

NLWJC - Kagan

Counsel - Box 021- Folder 006

Indian Gambling Case [1]

THE WHITE HOUSE

WASHINGTON

July 2, 1996

Edward C. Wallace, Esq.
Greenberg, Traurig, Hoffman, et al.
153 E. 53rd St., 35th floor
New York, NY 10022

Dear Ed:

As a result of our recent conversation, I have looked into the status of the effort to bring Indian gaming to the Catskills, Long Island and Governor's Island. As you mentioned, Governor Pataki is, in fact, engaged in negotiations with the New York Oneida tribe to bring Indian gaming to the Catskills. It is my understanding, however, that reports that these negotiations include proposed casinos for Long Island and Governor's Island are untrue.

The U.S. Department of the Interior has been following these negotiations, which are designed to provide a means of liquidating longstanding land claims against the state by the New York Oneida, the Wisconsin Oneida and other tribes, very closely. They report that several very serious issues remain unresolved.

The U.S. Department of the Interior is generally supportive of the idea of taking land into trust for purposes of the construction and operation of a casino to be run by the New York Oneida, or another tribe with a pending land claim. This support, however, is contingent upon local community support, which is to be manifested in the form of an approved ballot referendum on the issue.

At this point, it appears that consideration of such a referendum by the voters will not be possible until the fall of 1997. Only upon passage of the referendum, and only with Governor Pataki's concurrence, would the Department take the land into trust and construction of an Indian gaming casino in the Catskills begin. Although the Governor may consult the Legislature, the law does not require him to do so.

If you have any further questions, please contact me or Tom Shea at 202-456-2459.

Sincerely,

Harold Ickes

Harold Ickes
Assistant to the President and
Deputy Chief of Staff

cc: Tom Shea



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

TRANSMITTAL SHEET

Date: 7/29

of pages: 2

TO: Elena Kagan

Agency / Bureau: _____

Telephone Number: _____

Fax Number: 456-1647

Subject: N.Y. Gaming

FROM: Bob Anderson

Department of the Interior
Office of the Solicitor
Division of Indian Affairs
6456 MS/MIB
Washington, D.C. 20240

Transmission #: 202/219-1791
Confirmation #: 202/208-3401

REMARKS: _____

As I mentioned in my voice mail to you, I would prefer that this letter not be sent. There is no certainty as to which ~~business~~ Oneida tribe might obtain a casino. Also we will not require a local ballot measure, but 'N.Y. State might. Please call - 208-7404

THE WHITE HOUSE

WASHINGTON

July 2, 1996

Edward C. Wallace, Esq.
Greenberg, Traurig, Hoffman, et al.
153 E. 53rd St., 35th floor
New York, NY 10022

Dear Ed:

which may include Indian gaming in the Catskills as a component of the New York Oneida settlement with the state of New York and Oneida.

As a result of our recent conversation, I have looked into the status of the effort to bring Indian gaming to the Catskills, Long Island and Governor's Island. As you mentioned, Governor Pataki is, in fact, engaged in negotiations with the New York Oneida tribe to bring Indian gaming to the Catskills. It is my understanding, however, that reports that these negotiations include proposed casinos for Long Island and Governor's Island are untrue.

The U.S. Department of the Interior has been, following these negotiations, which are designed to provide a means of ~~liquidating~~ ^{resolving} longstanding land claims against the state by the New York Oneida, the Wisconsin Oneida and other tribes, very closely. They report that several very serious issues remain unresolved.

The U.S. Department of the Interior is generally supportive of the idea of taking land into trust for purposes of the construction and operation of a casino to be run by the New York Oneida, or another tribe with a pending land claim. This support, however, is contingent upon local community support, which is to be manifested in the form of an ~~approved ballot referendum on the issue~~ ^{of consent in a way determined to be appropriate}.

At this point, it appears that consideration of such a referendum by the voters will not be possible until the fall of 1997. Only upon passage of the referendum, and only with Governor Pataki's concurrence, would the Department take the land into trust and construction of an Indian gaming casino in the Catskills begin. Although the Governor may consult the Legislature, the law does not require him to do so.

If you have any further questions, please contact me or Tom Shea at 202-456-2459.

Sincerely,

(Handwritten signature)

Harold Ickes
Assistant to the President and
Deputy Chief of Staff

by state and local officials.

cc: Tom Shea

Litigation in Onida case

We're not party

Might IV

But now trying to facilitate a settlement

Trying not to disclose anything in writing
re nature of our contacts / our position.

Prefer that HI not respond at all.

Telephone ^{call} better than letter.

