and restore essential services.

While states have many tax sources to generate needed revenue, nearly every state has sanctioned and agressively promoted some form of gaming activity to supplement their state coffers. While gaming has been recognized by most states as a legitimate means of raising revenues, they have also enjoyed a monopoly over any high stakes gaming operations. For most, if not all tribes, taxation is not a viable option to raise sufficient governmental revenue.

While the states oppose gaming by tribes, the states actively promote their own gaming operations. While it is acceptable for states to generate revenue via gaming it isn't

acceptable for tribes to do so and the states can offer no suggestions to tribes of alternative means of revenue generation. We would like to point out some figures which would attest to the ludicrousy of the various state's positions. Out of the fifty states, only four do not allow gambling of any kind. Nineteen states are directly involved in lotteries and thirty-two states generate revenue from horse racing, fourteen have dog racing, and forty-three permit Bingo. This seems to suggest that the objections or concerns are not of maintaining tribal integrity, but to circumvent economic benefits to the tribes and to gain control <u>just for the sake of control</u> over tribal affairs.

Correspondingly, Indian gaming indirectly increases state revenue. Patrons of Indian gaming generate revenue through gas, sales, and income tax via the money they spend on transportation, food, lodging and incidental expenditures.

A sampling of the essential governmental services and charitable contributions made by some of the USET gaming tribes is attached to this testimony. The services include construction of health clinics, provision of nutrition programs for the elderly and destitute, scholarships, law enforcement, water and sewerage services, housing, road construction and maintenance, medical services, business loans and day care facilities to name a few. Charitable contributions include those to the Red Cross, American Cancer Society, United Way, Salvation Armny, Muscular Dystrophy and many others.

The revenue from Indian gaming has also provided investment capital for many tribal enterprises and individual businesses thus helping to diversify the reservation economy, create jobs, reduce welfare and other transfer payment and generate new income and taxes.

There has been a lot of talk about the infiltration of organized crime into Inidan gaming operations. To our knowledge, neither the FBI nor the Justice Department have been able to document a single case of organized crime involvement in Indian gaming.

While organized crime does not appear to be a pressing issue, the member Tribes of USET are concerned about unscrupulous management contractors. We feel that the bills affords adequate protection to tribes to prevent or eliminate such contractors' involvement in Indian gaming in instances where such persons have been or are subsequently convicted of a gaming offense or felony or fail to comply with the terms of the management contract or tribal gaming ordinance.

The bills would also prohibit tribal council members from having any personal interest in a management contract with their own tribe. Since council members are responsible for making decisions for the good of the tribe, such a prohibition would eliminate potential or actual conflicts of interest.

Based upon the experiance of the gaming tribes of USET, we feel that both H.R. 964 and H.R. 2507 are a well-balanced legislative measures to ensure that Indian gaming operations are conducted with accountability, honesty, and without involvement of unscrupulous or criminal elements from within or outside of the respective tribes.

Both bills establish all of the essential standards and safeguards and provide for essential sanctions for any violations of those standards which might be necessary for the proper operation of gaming activities on Indian reservations. The legislation would not authorize any tribe to engage in any gaming activity which is prohibited by state law. They merely recognize the sovereign rights of tribes to regulate their own gaming activities if such activities are not otherwise prohibited by state or federal law.

Obviously the major difference of concern to USET is the difference in which Class III gaming would be regulated under the respective bills. We adamantly oppose any legislation which would directly or coercively require that tribes come under the civil and criminal jurisdiction of a State. While none of the USET member tribes are operating Class III gaming, there are a number of tribes who do. There has been no demonstration that these games are not professionally, compentely, and honestly operated. We therefore favor the provisions of H.R. 2507 over H.R. 964 in this regard.

We would also like to state that we favor the definition of Class II gaming in H.R. 2507 over H.R. 964 and that USET has unanimously passed a resolution in support of the provisions of Section 23 of H.R. 2507.

Given the close similarity of most of the other provisions of the respective bills, our recommended amendments herein refer to H.R. 2507.

RECOMMENDED AMENDMENTS TO S. 1303

1. We recommend that Section 4(c) on page 4 be amended to delete any requirement that tribes withold any federal taxes from a person's winnings. While we have no objection to reporting winnings in accordance with IRS regulations, we do not wish to act as the tax collector for the IRS.

2. We strongly recommend that paragraph (5) on page 8 be stricken from Section 6(a) and that paragraph (5) instead be added as a new paragraph to Section 7 (a).

Section 6. gives the Chairman certain powers which are appealable to the Commission. While the powers listed in paragraphs (1) thru (4) are to be exercised pursuant to very specific and reviewable standards specified in the bill, paragraph (5) is not subject to specified standards and reasonable persons could promulgate vastly different regulatory schemes for Class III. Given this fact, an appeal to the Commission from the Chairman's action under paragraph (5) would lack reviewable standards. Under what specific standards could the Commission overturn on appeal the Chairman's Class III regulatory scheme? We strongly feel that the regulatory schemes for Class III should be a NON-delegatable power of the entire Commission.

3. Section 12 will require conforming amendments if our preceeding amendment is adopted. On page 16, line 12 and page 17 lines 17 and 20 and on page 18, line 5 delete the word "Chairman" and add the word "Comission" in its place. And on page 18, line 9, delete the word "he" and replace it with the word "it".

4. We strongly recommend that Section 9.(b) on page 11 be stricken entirely from the bill. We strongly object to permitting the Secretary of the Interior to provide interim regulation of the Act for two primary reasons.

First, regulations are critical to whether an Act is carried out as intended or sabotaged by unworkable, and over reaching regulations. While the Secretary's regulation would be interim, regulations, whether interim or not, have a way of becoming permanent and precedent setting. The Indian Self-Determination Act is a classic example of a good law encumbered and abused by bad and excessive regulations.

Second, there is no set date or time frame by which the Commission itself would have to be appointed and functioning. The Secretary could interim regulate for years.

We therefore also urge that the Section 5(a) of the bill be amended to require appointment and establishment of the Commission within 180 days following enactment of this bill.

5. We recommend that Section 11(c) be amended to permit Class II gaming to be conducted without regard to state regulatory laws by individuals or other entities licensed by the tribe in accordance with tribal law and this Act.

While none of our member tribes currently do so, some tribes have licensed individuals to run Class II operations. Rather than being burdened with running their own games, some tribes prefer to generate income by taxing non-tribally owned gaming operations.

One of our member tribes which has its own BINGO operation also licenses the community fire departments to conduct their own BINGO operations which pays for the costs of those fire departments.

6. We recommend that Section 13(a)(1) on page 19 be amended such that, any individual or entity that is hired by a corporation that has the gaming management contract and who has management responsibility be subject to background checks. As the bill is now, a corpopration that has a management contract with a tribe, could hire individuals to do day to day management of the gaming operation and those individuals would not be subject to any background checks. Only the major stockholders of the corporation are subject to checks but key managers of their gaming operations are not.

7. We recommend that Section 13.(j) be amended to provide a grace period permitting employees of a gaming operation who are employed in a management capacity to begin and continue to be employed during the pendency of their license application. Key employees periodically change, sometimes with little or no advance notice. The gaming operation should not be forced to close or reduce operations pending licensing review of key employees.

8. We recommend that Section 13(l) be amended to include the costs of making a determination on key management employees under subsection (j) as well as (f)(1)(D).

9. We recommend that Section 7.(b)(4) on page 9 be amended to strike the word "other" on line 10 and insert in leiu thereof, the word "related".

CONCLUSION

Indian Tribes are at a critical crossroads at this point in time. The unemployment rate for the USET Tribes ranges from a high of 46 percent to a low of 25 percent. The federal deficit and resultant budget cuts have drastically reduced and, in some cases, eliminated many federal programs for Indian people. Most tribes do not have an economic infrastructure or viable tax base from which to generate needed revenue to maintain essential services or to develop critically needed investment and development capital. The states, when referring to Indian gaming, speak of the inherent evil of gambling yet they aggressively promote their own gaming as a means of raising revenue. The states insist that they must have the power to regulate Indian gaming because the tribes are incapable of doing it. Yet the papers are filled with stories of corruption and criminal activity surrounding state regulated gaming activities. By comparison, Indian gaming operations have had no such demonstrable corruption or criminal activity. Perhaps the states should allow tribes to regulate their gaming operations.

We submit that the issue is not demonstrated corruption or inability to regulate, but one of competition, greed and control. The states and private gambling industry wish to maintain their monopoly and control. The issue has been the same with all shared resources such as fish and wildlife, water rights, zoning, etc. In virtually every area of competition for resources the states and other competitors have always contended that tribes can't manage and we should have control. The record in virtually every area including gaming demonstrates otherwise.

We urge you to act favorably and expeditiously on Indian gaming legislation and that the legislation you adopt is based upon reason and the facts. We thank you for the opportunity to present our views on this very important matter.

USE OF PROCEEDS FROM GAMING OPERATIONS
CHITIMACHA TRIBE OF LOUISIANA

Chitimacha Tribe of Louisiana Contributions:

(1) Legal Assistance for Tribal Government and Individuals

(2) Tribal Council Support

(3) Economic Development Programs and Research

(4) Low Interest Housing Loan Programs

(5) Education Programs

(6) Scholarship Program

(7) Youth Programs

a. Recreation
b. Organized Sports

(8) Senior Citizen's Programs

a. Hot Meals Program
b. History Project
c. Social Programs
d. Trip Sponsorship

(9) Maintenance Program

a. Road and Access Maintenance
b. Building and Grounds Maintenance
c. Community Clean-up

(10) Land Acquisition

(11) Per Capita Payment

(12) Trust Fund for Minors

(13) Investment Fund

(14) Charitable Organizations

USE OF PROCEEDS FROM GAMING OPERATIONS:
SEMINOLE TRIBE OF FLORIDA

Seminole Tribe Donations and Contributions:

(1) 1 day's proceeds to Muscular Dystrophy Telethon.

(2) State Museum for Research and Development and Cultural Development Program.

Tribal Program Subsidies Include:

(1) Education programs including scholarships.

(2) Medical programs supplement.

(3) Homes for senior citizens - rent or mortgage-free program.

(4) Recreation and Gymnasium buildings - supplement towards construction cost.

(5) Senior citizen hot meals building.

(6) New clinic.

(7) Neighborhood facility building.

(8) Business development loan program for individuals. 21 gone into some form of business to-date. $35,000 loan average.

USE OF PROCEEDS FROM GAMING OPERATIONS:
POARCH BAND OF CREEKS

Poarch Band of Creeks Tribal Contributions:

(1) Economic Development Programs

(2) Land Acquisitions

(3) Tribal Government Support

a. Law Enforcement
b. Community Facilities
c. Education Programs
d. Social Programs
e. Health Programs

These are planned for when sufficient revenue is generated since this operation is new.

USE OF PROCEEDS FROM GAMING OPERATIONS:
SENECA NATION OF NEW YORK

Seneca Nation Tribal Program Contributions

(1) Law Enforcement

(2) Education

(3) Day Care

(4) Public Works

(5) Roads and Streets

(6) Water and Sewer

(7) Senior Citizen Programs

(8) Recreation

(9) Community Services

Donations and Contributions

(1) American Red Cross

(2) Salvation Army

(3) American Cancer Society

(4) Most Major Charitable Organizations

Employment

(1) Facility created 150 full and part-time positions.

(2) Income generated creates local economic cycle for reservation which otherwise would be limited.

The CHAIRMAN. We will look at your suggestions.

Does your comrade on your left there have anything to say?

Mr. MARTIN. Yes, Mr. Chairman.

The CHAIRMAN. Make it short.

Mr. FRANKE. Thank you, Mr. Chairman, members of the committee. I would just like to make a few comments in regard to the State of Nevada's position on this legislation.

Last year, H.R. 964, equivalent legislation to H.R. 964 was pending in the U.S. Senate, and but for the opposition of the Nevada Delegation and the State of Nevada and the Nevada Gaming Commission, that legislation would probably have become law last year. So, it is only because of the Cabazon case that the State of Nevada I think has taken an about-face to some degree, and is now supporting legislation which last year they opposed.

The other thing is when we were in negotiations with the State of Nevada last year, when the negotiations were finally concluded, the bottom line came down to that the State of Nevada was opposed to gambling anywhere in the United States, and particularly they were concerned about card games in the State of California.

I submit that the real motivation for opposition from the State of Nevada is not one of concern for organized crime infiltration but one of concern for competition, and in fact, the administrative assistant for Senator Laxalt last year admitted that the bottom line was that Nevada was most concerned with competition, regardless of whether it was bingo games, card games or anything else.

One other point, Victoria Toensing indicated that they have ongoing criminal investigations going on by the Justice Department. We have been hearing from the Justice Department for about 7 years on the gaming legislation now. They always raise the specter of organized crime infiltration.

To our knowledge, they have not been able to document a single case of organized crime infiltration in Indian gaming, and you would think that after 7 years, they would be able to make some kind of public statement or demonstrate some kind of convictions in that regard.

The committee has asked for a listing of the criminal investigations that are ongoing with regard to Indian gambling establishments. I would also suggest that you ask for the number of criminal investigations with regard to State operated gambling operations.

I think that concludes my remarks. Thank you very much.

The CHAIRMAN. Any questions?

Mrs. VUCANOVICH. No questions. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The CHAIRMAN. We will now hear from Mr. Don Allery, Chippewa Tribe of Minnesota. Thank you for your statement. We have it, and you may proceed.

STATEMENT OF DON ALLERY, TRIBAL ARCHIVIST, RED LAKE BAND OF CHIPPEWA INDIANS TRIBE OF MINNESOTA

Mr. ALLERY. Mr. Chairman, Members of Congress, I appreciate the opportunity to present testimony on these gaming issues. My

name is Don Allery, spelled with an A, not with an E as it indicates on the list.

The CHAIRMAN. All right.

Mr. ALLERY. I am an educator and an historian, along with being the tribal archivist of Red Lake. I am here authorized by the tribal chairman, Roger Jardine, to present the testimony on behalf of the Red Lake Band Chippewa.

We have a prepared statement, but first, I would like to make some comments based on my experience as an educator and an historian.

For the past 20 years, I have worked in the education system, trying to develop educational approaches to improve the low self-esteem of Indian students. That low self-esteem of Indian students, most experts acknowledge this fact, it has been caused by the paternalistic actions of the State and Federal Governments.

Congress and a few States have also recognized this fact, and have passed legislation to assist in correcting that problem. Congress and some States have passed legislation that recognizes the fact that Indian tribes have the right to manage their own affairs.

Now, with the proposed gaming legislation, Congress and the States are sending a strong signal to the American people and Indian tribes that there will be a return to the paternalistic attitudes and actions of the past. They are telling American Indian tribes that they really can't manage their own affairs.

Some of the supporters of the proposed gaming legislation warn that allowing tribes to regulate their own gambling enterprises would open the door to crime and corruption on Indian lands. Any tribal leader who believes that argument has forgotten the lessons of history.

Most tribal leaders would consider the organized crime that gambling might bring to their reservations as an insignificant trifle compared to the organized crime that took place on Indian lands 100 years ago, all under the careful scrutiny and supervision and regulation of the Federal Government.

Anyone who believes that the Federal Government or the States can do a better job of protecting against organized crime need only to look at the current situation as it exists in this country.

The Federal Government has not demonstrated that it can control the daily narcotics traffic up and down its borders, or in the cities and towns of the States. The States of New Jersey and Nevada spend millions of dollars a year to police the gambling operations in their States. More States are adding to this burden by developing racetracks, lotteries, and other forms of gambling to replace revenues lost by Reaganomics.

For the Red Lake Band Chippewa, a constant reminder of the protection of their land and resources by Federal and State regulation is provided by an examination of the various Federal and State legislation enacted for their benefit.

Just to mention three: The agreement of 1889; the 1916 Red Lake Forestry Act; and the 1918 State Fishery Act. In these Federal and State Acts to protect the Red Lake Band, the Red Lake Band not only illegally lost land and forest resources, but they also lost the basis for economic development.

The statement of Red Lake Band Chippewa Indians to the House Committee on Interior and Insular Affairs has also been presented to the Senate Committee hearing the same bills. Since you each have a copy of this, I would like to go through it briefly and highlight some of the things that we think are very important, that are critical to Indian tribes.

The Red Lake Band Chippewa Indians opposes the enactment by Congress of S. 555, S. 1303, H.R. 2507, H.R. 964 or any other legislation that would impose upon Indian tribes Federal standards and regulations governing the conduct of gaming activities on Indian lands.

The Red Lake Band Chippewa Indians view the proposed gaming bills as a Federal abrogation of the inherent tribal sovereign authority to govern their own affairs.

The Red Lake Band, by Resolution No. 136-86 and No. 70-84, has expressed its strongly held opposition to such legislation. We request that these resolutions be including in the record.

The CHAIRMAN. Without objection.

[EDITOR'S NOTE.—Mr. Allery subsequently supplied the following resolutions.]

28 June 1987

Honorable Morris Udall
Chairman
House Interior and Insular Affairs Committee
House of Representatives
Washington, D.C. 20515

Dear Congressman Udall:

Attached are the Red Lake Band of Chipewa Indian's Tribal Resolutions, 135-86 and 70-84, which we requested be included with our statement in the Hearing record on the Indian Gaming legislation.

While I appreciated the opportunity afforded to the Red Lake Band to present testimony to your Committee I must advise you that I was extremely disappointed to hear that you chose to limit our delegate's oral presentation to 10 minutes while others had no time limitation imposed.

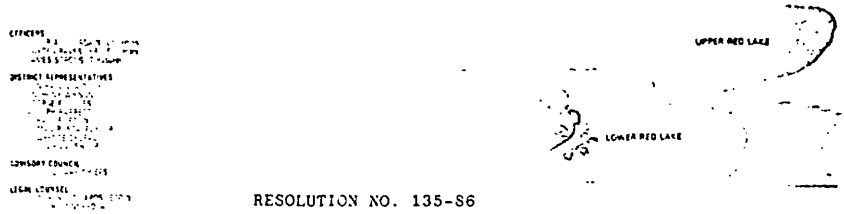
Your position and record in relation to Indian Tribes is acknowledged and I believe my personal support has been demonstrated many times over the past several decades. Most recently, when I and the Red Lake Tribal Council attended the Congressional Roast in your honor. Personal considerations aside, I believe the issues at stake in this matter to be of such critical importance to the Red Lake Band of Chippewa Indians and the other Tribes who oppose any legislation that their views should be fully represented in the hearing record.

Furthermore, in the rush to get some legislation enacted, I don't believe other options have been fully explored. It seems to me, as I point out in the enclosed letter to my friend Bill Houle, it would be more beneficial for Congress to oversee the implementation of mutual federal, state, and Tribal agreements on a limited basis as models rather than trying to develop rules and regulations that would apply to all Tribes.

Please give these suggestions your serious consideration.

Sincerely,

Roger A. Jourdain
Chairman



RESOLUTION NO. 135-86

OPPOSING ADOPTION OF H.R. 1920 A BILL IN THE CONGRESS OF THE UNITED STATES "to establish Federal standards and regulations for the conduct of gaming activities on Indian Reservations and lands, and for other purposes".

WHEREAS, the Red Lake Band of Chippewa Indians is an Indian Tribe recognized by the United States and State of Minnesota as a sovereign Indian tribe possessing and exercising from time immemorial the powers and right of self-government within the boundaries of the Red Lake Band of Chippewa Indians Reservation located within the State of Minnesota; and,

WHEREAS, in January, 1983, the President of the United States issued a document entitled "the President's Indian Policy Statement" which recognized and confirmed the historical inherent sovereignty of Indian tribes and declared there will be a recognition of a government-to-government federal/tribal relationship; and,

WHEREAS, the Red Lake Band of Chippewa Indians from time immemorial have established tribal laws governing the Red Lake Band Indian lands and Reservation, which have included the authoriztion and regulation of gaming activities participated in by Indian and non-Indians including the intra-tribal and inter-tribal games of chance, hand games, stick games, moccasin games and bingo which was introduced to the Indians by the missionaries of organized religion; and,

WHEREAS, Tribal operation and licensing of gaming activity have provided revenues for tribal government operations and economic and social development programs on the Reservation; and,

WHEREAS, the Red Lake Band and the other Indian tribes have been successful in their operation and licensing of gaming activity on their Reservations, under tribal laws and regulations adopted by the Indian Tribal Governing Body, which operations have been free from the interference of organized crime, and those who would defraud or otherwise attempt to exert corrupt influence upon the Indians; and,

EXHIBIT A

Res. No. 135-86
Page two

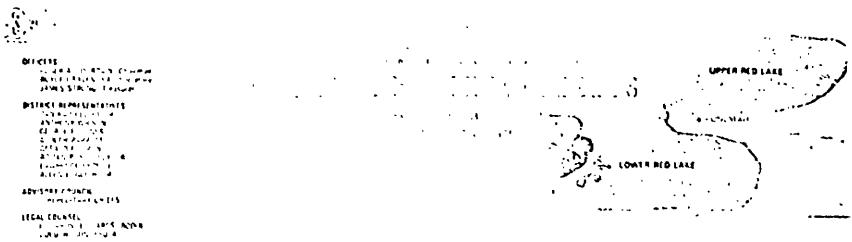
WHEREAS, that without exception the only successful business operations on the Red Lake Band Reservation have been businesses conducted and regulated by the tribe and its members free of federal regulations and bureaucratic control; and,

WHEREAS, since it has been judicially established that Indian tribes have the exclusive right to regulate gaming activity on Indian lands, which is not specifically prohibited by federal law and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity, all the states except for a few isolated occasion have recognized that the Indian tribes have conducted themselves responsibly in their gaming activity operations, and the positive impact to tourism, jobs and revenue generation which far outweigh the occasional unfounded sensationalized fearmongering warnings about "mafia infiltration" and that the Indian Tribal Government are incompetent to regulate the activity; and,

WHEREAS, by Resolution No. 70-84 adopted by the Red Lake Band Tribal Council on March 30, 1984 the Red Lake Band opposed the Adoption of H.R. 4566, which had been introduced in Congress as "A Bill to establish Federal standards and regulations for the conduct of Gambling Activities within Indian Country, and for other purposes" which resolution is reaffirmed and encorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Band does hereby oppose adoption by Congress of H.R. 1920 in its entirety or any other legislation that would have the purpose of imposing upon Indian tribes Federal Standards and Regulations for the conduct of gaming activity on Indian Reservation lands, for the reason that such legislation;

1. Violates the historical Indian tribe right of tribal self government and is contrary to the "President's Indian Policy Statement" and the "Indian Self-determination Policy" set by Congress in Public Law 93-638, and



Res. No. 135-86
Page three

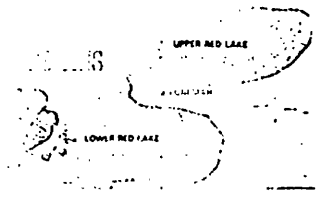
2. Is erroneously predicated on the stated assumption that "Federal standards or regulations are necessary to insure the orderly conduct of gaming activities on Indian lands", which is nothing more than a fearmongering unfounded statement, and

3. Erroneously "declares that the establishment of federal standards for gaming activity on Indian lands and a National Indian Gaming Commission are necessary to meet the concerns regarding gaming activities and to protect such activities as a means of generating tribal revenue" which is a self-serving unfounded declaration predicated by unfounded fearmongering concerns, and

4. Erroneously states "there are no existing statutes which require approval of management contracts dealing with Indian gaming' which ignores Federal Statute 25 USC Sec. 81 which requires the Secretary of Interior approval of contracts made with Indian tribes and is erroneously predicated on the unfounded fearmongering assumption that the Indian tribes and Secretary of Interior are incompetent, and the Chairman appointed by the Secretary of the Interior of the proposed newly created bureaucracy of the "National Indian Gaming Commission" would be competent, and

5. Abolishes tribal government control and places in the Federal Government appointed Chairman of the proposed "National Indian Gaming Commission" exclusive power to control Indian Reservation gaming activity through his "exclusive power" (1) to approve tribal ordinances or resolutions regulating Class II gaming (bingo and other similar gaming defined by the bill), and (2) to approve management contracts for Class II gaming, and

BEST AVAILABLE COPY



Res. No. 135-86
Page four

6. Limits the authority of the seven voting members of the proposed "National Indian Gaming Commission" to the approval of administrative functions, reducing them to a rubber stamp Commission, and

7. Abolishes tribal government control of Class III gaming (which is all other gaming except traditional games Class I, and Bingo and similar games Class II) and provides for operation only with approval and licensing by the "National Indian Gaming Commission" and under regulations and standards imposed by the States, and

8. Will result in bureaucratic destruction of a business which provides revenue for tribal government operations and economic and social development by Federal Bureaucratic interference.

