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Department of Justice

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STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

CONCERNING

VARIOUS ACTS TO REGULATE GAMBLING ON INDIAN RESERVATIONS

ON

NOVEMBER 14, 1985

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Mr. Chairman and Members of the Committee

My name is Victoria Toensing. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

It is a pleasure for me to appear before this Committee to state the Department of Justice position on gambling on Indian reservations. First, I would like to present some background on this issue.

In June of 1984, my colleague, Deputy Assistant Attorney General Mark Richard, appeared before you to testify on your bill, H.R. 4566, the Indian Gambling Control Act. He outlined for you at that time the concern of the Department of Justice over the development of widespread, unregulated high-stakes gambling on Indian reservations. He expressed the law enforcement community's fear that these operations, with their large sums of cash, and lucrative peripheral service industries, would draw organized crime like a magnet, and that in its trail would come fraud, intimidation and corruption.

Mr. Richard emphasized, as I do today, that we are speaking from an historical point of view. We are trying to prevent evils that have always plagued the gambling industry from developing -- those evils which experience over several decades has shown us are bound to occur. We do not claim that

Indian gambling operations are presently "mobbed-up." We state that only when these operations become fully legal and thus stable, when they cease to be a novel phenomena scrutinized by suspicious local law enforcement agencies, when no court decision or congressional act can be anticipated that will suddenly invalidate or eliminate the games, that will be the time for the mob to move in. Until that time, organized crime infiltration would be unwise because early detection could risk the prize of ultimate infiltration.

Local newspapers during the last few weeks have provided chilling proof of our thesis. At a trial going on right now in Chicago, a major union official testified how mob elements coerced a loan from the pension fund. This money was loaned to an entrepreneur who had purchased a hotel casino. The casino operator testified how that loan came with "partners" who ultimately forced him out of the business by threats against his life. He also described how the controlling mobsters skimmed millions of dollars from the casino operation. And all this in a highly regulated and controlled industry with intensive background checks, licensing procedures, auditing and oversight conducted by state officials.

Nor is this an isolated incident. The former mayor of an East coast casino city was convicted for demanding bribes while he was in office. He believed he was demanding bribes from

casino interests, but they were in fact undercover agents of the FBI.

The Department told this Committee, a year ago last June, that it "endorse[d] appropriately crafted standards and regulations for [Indian] gambling activity." We expressed reservations that H.R. 4566 as drafted prevented our full endorsement of its provisions, and admitted that we had "been unable to come up with a satisfactory alternate mechanism." We expressed the hope that "in conjunction with the Department of Interior" we would be able to do so.

I am able today to announce an Indian gambling policy that has been agreed upon by the Department of Interior and Justice. This policy has been hammered out after much hard thought and debate within each, as well as between, the two Departments. There has been as well input from the Indian tribal gambling interests and state law enforcement officials. The policy is not foolproof. It does not guarantee that nothing will go wrong. It represents the results of give-and-take negotiations in which no party gets or loses everything it wants. What this agreement represents is our best effort to arrive at a regulatory scheme that will balance the interests of the federal, state and tribal governments; that will respect law enforcement concerns, tribal sovereignty and economic development; and that will insure the integrity of the games legitimated by this legislation.

We are not prepared to offer a bill for this Committee's consideration at this time. Rather, I will lay out the major concepts of the plan that will be embraced in a bill that we hope to offer in the near future.

The major points of agreement are:

- In addition to social and ceremonial gambling among Indians, commercial ("high-stakes") bingo - and only bingo - would be permitted on Indian reservations. This would include those reservations over which criminal and/or civil jurisdiction has been vested in a State. The gaming must also be authorized by tribal ordinance as well as by the federal law to be enacted.

- All other forms of gambling would be forbidden except as authorized by tribal ordinance and by the criminal and regulatory law of the state in which the reservation is located.

- Unauthorized bingo operations would be a federal crime. Other illegal gambling would be subject to federal prosecution under the Assimilative Crimes Act or state prosecution where the state exercises criminal jurisdiction over the reservation.

- A board would be created with authority to license, oversee, audit and regulate tribal bingo operations. The board would be appointed by the Secretary and would serve at his pleasure.

- In its licensing function, the board would have authority to conduct background investigations; to grant,

suspend and revoke licenses. Licenses would be required of operating entities and personnel.

- The board would have the power to set limits on prizes and combinations, and to prescribe controls on record-keeping and the handling of cash and equipment.

- Its representatives would have access to gambling premises and records of licensees.

- It would have authority to demand independent audits of the licensees and to perform its own audits.

- The body would propose its own budget and licensing fee structure, subject to Secretarial approval. Licensing fees payable by the gaming operations would eliminate cost to the taxpayer. The costs of regulation would be borne by the industry.

- The body would have authority to issue judicially enforceable cease and desist orders to enforce its regulations and licensing decisions.

- The Secretary, in addition to his power of appointment and removal, would also be authorized to require reports from the oversight body, and the Department's Inspector General would have investigative authority with respect to the regulatory body. The Secretary would also have authority to veto regulations of the board.

There would also be express reaffirmation of the Secretary's authority to approve all leases and management contracts involved in the establishment and operations of bingo

operations on the reservations, as well as tribal gaming ordinances.

- The bill would also provide that the bingo operations are to be conducted for the benefit of the tribe as a governmental entity and community, not for private profit of individual members. Provision would be made to restrict the gaming operations to the reservation proper, and on trust lands where the tribe resides as a community and exercises authority as a government. Local governments would not be permitted to share in the proceeds of the operations in return for deeding over property for a bingo establishment. Outside management companies, because their expertise is required, would be permitted. But their contracts and conduct would be strictly controlled.

- Finally, the bill would contain a sunset provision which would require the Congress in five years time to take a hard look at the Indian gambling industry and the federal oversight program.

As I said earlier, in my testimony today, we do not offer this proposal as fail safe. There is a great deal of skepticism within the law enforcement community whether this plan will succeed. We offer it as a compromise measure between those who would eliminate entirely commercial reservation gambling and those who would allow it to flourish free of government regulation. After examining the several major

options and their variants, this plan is the one which the Justice and Interior Departments believe has the greatest chance of fostering honest games on the reservations and that will swell the coffers of tribal governments and not those of the crime lords of the underworld.

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