↓
FINE

February 15, 1996

MEMORANDUM FOR LEON E. PANETTA, THE WHITE HOUSE

FROM: THE ATTORNEY GENERAL

SUBJECT: THE DEPARTMENT OF JUSTICE WEEKLY REPORT

I. Key Department News

Suits Challenging Indecency And Abortion Provisions Of The Telecommunications Act Of 1996 (the "Telecommunications Act") Filed. As part of the Telecommunications Act, Congress enacted the Communications Decency Act (CDA), which makes it a violation of criminal law for individuals to transmit "indecent" speech over the Internet and other interactive computer systems. In addition, Section 507 of the CDA amended a provision of 18 U.S.C. § 1462, which had criminalized the transportation of information, goods or products relating to abortion, extending the ban to means of telecommunications. Three suits have been filed to date challenging the CDA, in which various Internet users and providers assert that the CDA violates the First Amendment because it will have a "chilling effect" on speech and will improperly restrict what materials adults can exchange and access via computer. American Civil Liberties Union, et al. v. Reno; Alexander Sanger, et al. v. Reno; Joe Shea, on behalf of the American Reporter v. Reno. The Civil Division is defending the "Internet indecency" provisions of the CDA, but has advised the courts in Philadelphia and Brooklyn that the Attorney General will not prosecute under the abortion provision in light of the Department's long-standing view that such speech restrictions are not constitutional.

Supreme Court To Hear Arguments In Koon And Powell. On February 20, 1996, the Supreme Court will hear oral argument in Koon v. United States, and Powell v. United States. Koon and Powell were convicted for their role in the beating of Rodney King in Los Angeles, California. The district court departed downward from the sentencing range prescribed by the Sentencing Guidelines for their offense. The Ninth Circuit affirmed their convictions, but vacated the sentences and remanded for resentencing, ruling that the reasons given by the district court for the downward departures were invalid. The Supreme Court granted certiorari on the sentencing issues. The U.S. will argue that the court of appeals properly reviewed the departures de

novo, and that it correctly concluded that each of the grounds for the departures cited by the district court was invalid.

Sara Lee To Pay Record Civil Penalty Violating Antitrust Premerger Notification Requirements. On February 6, 1996, a civil antitrust suit and proposed settlement were filed with the court in U.S. v. Sara Lee Corp. The complaint alleges that a Sara Lee subsidiary, Sara Lee/DE NV of the Netherlands, negotiated an acquisition of more than \$15 million in U.S. shoe care product assets from London based Reckitt & Colman plc in 1991 and avoided making premerger Hart-Scott-Rodino filings. Sara Lee will pay \$3.1 million if the settlement is approved by the court. This is the largest civil penalty any company has ever paid for violating the antitrust premerger requirements.

First Case Filed Under the Civil Remedy Provision of the Violence Against Women Act. On January 19, 1996, Christy Brzonkala, a former student at Virginia Tech in Blacksburg, Virginia, filed the first federal lawsuit alleging a violation of the civil rights provision of the Violence Against Women Act of 1994. Brzonkala v. Virginia Polytechnic Institute and State University, Antonio J. Morrison, and James Landale Crawford. The suit alleges that two students raped Ms. Brzonkala on the campus in September of 1994, and that the attack was motivated by animus against women, a necessary element of the claim. The suit also alleges that the University violated Title IX of the Education Amendments of 1972 by failing to properly discipline the students.

II. Department Work on Presidential Initiatives

Violence Against Women Conference Held In Delaware. On February 12, 1996, Violence Against Women Office Director Bonnie Campbell joined Senator Biden in Wilmington, DE for a conference with approximately 70 national corporate leaders to focus attention on and raise awareness of the threat management programs and employee assistance programs provided by corporations for victims of family violence.

III. Congress

Both the House and the Senate are meeting in pro forma sessions this week.

Senate Whitewater Hearings Continue. The Senate Special Whitewater Committee has scheduled hearings for this week on February 13, 14, and 15.

District of Columbia Conference Report Passes House but Stalls in Senate. The House passed the conference report on January 31, but the school voucher provision in the conference

report has stalled action in the Senate. Senator Dole has indicated that he will file a cloture motion on February 23 and that a cloture vote will be scheduled when the Senate returns on February 27. The Administration has threatened to veto the bill over the voucher provision.

House Crime Subcommittee to Hold Oversight Hearing on Independent Counsel. The Crime Subcommittee of the House Judiciary Committee will hold an oversight hearing on the Independent Counsel on February 29.

Senate Committees to Hold Hearings on Economic Espionage. The Senate Intelligence Committee and the Subcommittee on Terrorism, Technology and Government Reform of the Senate Judiciary Committee will hold a joint hearing on economic espionage the week of February 26.

IV. Regulatory Action

None to report.

V. Press Inquiries

None to report.

VI. FOIA Requests

- Both Criminal Division and OIP received requests for records concerning Theng Bunma, a 1995 delegate of the Cambodian government who, the requester (Wall St Journal) seems to think, is involved in drug trafficking. The WSJ also inquires about issuance of a visa to Mr. Bunma.

VII. Week in Review

Fifth Circuit Reverses Dismissal For Lack Of Standing In Case Challenging The Freedom Of Access To Clinic Entrances Act ("FACE"). On February 6, 1996, the Fifth Circuit reversed the dismissal of plaintiffs' complaint in Cook v. Reno. Anti-abortion demonstrators filed suit seeking an injunction against enforcement of FACE. The demonstrators' complaint alleged a desire to engage only in peaceful, non-confrontational activities. The district court denied the motion for a preliminary injunction because the statute does not proscribe peaceful picketing and protest. The court then dismissed the complaint for lack of standing. The Fifth Circuit reversed in a brief decision. The court of appeals ruled that the district court had impermissibly intertwined the issue of the plaintiffs' standing with their likelihood of success on the merits. The Fifth Circuit remanded the case to permit the demonstrators to amend their complaint.