BE IT FURTHER RESOLVED, that if any Federal Legislation is enacted imposing upon Indian Tribes Federal Standards and Regulations for the conduct of gaming activity within Indian Country that the Red Lake Band of Chippewa Indians be exempted from its application.

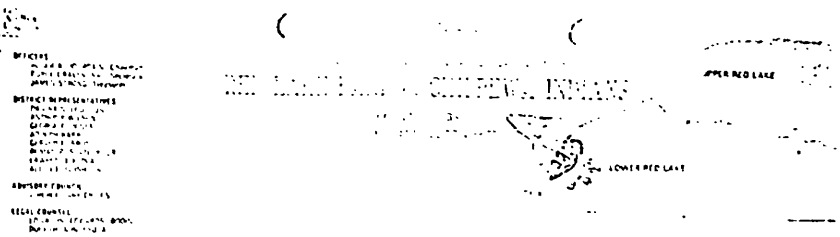
FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on Wednesday, July 16, 1986, with a quorum present at the Conference Room, Red Lake Tribal Council Office, Red Lake, Minnesota.

Roger E. Jourdain, Chairman

Roger Graves, Sr., Secretary

BEST AVAILABLE COPY



RESOLUTION NO. 70-81

Opposing H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country, and for other purposes".

WHEREAS, in January, 1983, the President of the United States issued a document entitled "The President's Indian Policy of 1983" which recognized the inherent sovereignty of Indian Tribes and declared there will be a recognition of a government-to-government federal/tribal relationship, and;

WHEREAS, the United States Federal Courts have held that Indian Tribes have the exclusive right to regulate gambling activity which is not prohibited by Federal or State law in Indian Country, and;

WHEREAS, a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments, and;

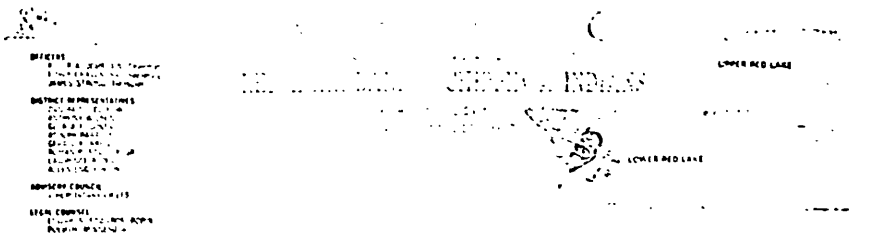
WHEREAS, Tribal operation and licensing of gambling activities is a legitimate means of generating revenues for tribal government operations and economic development programs, and;

WHEREAS, Indian Tribes have been successful in their operation and licensing of gambling activities in Indian Country, under tribal Ordinances and Regulations adopted by the Indian Tribal Governing Body, and;

WHEREAS, there is ample provision under existing Federal Law, which requires the licensing of outsiders who trade with Indians, by the Secretary of Interior, which if properly applied by the Secretary of Interior, would insure the orderly conduct of gambling activities within Indian Country, free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon the Indians, and;

EXHIBIT B

BEST AVAILABLE COPY



Res. No. 70-81
Page two

WHEREAS, the Secretary of Interior has consistently failed to perform the trust responsibilities of his office in respect to the management of the Red Lake trust properties and tribal trust fund accounts so that the Red Lake Tribal Sawmill, which by the Act of 1916 was placed under the management and supervision of the Secretary of Interior, is now bankrupt and the Secretary of Interior has been unable to furnish the Red Lake Band with an accounting of his operations of the sawmill, and has also been unable to furnish the Red Lake Band with an accounting of the tribal trust funds administered by the Secretary of Interior, and;

WHEREAS, there are now pending, at the unnecessary cost of the Red Lake Band, three separate lawsuits against the United States and Secretary of Interior involving the mismanagement by the Secretary of Interior of tribal trust properties and his failure to furnish accountings to the Red Lake Band of his trust administration of tribal trust funds, and;

WHEREAS, the Red Lake Band through it's tribal governing body has successfully managed tribal enterprises and tribal accounts which have not been under the supervision of the Secretary of Interior in contrast to the miserable tract record of the Secretary of Interior in respect to those operations under his supervision and management, and;

WHEREAS, H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country and for other purposes" proposes Federal Regulation over a matter the Federal Courts have held is within the exclusive jurisdiction of the Indian Tribes, and in effect transfer what is the exclusive right of the Indian Tribes to the Secretary of Interior.

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Band does hereby oppose H.R. 4566 in it's entirety or any other legislation that would have the purpose of imposing upon Indian Tribes, Federal Standards and Regulations for the conduct of gambling activities

BEST AVAILABLE COPY

Res. No. 70-81
Page three

BE IT FURTHER RESOLVED, that if any Federal legislation is enacted imposing upon Indian Tribes Federal Standards and Regulations for the conduct of gambling activities within Indian Country that the Red Lake Band of Chippewa Indians be exempted for its application.

FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Special Meeting of the Tribal Council held on Friday, March 30, 1981, with a quorum present at the Tribal Office, Red Lake, Minnesota.

Robert A. Bourdeau, Chairman

Rebecca Gravelle, Sec./Secretary

BEST AVAILABLE COPY

Mr. ALLERY. These resolutions not only oppose any expansion of Federal involvement in gaming activities, but also request that if legislation is enacted over our objections, Congress include language specifically exempting the Red Lake Band Chippewa Indians from its application.

The Red Lake Band Chippewa Indians also supports the inclusion of a provision making the application of such legislation contingent upon the consent of each affected tribe.

Such a requirement was called for by public assembly vote at a meeting of Indian tribal representatives held in Las Vegas on July 30, 1986. The meeting was called by the National Indian Gaming Commission to discuss pending Federal Indian gaming legislation. The association has a membership of 10 to 11 Indian tribes and does not speak for the Red Lake Band Chippewa Indians or many of the other approximately 390 Indian tribes in this country.

The CHAIRMAN. I am going to have to cut you off at that point, in fairness to the other witnesses.

Did you have one closing thought?

Mr. ALLERY. Other than if legislation is going to be passed, we earnestly request that an exemption be put in for the Red Lake Band Chippewa Indians. I believe there is no bar currently for Indian tribes who need supervision to work out arrangements with either the State or the Federal Government to assist them in their gambling enterprises.

Thank you.

[Prepared statement of Mr. Allery follows:]

STATEMENT OF RED LAKE BAND OF CHIPPEWA INDIANS
BEFORE THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON H.R. 2507 AND H.R. 964

June 25, 1987

INTRODUCTION

The Red Lake Band of Chippewa Indians opposes the enactment by the Congress of S. 555, S. 1303, H.R. 2507, H.R. 964, or any other legislation that would impose upon Indian tribes federal standards and regulations governing the conduct of gaming activities on Indian lands. The Red Lake Band of Chippewa Indians view the proposed gaming bills as a federal abrogation of the inherent tribal sovereign authority to govern their own affairs. The Red Lake Band, by Resolutions No. 135-86 and No. 70-84, has expressed its strongly-held opposition to such legislation. We request that these resolutions be included in the record. These resolutions not only oppose any expansion of federal involvement in gaming activities, but also request that if legislation is enacted over our objection, Congress include language specifically exempting the Red Lake Band of Chippewa Indians from its application.

The Red Lake Band of Chippewa Indians also supports the inclusion of a provision making the application of such legislation contingent upon the consent of each affected Indian tribe. Such a requirement was called for by public assembly vote at a meeting of Indian tribal representatives held in Las Vegas, Nevada on July 30-31, 1986. The meeting was called by the National Indian Gaming Association to discuss pending federal Indian gaming legislation. The Association has a membership of 10-11 Indian tribes and does not speak for the Red Lake Band of Chippewa Indians or any of the other approximately 390 Indian tribes.

DISCUSSION

Indian tribes are sovereign, having possessed and exercised from time immemorial the power of self-government within the boundaries of their respective territories. Their laws have historically included the authorization and regulation of Indian and non-Indian gaming activities such as intra-tribal and inter-tribal games of chance, hand games, stick games, moccasin games, and more recently, bingo. Tribally-regulated gaming operations have had a positive impact upon the economy of Indian reservations and surrounding communities.

The historical right of tribal self-government has been consistently recognized throughout history by the executive, the congressional, and the judicial branches of the Federal Government.

On July 8, 1970, in a Message to Congress, then President Richard M. Nixon declared the national Indian policy of "Self-determination without Termination." Recently, in his Indian Policy Statement of 1983, President Reagan reaffirmed the inherent

sovereignty of Indian tribes and the government-to-government relationship between Indian tribes and the United States.

The sovereignty of Indian tribes and the importance of strengthening their governments are explicitly recognized by the Congress in the "Congressional Statement of Findings" and "Congressional Declaration of Policy" set forth in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, 450a, and other significant federal Indian legislation.

In February 1987, in California v. Cabazon Band of Mission Indians, the United States Supreme Court held that Indian tribes have inherent sovereignty to operate and regulate tribal bingo and card games outside the scope of state and county regulatory law. In its opinion, the Court considered traditional notions of Indian sovereignty, the congressional goal of Indian self-government, and the need to encourage tribal self-sufficiency, and found that state and county gaming regulation would impermissibly infringe on tribal self-government.

Indian tribes have been successful in their gaming operation and regulation under tribal laws. These operations have been free from the interference of organized crime. Orderly, crime-free gaming activities continue to be conducted on the Red Lake Band's Reservation. No proof or even allegation of the actual existence of "organized crime" has been made in any of the litigation and congressional hearings on Indian gaming activities. In Cabazon, the Supreme Court noted that at no time did California state there was any criminal or organized crime involvement in the tribal gaming enterprises.

For the Federal Government to impose upon Indian tribes federal bureaucratic control over what have become successful business activities developed solely through tribal self-determination would constitute a derogatory interference with tribal self-government and a breach of faith by the Federal Government. We ask the question, "Why impose upon Indian tribes, without their consent, federal bureaucratic interference in business operations recently upheld by the United States Supreme Court and successfully regulated by Indian tribes." We ask this especially in view of the miserable track record of the federal bureaucratic control of Indian activities and resources.

Indian tribes and their respective reservations differ in geography, reservation economies, environmental considerations, tribal government strength, land status, and their relationships with the state governments and non-Indian communities. This leads to the logical conclusion that the mandatory imposition of standardized federal regulation of all Indian gaming activities is a mistake. If gaming legislation is enacted, we request that it include a specific exemption for the Red Lake Band. At the very least such legislation should apply only to those tribes specifically consenting to its application. There is ample legislative precedent for this approach. Public Law 280 excepted the Red Lake Reservation from its application

of state civil and criminal jurisdiction. Applicability of most provisions of the Indian Reorganization Act is dependent upon tribal consent. The Indian Civil Rights Act provides that states may now assume criminal and civil jurisdiction in Indian country only with tribal consent.

The gaming bills under consideration by the Congress conclude correctly that 25 U.S.C. § 81 does not provide standards for approval of management contracts. The bills erroneously assume that the proposed bureaucracy, the "National Indian Gaming Commission", will be more forthcoming with regulations than its parent, the Secretary of the Interior. Since the origin of the requirements of § 81 in the 1800s, Interior has never published comprehensive, substantive regulations implementing § 81. On the other hand, the majority of Indian tribes using management companies have taken considerable pains to negotiate sound contracts. In any event, § 81 was never intended to address these types of agreements nor was it intended to provide more than a technical, cursory review of contracts dealing with tribal lands.

Of course, tribes have made some mistakes in the selection and use of management companies. The right to make mistakes and to learn from them is no less a tribal than a federal right. We understand that tribes are learning from and correcting those previously existing unfair contracts.

Most tribes, such as Red Lake, manage their own gaming and are capable of negotiating fair and equitable management contracts on their own. It is, therefore, unfortunate that the bills assume that appointed bureaucrats will be more competent than tribal governments to approve management contracts, tribal ordinances and resolutions.

The proposed legislation also grants the Chairman of the National Indian Gaming Commission the sole authority to determine whether a gaming activity is illegal. This is a serious infringement on tribal sovereignty. It usurps tribal legislative and judicial authority, and creates a barrier to tribal access to the federal court system and its constitutional protections. We cannot understand how a bureaucrat will be more knowledgeable and competent than Indian tribal governments and the federal judiciary.

Finally, the funding of the Commission through assessments from tribal gaming activities would, in effect, constitute a federal, congressionally authorized income tax on Indian tribes and fly in the face of longstanding federal policy not to tax Indian governments. Such an assessment would, in effect, tax the gross revenue of tribal businesses, income used solely for tribal operations, economic development and the general welfare of the tribal members. The Commission would also require substantial congressional appropriations. Creation of a new bureaucracy is unthinkable at a time when there are insufficient funds to support existing bureaucracies.

The precedent which would be established and sanctioned by the Congress and the Executive if any of the pending gaming legislation

is enacted is certainly terminationist. The legislation would place Class III gaming and individual operations under state jurisdiction or subject to a federal regulatory scheme identical to state law. Not since Pub. L. 280 in the 1950s has the Congress passed legislation making Indian country subject to state jurisdiction. While many tribes are not planning to authorize Class III gaming or individual operations, all tribes should be concerned about Congress' legislating state law and jurisdiction over Indian country. Moreover, even Pub. L. 280 did not grant states authority over tribes themselves, and the pending legislation would do so. In the year of the bicentennial of the Constitution, the Congress should not abuse its legislative powers once again. The Constitution gives the Congress the power to enact legislation regulating commerce with the Indian tribes. It does not authorize the plenary power assumed by the Congress.

This is an era of tribal management in every aspect of tribal economic and natural resources. State political interests have always fought tribes as resource managers. Look, for example, at the stormy history preceding and following the Boldt decision and its affirmation by the United States Supreme Court. In my opinion the proposed legislation simply attempts to hide political concerns behind expressions of concern for tribes. The bills erroneously declare that the establishment of federal standards and a National Indian Gaming Commission are necessary to meet "congressional concerns" about gaming and to protect tribes. We ask you to look behind the terminology "congressional concerns" to see if it does not, in fact, refer to political concerns about state and local constituents' unfounded fear of crime and big gaming interests' fear of competition.

The CHAIRMAN. Any questions?

Mrs. VUCANOVICH. No questions. Thank you, Mr. Chairman.

The CHAIRMAN. All right. Our next witness is Mr. Stan Hunterton.

STATEMENT OF STAN HUNTERTON, ON BEHALF OF THE NEVADA RESORT ASSOCIATION

Mr. HUNTERTON. Good afternoon, Mr. Chairman, my name is Stanley Hunterton. Until I entered the private practice of law almost 2 years ago, I had spent 11 years in organized crime law enforcement, most of which time was involved with gambling prosecutions, both illegal gambling operations and the infiltration of licensed casinos.

I would note that a good deal of that time overlapped with the years when Senator Reid was chairman of the Nevada Gaming Commission, and I lived through many of the experiences which he expressed to this committee this morning.

As a Federal prosecutor, our interests were not always the same as the the Nevada regulators, and at times, frankly, were even at odds, but I can say that the fervor with which Senator Reid speaks about the difficulty of regulating large-scale casino gaming, the risks and the constant vigilance which is necessary are all true. I experienced all of those things myself.

I think I am the Federal prosecutor who was referred to by both Senator Reid and Senator McCain this morning, both citing conflicting examples of whether or not a Federal regulatory apparatus is necessary or a State regulatory apparatus, with respect to gaming on Indian reservations.

It is my view, perhaps surprisingly, after 11 years of service in the Federal Government, that this is, in fact, a job better left to the States, and there are a variety of reasons, some of which have already been set forth. I would be glad to respond to the Chair's questions.

But let me just say, in sum, because time is short, that I believe that the necessity of keeping the gaming clean, honest, and giving everyone a fair account on Indian reservations will get the benefit of the Federal law enforcement presence.

Since the late 1970's, the Federal Government has taken a very active role in prosecuting organized crime cases related to all forms of licensed gaming. There is no reason to believe that in 1987 or 1988, they are going to stop.

So, to the extent that a Federal presence is necessary in this regard, and I believe very strongly that it is, the process will have the benefit of it. However, given the widespread jurisdiction, given the different forms of games of chance, given the different character and customs of the various tribal lands which would come under regulation, it is my conclusion that State regulation is better, and in the State where I have firsthand experience, Nevada, I am absolutely sure that that is done.

The key thought that I would like to leave the committee with, prior to answering any questions, is that after several years of working many of these cases involving organized crime, it became clear to me that the much more efficient and cost effective way of

handling the problem of the corruption of licensed gaming interests was to stop it from happening in the first place. That is essentially a regulatory function.

When the Federal Government comes along after years of infiltration and makes criminal cases and puts people in jail, we have some effect. But the far cheaper and certainly the far more satisfactory way, in terms of running these games and casinos honestly is to prevent the infiltration from happening in the first place.

In sum, I think it would be a terrible waste of the FBI's manpower to do this. I believe that State boards, commissions and police forces are in a far better position to do it.

With that, I will stop, because I know the Chair needs to move on, and I would be glad to answer any questions.

[Prepared statement of Mr. Hunterton follows:]

Prepared Statement of C. Stanley Hunterton

It is a privilege to appear before this Committee on an issue which is of great importance to my State, as well as several other states, and which will no doubt become even more important in the years ahead. The volume of gambling in the United States, both legal and illegal, is constantly increasing. The excitement of chance and risk, combined with the presumption that one will win, makes gambling a permanent and growing part of our social, economic and political landscape.

I should make it clear that I do not claim any expertise on Indian related matters in general, nor with respect to the particular concerns of those Indian tribes which favor legalized gaming on their land. Rather, I have been asked to address the law enforcement issues which attend legalized casino gaming. The issues I will address necessarily come with legalized casino gaming, no matter where the casinos might be located. Therefore, my testimony would be essentially the same whether this Committee were considering control of legalized gaming on military reservations, or in any state of the United States, or on tribal lands.

I went to work for the United States Department of Justice in the fall of 1974, and was assigned to the Organized Crime Strike Force office in Detroit, Michigan. While in Detroit,

I prosecuted the Aladdin Hotel and Casino case, which was only the second of what we later came to call the "hidden interest" or "skimming" cases. These cases, which have been prosecuted in Los Angeles, Las Vegas, Milwaukee, Kansas City, Chicago and Newark, New Jersey, have been varied and complex; what each has had in common is the unlicensed and illicit influence of the mafia in Las Vegas casinos.

In 1978, I moved to Las Vegas and continued essentially the same kind of work until 1984, when I returned to Washington, D.C., to work with the President's Commission on Organized Crime. In short, most of my ten years as a federal prosecutor were spent involved with the problems of corrupt influences in licensed gambling.

When the law enforcement and regulatory problems which go along with legalized casino gambling are put in proper perspective, it becomes clear that casino gaming is a difficult, high risk way to raise public revenue. This may seem an odd remark from someone who has chosen to live in Nevada. Over 40 percent of my State's operating budget comes from various levies imposed on the hotel and casino industry. Although Nevada is clearly dependent on legalized gaming, we have also had over 50 years of experience in dealing with this form of economic enterprise. During those 50 years, Nevada has learned that the price of honestly operated casino gaming is constant vigilance, and although problems and scandals are never very far away, Nevada has learned how to live with and prosper from legalized gaming.

The Nevada experience notwithstanding, the prospect of starting up legalized casino gaming in any jurisdiction, under any form of controls, is something that ought to be carefully examined and probably discouraged at every turn. However, it is a fact that several tribal jurisdictions have concluded that they should have legalized gaming in order to raise revenue. For better or worse, they appear to be headed down this road; yet great care must still be taken with the the regulation and policing of these gaming activities to insure that the intended results are achieved.

My analysis of how gaming on Indian tribal lands ought to be regulated begins with a simple observation. No regulatory system is perfect, but to the extent that any regulatory system is flawed, there will only be one winner, and at least three losers. The winner will be the criminals whose influence on the gaming operations will reap for them huge rewards. The losers will be:

1) the tribes themselves, which will not realize the economic gain which was the reason they went to the trouble of installing gaming operations on their lands in the first place;

2) the public, because games of chance are operated on carefully calculated odds which insure that the house will always win but that the customer, on a short term

basis, can get lucky and walk away with a windfall. If the games are operated dishonestly, the public's chances may go down significantly;

3) the legalized gaming industry, from the card parlors of California to the horse tracks of New York, the lottery of New Hampshire and the casino operations of New Jersey and Nevada, gambling has been and will continue to be what Professor Jerome Skolnick called a "pariah industry." As Stephen Wynn, Chairman of the Board of Golden Nugget, has often said, the act of legalizing a form of gambling may be done in hours or even minutes; for that form of gambling to earn legitimation, is a process which is ongoing and which is rapidly undermined by any negative publicity, whether deserved or not.

There are two central questions on which I might be of help to this Committee: 1) who will do the regulating of gaming on Indian lands, and 2) what is the threat of organized crime infiltration of these operations?

It has been observed, correctly, that the states which have been responsible for regulating legalized gaming do not have a perfect record. Therefore, it is suggested that some sort of

federal Indian gaming commission, in combination with a local tribal regulatory process, might be better.

There are at least three significant flaws in the idea of a newly formed federal regulatory commission for gaming on Indian lands. First, the new regulators would have to make their own way and earn the respect of existing federal and state enforcement and regulatory bodies before they would be included in the sharing of information and operational cooperation. This breaking in period is not a matter of months, rather, it is a matter of years. Standing alone, this is good enough reason to vest the authority to regulate gaming on Indian lands with existing state authorities. Although the Congress could most certainly direct that existing federal regulatory and law enforcement agencies extend full cooperation to the new federal Indian gaming commission, such proclamations are easier said than done. I have lived through the practical problems of trying to balance the interest of highly sensitive informant or electronic surveillance information in the hands of one agency with the desire of another agency to use that information in the gaming licensure process. It is a thorny problem and one which a new regulatory agency is not institutionally prepared to handle.

Second, the only existing federal agency which might provide the support necessary to a new federal Indian gaming commission is the Federal Bureau of Investigation. Although I do not presume to speak for the FBI, I cannot imagine that given the Bureau's current workload in such areas as narcotics enforcement

and domestic terrorism, that the Bureau would want to take on responsibility for doing background examinations of licensee applicants, or that the Bureau would want to oversee the operation of a new gaming industry.

Third, the Federal government cannot claim a perfect record in regulatory matters generally, nor was the federal government of any particular early assistance in rooting out organized crime problems in casinos. I submit two facts for the committees consideration in this regard: 1) the first organized crime prosecution by the federal government in Nevada was not brought until 1970, and 2) the City of Las Vegas was the last city in which the United States Department of Justice established an organized Crime Strike Force.

Further, it is not necessary to construct a new federal regulatory apparatus in order to get the considerable benefits of a federal law enforcement presence in the area of gaming on Indian lands. Over the last several years, the Justice Department and the FBI have built up both a considerable interest and expertise in investigating and prosecuting cases involving the infiltration and corruption of licensed gaming. There is no reason to believe that this federal interest would stop at the border of Indian lands. Therefore, it seems clear that to the extent the existence of an effective investigative and prosecutive force is necessary to compliment an aggressive regulatory posture, the federal government is prepared to provide that influence.

Just as a federal regulatory apparatus carries the potential problem of being both too big and too far away to effectively regulate gaming on Indian lands, the prospect of tribal self-regulation in this area raises the prospect that the regulators will be too close to the problem and will not have sufficient financial wherewithal or manpower to actually do the regulating. As an extreme example, I have been told that there are Indian communities which consist of literally only a handful of people. These communities would be eligible under pending legislation to conduct high stakes gaming on their land. Necessarily, this gaming would actually be conducted by contract. This small group would simply not be in a position to effectively police their own contractor.

It must also be candidly observed that, at any level of government, the regulation of the proverbial"goose which lays the golden egg" is a difficult task. In Nevada, as well as in any other state, such as New Jersey, where the revenues from licensed forms of gambling have become significant to the public treasury, there is a constant built-in tension between promoting the industry and effectively regulating it. Unfortunately, there are times when effective regulation of the business means saying no to an applicant, no to a new development, or ultimately shutting down a corruptly run operation. Such actions mean that people who were employed will become unemployed and public revenue which had been produced will no longer be produced. It strikes me as simply a bad piece of government to charge a relatively small group of

people who are dependent on revenues from gaming with the duel and contradictory tasks of promoting gaming affairs and regulating that same business.

Turning to the question of infiltration of legalized gambling on Indian reservations by organized crime figures, it is important that a sense of perspective be brought to this issue. There is not now, nor has there even been in the past, a gangster lurking behind every slot machine and Craps table in Nevada and New Jersey. On the other hand, the record is quite clear that organized crime has repeatedly made in-roads into licensed gaming. This should be an area of the highest concern to any new jurisdiction considering licensed gaming. As Al Smith said, "Let's look at the record."

--In 1970, Meyer Lansky and several others were indicted for skimming at the Flamingo.

--Since 1970, 10 different casinos have been implicated in organized crime investigations.

--Since 1970, seven different families of La Cosa Nostra, the Genevese family from New York, the Cleveland family, the Detroit family, the Chicago family, the Milwaukee family, the St. Louis family, and the Kansas City family have all had documented involvement with various casinos.

--Since 1970, 20 prosecutions have been brought implicating LCN members and/or associates with Las Vegas casinos.

--Since 1970, 75 defendants have been indicted in organized crime cases involving casinos.

Parenthetically, I should add that this state of affairs was not the "fault" of any person or institution. The State lacked the financial resources, investigative tools and interstate jurisdiction to eradicate this problem. Further, until the late 1970's, the Department of Justice made no substantial commitment to chasing organized crime interests out of Las Vegas. It should also be noted that several of the federal criminal prosecutions grew out of work done by the State regulators. Today, State gaming regulators are doing an excellent job, and federal enforcement officials have also profitted from the experience of the last ten years.

The reason for the attraction of organized crime interests to legalized casino gambling is made clear by an examination of the documented dollar amounts of skimming in three different cases.

--The courier used by the Kansas City mafia to bring home cash from Las Vegas was searched and found to have $80,000.00 traceable to the Tropicana Hotel. The extensive surveillance which proceeded the search established that this courier made his run to Las Vegas and back at least once per month.

--In a separate case involving the Stardust Hotel and Casino, the government was able to establish that not less than $100,000.00 per month and perhaps as much as $200,000.00 per month was diverted from the table games (primarily Craps and Blackjack) for the benefit of organized crime interests.

--In one of the earliest casino skimming cases, it was statistically established that at least $400,000.00 per month was being removed from a consortium of four casinos being operated under common ownership. In that case, the skim was executed solely from slot machine revenues, and during the scheme's existence at least $7 million was diverted.

The period from the late 1970's through the mid-1980's taught all of us who lived and worked in Nevada that the mafia was ready, willing and able to infiltrate casinos, and we learned why they were so attracted to the casinos when the dollar volume of skimming was established. However, the most important lesson we learned was that once an illegitimate influence becomes entrenched in a casino, it is extremely difficult to remove.

These illicit influences can either appear in the form of the personnel who own and operate the casinos, or with respect to the sources of financing for the casinos. Both questions of personnel and financial integrity require the most thorough and sophisticated background investigations of those who would own and

operate casinos, as well as those who would finance the construction.

Repeatedly, we witnessed the phenomenon--which we could only discern clearly after the fact--of one casino owner or operator being forced out because of organized crime ties, to be followed by another whose links to the mob were just as strong. Similarly, the Central States Pension Fund of the International Brotherhood of Teamsters had as much as 20% of its money invested in Las Vegas. This permitted the mafia members who influenced the Fund to wield unlicensed, improper and corrupt influence over the conduct of casino gaming. I raise this point for the Committee's consideration even though the Fund no longer finances any casino operations in Las Vegas and is unlikely to finance casinos anywhere again. The reason I do so is that if casino gaming or Indian lands becomes lucrative and extensive, someone will have to finance and construct large buildings. Just as the operation of casinos is a highly specialized business, the problems involved in constructing and financing them is also a highly specialized business. Again, a newly formed regulatory body could be vulnerable to having one or more groups come to dominate this market without being sure that they would be operating in the best interest of the intended beneficiaries of this legislation or the patrons of the casinos.

Finally, on this question of organized crime infiltration of licensed casinos, I would urge that this Committee not think exclusively of what we commonly call the mafia or La Cosa

Nostra. Although I would expect the mafia to take at least an active preliminary interest in the possibility of infiltrating licensed gaming on Indian lands, the threat does not end there. If gaming on Indian lands becomes a significant business it is likely that an organized group with no connection to the mafia at all may try to dominate either the financing and construction of the physical plants, and/or the management and operation of those facilities.

In sum, after 11 years in federal law enforcement, most of which was spent dealing with issues involving organized crime and gambling, it is my conclusion that an effective state regulatory system which stops illicit interests at the front door via thorough licensing and background examinations is a far more effective and cheaper means of insuring that casinos are operated honestly than any amount of law enforcement pressure once those interests have become entrenched. With reference to Nevada, there is no question in my mind that the regulation of gaming on Indian lands should be under state control.

I thank the Committee for its attention and would be glad to answer any questions.

The CHAIRMAN. What would be your response to my reaction I had this morning that it would be easier, it seems to me, to infiltrate the State and local government? You seem to feel there is no difficulty there.

Mr. HUNTERTON. There is no doubt about that, Mr. Chairman. In fact, the very first organized crime casino case I worked on involved the corruption of a local public official, not a Nevada official interestingly, a district attorney in the State of Michigan who was trying to affect the licensing process in Nevada.

And I listened to your remarks this morning, and that case came rapidly to mind. I think it illustrates very well the appropriate role of the Federal Government. I don't have any quarrel with your proposition at all that as a general rule, it is easier to corrupt and improperly influence State and local officials than it is Federal officials, not because one comes from a better cut of cloth than the other, but for a variety of other reasons.

The CHAIRMAN. Have you had any contacts with any of these Indian gaming operations in your career?

Mr. HUNTERTON. No, I have not. But I would say that my remarks, my experience would lead me to say the same thing to this committee, whether the committee were considering casino gaming in Cabot Cove, Maine or on Andrews Air Force Base or in the State of Colorado or on overseas military reservations. I believe the issues remain constant.

The CHAIRMAN. How about a poverty stricken community down in South Carolina somewhere?

Mr. HUNTERTON. Same, yes.

The CHAIRMAN. Same thing?

Mr. HUNTERTON. Yes, sir.

The CHAIRMAN. OK. Any questions?

Mrs. VUCANOVICH. Yes, I would just like to ask a couple of questions. I would like to welcome Mr. Hunterton, and I appreciate him coming and testifying.

Can you explain to the committee what assistance the State authorities were able to give you in your Federal prosecutions? Were they helpful? What were they able to provide for you?

Mr. HUNTERTON. This was an evolutionary process, and I would like to back up just to put it in context for 5 seconds, and say that the question hasn't always been whether or not there is a question between State and Federal authorities in this highly sensitive area.

I remember when we were conducting one of these investigations from Detroit. We sent our own team of FBI Agents into Las Vegas to conduct a surveillance rather than using FBI Agents from Las Vegas. There was that kind of sensitivity back in the late 1970's. In fact, the State of Nevada doesn't get credit for opening one of the early doors in these prosecutions. People from the Gaming Control Board conducted an investigation of skimming of slot machines in particular.

We took the results of their investigation, and because we had the benefit of the Internal Revenue laws and Grand Jury subpoena power, we were able to put together prosecutions. But the basic skimming operation and the fundamental investigative work had already been done by State authorities.

Mrs. VUCANOVICH. With regard to commercial gaming, and based on your experience as a Federal prosecutor in pursuit of organized crime, would you rather have total Federal jurisdiction over Indian or State gaming activities, or do you think that the existing State law, at least what we have in our State, and I assume this is the same in other States, but State law enforcement and regulations to be necessary and beneficial; in other words, do they work together, and would the Federal heavy hand be better or not?

Mr. HUNTERTON. No, I don't think so. I think, as I said earlier to the chairman, I have ever confidence that the Indians and the patrons of gaming on an Indian reservation will get the benefits of the Federal law enforcement presence without creating a Federal regulatory apparatus, and I would also like to repeat that in my view, although I am sure the FBI will express its own opinion on this, this would be a bad use of FBI manpower.

The kind of background checking that should be done, primarily on the operators, I would say, the contract operators, should be done by the State with access to Federal background information.

Mrs. VUCANOVICH. And it should be done in the early process, in the licensing process.

Mr. HUNTERTON. There is no more single aspect—no more important single aspect of the legislation which the House and the Senate are considering than prelicensing background qualifications, both as to the person and the financial integrity of the operation.

Mrs. VUCANOVICH. In the State of Nevada, it is my understanding that wiretaps are not legal, but they are something that you can use as a Federal prosecutor; is that correct?

Mr. HUNTERTON. That is correct. That is one of the reasons you need a Federal law enforcement presence.

The CHAIRMAN. The amendment now pending is the $7 million in the Indian Health Service.

Mrs. VUCANOVICH. Oh, I don't want to——

The CHAIRMAN. I think if we could get our last witness up here——

Mrs. VUCANOVICH. Thank you, Mr. Hunterton. That's fine with me, I want to go vote.

Mr. HUNTERTON. Thank you.

The CHAIRMAN. Our last witness is Mr. Jim Hena, on behalf of the All-Indian Pueblo Council.

STATEMENT OF JIM HENA, ON BEHALF OF THE ALL-INDIAN PUEBLO COUNCIL, ALSO GOVERNOR OF TESUQUE PUEBLO, NEW MEXICO

Mr. HENA. Mr. Chairman, members of the committee, for the record, I would like to introduce my associate, Mr. Eric Eberhart. I have a short statement, Mr. Chairman.

The CHAIRMAN. Give my about 3 minutes' worth.

Mr. HENA. OK.

My name is Jim Hena, I am the governor of the Pueblo Tesuque. I am here today on behalf of my Pueblo and the other gaming Pueblos in New Mexico. We have already filed a written statement with the committee.

I would like to use my time today to emphasize a few points which we made in our written statement. It is quite clear to everyone who is involved in this issue that the real difference between H.R. 964 and H.R. 2507 is in the area of jurisdiction over class III gaming.

The Pueblo support Federal legislation to regulate gaming on Indian lands along the lines proposed in H.R. 2507. We do not and will not support any bills which provide for State jurisdiction over gaming on Indian lands.

Those who favor State jurisdiction over class III gaming have raised a concern about creating enclaves for organized crime resulting from runaway Indian controlled gaming. Some proponents of State jurisdiction also seem to feel that our tribal governments are temporary in nature and that we lack the capacity to handle our own affairs.

Let us get the record straight. The fear of organized crime was raised when the tribes first began bingo games several years ago. To this day, there is not any evidence of organized criminal activity in tribally controlled games.

The tribes are not about to let this valuable source of revenues and employment fall into the hands of organized crime, and H.R. 2507 will help us to ensure that this cannot happen in the future.

The real concern about jurisdiction over class III gaming emanates of a fear of economic competition. The so-called organized non-Indian gaming interests simply do not want to have competition with the tribes. H.R. 2507 addresses this concern with the requirement that Indian controlled class III games be conducted in an identical manner to State controlled class III games.

This approach to regulating class III gaming by Indian governments is consistent with the decisions of the Federal Courts and longstanding Federal policies to promote tribal self-government.

With respect to the idea that tribal governments are temporary in nature and that we lack the capacity to handle our own affairs, let us also get the record straight. The Pueblos have been self-governing for centuries. Although a few of our Pueblo governments are now organized under the Indian Reorganization Act, most continue operating with a traditional form of government we have used for hundreds of years.

Pueblo governments pre-date the U.S. Government, and even most of the governments in the international community. We have withstood attempts by a variety of outside forces to diminish or restrict our governmental authority over these years.

It is ironic to hear that we lack the capacity to govern ourselves effectively, because we have been self-governing for more than 750 years. The State of New Mexico is now celebrating its 75th year of self-government. When New Mexico became a State in 1912, the U.S. Congress required New Mexico to disclaim jurisdiction over Indians and Indian lands. New Mexico agreed to this disclaimer of jurisdiction, and the disclaimer clause is still a part of the New Mexico Constitution today.

From our point of view, both the Congress and the State of New Mexico recognized and reaffirmed our inherent rights of self-governance through that disclaimer clause. The U.S. Constitution itself recognizes our inherent sovereignty by placing with the Con-

gress the authority to regulate trade and commerce with Indian tribes.

Tribal governments are a part of the Federal system of the United States. As a result, proposals to place Indian gaming under State jurisdiction are contrary to the Constitutions of both the United States and the State of New Mexico, and inconsistent with 200 years of Federal policy and action to recognize and promote tribal self-governance.

We strongly urge this committee to reject any proposals to place Indian gaming under State jurisdiction, but to promote instead legislation that requires cooperation rather than imposition of one government's views over the other. We urge you to uphold the Federal tribal relationship as it is mandated in the Constitution.

We pledge to you our fullest cooperation as you work to enact legislation which will promote tribal self-sufficiency and ensure the integrity of Indian controlled gaming.

That concludes my statement, Mr. Chairman.

[Prepared statement of Mr. Hena follows:]

TESTIMONY

OF

JIM HENA, GOVERNOR

PUEBLO OF TESUQUE

ON BEHALF

OF

THE GAMING PUEBLOS OF NEW MEXICO

BEFORE

THE

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

ON

H.R.964 and H.R.2507 - REGULATION OF GAMING ON INDIAN LANDS

June 25, 1987

Mr. Chairman, Members of the Committee:

My name is Jim Hena and I am the Governor of the Pueblo of Tesuque. I am here today as the representative of the Pueblos of Sandia, San Juan, Tesuque, Isleta, Acoma and Santa Ana. Each of these Pueblos is currently engaged in gaming activities or has plans to do so.

We want to commend this Committee for its continuing efforts to develop and secure passage of federal legislation to protect and promote Indian controlled gaming. We know that the task before you is not an easy one. We appreciate

the opportunity to appear here today to share our views with you.

As you know, the United States Supreme Court has recently issued its opinion in the case of California v. Cabazon Band of Mission Indians. We are pleased that the Court confirmed prior federal law and policy with respect to several fundamental aspects of the federal/tribal relationship. In particular the Court once again found that the states lack authority to exercise jurisdiction over activities conducted on Indian land and that only the United States and the tribes possess such authority. The Cabazon case also confirms the constitutional responsibility of the United States for the promotion, protection and regulation of trade and commerce with the Indian Tribes. Finally, the Cabazon case has confirmed the legitimate federal and tribal interest in promoting Indian self-governance and economic self-sufficiency.

It is the goal of the Pueblos engaged in gaming activities to ensure that federal legislation is enacted which is consistent with existing federal Indian law, promotes Tribal self-governance and enhances Tribal economic self-sufficiency. We have developed a six-point position on federal legislative proposals, as follows:

1. Federal legislation is desirable because it will underscore the fact that regulation of Indian gaming has been preempted by federal and tribal law.

2. Uniform standards for the conduct of Indian gaming are necessary for the protection of both the Tribes and the patrons of the gaming activities.

3. Indian gaming control legislation should be consistent with existing statutory and case law relating to other economic and business activities of Indians on Indian lands.

4. The legislation should clearly recognize gaming as a legitimate means of generating Tribal revenues, promoting economic development and enhancing self-determination through Tribal control.

5. The legislation should clearly provide for and authorize Indian gaming in any state within which similar activity is permitted by non-Indians under state law.

6. The legislation should prevent the intrusion of organized crime or criminal activity into Indian gaming for the benefit of the Tribes and the patrons of the Indian games.

Each of the bills currently pending before the Congress contains elements of our six point position. However, H.R.2507 and S.1303 are the most consistent with our position for two important reasons. First, these bills recognize and expressly provide for Tribal self-regulation over Class II gaming in certain circumstances. These provisions are entirely consistent with federal laws and policies aimed at promoting Tribal self-governance. Second,

H.R.2507 and S.1303 respect the historic tribal/federal relationship. Under these bills state governments would not assume jurisdiction over Class III Indian gaming. This is as it should be. State jurisdiction over Indian gaming is neither desirable or appropriate for at least three reasons:

1. State jurisdiction over Indian gaming would be contrary to federal Indian law as enunciated through the U.S. Constitution, the Treaties, federal statutes, court decisions and, in many instances, state constitutions.

2. State jurisdiction would undermine and impair the authority of the Tribes and would thereby undermine longstanding federal laws and policies promoting Tribal self-governance.

3. State jurisdiction would inevitably undermine federal efforts to promote Tribal economic self-sufficiency due to the direct financial interest held by many state governments in their own gaming operations.

We believe that H.R.2507 and S.1303 reflect a recognition of both the Tribal/federal relationship and the capability of Indian people to manage their own affairs. Let us all remember that the Pueblos were self-governing long before the Spanish came to our territory in the 1500's. We have a long and proud history of managing our own affairs. We believe that part of the bargain that we made with the United States during the 1800's was that we would be free

from state interference in our affairs in exchange for the surrender of much of our land. The United States understood this bargain as recently as 1912 when New Mexico was admitted to the Union. One of the conditions of admission to full statehood was the state's disclaimer of jurisdiction over Indians and Indian lands. The state voluntarily agreed to this condition. The disclaimer of jurisdiction is still part of the state constitution and should not be changed through federal gaming legislation.

The proponents of state jurisdiction often try to justify their position by raising the specter of organized crime. This is the same argument that was raised when the Tribes first began to be involved in bingo. Some critics said that the Tribes lacked the capacity to run honest and fair games and that organized crime would quickly infiltrate tribally controlled games. This has not proven to be true. Today over one-hundred Tribes are engaged in gaming. There is no evidence of infiltration by organized crime. In fact all available evidence indicates that the tribes are operating honest, well organized games which have the full confidence of both Indian and non-Indian patrons. This is not surprising to us. We know how to be self-governing. We have no interest in allowing organized crime to participate in our affairs. There is not now and never has been an Indian element in organized crime activities.

I want to point out that the United States Constitution envisions a federal system which has as its component parts federal, state and tribal governments. We all know that most children in this country are taught in school about the federal and state governments. It seems that only Indian children are taught about tribal governments. Yet, the Supreme Court, the Congress and the President have recognized the constitutional role of tribal governments for two hundred years. In light of this, we must ask: Whose interest will be served by the imposition of state jurisdiction over gaming on Indian lands. Clearly, the integrity of the United States Constitution will not be served by such action. Tribal self-governance will not be served. Indeed, it is even questionable to us whether state governmental interests would be well served because the insertion of state jurisdiction will likely lead to unwanted frictions between the state, tribal and federal governments.

We submit to you that the only interest to be served by providing for state jurisdiction would be the economic interest of some non-Indians who fear the competition from Indian controlled gaming. The issue here is not organized crime. The issue is not lack of tribal capability. Indeed, tribes have shown both capability and responsibility in a diverse array of activities involving non-Indians. The issue is one of economic competition. Some evidence of this can be

seen in the fact that it is the non-Indian organized gaming interests who are also pushing so hard for state jurisdiction. Other non-Indian businesses have not promoted state jurisdiction over Indian gaming. Indeed, most non-Indian businesses are delighted with the increased demand for goods and services which has occurred as a result of Indian controlled gaming. Millions of dollars of new business for non-Indians has been generated as a result of Indian gaming. We respectfully submit to you that the fear of economic competition on the part of the non-Indian organized gaming interests does not create a sufficient or rational reason to adopt legislation which will undermine tribal self-governance and the federal/tribal relationship.

We also want to take this opportunity to share with you our views on the proper role and operation of the federal gaming commission which would be authorized by every bill now under consideration. We have developed a five point position with respect to the commission, as follows:

1. The Commission should be structured and organized in a manner which will enable it to fulfill the federal trust responsibility for the protection and promotion of Tribal interests and Tribal self-governance.

2. The authority of the commission should be carefully balanced to provide for deference to the primary regulatory authority of Tribal governments.

3. An independent federal commission is preferable to the establishment of another administrative office in the Department of the Interior.

4. The operations of the commission should be funded entirely from federal appropriations. No other federal regulatory entity is funded through an annual assessment of the entities it regulates. The federal trust responsibility is to promote and protect Tribal interests. There is no rational basis for expecting the Tribes to bear the financial burden of financing the commission.

5. Enforcement decisions and actions of the commission should be undertaken in the context of the federal duty to promote and protect Tribal economic self-sufficiency and self-governance. Sanctions or penalties should only be imposed by the commission in a manner which is the least disruptive of gaming operations while insuring the integrity of the operation for the benefit of the Tribes and the patrons.

We are hopeful that this Committee will carefully reconsider the concept of assessing the Tribes to pay for the operations of the gaming commission. While we appreciate the fact that the federal government is operating at a deficit, we must question the wisdom of assessing the tribes in order to pay for fulfillment of the trust responsibility.

Mr. Chairman, we again thank you for this opportunity to appear before the Committee and express our views. We pledge to you our cooperation and best efforts to assist the Committee and the Congress in the adoption of appropriate legislation.

The CHAIRMAN. Very good.

Any questions?

All right. This concludes our hearing, and we appreciate the cooperation of everyone.

Mr. HENA. Thank you.

[Whereupon, at 2:40 p.m., the committee was adjourned.]

APPENDIX

THURSDAY, JUNE 25, 1987

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

BARBARA F. VUCANOVICH
2ND DISTRICT, NEVADA

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

COMMITTEE ON HOUSE ADMINISTRATION

CONGRESSIONAL TRAVEL AND TOURISM CAUCUS

ENVIRONMENTAL AND ENERGY STUDY CONFERENCE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

212 CANNON BUILDING
WASHINGTON, D.C. 20515
(202) 225-6155

FEDERAL BUILDING
300 BOOTH STREET, SUITE 1138
RENO, NEVADA 89509
(702) 784-5568

443 5TH STREET
ELKO, NEVADA 89801
(702) 738-4064

POST OFFICE BOX A
2200 CIVIC CENTER DRIVE
NORTH LAS VEGAS, NV 89030
(702) 399-5555

July 9, 1987

JUL 10 1987

The Honorable Morris K. Udall
Chairman
Committee on Interior and
Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The attached resolution from the State of Nevada pertains to the Indian gaming proceedings. I would appreciate it if you would insert the resolution into the record of the hearings held on June 25, 1987.

Thank you for your assistance in this matter.

Sincerely,

BARBARA F. VUCANOVICH
Member of Congress

BFV:jjk
Enclosure

A.J.R. 47

ASSEMBLY JOINT RESOLUTION NO. 47--COMMITTEE ON GOVERNMENT AFFAIRS

JUNE 16, 1987

Declared an emergency measure under the constitution

SUMMARY--Urges Congress to authorize states to regulate all gaming on Indian land except bingo and traditional Indian games. (BDR R-2328)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION--Matter in italics is new; matter in brackets [ ] is material to be omitted.

ASSEMBLY JOINT RESOLUTION--Urging Congress to authorize the states to regulate all gaming on Indian land except bingo and traditional Indian games.

WHEREAS, State and local regulation of public gaming is necessary to prevent the attraction of organized crime and other unsavory elements; and

WHEREAS, Public support for gaming is based upon the comprehensive regulation of that activity by state and local authorities; and

WHEREAS, The State of Nevada has more than 50 years of experience and acquired expertise in licensing and otherwise regulating public gaming; and

WHEREAS, The various states have sufficient experience and expertise to regulate public gaming satisfactorily and in a more efficient manner than the Federal Government; and

WHEREAS, The fact that public gaming is currently allowed on Indian land in an unregulated manner threatens the welfare of the Indian tribes and of the public as a whole by permitting organized crime and other unsavory elements to proliferate in that unregulated setting; and

WHEREAS, The operation on Indian land of slot machines, mechanical gaming devices or mechanical-electrical video gaming devices, whether new forms of games or facsimiles of existing forms, are essentially alike and present the same threat to the public welfare; and

WHEREAS, A recent decision of the Supreme Court of the United States clarifies the status of the law that, absent Congressional action, public gaming on Indian land will remain unregulated; and

WHEREAS, Recent Congressional debate appears to have resulted in a consensus that the forms of gaming other than bingo and traditional Indian games on Indian land should be subject to stringent regulation; and

WHEREAS, The problem presented by unrestricted gaming on Indian land can only be resolved by permitting the application of the laws and regulations of each state where that gaming is conducted; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That the Legislature of the State of Nevada hereby urges the Congress of the United States to enact legislation to authorize the states to regulate, without permitting unfair discrimination, the operation of games other than bingo and traditional Indian games on Indian land; and be it further

RESOLVED, That the Legislature urges the Congress of the United States to authorize the states to prohibit the operation on Indian land of slot machines, mechanical gaming devices and mechanical-electrical video gaming devices, whether new forms of games or facsimiles of existing forms; and be it further

RESOLVED, That copies of this resolution be transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and the members of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

JUN 23 REC'D

JUN 2 1987

STATEMENT

OF

PURCELL POWLESS

TRIBAL CHAIRMAN

ONEIDA TRIBE OF INDIANS OF WISCONSIN

BEFORE

THE

INTERIOR AND INSULAR AFFAIRS COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

HR2507

ON

JUNE 25, 1987

The Oneida Tribe of Indians of Wisconsin hereby states its position and concerns regarding the proposed legislation now pending in this Committee. As it has in previous testimony on the same subject before the last two Congress', the Oneida Tribe clearly supports the need for federal legislation that will end the confusion that has existed regarding the relative governmental interests of tribes, states and the federal government.

The situation has been alleviated to some extent by the decision of the United States Supreme Court in the case of California v. Cabazon. The decision delivered in February of this year emphatically upheld the right of recognized Indian tribes to regulate gaming on their reservations free of state interference. The decision also reaffirmed the goals of encouraging tribal self-sufficiency and economic development. Cabazon was received by Indians with anticipation and relief. However, it is the belief of the Oneida Tribe that federal legislation is necessary to protect the right of tribes to continue to regulate and operate gaming enterprises on their own lands free of all outside intrusions.

The Oneida Tribe supports the findings and provisions of HR2507 with respect to the general intent of the bill. However, it is our considered opinion that legislation must be revised or clarified in the following:

1. Approval of ordinances or resolutions, if not required by a tribe's constitution, is an unnecessary intrusion on the law making powers of the tribal government. The provisions of the proposed regulatory schemes would govern the activity as well without this

approval power. If it is included, as drafted, the power to approve gaming ordinances would diminish the right of tribal governments to make and enforce their own laws and to be governed by their own organic law.

A less burdensome and more logical means of achieving the same goal would be to require review and disapproval for cause inconsistent with the provisions of the law.

2. The requirement of annual independent audits for gaming enterprises ignores the fact that some tribes, such as the Oneida, own and operate their own enterprises exclusively and use the One Audit requirement of OMB, Circular A-128, which includes all tribal enterprises. As drafted, a separate independent audit requirement would be costly, duplicative and unnecessary unless there has been established indication of the need for such an audit.

3. The assessment formulas suggested by the bills are unrealistic. The Oneida Tribe believes that a fixed schedule based upon seating capacity, number of occasions, or other such indicia would be more fair and meet the necessary objective of supporting the regulatory body.

4. Classifications of gaming should reflect the findings of Cabazon, in that any gaming activity civilly/ regulated by the state can also be civilly regulated by the tribe consistent with provisions of the act. As drafted, the present legislation does not adequately address or reflect the full scope or tribal rights recognized by the United States Supreme Court in Cabazon.

CONCLUSION

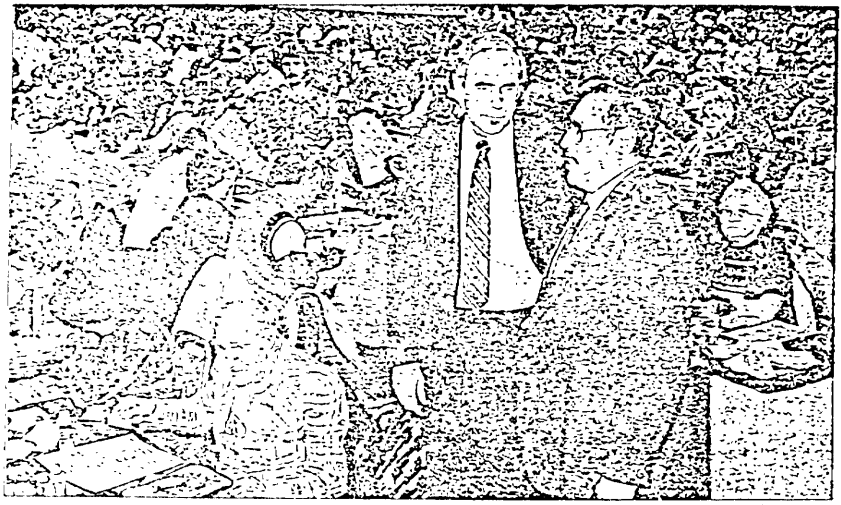
For the facts and reasons set forth above, the Oneida Tribe of Indians of Wisconsin, supports the need for federal legislation in the area of tribal gaming regulation. Such legislation should recognize the sovereign governmental rights of Indians and not interfere or intrude unnecessarily where tribes, such as Oneida, have demonstrated by their success the ability and determination to be self-reliant and self-determining. Attached you will find information showing the financial success of the Oneida Tribe and the uses to which the gaming revenues have been put, as well as recognition and support of federal and state officials.

Thompson plays bingo in Oneida

5/19/97 Press-Gazette photo by Ken Wesely

Governor visits center: Governor Tommy Thompson jokes with tribal members as he plays bingo at the Irene Moore Activity Center Monday night during a visit to the Oneida Reservation. Surrounding Thompson are, from the left, Purcell Powless, George Reed, Sandy Ninham and Alma Webster.

Tour of Oneida bingo session



Press-Gazette photo by Russ Kumanins

Bingo tour... Ross O. Swimmer, assistant secretary for Indian affairs for the U.S. Department of the Interior, tours the Irene Moore Activity Center during a Sunday afternoon bingo session. Conducting the tour is Tribal Chairman Purcell Powless, right.

Top Indian official lauds Oneida efforts

Bingo critic praises use of funds for economic development

By Stephanie Reed
Crime Press Staffer

A top U.S. Department of the Interior official has lauded the Oneida Indian Reservation on Sunday and praised the Oneidas for using their bingo proceeds to spur the tribe's multimillion dollar economic development.

Ross O. Swimmer, the department's assistant secretary for Indian affairs, has been an outspoken critic of tribal bingo operations.

The Associated Press quoted him in December of 1985 as saying that bingo was a poor idea economically and ethically. He also has said that the activity fails to encourage a work ethic and that reservations aren't the prime beneficiaries of bingo proceeds.

■ Bia official defends his plan for education, B-1

Swimmer's comments at the time prompted Oneida Tribal Chairman Purcell Powless to invite him to tour the reservation to see how the tribe has benefited from its bingo operation.

At a press conference at the Oneida Rodeway Inn following his tour, Swimmer said his comments on Indian bingo were largely misunderstood.

"I've asked the tribes to be careful that the bingo isn't looked at as a panacea to all Indian problems," said Swimmer, who met with officials from the Oneida Tribe and the National Indian School Board Association following the press conference.

Swimmer also said he was concerned about tribes establishing bingo facilities on trust land outside of the reservation which could result in jurisdictional and law enforcement problems.

The Oneida bingo operations are conducted at the Irene Moore Activity Center adjacent to the Rodeway Inn. Both are located on land in the Oneida reservation.

Swimmer, who is a member of the Oklahoma Cherokee Tribe, praised the Oneidas for turning their bingo proceeds into multimillion dollar economic development.

Powless said he was pleased that Swimmer accepted his invitation.

"I was happy to afford Swimmer the opportunity to view our tribe and see

Please see Oneida/A-2

☐ Oneida

how some of our enterprises operate especially bingo," Powless said.

"I was satisfied that he realized the efforts of the Oneida is to make our reservation self sufficient in its striving toward economic development," he said.

The Oneida bingo operation has had an annual $4.50 million economic impact on the surrounding communities, the tribe said.

Bingo proceeds were instrumental in the purchase of the Oneida One Stop gas station and convenience store and the construction of the Rodeway Inn.

"There are just as many horror stories," Swimmer said. "But that's going to happen in any kind of business. Not every bingo operation is going to be successful, not every manufacturing company is going to be successful."

He said a case currently before the U.S. Supreme Court may have a significant impact on the tribal bingo control issue.

The court will decide whether the Cabazon and Morongo tribes of California can operate bingo and poker games without state or local control.

FALLON PAIUTE-SHOSHONE TRIBES

JUL 15

8955 Mission Road
P.O. Box 1650
Fallon, Nevada 89406
(702) 423-6075

STATEMENT OF THE FALLON PAIUTE-SHOSHONE TRIBES
BEFORE THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON H.R. 2507 AND H.R. 964

REGARDING THE REGULATION OF GAMING ON INDIAN LANDS

INTRODUCTION

The Fallon Paiute-Shoshone Tribe submits the following statements in opposition to the enactment of S. 555, S. 1303, H.R. 2507, and H.R. 964, especially those portions of the proposed bills that authorize the States to control and/or regulate Indian gaming. It is the Fallon Paiute-Shoshone Tribe's position that the regulation of gaming within the reservation is part of the inherent sovereign rights of self-government, as defined by the U.S. Supreme Court and other case law.

It is also our position that affected Tribes be allowed to consent to any imposition of gaming enforcement or regulation as each Tribes' needs dictate. Some Tribes have the sophisticated resources to regulate gaming by themselves, while other Tribes may require some type of federal assistance. It should be at the Tribes' discretion to request such assistance.

DISCUSSION

We call your attention to the recent Supreme Court decision reaffirming Tribal government regulatory rights (California v. Cabazon Band of Mission Indians, Feb. 1987) and to the National Indian Policy Statement of 1983, which also reaffirmed Tribal rights to self-government. Congress saw fit to enact the Self-Determination and Education Assistance Act allowing Tribes to take on more responsiblity in handling their own affairs. To enact the present legislaltion would, in effect, reverse the policies of the last fifteen years in Indian affairs.

Tribal governments have taken to heart the government-to-government relationship as advocated by the Administration and have sought to establish responsible and viable governmental entities. But it seems that everytime Tribes establish businesses or develop income-generating enterprises, the government steps in or halts Tribal progress. Federal and/or State bureaucratic interference over Indian gaming will have a negative effect on any economic gaming venture that may be started by reservations in Nevada.

The solution to the alleged problems faced by Tribal Governments in regulating gaming, i.e., infiltration by organized crime, is to strengthen Tribal governments, not by imposing federal and state bureaucratic control over Tribes. By strengthening Tribal governments, Congress would show tangible proof of their desire to show recognition of Tribal Governments as self-governing entities. In fact, Congress has already passed laws to do so through the Self-Determination and Education Assistance Act, as amended, P.L. 93-638. Opposing the current Indian gaming bills, as they are now written, would be a reaffirmation of the Self-Determination Act and federal policy of dealing with Tribes on a government-to-government basis.

We request that you oppose the Indian gaming bills as proposed, until they reflect or reaffirm the Tribes' right to self-government.

Sincerely,

Richard Hicks
Tribal Chairman

Ft. McDowell Mohave-Apache
Indian Community
P O Box 17779
Fountain Hills, Arizona 85268
(602) 990-0995

JUL 8 1987

1 July 1987

Members of the Arizona Congressional Delegation:

Hon. Dennis DeConcini
Hon. John McCain
Hon. Jon Kyl
Hon. Morris Udall

Sirs:

We know that hearings were held recently on proposed Indian Gaming legislation. Unfortunately, we at Fort McDowell were unable to testify but we would like to share our thoughts and concerns with you.

As you know, Fort McDowell has been involved in a most successful Bingo operation since 1984. We have a joint venture agreement with Mid-America and, although nothing runs smoothly all the time, the Tribe has reaped significant profits which have been used to our benefit. Our Bingo operation grosses in excess of $1 million/month, seats 1,400 players and is open seven days each week. In the absence of any form of government regulation, the Tribe has nonetheless managed to consummate this agreement, build a $1.2 million facility, open the doors and successfully operate a multi-million dollar venture these past three years.

Notwithstanding this "success story", the Tribe understands and has no problem with the concept of external regulation as it applies to various forms of on-reservation gambling. Of course, as a sovereign nation, we cannot submit to any form of state control, regulation, licensing, etc. We would therefore welcome and accept federal regulation, as proposed in the pending legislation for Class II & III activities (Section 10 (b)).

We do however, take exception to other language in Section 10 (b), as it relates to the federal government, on behalf of sovereign nations, permitting and regulating Tribal activities as allowed by the states. Frankly, we see no need or reason for this type of paternalistic protection and we resent the suggestion that Tribes are in such need.

Given the ambiguities of state law which, in some cases, permit and regulate certain types of gambling while, in other cases, prohibit other activities under both civil and criminal penalities, Tribes should be free to pursue their own independent objectives, regulated by federal authority only. The pending legislation would easily accomplish this objective and we find no logic in the attempt to codify existing case law developed (often speciously) in federal court within the proposed legislation. The most recent (Cabazon) Supreme Court decision makes clear the court's discomfort with the current status of this conflict and seeks clarifying federal legislation. We concur with the court, but find no purpose served to requiring that Tribes observe state law.

If this legislation is enacted, there will be ample safeguards to ensure that both Tribes and the general public will receive adequate protection, without the further requirement that permissive state legislation is also necessary. Does Congress really hold that the states are in a position to aid the Tribes in our quest for self-determination and economic self-sufficiency? If not, why must we submit an on-reservation activity to a state "litmus test" before even allowing its regulation by the Tribes and a federal regulatory commission?

In essence and in summary, we wish to indicate our support for the regulatory process proposed in the Indian Gaming Regulatory Act. We do suggest that contingencies relating to activities "...located within a State that permit such gaming..." (Section 10 (b)) be removed, vesting authority to decide what will or will not be allowed in the Tribes, to be regulated by the proposed federal commission. Any fear that this would result in the Tribes' wholesale march into gambling is unfounded, since not all (or perhaps even most) Tribes would pursue this option. Even if they did, it would be carefully and properly controlled and regulated, as stipulated in the legislation, thereby affording far greater protection to the public and the Tribes than is presently available. We further request that, should there be a need for additional hearings, that these be scheduled in our state.

Once again, many thanks for your continued support of Indian nations and for your on-going interest in our well-being. We will be pleased to provide further information and/or clarification should you desire.

Sincerely,

Clinton Pattea
Tribal Council President

CP/MSK/msn

STATEMENT OF

STANLEY G. JONES, SR., CHAIRMAN
TULALIP TRIBES OF WASHINGTON

ON

H.R.2507 and H.R.964
(THE INDIAN GAMING REGULATORY ACT)

BEFORE

THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

JULY 13, 1987

On behalf of the Tulalip Tribes, I appreciate the opportunity to present our views and recommendations with respect to the pending measures.

Although we have consistently supported the enactment of constructive Indian gaming legislation in prior Congresses, we wish to emphasize that our current position has been influenced by the favorable U.S. Supreme Court Opinion handed down on February 25, 1987, in California et al. v. Cabazon Band of Mission Indians, et al. That opinion upheld the rights of tribes to operate gaming where such gaming is not criminally prohibited by state law, free from any state control.

With the Cabazon decision firmly in mind, we have adopted the position that we could support only legislation that does not impose any form of state jurisdiction over Indian gaming. This

is particularly so with respect to Class III gaming that we believe should be licensed and regulated by the federal Commission contemplated in the two pending bills.

Therefore, we support enactment of H.R.2507 since it conforms to our strongly-held views on the form of jurisdiction that should be applicable to Class III gaming.

Initially, we had hoped that the favorable Cabazon decision would have laid to rest the need for enactment of Indian gaming legislation; however, upon sober reflection and study, we concluded there were overriding reasons why such legislation should be enacted. First, the non-Indian gambling establishment together with the anti-tribal sovereignty forces continue to oppose the right of Indian tribes to engage in legitimate forms of gaming as revenue-generating vehicles. Second, the Administration, who should be playing a leading role in protecting our sovereign right to license, operate and regulate Indian gaming, seems more determined to amend the pending bills in a manner that would limit our income in Class II gaming and impose state jurisdiction over Class III gaming. For these reasons, and as a practical matter, we support enactment of Indian gaming legislation that upholds the sovereign rights of Indian tribes and that does not impose any semblance of state jurisdiction over Indian gaming activities.

Since the majority of Indian tribes are prepared to support enactment of positive Indian gaming legislation, notwithstanding the strength of our inherent sovereign powers, the tribes must look to the Congress to formulate a fair and equitable national Indian gaming policy that recognizes and upholds such sovereign powers. Since the Congress serves as the legislative arm of the Federal Government and has a trust obligation to Indian tribes, the enactment of positive Indian gaming legislation would clearly be within its powers and would represent fulfillment of that trust obligation.

In our view, the positive goals that could be achieved in Indian gaming legislation were clearly articulated in the National Indian Gaming Association's April 5, 1987 communication to Chairman Inouye, Senate Select Committee on Indian Affairs:

> Legislation at this juncture, however could still achieve desirable results. Legislation could codify the federal posture that gaming is a legitimate aspect of the federal commitment to promote Indian self-determination and economic self-sufficiency. Legislation could provide a system and standards for regulating management contracts, as well as provide for uniform national standards for Executive Branch action with respect to gaming. Well crafted legislation could also insulate tribal gaming from what we expect will be a new onslaught of challenges from states, as well as challenges from some quarters of the Department of Justice.

Specifically, the Tulalip Tribes were pleased to note that sponsors of H.R.2507 included our "self-regulatory" concept in the bill. That concept is embodied in section 11(e) and provides

tribes that own and operate Class II gaming facilities, upon meeting designated standards, an opportunity to exercise a higher level of self-regulation over their gaming facilities and activities. We urge the Committee to approve this provision.

The Tulalip Tribes join other tribes in expressing disappointment over the Administration's recent testimony before the Committee in which they continued to characterize Indian gaming as an unregulated activity. Such characterization totally rejects the concept of tribal sovereignty and the fact that many tribes own, operate and indeed regulate gaming activities, primarily bingo, for the benefit of their members and the patrons of such gaming activities.

Moreover, the Administration has belatedly conceded that gaming represents a viable economic development endeavor on many Indian reservations. We are satisfied that the tribal leadership across the country views gaming as one alternative for economic development and not as an end in itself. Significantly, the Bureau of Indian Affairs reported in its INDIAN NEWS, July 13, 1987, that 113 Indian tribes are engaged in high stakes bingo games and gross an estimated $255 million a year. These earnings translate into substantial net profits for gaming tribes, employment for deserving Indian people and substantial payrolls that are spent primarily in non-Indian communities. The Tulalip Tribes' successful bingo game generates income that is a part of this positive national Indian gaming picture. Our gaming

earnings, including bingo and pulltab sales, are already a part of this Committee's extensive hearing record. Therefore, we shall refrain from reporting further on that aspect in this statement.

What we wish to emphasize is that legitimate gaming activities serve as a major revenue stream for many tribes. Such activities must not only be preserved, but enhanced, where possible, to benefit participating tribes. In the final analysis, we are looking to the Congress to enact the type of Indian gaming legislation that will accomplish these desirable results. To do so will foster the concept of Indian self-determination and permit tribes to pursue a course of action leading to self-sufficiency.

We have directed our legal counsel, gaming director and legislative consultant to work closely with the Committee staff to promote detailed changes to the bill that we believe will improve its effectiveness.

STATEMENT

OF

LEON MILLER
TRIBAL CHAIRMAN

STOCKBRIDGE-MUNSEE TRIBE OF WISCONSIN

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

REGARDING

H.R. 964 AND H.R. 2507

ON

JUNE 25, 1987

Chairman Udall, my name is Leon Miller, Chairman of the Stockbridge-Munsee Tribe which is located north central in Wisconsin. I wish to express my gratitude to you for allowing me these few minutes to offer testimony on H.R. 964 and H.R. 2507 pertaininng to the establishing of Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands. Our reservation was established by an 1856 treaty and consists of 22,394 acres, of which 6,760 are privately owned. Tribal enrollment numbers approximately 1,357 persons. Like many other small Indian reservations in the United States, we are faced with the same set of social and economic barriers: high levels of unemployment, geographic isolation, inadequate community facilities and services and an economy largely dependent on the infusion of federal and state funds.

As you sir, are aware, there is nowhere in this country where poverty is more widespread and crushing than on Indian reservations. With the severe cut-backs we have been experiencing from the current Administration for supporting programs on the reservation, we began a desperate search for revenues to replace those dollars which have disappeared. We sorely lack the economic resources and there is very little, if any, economic activity on the reservation which we can tax. As a result, we have followed the lead of what other tribes have done, and that is to develop gaming enterprises, primarily bingo, as a means of generating badly needed tribal revenue.

While it is true that over the course of the past few years, proposed House and Senate bills have "come and gone" that would effectively create a system that would regulate tribal bingo games, the United States Supreme Court decided, on June 10, 1986, that it would review the decision of the

9th Circuit in California et al. v. Cabazon Band of Mission Indians, et al. Up to that point, all federal courts to address the issue had held that Tribes were able to operate gaming enterprises free from state jurisdiction. The Supreme Court had previously declined to review the decisions of the two separate federal circuit courts that had upheld tribal gaming rights. Giving this legal setting, the predominant, though not universal opinion, was that there was a significant danger of the Supreme Court reversing Cabazon.

From the time the Supreme Court agreed to hear Cabazon, up to the date when a favorable decision was rendered for us on February 25, 1987, a central view point which seemed to emerge as controlling from state and gaming industry representatives was that Indian gaming is unregulated gaming. This view point does not recognize that tribes are governments, and capable governments at that. In spite of the years of scandals related to state regulated gaming, States are presumed to be inherently competent. On the other hand, Tribes are assumed to be incapable of controlling their gaming. The fact that Tribes are running a nationwide gaming industry involving some 140 games, an industry that will soon enter its second decade, with relatively minimal problems relative to criminal activity and apparently no problems relative to organized crime, seemed to have no impact on assumptions or presumptions of tribal competency.

The Cabazon decision recognized that state laws are not generally applicable to Indians and their lands. Indian lands or Indian country are distinct geographic units, where the governmental unit with primary responsibility is the Indian tribe. Some have argued that it is somehow inappropriate for a citizen of a state to be subject to one set of laws

when in his/her state, and other laws when they are on Indian lands within the boundaries of that state. However unique that situation may seem, it is part of the essence of the Federal-Indian relationship. When the framers of the Constitution determined to recognize Tribes as distinct governments and to place the responsibility for Indian Affairs with the Federal Government; it was a knowing decision --- a decision to exclude the States from Indian Affairs. States were then, and unfortunately are periodically now "enemies" of Indian interests. Much of the protective rule of the Federal government has derived from the responsibility to protect Tribes from States and the economic interests States represent.

We have considered very carefully, and reviewed very thoroughly the conditions spelled out in these bills before the Committee. We believe both H.R. 964 and 2507 are very similar in design and purpose. However, there are important differences between the bills which I feel must be commented on. A most critical difference is the treatment of Class III gaming. In H.R. 964, Class III games come under state control and supervision. Under H.R. 2507, games of the Class III nature would be regulated through both the tribes and National Indian Gaming Commission.

I must lend my support to that of H.R. 2507 rather than H.R. 964. I take this position because Congress has no business insulating non-Indian gaming interests for whom you have no fiduciary relationship, from competition of Indian interests for whom you do have a constitutional and moral responsibility. Additionally, it has been nearly ten years since Seminole revitalized Indian gaming through commercial bingo, and for the most part Indian tribes have a superb record; better than any State that I am aware of in a comparable start-up period. To these arguments the

proponents of State jurisdiction have added a new and somewhat curious argument -- Class III gaming is complex and only the States are capable of regulatng it. Presumably the States do what everybody else is capable of doing, they set a regulatory scheme, finance it and hire people to operate it. Something that is clearly doable at all levels of Government. This takes us back to the old problems of the seeming inability to recognize that Tribes are governments. Complexity has not precluded tribes from functioning as Governments in other areas. As noted, the Stockbridge-Munsee Tribe supports H.R. 2507 with respect to Class III.

It is the position of the Stockbridge-Munsee Tribe, that federal legislation is necessary to protect the rights of tribes to continue to regulate and operate gaming enterprises on their land free of all outside intrusions. The Cabazon decision delivered in February of this year emphatically upheld the right of Indian tribes to regulate gaming on their reservations free of State interference. Additionally, it is our opinion that the present legislation must be revised or clarified in the following:

1. Approval of ordinances or resolutions, if not required by a tribe's constitution, is an unnecessary intrusion on the law making powers of the tribal government. The provisions of the proposed regulatory scheres would govern the activity as well without this approval power. If it is included, as drafted, the power to approve gaming ordinances would diminish the right of tribal governments to make and enforce their own laws and to be governed by their own organic law.

A less burdensome and more logical means of achieving the same

goal would be to require review and disapproval for cause inconsistent with the provisions of the law.

2. The requirement of annual independent audits for gaming enterprises ignores the fact that some tribes, such as the Stockbridge-Munsee, own and operate their own gaming enterprise exclusively and use the One Audit requirement of OMB, Circular A-128, which includes all tribal enterprises. As the current bills are drafted, a separate independent audit requirement would be costly, duplicative and unnecessary unless there has been established indication of the need for such an audit.

3. The assessment formulas suggested by the bills are unrealistic. The Stockbridge-Munsee Tribe believes a fixed schedule based upon seating capacity, number of occasions, or other such indicia would be more fair and meet the necessary objective of supporting the regulatory body.

4. Classifications of gaming should reflect the findings of Cabazons, in that any gaming activity civilly/regulated by the state can also be civilly regulated by the tribe consistent with provisions of the act. As drafted, the present legislation does not adequately address or reflect the full scope or tribal rights recognized by the United States Supreme Court in Cabazon .

CONCLUSION

For the facts and reasons set forth above, the Stockbridge-Munsee Tribe of Wisconsin, supports the need for federal legislation in the area

of tribal gaming regulations. Such legislation should recognize the sovereign governmental rights of Indians and not interfere or intrude unnecessarily where tribes, such as Stockbridge-Munsee, have demonstrated by their success the ability and determination to be self-reliant and self-determining.

Thank you

PASCUA YAQUI TRIBE

PREPARED STATEMENT

OF

RAUL SILVAS

VICE CHAIRMAN OF THE

PASCUA YAQUI TRIBE

OF TUCSON ARIZONA

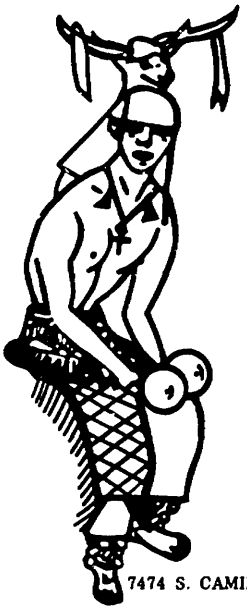
BEFORE THE U.S. HOUSE COMMITTEE

ON INTERIOR AND INSULAR AFFAIRS

HEARINGS ON H.R. 2507 AND H.R. 964

"THE INDIAN GAMING REGULATORY ACT"

JUNE 25, 1987



7474 S. CAMINO DE OESTE • TUCSON, ARIZONA 85746 • (602) 883-2838

96-492 O - 89 - 14

PASCUA YAQUI TRIBE

7474 S. CAMINO DE OESTE • TUCSON, ARIZONA 85746 • PHONE (602)883-2838

Prepared Statement of Raul Silvas
Vice Chairman of the Pascua Yaqui Tribe
Before the U.S. House Committee
on Interior and Insular Affairs
Hearings on H.R. 2507 and H.R. 964
"The Indian Gaming Regulatory Act"
June 25, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Raul Silvas. I live on the Pascua Yaqui Indian Reservation southwest of Tucson, Arizona. I am the Vice-Chairman of the Pascua Yaqui Tribe of Indians.

It is an honor for me to be here to day to present testimony on behalf of the Pascua Yaqui Tribe on H.R. 2507, a bill introduced by our Congressman, Chairman Morris Udall, and on H.R. 964, a bill introduced by Representative Tony Coelho. Both of these bills would establish federal standards and regulations for the conduct of gaming activities on Indian reservations and lands. Also joining me here today is Ms. Anne L. Howard, Washington Representative for the Pascua Yaqui Tribe.

Mr. Chairman, on behalf of all members of the Pascua Yaqui Tribe, I would like to thank you for your leadership in introducing this most important legislation. During the last several months, our Chairman, Mr. David Ramirez, has served as

a member of The National Indian Gaming Association (NIGA) and previously, served as a member of The National Task Force on Gaming on Indian Reservations. As you know, the NIGA has reviewed this legislation and earlier versions of this bill which address many of the concerns raised about Indian gaming businesses, and, at the same time, seeks to protect Indian gaming operations which have become a significant source of governmental revenues to many tribes throughout our country.

The Pascua Yaqui Tribe strongly supports Chairman Udall's legislation, H.R. 2507; and the Senate companion bill, S. 1303, which was introduced by Senator John McCain of Arizona on June second. The Pascua Yaqui Tribe generally supports the NIGA's position on these bills as presented by Chairman Billy Houle today, with a few exceptions which I will outline in my testimony today. Specifically, I wish to recommend a few minor amendments to Chairman Udall's bill, which we believe will strengthen this legislation.

We strongly urge you to enact H.R. 2507 during this session of Congress. We believe this legislation is absolutely essential if Indian gaming operations are to succeed as legitimate and viable tribal businesses. If your legislation is not passed,

tribal gaming operations will continue to be subject to court challenges, even with the recent Cabazon decision, and state interference will continue, raising questions about the legitimacy of tribal gaming activities, limiting the success of many tribal bingo operations which have become much-too-much dependent on outside, high-risk investment capital to survive.

The Pascua Yaqui Tribe strongly believes that your legislation, with some minor modifications, along with your Committee's oversight of the new National Indian Gaming Commission and its regulations designed to protect Indian bingo, can contribute greatly to the future success and security of Indian gaming business operations. The current lack of any federal legislative standards to protect Indian gaming, particularly bingo operations, has resulted in repeated challenges to tribal sovereignty, and has, time and again, left many tribes, particularly the Pascua Yaqui Tribe, at the mercy of unethical management contractors and numerous lawsuits. Because Indian bingo is perceived as a high risk business, very few, if any, banks or conservative investors are willing to risk their capital in a business that could conceivably be closed down tomorrow by the courts or by the Congress, Cabazon not withstanding. The Pascua Yaqui Tribe strongly supports the stringent requirements and high standards for management contractors and management contracts as set forth in the proposed legislation. We

will offer three amendments to this section of the bill to further protect Tribal gaming enterprises.

History of Pascua Yaqui Tribe
Bingo Business--YAQUI BINGO-- and
Experience with Non-Indian Management Companies
1982-1987

Overview:

The Pascua Yaqui Tribe decided to go into the bingo business in December of 1982 in order to generate additional revenues to address the many social, economic and educational needs of our people. In 1982, the unemployment rate on our reservation was seventy percent (70%). Out of a potential labor force of three hundred and seven (307) members of sixteen (16) years of age and older, one hundred and fifty-seven (157) members of our Tribe were unemployed, and of the one hundred and fifty (150) members who were employed, one hundred and five (105) earn less than $7,000.00 a year.

At the present time, approximately one thousand sixteen (1,016) members of our Tribe now live on our reservation in Tucson. As you know, the majority of the five thousand seven hundred (5,700) enrolled members of the Pascua Yaqui Tribe live in other communities scattered throughout central Arizona, in Tucson (approximately two thousand three hundred [2,300] members), in Guadalupe near Tempe, in Marana, and in Scottsdale,

where they work the land for others, have no income security and are totally dependent upon federal assistance.

In 1982, the median family income of the Pascua Yaqui Tribe was $7,000.00. In 1985, our median family income dropped to $5,032.00, and eighty-five percent (85%) of our people now live below the poverty line. This low income is further supported by an unemployment rate of fifty-one percent (51%) on our reservation. Of the approximately one thousand (1,000) members who currently live on our reservation in Tucson, more than three hundred (300), or approximately one-third, are under the age of sixteen (16). By the end of this year, a majority of the Tucson area members of our Tribe will return to the reservation to live in some four hundred (400) new HUD homes which are scheduled for completion by the end of the year. With these new houses, there will be a three hundred percent (300%) increase in the reservation population by the end of the year. The population will triple from one thousand (1,000) members to three thousand (3,000) members and the health, educational, and other needs of our people will increase accordingly.

All members of the Pascua Yaqui Tribe, those who are fortunate enough to live within our reservation, as well as those outside, are eager to work hard to contribute to our Tribal economy and do not want to be dependent upon federal funding

alone. For this reason, our Tribe decided to establish a bingo business in 1982 with the hope that badly-needed revenues could be generated to help us address the many needs of our community and, at the same time, help us to reduce our dependency on shrinking federal dollars.

During the last two fiscal years, FY1986 and FY1987, the Pascua Yaqui Tribe has continued to experience across-the-board cuts in federal funding. The Bureau of Indian Affairs will continue to reduce its overall contributions in FY1988 (which begins October 1, 1987) by more than $100,000.00, that is, from $630,200.00 in FY1987 to $533,600.00 in FY1988. These reduced funds are for basic tribal social services, for tribal courts, fire protection, for employment, and for training.

The Indian Health Service advised us in January 1987 that there would be no funds for at least ten years in support of a badly-needed health care clinic on our reservation. Furthermore, I might add that even with the assistance of our Congressional Delegation, The Economic Development Administration (EDA) at The U.S. Department of Commerce has refused to invite our Tribe to submit a full application for a reservation-based Health Clinic which would serve the three hundred percent (300%) increase we will experience in our population by the end of 1987. EDA denied our request due to cutbacks in EDA's budget and competition among otherwise equally meritorious projects, not because our project did not meet all the general policy

and specific program requirements. In fact, the pre-application for our project was an outstanding example of what Congress intended when it authorized projects to be funded under the "Public Works Impact Program (PWIP)" of the EDA.

Since The Indian Health Service will not have any funds to construct a health clinic on our reservation for ten years, our only hope is that the EDA and HUD--the only other federal agencies which fund construction of health clinics--will reconsider our request next year. I should also mention that since there will be a two percent (2%) cutback in IHS "reserve funds" in FY1988, our Tribe will not have sufficient funds to meet the health care needs of the 300% increase in our population by the end of the year. Furthermore, since Indian Tribes are not eligible for Head-Start "Expansion Money" our head-start program will not be able to accommodate the additional increase of some sixty-five (65) children at the end of this year.

Pascua Yaqui Bingo Management Companies

On December 1, 1982, the Tribal Council of the Pascua Yaqui Tribe adopted a bingo ordinance, licensing and authorizing the establishment of a bingo business on our reservation under certain conditions. On December 22, 1982, we signed a contract and a management lease agreement with our first outside management company, The Pan-American Management Company (PAMCO) of Tampa, Florida, to assist our Tribe in the financing,

management, and maintenance of the bingo operation.

Beginning with the Pan-American Management Company, our Tribe has had nothing but a series of problems with each successive management company. In total, we have had five management companies or contractors, beginning with PAMCO.

I will briefly describe our experiences with each successive management company. I will then draw certain conclusions, based on the similarity of problems we have experienced with each management company and how these problems can be addressed by your legislation. As stated in the beginning of my testimony, I will make several recommendations in the form of proposed amendments to your legislation based on the experiences our Tribe has had in working with five different bingo or gaming management companies. Although the most recent problems with our current management company are not resolved, they are, in fact, indicative of the continuing problems which will arise without some federal standards and regulations for monitoring and enforcing laws that pertain to tribal gaming operations. I will summarize in somewhat greater detail our first experience with PAMCO (Pan-American Management Company), as all future contract and manatement lease agreements were amended to improve upon our agreements with PAMCO.

The five management companies retained by our Tribe and the approximate time frames within which each company managed and operated the Pascua Yaqui Bingo Hall are listed below. I should also mention that during more than one period since 1982,

the Pascua Yaqui had to intervene personally to manage the bingo operation in order to keep the doors open; during other periods, we have had to close the Bingo Hall down.

Name of Management Company or Status of Pascua Yaqui Bingo Hall Operation	Date
(1) Pan-American Management Company	December 22, 1982 - December 31, 1983
(2) VAL-DEL Company of Knoxville, Tennessee	January 1, 1984 - May 13, 1984
(3) Pascua Yaqui Tribal Management of Bingo Operation (Outside investor lent Tribe $50,000.00 to re-open Bingo Hall on June 13, 1984)	June 1984 - November 1984
(4) Mr. Norman Weston, a British bingo manager and investor	November 1984 - November 1984
(5) Pascua Yaqui Bingo Hall closed	November 1984 - August 1985
(6) K.T.I. Corporation, represented by Ann Chalk and Barry Bobbitt	August 1985 - October 28, 1985
(7) Yaqui Bingo, Ltd., President, Alvin Chafetz who is also President of TOMOL Holdings, Ltd., Calgary, Alberta, Canada	January 1986 - present

THE PAN-AMERICAN MANAGEMENT COMPANY: December 1982-December 1983

On January 22, 1983, one month after the signing of our contract with PAMCO, the Pascua Pueblo Bingo Hall, a one million dollar ($1,000,000.) new bingo facility and parking area on our reservation, opened for business. Our management lease with PAMCO provided that the Pascua Yaqui Tribe would be the sole owner of the business, including the newly-constructed facility. We agreed to retain and engage the services of PAMCO for a period of eight (8) years. We also agreed to pay PAMCO a management fee equal to forty percent (40%) of the net operating profits for each fiscal year, resulting from the bingo business. It was also agreed that one hundred percent (100%) of the net operating profits would be applied to pay the principal and/or interest on any indebtedness resulting from the cost of constructing, furnishing and equipping the Bingo Hall.

Our lease agreement outlined specific duties of the contractor in conformance with our Tribal Bingo Ordinance which included, for example, on-the-job training for new employees, preference for hiring Pascua Yaqui tribal members, management training for tribal members, preparation of monthly financial statements to be submitted to the Tribe

and grounds for termination and arbitration rights.

Of the one hundred and fifty (150) jobs immediately created at Pascua Pueblo Bingo Hall, one hundred and twenty (120) went to qualified tribal members, and, as a result, in 1983, our unemployment rate dropped to forty-six percent (46%). Our total payroll in 1983 at Pascua Pueblo Bingo was $770,000. However, all management positions at the Bingo Hall were held by non-Indian, PAMCO employees. After the first few months of operation, we began to have serious problems with PAMCO's management. Tribal employees complained that they were being treated unfairly -- if a tribal member was late to work, he would be fired rather than being put on probation or even being counselled on personnel requirements and responsibilities. No management training program was established for tribal members. PAMCO also failed to submit financial reports to our Tribe on time. No member of the Tribe had access to the financial books or to the money room where questions began to arise over the profitability of the operation.

During the first eight (8) months of the operation, our Tribe received no income from Pascua Pueblo Bingo. We were told that the business required five hundred (500) players an evening to "break even," and attendance had consistently been below the "break even point." Pascua Pueblo Bingo then seated thirteen hundred (1300) players and was open seven (7) days a week. Our admission price was relatively low ($18 single/

$30 double), and our prizes were high in order to attract and maintain our new customers. The Tucson market also provided a solid population base to support our business, yet we were told that our business was suffering, because the Tucson market was not sufficient. The success of the newly-opened Papago Bingo operation outside of Tucson in 1984 and other successful bingo operations in Arizona and other states as well during the past year certainly contradicts PAMCO's explanation to us at that time.

Based on the success of other PAMCO bingo operations, principally in Florida with the Seminole Tribe and in Minnesota with the Shakopee Mdewakaton Sioux Community, we knew that something was wrong. In October of 1983, our Tribal Council members met with the senior management of PAMCO. We demanded that PAMCO live up to its contractual responsibilities and respond to tribal concerns over the financial situation as well as the continuing personnel problems of tribal members employed at the Bingo Hall, or we would terminate the contract.

PAMCO then filed suit in the Federal District Court of Tucson, claiming tribal interference in the management of Pascua Pueblo Bingo was a violation of our contract and that the Pascua Yaqui Tribe did not have the right to ask management to leave the reservation, thus terminating our contract. The Federal District Court Judge ruled that the

court did not have jurisdiction over the matter and requested that The Bureau of Indian Affairs (B.I.A.) bring both parties together to resolve the issues. After examining our contract, the B.I.A. advised PAMCO that they were in violation of our management agreement. PAMCO then agreed to sell out its share of the business but demanded that our Tribe agree to their offer within two weeks -- by December 31, 1983 -- so that PAMCO could declare a business loss.

VAL-DEL COMPANY OF KNOXVILLE, TENNESSEE: January 1, 1984 - May 13, 1984

In January 1984, our Tribe was able to hire another bingo management company -- the VAL-DEL Company, based out of Knoxville, Tennessee -- which had expressed an interest in managing Pascua Pueblo Bingo for some time. VAL-DEL agreed to pay PAMCO $550,000 which was part of the remaining amount of indebtedness on the cost of constructing the bingo facility. One of the reasons that PAMCO offered for the lack of any previous tribal bingo profit was the necessity of using one hundred percent (100%) of all net operating profits to pay down our construction loan. One year after operation, therefore, we were still in debt over $900,000. PAMCO would have had us believe that in a year of operation, they had only made a little over $40,000 in profits. We, therefore, had no recourse but to hire another management firm that was willing

to put up the investment capital necessary to assume our tremendous debt.

On January 1, 1984, we signed a new management agreement with VAL-DEL Inc. which provided for the Pascua Yaqui Tribe to receive $5,000.00 per month in bingo profits or twenty percent (20%), whichever was greater, and the remaining eighty percent (80%) of net operating profits would be used to pay down our $550,000 note on the building. The terms of the agreement were for a period of seven (7) years with the same sixty percent (60%)/forty percent (40%) split in net operating profits. VAL-DEL also agreed to increase the number of Yaqui members in key management positions immediately; that audits of the operation would be undertaken by an outside firm, with monthly reports submitted to the Tribe; and that a designated tribal official could have access to the money room.

Unfortunately, our problems started all over again. The bingo manager appointed by VAL-DEL was inexperienced in Indian Bingo and did not keep the company nor its investors apprised of our concerns as they arose. Our tribal members were not placed in key management positions, and employee and personnel problems continued. Although our community manager, Mr. Valencia, had access to the money room and to the financial statements, according to our agreement, we did not receive our first audit report for three months. The business was still not making any money, and we were employing

fewer people. In 1984, our unemployment rate rose to fifty-eight percent (58%), and our total payroll dropped to $160,000 in the first quarter of 1984, an annual rate of $640,000 less than our 1983 annual high of $770,000.

In April of 1984, Mr. Valencia met with the VAL-DEL investors in New York and later in Arizona with members of our Tribal Council to review our complaints. The investors contended that they had not been informed of any problems. We attempted to negotiate a solution, but VAL-DEL would not agree, so we terminated our agreement. Following our agreement with the VAL-DEL investors, we learned that all money in the safe at the Bingo Hall had been removed, and that the preceeding week, VAL-DEL had closed all bank accounts. When payroll checks were issued the next week, they all, of course, bounced. We had to close the Bingo Hall on May 13. VAL-DEL left the Tribe with over $150,000 of outstanding bills.

PASCUA YAQUI TRIBAL MANAGEMENT OF THE YAQUI BINGO OPERATION: June 1984 - November 1984

In June of 1984, we were able to find a new investor who agreed to lend the Tribe $50,000 to reopen the Bingo Hall. It was agreed that the new investor would receive monthly financial reports from us but would not be involved in any management or administrative details of the Yaqui Bingo operation. Tribal members managed the business and held all key management positions except for two non-Yaqui tribal

employees who filled the positions of Finance and Public Relations Directors. The Bingo Hall was re-opened on June 13 with ninety (90) employees. During the period of the tribe's management of the operation, the Papago Indian Tribe opened its new bingo hall which was located in the highly desireable position adjacent to the Tucson International Airport. Competition was stiff. Our Tribe was not able to pay salaries to Yaqui Bingo employees, nor were we able to cover expenses. As a consequence, we incurred over $300,000 in additional debt.

MR. NORMAN WESTON: BRITISH BINGO MANAGER/INVESTOR: November 1984 - November 1984

In November 1984, the Pascua Yaqui Tribe was approached by a British Bingo manager/investor by the name of Norman Weston. Mr. Weston proposed a joint venture agreement with the Tribe that was based on an "English style" bingo which would be played for a minimum of three (3) days per week. A member of our Tribe who monitored these games told me it was a ninety (90) number game which is much different from the normal or typical bingo game in the United States. However it differed, the public in Tucson did not like it. The night that the "All English Style" Bingo was held, no one came. In order to run his special, British style bingo games, Mr. Weston had to install new equipment in the Yaqui Bingo Hall.

Some of the original equipment was removed. In a very short period of time, Norman Weston decided to leave the Pascua Yaqui reservation. However, we demanded that, prior to his departure, he restore the Bingo Hall to its original condition. Since Mr. Weston did not intially want to comply, the Tribe stated that it would hold his equipment as collateral until such time as he deposited sufficient funds in an escrow bank account to cover the restoration costs. Both our Tribe and Mr. Weston had dual signing authorities. Approximately $14,000 was put in an escrow checking account to cover the costs of the renovation for the Bingo Hall. However, soon after Mr. Weston had left, our Tribe went to the bank to withdraw the funds for renovation, only to be told that Mr. Weston had a few days previously withdrawn all of the money. In addition, during the short period of Mr. Weston's operation of the Bingo Hall, he incurred numerous debts from vendors and other service providers in the local community.

Our Tribe sued the bank and has also sued Norman Weston and his partner in Nevada, Slim Ewing. A suit is currently pending.

The Bingo Hall was closed in November 1984 and did not re-open for almost a year, until August 1985. During this period, our Tribal Enterprise Commission interviewed more than fourteen (14) potential investment groups. The K.T.I. Corporation was chosen.

K.T.I. CORPORATION: August 1985 - October 28, 1985

The K.T.I. Corporation was represented by Ms. Ann Chalk, a Native American, and her partner, Mr. Barry Bobbitt, who would be the financial investor for the Yaqui Bingo operation. Both individuals initially gave a very good impression to tribal officials. Mr. Bobbitt established his reputation and credibility through his family who were financially and legally well-known in Washington state. After much discussion and negotiation, our Tribe felt comfortable about entering into a contract with Bobbitt and Chalk, as long as they would pay the Tribe a $200,000 down payment that was required for the Tribe to pay back wages and the outstanding debt to all vendors.

Sam Hilliard, the B.I.A. Area Director for the Pascua Yaqui Tribe and the Fort McDowell area, was present for the signing of the management agreement and lease between K.T.I. and the Pascua Yaqui Tribe. In addition, it should be noted that the B.I.A. arranged for all appropriate background checks to be conducted at the Tribe's request for both Mr. Bobbitt and Ms. Chalk. Since we were eager for our bingo business to get started once again, we authorized Mr. Bobbitt and Ms. Chalk to open the doors of the Yaqui Bingo Hall once again. Following the signing of our management agreement and lease, Barry Bobbitt stated that he had to go

to Washington to secure the $200,000 down payment, but he never came back with the money. Instead, he returned to the Yaqui reservation with a highly convincing excuse that there would be a delay in the transfer of funds. The Tribe then put Mr. Bobbitt on a legal default notice of sixty (60) days. Although the Bingo business operated for about two months, no money was generated, and the Tribe was again left with a substantial debt. In addition, we fell prey to two individuals who can surely be called professional con artists. These were not ordinary people. Mr. Bobbitt constantly bragged about his mercenary activities, and he argued publicly a great deal with Ms. Chalk. On one occasion, he even used his rifle to pursue her, and Ms. Chalk had to call the Pima County sheriff to escort her to safety.

On August 28, 1985, the Pascua Yaqui Tribal Enterprise Commission served the K.T.I. Corporation with a Notice of Default, and sixty (60) days later, on October 28, 1985, the Bingo Hall was closed. K.T.I. Corporation left our Tribe with a further damaged credit rating with local vendors and still owes at least one hundred thousand dollars. K.T.I. filed for bankruptcy in early 1987.

At the current time, K.T.I. representatives, Ms. Chalk and Mr. Bobbitt, are involved in a lawsuit in Tucson. The appeal period granted by the lease with K.T.I. and the other lawsuits pending with previous operators, such as Mr. Weston,

continue to complicate our Tribe's ability to enter into new agreements with other management companies, as will be evidenced in a description of our current situation with the Yaqui Bingo, Ltd. Corporation, run by a Canadian investment group.

YAQUI BINGO, LTD.: January 1986 to Present

Beginning in November 1985, the Pascua Yaqui Tribal Enterprise Commission (T.E.C.) began their search for other bingo management groups. The T.E.C. interviewed three major companies: CAHK, Inc., based out of Florida; TOMOL, Ltd., based out of Alberta, Canada; and Best Bingo, Ltd., an east coast management group represented by a Mr. Larry Parr.

The Canadian group, TOMOL, was represented by Casinos Austria. Mr. Jack Lansdale, the Pascua Yaqui Tribal attorney, introduced representatives of Casinos Austria, Mr. Ray Carter and Dr. Irwin Haitzman, Managing Director, to Pascua Yaqui Tribal Manager, Anselmo Valencia, and Mr. Roperto Mendez, Yaqui Tribal Enterprise Commissioner, in November 1985. (I have included a copy of the Casinos Austria annual report and promotional brochure in the attachments to my testimony for the consideration of the Committee.)

The managing director of Casinos Austria, Dr. Haitzman, told the Yaqui Enterprise Commissioners that Casino Austria

wanted to move to the United States and was very interested in economic development projects with the Pascua Yaqui Tribe. Dr. Haitzman and Mr. Carter further stated that Casinos Austria intended to buy a large tract of land between Tucson and Phoenix to develop a large project called "Sportsworld" which would host major league baseball, football, tennis and other competitive sports and establish an "adult Disneyland" for Tucson/Phoenix area residents. In exchange for a gaming facility they planned to erect at "Sportsworld" on "Trustland" which they would buy and donate to the Tribe, they offered the Tribe a percentage of the new development. They stated that they wanted to have a very large bingo facility and possibly a casino, if Arizona law would permit. They assured us that they would take care of all the legislation and any legal issues involved, and basically, they promised us that everyone involved would get rich. To further substantiate their promises and commitments, detailed diagrams of the projected Sportsworld complex and other documents were shown to the Tribal Enterprise Commissioners. The managing director of Casinos Austria then stated that he was aware that we were looking for a new bingo operator, and they wanted to highly recommend an operator based out of Canada, the TOMOL Corporation, headed by Mr. Alvin Chafetz. We were told that the TOMOL Corporation was very experienced in bingo, that they had managed several successful operations

in Canada. In addition, we were later apprised that TOMOL Corporation specialized in the construction and design of condominium business parks and perceived itself to be a leader in progressive real estate development with substantial holdings throughout western North America, from Calgary to Dallas, from Phoenix to Spokane.

By December 1985, the Tribal Enterprise Commission had received formal bids from three different investments groups to operate the Bingo Hall. The basic agreement for each investment group provided a minimum compensation and reimbursement provision for the Tribe of some $265,000. Of this amount, $200,000 was to be paid upon the signing of the agreement, and the remaining $65,000 would be paid to the Tribe on or before April 30, 1986. These funds would be used to pay the back expenses incurred by the Tribe's previous operation of the Bingo Hall (including expenses for employees' salaries, vendors, suppliers and a tribal loan). The agreement also provided for a minimum compensation fee to the Tribe of $20,000 per month to be paid in advance. Of this amount, $15,000 represented a fixed monthly lease payment, and $5,000 represented a minimum fee for the Tribe's projected monthly share of bingo revenues. These funds were used to supplement reduced federal funding for health, education and employment programs, as exhibited in the

1986-1987 Pascua Yaqui Financial Statement.

In December 1985, the Tribal Enterprise Commission presented the three offers that they had received to the Tribal Council. The Tribal Council chose to do business with the TOMOL, Inc. group from Canada whose representatives were Mr. Alvin Chafetz, President, and Mr. Byron Jacobson, Operating Manager. The TOMOL, Inc. group made a very attractive offer, as reflected in a detailed Letter of Intent dated December 7, 1985 to Tribal Chairman, Mr. David Ramirez. (I have included this Letter of Intent for "Yaqui Bingo, Ltd." in the attachments for the Committee's consideration.)

The proposed terms of the agreement provided for a term of five (5) years to commence once the Bureau of Indian Affairs (B.I.A.) approved of the agreement and contained other very positive features, including an agreement that seventy-five percent (75%) of the operational management positions would be held by Yaqui tribal members at the end of the fifth year. Proper and standard accounting procedures assuring that sufficient funds would be on hand for payments of the prize schedules and for timely payment of all operating expenses and employee salaries were also contained in this agreement. To give the Tribe the assurance of financial collateral we desired, the agreement required that an irrevocable Letter of Credit in the amount of $200,000 be placed on deposit with the Valley National Bank

in Tucson, Arizona for the entire term of the agreement and lease, including any renewals.

The minimum monthly fee of twenty thousand dollars ($20,000) constituted a guarantee against a payment formula which was based upon a "per capita" attendance at the Bingo Hall. The payment formula provided that the Tribe would receive $2.00 per person attending each night's bingo session, up to five hundred persons. An average nightly attendance would be established to be used as the basis for determining whether there would be any future adjustment of the "per capita" attendance payment for each applicable month. For example, if the average nightly attendance were five hundred (500) persons or less, the Tribe would be paid a sum of $2.00 for each person attending the bingo during that current month. If the average nightly attendance were greater than five hundred (500) but less than six hundred (600), the Tribe would receive $2.25 for each person. The agreement, therefore, provided an escalator clause, so that after the first five hundred (500) people, payments would increase at one quarter increments to a maximum of $3.00 per person for eight hundred (800) people or more attending bingo during a current month.

This particular payment system, where the Tribe received a per head fee off the gross take of the Bingo Hall, assured that the Tribe would benefit from the bingo proceeds. Previous

arrangements based on a percentage of net operating profits never resulted in the Tribe's receiving its just share or percentage of bingo revenues. Based on the per head system, the Tribe would average approximately $50,000 a month, although this amount was not paid at all times, as I will describe further in my statement. In addition, projections showed that, based on these per head calculations, well over sixty to eighty percent (60% to 80%) of the projected net operating profit would go to the Tribe if all other things were equal. However, as I have just stated, the reason the Tribe did not negotiate an agreement based upon a percentage of the net operating profit is that in all of its four prior management agreeements, the Pascua Yaqui Tribe never received the agreed upon amount or percentage of the "net operating profits," because we were told there was never a net profit or sufficient profits to pay the Tribe's share.

During the first week of January 1986, the Tribal Council signed the Letter of Intent and a lease for the operation and management of the Bingo Hall with the TOMOL, Inc. group. The Bureau of Indian Affairs' Area Representative and Director had previously reviewed the proposed agreement in December 1985 and advised us that they saw no problems and offered only a few minor, technical changes. We discussed with the B.I.A. whether or not the hall should be open during the appeal period still pending with the

K.T.I. Corporation suit. It was agreed that the Bingo Hall should be opened, that back wages due to Yaqui employees be paid and that the Yaqui Bingo, Ltd. would commence management and operation of the Hall under the December 7, 1985 Letter of Intent submitted by Mr. Chafetz.

The pending lawsuit and drawn out appeal process of the K.T.I. Corporation prevented the B.I.A. from immediately ratifying the Yaqui Bingo, Ltd. Letter of Intent. Under CFR25, the Code of Federal Regulations which governs lease agreements with Indian tribes, there were two separate appeal periods that K.T.I. could utilize in appealing its lease agreement with the Tribe. After considerable time had passed and the appeal process was complete, the B.I.A. caused the Tribe a further delay in ratifying the Tribe's Letter of Agreement. Once the B.I.A. denied the K.T.I. representative's request for an appeal, the B.I.A. authorized another thirty day period on the second appeal. As a result, the current agreement with Yaqui Bingo, Ltd. could not be ratified until K.T.I.'s appeal process had fully expired. Once the appeal process expired, the B.I.A., in April 1986, contacted the Tribal Enterprise Commission and said the agency was in a position to ratify the agreement, so long as Yaqui Bingo, Ltd. was in compliance with the terms of the agreement. As set forth below, Yaqui Bingo, Ltd. was in gross violation of the agreement, and therefore, the

B.I.A. could not ratify the agreement.

BACKGROUND: YAQUI BINGO, LTD. VIOLATIONS OF MANAGEMENT AND LEASE AGREEMENTS

Almost as soon as Yaqui Bingo, Ltd. commenced business, our problems began all over again. The president and manager of Yaqui Bingo, Ltd., Mr. Alvin Chafetz and Mr. Byron Jacobson, (hereinafter referred to as "Yaqui Bingo, Ltd. representatives or officials") evidenced a consistent pattern of gross violations again the signed Letter of Agreement (Letter of Intent and Lease Agreement) which was submitted to the Chairman of the Pascua Yaqui Tribe by Mr. Alvin Chafetz on December 7, 1985.

In January 1986, Byron Jacobson told the Yaqui Tribal Enterprise Commission that Ray Carter, the former representative of Casinos Austria, had been involved in criminal activities in Austria, and Casinos Austria had therefore withdrawn all prior commitments and promises to the Tribe for the additional land and the joint venture proposed involving the "Sportsworld" project, among others. In January, our Tribe submitted its third request for background information on investors in the Yaqui Bingo, Ltd. Corporation. As we have recently discovered, full disclosure was never made to the Tribe. The Yaqui Bingo, Ltd. also requested a ninety day extension to provide the $200,000 Letter of Credit required by the Letter of Agreement. As early as February 1986, the Yaqui Bingo, Ltd. commenced the practice of issuing bad checks, a situation

which has persisted to date. On February 13, the manager delivered a check in the amount of twelve thousand, seven hundred and fifty-eight dollars ($12,758.00) to the Tribe. This was the remainder of the first month's payment to the Tribe, but the check was returned for insufficient funds on the Friday that it was deposited.

On the second page of our Letter of Agreement, the right of the bingo manager to engage in casino-related gaming activities without the written consent of the owner is specifically prohibited. However, the Yaqui Bingo, Ltd. proceeded to install poker machines in the Bingo Hall, and on February 25, 1986, the Tribal Enterprise Commission formally put the management company on notice that only bingo-related videos were allowed in the hall under law.

In March, the management company continued its practice of bouncing checks for both the Tribe and its employees. On March 4, the remainder of the Tribe's January payment, twelve thousand, seven hundred and fifty-eight dollars ($12,758.00) and a twenty thousand dollar ($20,000) payment bounced twice. Appropriate memoranda were sent to the management company by the Tribal Enterprise Commission, stating that bad checks were illegal and were causing extremely serious problems, that numerous suppliers in the Tucson area were complaining of late payments and bad checks, and that the management company's poor credit reputation was reflecting negatively upon the Yaqui Indian Tribe.

In the third month of operation, Yaqui Bingo, Ltd. began to have employee problems. Under our agreement, the management company was required to submit a personnel policy to the Tribe which provided for due process when terminating an employee. Much to our dismay, the management company did not implement any of the standard personnel policies outlined in our agreement. In fact, Yaqui Bingo, Ltd. failed to implement policies that had been used by prior management companies in accord with the Tribal Bingo Ordinance and each particular management agreement.

In April 1986, the Bureau of Indian Affairs submitted a letter to Yaqui Bingo, Ltd. setting forth the numerous non-compliance areas of the agreement, and asked for verification that all problems had been addressed before the B.I.A. could ratify the agreement. The Bureau of Indian Affairs noted seven (7) major breaches of our agreement, all of which are contained in the attachments on the "Yaqui Bingo Performance History," (December 1985 to May 1987). I call your attention to page eleven (11) of that document, which summarizes the B.I.A. letter. The B.I.A. stated that the management company had failed to:

- provide a workman's compensation binder and employee insurance documentation;
- provide documentary evidence that all employees who had no money were bonded;
- provide proof that the $200,000 Letter of Credit

had been placed in the Valley National Bank;

- provide proof that the remaining $65,000 had been paid on our down payment agreement;
- cover all of the bad checks that they had written and certify in writing that this illegal practice would not continue;
- comply with the disclosure agreement to inform the Tribe of sub-contracting for $1,000,000 events, etc.;
- provide proof that the building and public liability insurance were in effect.

At the end of April, the president and manager of Yaqui Bingo, Ltd. met with officers of the Tribal Enterprise Commission and claimed that they could not meet their back payments. They swore that an additional two hundred fifty thousand dollars ($250,000) had been invested in Yaqui Bingo, Ltd., enabling them to bring back payments due to the Tribe in the near future. They offered payment schedules, but payments were not made. I should note that it took one year, that is until April of 1987, for the management company to even insure the Bingo Hall.

The saga of our Tribe's relationship with this management company continues. I will simply add that at the end of April 1986, as if the Tribal Enterprise Commission had not already received every excuse in the book, the officers of Yaqui Bingo, Ltd. asserted that they could not make their

final down payment, because oil prices had fallen in Canada, and they had been put in additional financial distress. Requests for further extension privileges were made, and, month by month, the situation continued.

In November of 1986, the Bureau of Indian Affairs informed the Yaqui Tribal Enterprise Commission that they were now in a position to ratify the Lease and Letter of Agreement between the Tribe and Yaqui Bingo, Ltd., since the time for the K.T.I. Corporation's appeal had expired. Mr. Sam Hilliard, the local B.I.A. representative, asked if Yaqui Bingo, Ltd. was in compliance with the agreement and if they had complied with the points outlined in his breach of contract letter of April 1986. On November 21, 1986, the Tribal Enterprise Commission submitted a formal letter to Yaqui Bingo, Ltd. signed by Chairman Ramirez, asking that the management company certify their compliance with the Letter of Intent and Agreement of December 7, 1985 so that the contract could be ratified, along with appropriate addendums, by the B.I.A. To this date, no response has been received from Yaqui Bingo, Ltd. Therefore, the B.I.A. never ratified the lease nor the agreement of this management company. I should note that the Tribal Enterprise Commission made repeated requests to the management company for evidence of their compliance with our agreement so that the contract could be ratified.

In late November 1986, it became increasingly clear that further breaches of contract could be anticipated.

The management company was opening the Bingo Hall with insufficient funds to meet the payments of the prize schedule, let alone provide for payment of operating expenses, including employee wages, vendors and suppliers costs. The management company was hiring employees without disclosing personnel information to the Tribe, as required under our contract, and, outside lawsuits against Yaqui Bingo, Ltd. by various equipment vendors were beginning to surface.

On December 9, 1986, twenty-eight (28) customers and employees of Yaqui Bingo Hall filed a formal complaint against the management of Yaqui Bingo, Ltd. with the Tribal Enterprise Commission. Among their concerns were the following: bounced checks; unfair pay; unprofessional management as demonstrated by the lack of sufficient funds to cover payment for prize schedules each evening; forcing sales on customers when they were not interested; lack of uniforms for security personnel; poor sanitary conditions,; poor working conditions of the bingo equipment.

The management company advised the Tribal Enterprise Commission that they were unable to pay the rent or meet the per head payment to the Tribe, since attendance had dropped and former suppliers had removed video equipment due to the management company's negative credit rating. (Yaqui Bingo had written so many bad checks that the owner of the video machine company refused to do business with them.) In an attempt to collect some money from the bingo operation for

the Tribe, Tribal Enterprise Commissioner Kathy Nordine met with the president of the management company and agreed to intervene on its behalf with the owner of the video machine company to propose that the video businessman participate in the profits of the video machines. The proposal guaranteed that the Tribe, on a daily basis, would make thirty percent (30%) of the net profits generated by the videos. On December 24, 1986, an agreement was reached (see attachments). Since that time, the only payments that the Tribe has received from Yaqui Bingo, Ltd., including payments due for the rent, for the per head share of the bingo revenues, interest payments and so forth, were the daily payments collected from the video receipts, amounting to approximately twenty thousand dollars ($20,000) per month. The average amount due to the Tribe was approximately forty-six thousand dollars ($46,000) per month.

In January 1987, the president of Yaqui Bingo, Ltd. met with the Tribal Enterprise Commission to again try to make amends on the, by now, continuous breaches of the Tribe's contract. The president of the management company stated that he would remove the manager of the Bingo Hall, thereby creating a new management team that would rectify the situation. I should note at this point that the manager of the Bingo Hall was not removed from his position until May 2, 1987.

Mr. Chairman, I now turn to the most recent situation

with our management company, having demonstrated the company's clear and consistent pattern of violating our management and lease agreements.

I can only assume, Mr. Chairman, that you and other Members of the Committee are curious: why did the Tribal Enterprise Commission or the Tribe not sever our relationship with Yaqui Bingo, Ltd. sooner? One of the reasons is that, given our history with previous management companies -- companies that promised to pay but never came through on their word -- the initial payment received from the TOMOL group was a significant factor in the Tribal Enterprise Commission's constant attempts to negotiate a solution to the on-going problem. Specifically, since the Tribe had been given two hundred thousand dollars ($200,000) (and, even though this was less than one-half of the four hundred sixty-five thousand dollars ($465,000) payment due on the signing of the agreement), we were able to pay back wages to all the bingo employees (many who had not received any wages since June 1984) and also to pay off many outstanding bills, as well as support certain critical tribal programs. In fact, during 1986, the Tribe receive a total of approximately four hundred thousand dollars ($400,000) in bingo income (including the two hundred thousand dollars [$200,000] down payment) which was used, for example, to pay for tribal projects and programs such as: the Tribe's adobe brick block machine ($66,534.00); wages and fringe benefits for firemen,

the Tribe's economic development planner, prosecuter and defender; wages (totalling $84,474); payments for three community van vehicles for the elderly (approximately $16,000), etc. (See attachment of May 15, 1987 on Yaqui Bingo Financial Statement.)

In addition, we did not terminate our contract with Yaqui Bingo, Ltd. sooner, because very few, if any management companies were interested in running our bingo business until the Supreme Court made its decision on the Cabazon case.

On March 27, 1987, the president of Yaqui Bingo, Ltd. met with the Tribal Enterprise Commission to review the numerous breaches of the bingo contract and to show the commissioners a copy of an installment agreement with the Internal Revenue Service, showing that he was paying $2,000 per week against the $140,194.39 debt he owed the I.R.S. for withholding taxes. A letter was also provided from the Arizona bank stating that no checks had been returned since January 14, 1987. It was decided at this meeting that the Tribe would submit to Mr. Chafetz in writing in the form of a Notice of Breach to be legally prepared by the tribal attorney, Mr. Jack Lansdale, a summary of all of the violations of the current agreement.

During the period that the breach of contract letter was being prepared by our tribal counsel, the president of

Yaqui Bingo, Ltd. approached the Tribe with yet another offer to pay off all the debt and continue the business by giving the Tribe thirty percent (30%) of the video net profits to pay the previous debts. Under this agreement, the president's figures showed that the Tribe would receive a minimum of fifty thousand dollars ($50,000) per month estimated income which was comparable to if not better than the current agreement. However, given the numerous problems and consistent pattern of violatons of the existing contract for more than a year, the Tribal Enterprise Commission decided the Tribe should demand a minimum monthly guarantee of fifty thousand dollars ($50,000). The Tribal Enterprise Commission advised the president of the Yaqui Bingo, Ltd. that they were prepared to take his offer to the Tribal Council if he would agree to the minimum monthly guarantee. Since the president of Yaqui Bingo, Ltd., Mr. Alvin Chafetz, said he could not agree to add such a guarantee, Commissioner Nordine stated that he would be therefore put on formal notice of breach of contract.

During April 1987, we additionally learned from our tribal attorney that two investors of Yaqui Bingo, Ltd. were also suing the company for alleged fraud, racketeering, and breach of contract, seeking more than eight hundred and forty thousand dollars ($840,000) in damages, as well as a court order dissolving ARIZONA BINGO which the investors said was

illegally established. The two investors, Texas businessmen Michael A. and Martin B. Grossman, stated, according to a May 9th article in the Arizona Daily Star, that they invested two hundred and ten thousand dollars ($210,000) in the bingo management company in December 1985 and that Chafetz and his partner Jacobson misled them into expecting much higher profits than were actually generated.

On May 4, 1987, Tribal Chairman, Mr. David G. Ramirez, issued a ten (10) day breach of contract notice to Alvin Chafetz, President of Yaqui Bingo, Ltd. The breach of contract notice covers many of the points I raised earlier in my testimony, but in summary specifically addresses:

1. Employee-related matters. The management company did not abide by the personnel policies outlined in the agreement;
2. Security: The management company did not provide for adequate security. (i.e., they did not respond to numerous complaints regarding drug usage on the premises; security personnel refused to intervene in numerous instances affecting the personal safety of patrons; security personnel were not wearing uniforms or badges as required.
3. Accounting/Books of Account: Bingo prizes have been paid with post-dated checks, and winners have not been able to immediately collect on their winnings

as required under the contract. The two hundred thousand dollar ($200,000) Line of Credit was never supplied, and further, bad checks had been issued to vendors, employees, and maintenance personnel. The management company failed to provide the Tribe with personnel records, wage and salary information, and monthly financial statements.

4. Compensation/Reimbursement: Management contractor owed the Tribe two hundred and sixty five thousand dollars ($265,000) from the initial payment due upon signing of the contract.
5. Compensation: Management company was delinquent on rent due and in monthly bingo revenue payments to the Tribe in the amount of four hundred and one thousand, three hundred and twenty-five dollars and twenty-three cents ($401,325.23) through April 30, 1987.
6. Maintenance/Operation: Necessary roof and generator repairs have not been made.
7. Partners/Investors: Failure to disclose all investors, partners, officers, and/or directors as required under the agreement with the Tribe.
8. Insurance, Social Security, and Taxes: Management company failed to comply with applicable social security, workman's compensation and insurance for

occupational disease and other requirements of the contract.

9. Insurance: Management contractor had not complied with the requirements of insurance for public liability (Be it noted that not until March 27, 1987 did the management contractor provide a binder showing insurance of the premises.)

Mr. Chairman, on May 4, 1987, the day that the formal breach of contract notice was submitted to the president of Yaqui Bingo, Ltd., the situation at the Bingo Hall became very serious. The officers and employees of the management company were writing bad checks and bad gift certificates for the winners of the games, since there was not enough money to pay for the prizes. The Tribal Enterprise Commission contacted our tribal attorney to let him know of these events, and the attorney advised that the Bingo Hall should be closed immediately and, if the Tribe was aware of any criminal activities in the Bingo Hall (e.g., writing bad I.O.U.'s), it should be immediately reported to the B.I.A. police. The Tribal Enterprise Commission conveyed our attorney's recommendation to the management's officers at the Bingo Hall, and the recommendations were rejected. Commissioner Nordine then called the B.I.A. police and the tribal prosecutor to discuss the circumstances. Later, Commissioner Nordine, at a meeting with the Tribal Judge,

was asked about the Tribe's action in serving Yaqui Bingo, Ltd. with the ten (10) day breach of contract notice.

Mr. Chairman, I have mentioned some of the additional circumstances that led up to and followed our Chairman's submittal of the ten (10) day breach of contract notice on May 4, as neither I nor several members of the Tribal Council were aware of the illegal and criminal activities that were going on in the Bingo Hall. Under our agreement with the management company, if there is a dispute between the management and the Tribe, the dispute is first to be brought to the Tribal Council to see if it can be resolved amicably prior to going to arbitration. It is further stated that the governing body adjudicating the arbitration shall be the tribal court and that the management company and the Tribe shall abide by the decision of the tribal court. Since several members of our Council were not fully aware of all the serious violations of our agreement during this protracted period of time, we challenged the authority of the Chairman and the Tribal Enterprise Commission in filing the breach of contract notice against Yaqui Bingo, Ltd. The Council contended that they should have been consulted before the notice was issued; however, given the emergency nature of the activities occurring at the Bingo Hall -- the "last straw nature" of what by now were daily violations of our contract -- the Tribal Enterprise Commission and the Chairman proceeded on their own to rectify

the situation. Because the Council was not notified in advance of this matter, and since these issues were of serious concern to certain of our Council Members, our Chairman, Mr. David Ramirez, and our Community Manager, Mr. Valencia, were temporarily suspended, and members of the Tribal Enterprise Commission were unfortunately relieved of their duties on May 12, 1987. We are now working to resolve this situation as soon as possible. I am hopeful that it will be resolved in the coming week or two.

Let me now summarize the general problems our Tribe has experienced with management companies or contractors who have managed, operated, or invested in the Pascua Yaqui Bingo Hall from 1982-1987.

Based on the experiences of our Tribe with five different management companies during the period of December 1982 to the present, the following represent a few of the problems we have encountered with each management company. Some of these problems were rectified in each management agreement, only to be later violated. On the whole, however, the stringent standards and regulations for management contractors and investors as required under S.1303 (H.R. 2507), along with the proposed amendments to S.1303 (H.R.2507) that the Pascua Yaqui Tribe will submit in our testimony today, address the following problems:

1. General violations of tribal management contract and/or lease agreements including specific duties of the contractor to conform to requirements of the Tribal Bingo Ordinance. Failure to comply with provisions such as:
   - on-the-job training for new tribal employees;
   - preference for hiring Pascua Yaqui tribal members;
   - management training for tribal members;
   - preparation of monthly financial statements to be submitted to the Tribe;
   - establishment of overall personnel and employment

policy;

2. Full disclosure of financial investors in management companies, prior to, during and after signing tribal agreement or contract.
3. Receipt of monthly audit reports and tribal access to bingo money room and all financial agreements.
4. Adequate security personnel and enforcement of all pertinent laws and regulations concerning the handling and dispensing of monies.
5. Proper and standard accounting procedures to ensure that sufficient funds will be on hand for payment of prize schedules either through cash or certified funds and that sufficient funds for timely payment of all operating expenses, including but not limited to wages, vendors, and suppliers be made available.
6. Timely minimum compensation payments to Tribe based on bingo profits.
7. Timely approval of management contract or lease agreement and timely background checks, both criminal and financial, by the Bureau of Indian Affairs.
8. Full disclosure of all investors, including general and limited partners, and all corporate officers, directors and employees who have day-to-day management responsiblity for the gaming operation.
9. Employee-related matters: Implementation of personnel

policies and procedures outlined in the management agreement.

10. Accounting: Bingo prizes were paid with post-dated checks and winners were not able to immediately collect on their winnings as required under the contract. The management company failed to provide the Tribe with personnel records, wages and salary information, and monthly financial statements. Bad checks were illegally issued to numerous vendors and other service providers in the Tucson area, as well as employees and maintenance personnel.
11. Compensation/Reimbursement: Management company was delinquent on rent payments as well as monthly bingo revenue payments to the Tribe.
12. Failure to comply with insurance requirements pursuant to the management agreement.

Let me now turn to my specific recommendations for amendments to your legislation.

RECOMMENDATONS:
PROPOSED AMENDMENTS
TO S.1303/H.R.2507

1. NATIONAL INDIAN GAMING COMMISSION:

Mr. Chairman, our first proposed amendment to S.1303/ H.R.2507 is to Section 5 of the Act which establishes within the Department of the Interior an independent commission to be known as the National Indian Gaming Commission. Chairman Ramirez and Mr. Valencia, our Tribal Community Manager, previously presented our recommended changes to this section of the bill to the National Indian Gaming Association and also to the Counsel for Indian Affairs of the House Interior and Insular Affairs Committee.

The Pascua Yaqui Tribe believes it is very important that the five members who will be appointed Commissioners represent appropriate geographic and regional balance. We are fully cognizant of this Committee's desire to keep the commission small, so we have not proposed an increase in membership; rather, we propose that tribal members be selected from each of four regions, the East and Southeast; the Midwest; the Northwest; and the Southwest. And, that language be included in the bill or in the committee report instructing the Secretary of the Interior to assure that members are selected from each of the four regions reflecting appropriate geographic and regional balance.

Technically, we recommend that Section 5(b)(1)(B) be deleted and that Section 5(b)(1)(C) be amended to read as follows:

"...four members who shall be enrolled members of federally recognized Indian tribes and who shall be appointed by the Secretary from the recommendations of tribes then engaged in or regulating gaming activities. Tribal members shall be selected from each of four regions: the East and Southeast; the Midwest; the Northeast; and the Southwest; and shall represent appropriate geographic and regional balance."

2. REQUIREMENTS FOR MANAGEMENT CONTRACTS/CONTRACTORS:

Under Section 13 of S.1303 and H.R.2507, subject to the approval of the Chairman of the new Gaming Commission, a "tribe may enter into a management contract for the operation and management of a Class II or Class III gaming activity, except that, before approving such contract, the Chairman shall require and obtain" pertinent background information to include "a complete financial statement of each person listed pursuant to paragraph (1)." (i.e., see Section 13(a)(3).)

The Pascua Yaqui Tribe proposes to further strengthen this Section of S.1303/H.R.2507 by requiring the Gaming

Commission to conduct appropriate background credit checks on all prospective management companies or contractors, similar to the standard credit checks undertaken by financial institutions to determine the "credit-worthiness" of a firm. Such credit checks would include an evaluation of information available through public sources such as Dunn & Bradstreet and TRW, as well as a more rigorous analysis conducted by expert staff of the background financial statements submitted by each contractor or management company.

In addition, since all gaming tribes have a valuable asset in their gaming enterprise(s), the Pascua Yaqui Tribe recommends that the Commission further protect tribes against the possibility of fraud or diversion of funds by management contractors or joint venture partners by requiring certain minimum financial guarantees, which could take the form of surety payment bonds or a bank stand-by letter of credit. We believe this type of financial guarantee is particularly important when a tribe does not have direct control over the management and day-to-day operations of a tribal gaming enterprise. In the case of a minimum financial guarantee, such as a surety payment bond, or a bank letter of credit, the tribe would be designated by the management contractor as the beneficiary, and would thus have the right to draw on the letter of credit or bond if and when the management company were delinquent in its payments to the tribe, pursuant to

the agreed-upon management contract. As the Committee knows, this type of financial arrangement is a standard operating procedure with many tenants who are required to post a bond or letter of credit in an escrow bank account.

The Pascua Yaqui Tribe has found out the hard way that the simple provision of requiring a financial statement of the person or entity having a financial interest in, or management responsibility for, a tribal gaming enterprise does not provide sufficient or necessarily accurate information on the short or long-term financial soundness (i.e. "credit-worthiness") of that individual or entity.

Specifically, we recommend that the following or similar language be added to S.1303/H.R.2507, Section 13(a)(3) and Section 13 (c):

Section 13(a)(3): " a complete financial statement of each person listed pursuant to paragraph (1);" and, any person listed pursuant to Subsection (a)(1) shall by subject to a standard financial background credit check by the Commission.

Section 13(c): "Any management contract entered into pursuant to this secion shall specifically provide -"

(7) for a minimum financial guarantee to the Indian tribe in the form of a surety payment bond or a bank stand-by letter of credit.

In addition, we propose an amendment to Section 13 Subsection (d) which provides that the Chairman of the

Gaming Commission "may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed forty percent (40%) of the net revenues."

In my prepared testimony, I stated that the Pascua Yaqui Tribe did not negotiate an agreement with our current management company based upon a percentage of the net operating profits, since our last four management agreements which were based on such an arrangement never allowed the Tribe to recoup its percentage share of the "net profits" as provided under each agreement. The plain fact is we were always told that there were never sufficient "net profits" to pay for the Tribe's share of the agreement after all prizes and expenses had been paid.

To deal with this situation, our current management agreement provides that the Tribe shall receive a per head fee for every person who walks in the door for the first five hundred (500) people. There is an escalator clause in our agreement to increase that per head amount at one quarter intervals for each additional one hundred (100) persons, up to a maximum of three dollars ($3.00) per person for eight hundred (800) people or more. In other words, the fee is two dollars ($2.00) per person for the first five hundred (500) people, two dollars and twenty-

five cents ($2.25) for the next six hundred people, two dollars and fifty cents ($2.50) for the next seven hundred (700) people and so on up to the maximum of three dollars ($3.00) for eight hundred (800) people or more. In addition, this system was based on a six month averaging of attendance. This arrangement, where the Tribe receives a per head fee off the gross take of the Bingo Hall, assures that a tribe will benefit from the bingo proceeds. According to our calculations, our Tribe would average approximately fifty thousand dollars ($50,000) a month, although this amount was very rarely paid, as detailed in my statement. Projections also showed that, based on these per head calculations, well over sixty to eighty percent (60% to 80%) of the projected net would go to the Tribe, if all other things were equal.

Accordingly, the Pascua Yaqui Tribe would respectfully recommend the following amendment to Section 13, Subsection (d): "The Chairman may approve a management contract providing for a fee based upon the net revenues of a tribal gaming activity," or for a fee based upon the percentage of gross revenues,"if he determines that such percentage fee is reasonable in light of surrounding circumstances but in no event shall the fee exceed forty percent (40%) of the net revenues."

3. COMMISSION LISTING OF MANAGEMENT COMPANIES/CONTRACTORS:

Mr. Chairman, the Pascua Yaqui Tribe recommends that the Committee include a provision in the legislation, or in the Committee Report to accompany the bill, that will provide for the Chairman of the National Indian Gaming Commission to ass[illegible]e a list of management companies and contractors in the gaming or bingo management business who have been approved by the Gaming Commission according to the provisions of Section 13 of S.1303 and H.R.2507. Such companies or contractors would also comply with other provisions of the legislation which determine the suitability and fitness of a management contractor for Class II and Class III gaming. The list of gaming management companies would be available upon request to any tribe within the United States.

Mr. Chairman, I want to thank you again for the opportunity to testify before your Committee today in strong support of H.R.2507. The Pascua Yaqui Tribe commends you for your leadership and respectfully requests consideration of our recommendations. Thank you very much.

Sheriff Don Omodt
President
Minneapolis Minnesota

L. Cary Bittick
Executive Director
Alexandria Virginia

JUL 15 1987

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314
Telephone Number 703-836-7827
Telecopier Number 703-683-6541

July 13, 1987

Sheriff Dwight Radcliff
1st Vice President
Circleville Ohio

Sheriff Henry Healey Jr.
2nd Vice President
New Haven Connecticut

Sheriff Lyle Swenson
3rd Vice President
Mitchell South Dakota

Sheriff Bob Rice
4th Vice President
Des Moines Iowa

Sheriff Marshall Rowlett
5th Vice President
Bristol Virginia

Sheriff Merrill Smothers
6th Vice President
Thomaston Georgia

Sheriff Robert Turner
7th Vice President
Prattville Alabama

Sheriff Frank Policaro
Sergeant At Arms
Beaver Pennsylvania

Sheriff E. W. Pelfrey
Secretary
Palatka Florida

Sheriff Richard J. Elrod
Treasurer
Chicago Illinois

Sheriff Richard Germond
Immediate Past President
Adrian Michigan

Sheriff Louis Bianchi
Immediate Past President
Wausau Wisconsin

Courtney A. Evans
General Counsel
Washington DC

The Honorable Morris K. Udall
Chairman
Committee on Interior and
Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The National Sheriffs' Association (NSA) appreciates your invitation to submit testimony on the issue of gambling on Indian lands.

Sheriff John F. Duffy testified for NSA on June 18, 1987, before the Senate Select Committee on this issue. Unfortunately, the Hearing in your Committee coincided with our Annual Conference, and we were unable to send a representative. We have, however, prepared a written statement for your proceedings, which you will find enclosed.

Thank you for considering our comments.

Very truly yours,

Susan P. Keegan
Legislative Director

enc.

BOARD OF DIRECTORS

Sheriff Belton Bergeron, Port Allen Louisiana
*Sheriff L. B. Bonds, Greenwood South Carolina
Sheriff Bill Holman, Marietta Georgia
*Sheriff James Murphy, Newport Vermont
Sheriff Jim Thomas, Nashville Tennessee
Sheriff Richard Wille, West Palm Beach Florida

Sheriff Jerry B. Brooks, Oregon Illinois
Sheriff John Duffy, San Diego California
*Sheriff John Lambert, Sidney Ohio
*Sheriff John Stark, Nevada Iowa
Sheriff Ralph Tyson, Greenville North Carolina

Ex-Officio Members
All Past Presidents

Sheriff Johnny Mack Brown, Greenville South Carolina
Sheriff Daniel Fogo, Fort Wayne Indiana
Sheriff Philip R. McKelvey, Cambridge Maryland
Sheriff Vince Swinney, Reno Nevada
*Sheriff Charles Von Wald, Rochester Minnesota

*Member of the Executive Committee

Sheriff Dale Carson, Jacksonville Florida
Sheriff Ken Sass, Albany Oregon
Sheriff Theodore Wiesmann, Juneau Wisconsin
Sheriff Lonnie Tipton, Lexington Kentucky
Sheriff Carl Wells, Bedford Virginia

Sheriff [illegible]
President
Minneapolis, Minnesota

L. Gary Billion
Executive Director
Alexandria, Virginia

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314
Telephone Number 703-836-7827
Telecopier Number 703-683-6541

Sheriff Dwight Radcliff
1st Vice President
Circleville, Ohio

Sheriff Henry Realey Jr.
2nd Vice President
New Haven, Connecticut

Sheriff Lyle Swenson
3rd Vice President
Wagner, South Dakota

Sheriff Bob Rice
4th Vice President
Des Moines, Iowa

Sheriff Marshall Hamaker
5th Vice President
Bristol, Virginia

Sheriff Merrill Smallwood
6th Vice President
Thomaston, Georgia

Sheriff Robert Turner
7th Vice President
Prattville, Alabama

Sheriff Frank Policaro
Sergeant At Arms
Beaver, Pennsylvania

Sheriff E. W. Pelliser
Secretary
Panama, Florida

Sheriff Richard J. Ehrlich
Treasurer
Chicago, Illinois

Sheriff Richard Hammond
Immediate Past President
Adrian, Michigan

Sheriff Lewis Evenson
Immediate Past President
Wausau, Wisconsin

Courtney A. Evans
General Counsel
Washington, DC

TESTIMONY

OF

JOHN F. DUFFY
SHERIFF OF SAN DIEGO COUNTY, CALIFORNIA

AND

CHAIRMAN OF THE NATIONAL SHERIFFS' ASSOCIATION
LAW AND LEGISLATIVE COMMITTEE

for the

Committee on Interior and Insular Affairs
U.S. House of Representatives

Indian Gambling Legislation

Prepared

June 28, 1987

BOARD OF DIRECTORS

Sheriff Dennis Bergeron, Port Allen, Louisiana
Sheriff Jerry B. Brooks, Oregon, Illinois
Sheriff Johnny Mack Brown, Greenville, South Carolina
Sheriff Dale Carson, Jacksonville, Florida
*Sheriff L. E. Bonnel, Greenwood, South Carolina
Sheriff John Duffy, San Diego, California
Sheriff Daniel Figel, Fort Wayne, Indiana
Sheriff Ken Katz, Albany, Oregon
Sheriff Bill Holmes, Marietta, Georgia
*Sheriff John Lambert, Sidney, Ohio
Sheriff Phillip E. McCubrey, Cambridge, Maryland
Sheriff Theodore Nunamaker, Juneau, Wisconsin
*Sheriff James Murphy, Newport, Vermont
*Sheriff John Stark, Nevada, Iowa
Sheriff Vince Swinney, Reno, Nevada
Sheriff Lonnie Taulbee, Lexington, Kentucky
Sheriff Fon Thomas, Nashville, Tennessee
Sheriff Ralph Tyree, Greenville, North Carolina
*Sheriff Charles Von Wald, Rochester, Minnesota
Sheriff Carl Wells, Bedford, Virginia
Sheriff Richard Wells, West Palm Beach, Florida

Ex-Officio Members
All Past Presidents

*Member of the Executive Committee

Thank you very much for the invitation to appear before you regarding the regulation of gambling on Indian lands. As you consider H.R. 964 (Congressman Tony Coehlo) and H.R. 1079 (Congressman Morris Udall), I hope that you will consider my thoughts and experience in this area.

I am speaking to you today as a representative of the National Sheriffs' Association. There are 3,100 elected sheriffs in this country and they are the chief law enforcement officers in their county. As the chief law enforcement officer, sheriffs are concerned about the proliferation of crime and that is why we feel it is so important for you to hear our concerns. While my testimony will focus on the problem of organized crime infiltration in San Diego County, I submit to you that loosely regulated Indian gambling will open up new havens for organized crime in Indian lands all over this country.

The consequences of our actions with regard to the bills pending before you affects Indians and non-Indians alike. Indian gambling draws large numbers of non-Indians to gamble on Indian lands. The very nature of this enterprise is such that strict regulation is required to protect all our citizens.

I am going to provide some background for you about California as a PL-280 State and outline for you some of the problems we have had in California with organized crime and Indian gambling. This

will convince you of how important adequate regulation is with regard to gambling. Reservation gambling, particularly bingo, has become a major concern for local, state and federal law enforcement and has impacted adversely on both Indian and non-Indian citizens.

California, as I am sure you are aware, is what is known as a Public Law 280 State, unlike other States such as Arizona where criminal law enforcement is not the responsibility of state and local agencies on Indian land.

The enactment of Public Law 280 in 1953 provided that all criminal laws of California and San Diego County were as applicable on an Indian reservation as in any other part of San Diego County. What this means is that beginning in 1953, the FBI no longer enforced federal criminal law on 117 reservations in California, 19 of which are in my County of San Diego. The federal statutes and the federal officers were replaced by state statutes, and the federal officers were replaced by state statutes, county ordinances and deputy sheriffs. Even though there have been a few federal court tests involving such things as the authority of deputy sheriffs on Indian reservations and the applicability of certain county ordinances which provide for criminal sanctions for violating such things as our public dance hall ordinance, the transition went smoothly.

For many years it has been the expectation of United States citizens that laws are applied equally throughout the country and that they are enforced equally. All of that changed with the advent of what the media calls, "Indian Bingo". I know that in 1953, the United States Congress did not foresee and did not intend that the conduct of gambling operations, which would result in the immediate arrest of the operators if committed anywhere else in California, would be not only tolerated but actually promoted by the Bureau of Indian Affairs and the Secretary of the Interior if conducted on Indian reservations. However, that is exactly where we are today. If a local Catholic Church or an Elk's Club or a mobile homeowners' association conducted bingo operations in the same manner as profiteering companies under contract with tribal councils now conduct them on 26 separate reservations in California, a Catholic priest, an Exalted Ruler or a mobile homeowners' board of directors would be prosecuted for criminal law violations.

I also do not believe that the Ninth Circuit Court of Appeals, in its 1982 reversal of a federal court decision in the Southern District of California, entitled "Barona Group of Capitan Grande Band of Mission Indians v. John F. Duffy, Sheriff of San Diego County", anticipated that they were creating a potential of 117 separate enclaves in California, 19 in San Diego County, where illegal gambling by profiteering corporations would be

sanctioned. Nor do I believe they still understand the problem as evidenced by their 1986 decision (Cabazon Band v. Riverside County) to uphold their 1982 decision (Barona v. Duffy) on allowing Indian gambling.

This problem has now grown in many other states such as Washington, Arizona and New Mexico. Some of these tribes are already discussing the possibility of introducing horse racing, dog racing, Jai Alai and off-track betting. We are talking about a growing, unregulated national problem.

The Barona decision encourages completely unregulated illegal gambling by non-Indian profiteers who use judicially established legal loopholes in Public Law 280 to expand activities that are illegal in every other place in the State except on Indian reservations. The essence of the Barona case was that the Ninth Circuit said that California's statute on bingo was a civil/regulatory and not a criminal/prohibitory statute. This decision was exactly opposite from the findings of the federal trial court judge. As a result, high stakes bingo and other illegal forms of bingo are being operated by quickly formed profit-making companies who have "sweetheart" contracts with Indian tribal councils.

Since the Barona decision, 25 other tribal councils in California have enacted a so-called bingo regulatory ordinance, four of

which are in my county. Barona was in operation until May 1986 when they closed their doors following the indictment of members of the management company for skimming thousands of dollars from the operation. A Texas-based company is negotiating a contract to run bingo and other forms of gambling on yet another reservation in my county.

All of these tribal councils have signed long-term contracts with different profit-making companies who operate high stakes bingo games that are not permitted anywhere except on Indian reservations. These unrestricted games have lured thousands of people to the Indian reservations and are generating millions of dollars of profit to these corporations.

Indian gambling operations are not subject to any control whatsoever and have great potential to be used for skimming, laundering of illegal funds and many other activities which are best avoided in such states as Nevada and New Jersey by regulating the gambling enterprise through state gambling commissions.

In California, the Ninth Circuit Court has allowed illegal gambling to take place on Indian reservations without regulation. Prior to their closing, the management company at the Barona Reservation said they were grossing $1 million-per-month in cash.

They were in operation since 1982 and the estimated gross income was in excess of $35 million dollars; however, there was no visible improvement to the Indians' status. In fact, some of the homes on the Barona Reservation still do not have running water. The management company claimed that all the money went to pay for prizes and payroll expenses. The dividends declared by the company were minuscule in comparison to the amount of cash taken in. The management company blamed their closure on the fact that the Indians would not allow them to bring in outside stockholders to bolster the bingo operation. The Barona Indians found that these stockholders were members of the management company which currently operates Sycuan Indian bingo in competition with Barona. This management company is known publicly as having been the object of law suits in other States where they conducted reservation bingo. In addition, we have confirmed information that this management company has been tied to several known organized crime figures.

As predicted, when the Ninth Circuit Court opened the door, these operators in San Diego County have expanded beyond traditional bingo into other forms of gambling. In August 1984, at the Sycuan Reservation, the management company began operating a casino-style lounge, featuring variations of illegal blackjack and keno, which they called "Bingojack" and "Bingo Horseracing". The operation was raided by deputies from my department who seized $4,400 in cash and three truckloads of gambling

paraphernalia which closely resembled equipment used in Nevada casinos. Twenty-one people were also arrested for state gambling law violations during the raid. Evidence was found indicating that these operators were about to install and start playing illegal variations of roulette and slot machines. I raced to the state courts to file criminal cases while the operators were running to the federal court to file for civil remedy of our seizure. The definition of bingo became the key issue.

With respect to the Barona Management Company, my deputies served search warrants and grand jury subpoenas simultaneously in San Diego County, Los Angeles County, Las Vegas, Nevada and Atlantic City, New Jersey. This followed an investigation which revealed evidence of conspiracy and grand theft, more commonly known as "skimming". This activity involved the general manager of the management company using "shill" players to win large prizes and secretly returning the money to the managers. All the searches produced useful evidence and principal individuals, including an employee of an Atlantic City, New Jersey casino, who were involved in the Barona skimming operation.

On April 2, 1986, Stewart Siegel, the ex-general manager of the Barona operation, pled guilty to four counts of grand theft following his indictment by the San Diego County Grand Jury and became a cooperative witness. As a result, one other person employed by the management company has been charged with three

counts of grand theft. By his own admission, Mr. Siegel has known ties to organized crime figures in Las Vegas, New York and New Jersey. Several other members of the Barona management company are also known to have these ties. In fact, an associate of a Los Angeles organized crime family was generally believed to be a hidden owner in the management company.

Mr. Siegel is also being investigated for involvement in two professional contract murders in Los Angeles with possible relationship to the Barona gambling operation.

Louis Cordileone, the boyfriend of one of the "shill" players in the Barona case, has been charged with subordination of perjury, where it is charged that he instructed the "shill" to lie to the County Grand Jury regarding their part in the operation. Cordileone is also known to have organized crime ties.

We have also learned that members of the Barona tribal council received favors from persons who are organized crime figures in San Diego County. These persons, using a "front" from Las Vegas, promised to either let the tribe run their own bingo or they would run it for them. Another group that has approached the Barona tribal council has plans of building a theme park on the reservation which includes a western town and live shows, and wants to buy an adjacent ranch and lease it back to the Barona tribe for a paramilitary "survival game" area.

Without the Barona decision, the Indian lands would not be attractive to these outside groups. Knowing that gambling is a sure draw, many outside groups will be approaching other tribes in the country promising them untold riches.

Bingo games have resumed on the Rincon Indian Reservation in San Diego County. The President and sole stockholder, claims to have invested $50,000 of his own money into the operation and used a $200,000 loan from two investors whom he declines to identify.

Under the previous management company, Rincon Indians did not make a profit and ended up in debt. The operator of that company claims he lost $800,000 himself in the operation; however, it is generally believed they grossed $8 million dollars during the first year of operation.

You can see from the example of just one county in the United States, how organized crime can harm our Indian and non-Indians citizens alike. I, like you, do not want to see a growth in organized crime because we do not have the foresight to stop this problem before it becomes epidemic.

Several bills have been proposed in the U.S. House of Representatives and the Senate this session of Congress to address the issue of Indian gambling.

I would like to offer my thoughts on these as you consider how to proceed:

* NSA believes that the individual states should determine whether or not gambling (for Indians and non-Indians) is permitted in a state. We further believe that each state should regulate and enforce those laws and regulations. For example, in Nevada, where high stakes gambling is permitted, it would be allowed also on Indian lands. Regulation of gambling would then come under state regulation as it does for non-Indians. Our members passed a resolution at our 1986 Conference addressing this issue, and a copy is attached for your information.

* We can see from the experience of the sheriffs in California, as well as North Carolina and Michigan, that Indian gambling is **NOT** merely an economic issue for the Indians. This is an issue for non-Indians alike, as gambling on Indian lands attracts hugh numbers of non-Indians and generates havens for organized criminals to engage in "shill" operations and money laundering. From our experience in San Diego, we are concerned that the Indians will not profit from these enterprises but that organized crime will find a new haven for its illegal activities.

* We believe that none of the current legislative proposals, S. 555, S. 1303, H.R. 964 or H.R. 1079, goes far enough in regulating Indian gambling. If Congress permits Indian gambling, we would like to see a bill that would: (a) allow Indians to conduct only those forms of gambling already permitted in a state, including bingo; (b) authorize existing state gaming authorities to regulate and enforce Indian gambling; and (c) establish a state mechanism to license and regulate the management companies operating Indian gambling.

* If, however, the Congress is going to pass one of the bills pending before them, we urge you to support S. 555 and H.R. 964, with some modifications: (a) Indian bingo would be permitted only as allowed by a state and subject to state regulation; (b) where Indian tribes contract with management companies for the generation of gambling, the management companies would be subject to licensing and regulation of that state.

This concludes my testimony. Again, I thank you for the opportunity to express the concerns of law enforcement on this important issue.

ATTACHMENT

NATIONAL SHERIFFS' ASSOCIATION
1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314 • 703-836-7827

L. CARY BITTICK
EXECUTIVE DIRECTOR

RESOLUTION

Regulation of Illegal
Indian Gambling

WHEREAS,

1. Unregulated Indian gambling presents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gambling; and

2. Unregulated Indian gambling represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

3. The states have traditionally regulated gambling, as they do liquor, and provide the best means of addressing the threats posed by unregulated Indian gambling;

THEREFORE, BE IT RESOLVED that the National Sheriffs' Association urges President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gambling; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to recognize that state and local jurisdiction over gambling on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to enact legislation to provide that the gambling laws and administrative regulations of the states, whether civil, regulatory, or criminal, as presently enacted or as they may be enacted, amended or revised shall be applicable to Indians and their nations, tribes, or bands and to all land owned by or held in trust for Indians and their nations, tribes, or bands, including without limitation regulations governing licensing, operation, conduct, promotion, administration, and disposition of proceeds from gambling as required under state law.

Adopted at a meeting of the Membership,
This 4th day of June, 1986
Reno, Nevada

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET, N.W.
WASHINGTON, D.C. 20037
202 785 9700
TELEX 892608 DSM WSH

ANDREW P. MILLER
DIRECT DIAL
202 828 2216

666 MADISON AVENUE
NEW YORK, N.Y. 10022
212 832 1000

JUL 14 1987

July 13, 1987

BY MESSENGER

The Honorable Morris K. Udall
Chairman
House Interior and Insular
Affairs Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed my statement for the record on behalf of the American Greyhound Track Operators Association (AGTOA) on H.R. 964 and H.R. 2507, legislation to regulate gaming on Indian lands.

AGTOA appreciates the opportunity to comment on these bills and trusts the Committee will move legislation at an early date.

We look forward to working with you and your staff in the days ahead.

Sincerely,

Andrew P. Miller

Andrew P. Miller

Enclosure

STATEMENT

BY

ANDREW P. MILLER

ON BEHALF OF THE

AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION

BEFORE THE

HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

CONCERNING

H.R. 964

AND

H.R. 2507

(INDIAN GAMING REGULATORY ACT)

July 13, 1987

Mr. Chairman and Members of the Committee:

My name is Andrew P. Miller. I am counsel for the American Greyhound Track Operators Association ("AGTOA"). It is a pleasure for me to submit to this Committee AGTOA's position on pending legislation to regulate gambling on Indian reservations.

AGTOA is a non-profit corporation which was formed in April 1946. Its membership consists of the owners and operators of forty-five Greyhound racetracks located throughout the United States. Membership is open to all lawfully licensed Greyhound tracks whether they be owned by individuals, partnerships or corporations.

Last year, the House of Representatives passed legislation dealing with the issue of gambling on Indian lands, but procedural problems prevented the Senate from acting on a compromise proposal before the end of the 99th Congress.

AGTOA was deeply involved in this debate during the last Congress. When the House Interior and Insular Affairs Committee held hearings and marked-up H.R. 1920 introduced by Chairman Udall, we supported Congressman Tony Coelho's efforts to place high-stakes Class III gaming under State control and regulation. In April 1986, the full House of Representatives took up H.R. 1920 with an amendment which was agreed to by Chairman Udall and Congressman Coelho. That amendment placed a moratorium on Class III high-stakes gambling on Indian lands. AGTOA opposed the

Udall bill as reported from the Committee, and reluctantly supported the moratorium as a short-term solution to the problems inherent in gaming on Indian lands.

The Senate Select Committee on Indian Affairs held a hearing on H.R. 1920 and the Administration's draft bill during the summer of 1986. After the Select Committee narrowly reported out their version of legislation, Chairman Andrews announced that a further compromise would be sought before bringing a bill to the Senate floor. In an effort to produce such a compromise that would protect both the rights of the tribes, the interests of the gaming industry and the legitimate concerns of the States concerning control of gambling within their borders, we worked with both the Senate and House staff, tribal representatives and State officials to produce a compromise for full Senate consideration last fall. This compromise represented a consensus position among most groups, and likely would have been adopted by the full Senate and accepted by the House but for certain procedural obstacles that prevented its consideration in the waning days of the 99th Congress.

At the beginning of this year, we continued to work with parties in interest to refine the compromise further in order to produce a bill which could receive the widest possible support. This consensus-building process was completed in late January, 1987 and is embodied in legislation introduced both by Senator Daniel Inouye (S. 555) and by Congressman Coelho (H.R. 964).

Like all true compromise efforts, neither the tribes nor AGTOA and other gaming industry interests nor the States achieved one-hundred percent of what they were seeking. Nevertheless, at the time of introduction the bills were basically acceptable to all parties who participated in the negotiations.

Efforts to pass these bills and solve the problems inherent in unregulated gaming on Indian lands were, of course, delayed as a result of the Supreme Court's decision in the Cabazon case which was handed down on February 25, 1987. The Cabazon case, in a nutshell, stands for the proposition that absent legislation from Congress State control over bingo and card games on Indian lands is not possible. This general proposition is, however, fraught with numerous potential exceptions and caveats that make the prospect of further litigation, absent Congressional action, almost certain.

During the past Congress, the specter of a Supreme Court decision on Indian gaming was ironically both an impediment as well as a spur to Congressional action. Among some groups, there was a view -- misguided in our opinion -- that the Supreme Court would "solve" the issue of Indian gaming once and for all. This view was shared both by some Indian tribes who advocated no federal legislation on this subject as well as by others who were totally opposed to any form of Indian gaming and who blocked any reasonable legislation in the 99th Congress.

AGTOA has never believed that the Supreme Court in Cabazon would settle the issue of Indian gaming. From the inception of debate in the 99th Congress, we have consistently advocated the need for responsible legislation to address the serious questions of tribal rights, state control and the protection of the integrity of the gaming industry. It was this desire for balanced legislation which led us to participate in negotiations with the parties in interest last year and early this year, and it remains our position today.

Now that the Cabazon decision has been handed down and sufficient time has elapsed to review that decision, we urge Congress to adopt the compromise approach embodied in H.R. 964. We believe this bill represents an appropriate balance between tribal sovereignty and State jurisdiction. Its objective is to provide economic development for the tribes while deterring the influence of organized crime through strict State control of high stakes gaming. For the long-term good of all interested parties, the Indians, the States and the gaming industry, Congress must act definitively on this issue now.

Until Congress passes legislation, the ability of organized crime to infiltrate games on Indian lands is enhanced with each passing day. It is Congress' duty to protect the citizens of the States, both Indian and non-Indian, in which these games are played from unscrupulous elements of society who would otherwise prey on unregulated gaming enterprises in Indian

country. AGTOA strongly believes that H.R. 964 is the best vehicle to insure safe, fair and honest gaming on Indian lands.

The legitimate concerns of Congress on the need to place reasonable controls over unregulated Indian gaming have not diminished as a result of the Cabazon decision. Indeed, Congress should have more concern that this decision will accelerate the plunging of tribes into the uncharted waters of high-stakes gaming as unscrupulous promoters sing the siren song of potential wealth. While Indian bingo has been a source of revenue for certain tribes, Congress correctly was concerned last year about the expansion of unregulated gaming into the much more complex areas of parimutuels and casino gaming. The Cabazon decision did nothing to alleviate this concern.

Lest there be any doubt about the right of Congress to impose controls over unregulated gaming on Indian lands, the Supreme Court acknowledged such a role in the Cabazon case when the Court stated:

> "It is clear, however, that state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided."

And also:

> "[t]he Federal Government has the authority to forbid Indian gambling enterprises."

AGTOA does not seek to forbid Indian gaming. Indeed, we argue that the issue is not about gaming among Indians.

Instead, the issue is regulating games on Indian lands which attracts almost entirely non-Indians thus avoiding State law and regulations which would otherwise apply to non-Indian gamblers. There is no reason why State law should be avoided by these non-Indians solely because they step across a reservation boundary. We oppose the short-run financial reward of engaging "management contractors" for unregulated Indian games run for the benefit of non-Indians who use the reservation lands as a enclave to escape State control that would otherwise apply if such activities were held on non-Indian lands. In the long-run, we fear that such unregulated activity will only bring scandal and disrepute to the Greyhound racing industry whose reputation we have sought to protect over the years.

Instead, we believe that the compromise embodied in H.R. 964 represents the best approach to the problem. It allows Indian bingo to continue without change, thus protecting actual and future games. In the area of "hard-core" gaming such as parimutuels and casino gaming, however, it insists that, if the tribes wish to engage in such activity, it come under the control of States with a wealth of experience in regulating such complex games.

States already have the mechanisms in place to regulate high-stakes gaming. They know how animals can be drugged, games are tampered with and corruption can seep in. While State regulatory systems may not always be perfect, allowing a separate

and unequal system of Indian games to sprout up will only compound the difficulties of maintaining the integrity of the gaming industry.

Non-Indian games are obviously profitable. The tribes do not need to avoid State regulation to make money but, without State regulation, all the promise of riches may well vanish in scandal. In providing for State control over "hard-core" gambling, H.R. 964 is sensitive to the principle of Indian sovereignty and goes to great lengths to insure that, unless and until the tribes wish to engage in such gaming, they need not assent to State control. Finally, the compromise protects both the tribes from unfair discrimination by a State that would violate the equal protection clause of the Constitution.

In short, the Coelho bill is a true compromise. AGTOA is not entirely happy with its provisions and neither are the tribes. While some tribes which supported the compromise earlier this year believe that the Cabazon decision has changed the political landscape and that legislation is no longer necessary, AGTOA believes that Congress must look beyond parochial interests on this issue and act to balance the competing rights, duties and responsibilities of the tribes, the gaming industry and the States. In doing so, there is no way to make all parties completely happy, but there is a way to insure that all parties are protected and that the public interest is served. AGTOA urges the Committee to act favorably on H.R. 964.

Mr. Chairman, we applaud your efforts to examine this issue thoroughly. We also thank you for the opportunity to share AGTOA'S views with the Committee. We hope you will move expeditiously on legislation and look forward to working with you, your staff and other Members of the Committee.

Thank you.

BRITISH AMERICAN BINGO Inc.

THE QUADRANGLE
2701 EAST CAMELBACK ROAD, SUITE 484
PHOENIX, ARIZONA 85016
TELEPHONE (602) 224-0715

TESTIMONY OF MR. JOHN O'NEILL,
EXECUTIVE VICE PRESIDENT,
BRITISH - AMERICAN BINGO, INC.,
ON H.R. 2507 and H.R. 964,
TO REGULATE GAMING ON INDIAN RESERVATIONS,
FOR THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
JUNE 25, 1987

Mr. Chairman, Members of the Committee, good afternoon. I am John O'Neill, Executive Vice President of British American Bingo, a Tribal bingo management company located in Phoenix, Arizona. Currently, British American Bingo (or B.A.B.) manages three Tribal bingo ventures in Auburn, Washington, Lemoore, California, and Albuquerque, New Mexico.

British American Bingo is a wholly-owned subsidiary of Bass P.L.C., one of the largest companies in England. Bass P.L.C. was founded in 1775 as a local brewer and is now Europe's largest brewer. Those of you who have visited England will almost certainly have seen if not visited one of our 8,500 pubs and restaurants. Bass also operates very extensive leisure-related facilities, including hotels and vacation resorts. Additionally, one of Bass's smaller companies owns and operates 80 commercial Bingo Clubs throughout Great Britain

The English Bingo industry was established just after World War II. It is now a mature profitable industry employing thousands and providing service to hundreds of thousands of customers. The industry is closely supervised by the Gaming Board of Great Britain through a well-developed and inter-related system of operative licenses, club licenses, field visits by Gaming Board Inspectors, and regulations developed within the general aegis of the Gaming Act.

Noting the development of Tribal commercial bingo in the United States, Bass established B.A.B. here two and one half years ago. Since that time, we have consistently supported the enactment of sensible legislation to regulate Tribal gaming. Although the advent of commercial bingo in the United States is the unique product of Tribal sovereignty and Indian ownership, we see many parallels in the business development of a Bingo industry in our two countries.

Bass, and B.A.B., with its long-standing financial expertise and management strength, is by nature honest, well disciplined and conservative. We feel that, in both its developmental and mature phase, this Indian Bingo industry will benefit from the involvement of companies such as ours. However, we are accustomed to and seek a reasonably stable environment with some acceptable forms of protection including regulation, arbitration, and

grievance and dispute resolution. We are not comfortable with an entirely unregulated environment which, like all immature industries, has attracted along with the truly talented, a host of others, including the unscrupulous, the incompetent, and the dishonest all pursuing a get-rich-quick scheme.

My company is still learning in this American market. We have followed the arguments that Indian bingo will be attractive to organized crime. We don't rule out this possibility even though our experience suggests that it is not especially likely, at least not in the near term. The real and present problems in this industry are those shared by all retail industries - theft, pilferage, product "shrinkage", incompetence and dishonesty at all levels. All responsible management teams, whilst seeking to minimize these problems through selection, training, and motivation, still keep a weather eye open for employee frauds and develop regulations and control systems to counter these.

In its current form, bingo is a high-risk industry. Many contracts are hedged in by uncertainty - this was certainly the case before the Cabazon-Morongo case, and in some instances the relationship between the Tribe and the management company is not a happy one. The industry is basically open to anyone, there is no ongoing supervision by an experienced central body - no gaming Commission. It encourages a get-rich-quick environment and the principal losers are the Tribes and the customers who have had to endure rudimentary facilities and the occasionally discovered malpractice. Some Tribes have the resources available to prevent this, others, probably the majority, do not.

Properly managed, a Tribal bingo business can and will help the Tribe tackle its various problems and difficulties. This correct management will be stimulated by the establishment of controlling legislation and a National Indian Gaming Commission.

The key to a successful industry does not lie in establishing an exact contract-formula, but in providing a framework of control with operative licenses and game licenses, underpinned by necessary background checks. More important is the ongoing examination of the industry, those working in it and the establishment of a more reasonably secure environment.

B.A.B.'s preferred position is for flexible negotiated terms tailored to each Tribe's circumstances followed up by informed, experienced, consistent standards of supervision by a National Commission. Rigid and overly limited contractual terms, such as the 5 year management contract term and actual 29% profit share (see attached) contained in H.R. 964 are prohibitively restrictive.

Such rigid terms prevent the increased capital investment to build the attractive facilities we believe to be necessary to foster a long term-industry. They favor Tribes that have better locations, while denying the benefits of bingo to Tribes at more

remote locations or facing competition. They also favor Tribes with existing games by making economically unattractive the provision of outside assistance that is frequently needed by Tribes seeking to start a game. H.R. 964's management terms especially favor existing games that are Tribally operated, in that its restrictions would certainly force the closure of at least some existing games where their outside managers simply could not afford to stay on and where the Tribes are unwilling or unable to continue operation.

By making the legislation prohibitively restrictive for legitimate managers, it effectively eliminates that option for Tribes. But while such restrictive limitations would deter companies like mine that seek a true maturation of the industry, they would not particularly affect the get-rich-quick merchants who build cheap, exhaust the market, and then hastily depart. They perhaps regard anything over three years as a bonus.

It has been represented by some members of the Tribal gaming industry that a five year contract term is justified by their assertion that such an amount of time is the period needed for Tribes to learn enough to assume direct operation of their games. While their assertion that five years is the period needed for every Tribe to assume the direct operation of their game may - or may not - be appropriate or correct, its application as a reason to limit a contract term is specious. The fact is that the period of time needed for a Tribe to take over a game once it is present on the reservation is not at all necessarily related to the period of time that warrants a manager's investment of funds, time and effort to join a Tribe in establishing and developing a game. A Tribe's ability to assume operation of its game may have little or no bearing on the economics of attracting investors or managers to the differing locations of Tribal games.

In any event, strict formulas by themselves are not much of a detriment to the unscrupulous. Legal and accounting manipulations can be devised to get around the letter of the law. The true strength of this legislation lies in its creation of a knowledgeable and active regulatory Commission that will protect the fair and honest games and flush out those that are not.

Although we would prefer as much flexibility as possible to meet the varied demands of the market, B.A.B. can support the 7 year contract term and true 40% profit share provisions contained in H.R. 2507 as fair and workable. We believe we could meet those terms and still operate the three games we now manage.

I am aware that the issues being considered here go beyond the Indian Bingo industry and encompass the much larger issue of Class III gaming. I hope that these larger issues can be satisfactorily resolved so that this legislation can proceed and Indian bingo may also advance beyond its current unstable phase.

This transition from an immature "anything goes" atmosphere

to a mature, honest self-regulating industry is a necessary evolution. Those who prefer the "anything goes" atmosphere do not welcome this legislation. My company urges that a solution be found and that legislation be enacted which will provide a more secure environment wherein can grow a well-disciplined, long-term Indian gaming industry the benefits of which are accessible to all Tribes.

Thank you.

IN H.R. 964, A MANAGER'S FEE LIMITATION OF 40% OF NET REVENUES IS ACTUALLY 29% OF NET REVENUES.

In Sections 12(b)(5) and 12(c), H.R. 964 requires "that the term of the contract not exceed five years" and "in no event shall the [manager's] fee exceed 40 percent of net revenues". Section 19(8) of H.R. 964 defines "net revenues" as "gross revenues ...less amounts paid out as total operating expenses including management fees". In cases where the management fee is a percentage of net, this would mean that the net out of which the manager is to receive his fee is to be reduced by the amount of the fee. This reduction, whether inadvertent or deliberate, has the practical consequence of restricting the management's percentage from a stated 40% to an actual 28.6%. The following formula demonstrates the reduction. M = Management Fee, G = Gross Revenues, P = Prizes, and E = Operating Expenses.

M = .40(G-P-E) -.40M or 1.40M = .40(G-P-E) or

M = .40(G-P-E) divided by 1.40 or M = .286(G-P-E)

So, the stated 40% of net revenues management fee limit really turns out to 28.6% of net revenues.

○