DOD Set-Aside Case Settled. On February 6, 1996, the parties filed settlement agreements and joint stipulations for dismissal in McCrossan Construction Co. v. Perry et al., and McCrossan Construction Co. v. Carney et al.. These two Adarand-related cases were brought by a non-disadvantaged contractor seeking Department of Defense (DOD) contracts designated for small disadvantaged businesses (SDB) pursuant to DOD's statutory set-aside program, 10 U.S.C. § 2323. Perry involved an Army construction procurement at the White Sands Missile Range in New Mexico. Carney involved an Air Force construction procurement at the Holloman Air base in New Mexico. In October 1995, DOD suspended one of the statute's regulatory provisions referred to as the "rule of two." In general, it provided that a Department of Defense procurement should be set-aside exclusively for SDBs if at least two qualified SDBs express interest in bidding on the contract. The solicitations being challenged in these lawsuits were set-aside for SDBs pursuant to this regulatory provision. The settlement agreements permit plaintiff to recover reasonable attorney fees in return for dismissing the two suits with prejudice. The agreements further reflect that the Government denies the illegality of its actions or the unconstitutionality of the statute and the regulations at issue.

Defendant In Environmental Justice Case Sentenced To 18 Months For Illegal Asbestos Removal From Building Located In Minority Community. On February 8, 1996, in US v. Mizani, et al. Mohammed Mizani, a real estate developer, was sentenced to 18 months in prison for conspiracy to violate the Clean Air Act. Mizani directed the illegal asbestos removal from a 14-story commercial building located in a North Philadelphia minority community. He used homeless men who lived in a shelter that he owned and operated to remove the asbestos. On August 9, 1995, Mizani's employee, Lalit Verma, was sentenced to five years of probation and a \$25,000 fine on a guilty plea to conspiracy to violate the Clean Air Act.

D.C. District Court Denies Tribe's Request To Enjoin The Department From Taking Enforcement Action Against Gaming Casino; U.S. Files Counterclaim For Declaratory Action In Related Case. On February 5, 1996, in Apache Tribe of the Mescalero Indian Reservation v. Reno and Babbitt, the district court denied a request by the Mescalero Apache Tribe to prevent the Department of Justice from taking an enforcement action against the tribe's gaming casino. The court stated that the Mescaleros failed to establish irreparable injury or demonstrate that the public interest would be served by granting injunctive relief against the United States. The court also granted the United States' motion to transfer the case to the District of New Mexico. On February 12, 1996, in the related case Pueblo of Santa Ana, et al. v. Kelly, et al., the United States filed its answer and counterclaim against the tribes (and joining New Mexico as a defendant), seeking a declaration that Indian Class III gaming is

illegal in New Mexico because that state's highest court ruled recently that no such gaming is permitted in the State for any purpose. Under IGRA, Class III gaming is therefore illegal regardless of whether the compacts are valid. Our pleading explicitly took no position on the validity of the compacts.

New Hampshire Bank Officer Pleads Guilty to Conspiracy Charge. Nancy I. Keene pleaded guilty to conspiring to falsify mortgage loan documentation while working as a loan officer for the New Hampshire mortgage loan subsidiary of Dime Savings Bank of New York, FSB. Keene was one of seven Dime officials named in a 60-count indictment returned on January 24.

Guilty Pleas Result from Efforts of Multi-jurisdictional Task Force Aimed at Cocaine in New England. Two defendants pleaded guilty in Massachusetts District Court to charges of conspiracy and possession with intent to distribute cocaine. The cocaine trafficking organization operated in the Lowell and Lawrence areas of Massachusetts from March through October 1995. The defendants, who used their residences and other locations to store and sell cocaine, sold multi-ounce quantities of cocaine to undercover DEA agents. Sentencing is scheduled for late March and early April. This is one of the first prosecutions arising out of the Cross Borders Initiative, a multi-jurisdictional, DEA-led task force, organized to confront the growing problem of cocaine and heroin trafficking into the New England states.

Defendants Plead Guilty to Drug Counts Arising from Southwest Border Initiative. In the Jesus Hernandez-Valenzuela, et al., case, five of eight defendants pleaded guilty to conspiring to possess with intent to distribute cocaine. The case arose from the August 3, 1995, seizure of 304 kilograms of cocaine from a semi-tractor trailer at a Southwest border checkpoint, 15 miles west of Las Cruces, New Mexico, and its subsequent controlled delivery to Los Angeles, California. The wholesale value of the cocaine was estimated at \$6.08 million. Two of the co-conspirators cooperated with the government and participated in the controlled delivery. Information from the cooperating defendants led to the seizure of approximately 281 kilograms of cocaine on August 5, 1995. The seized cocaine, with a wholesale value of approximately \$5.62 million, was stored in a warehouse in El Paso, Texas. Three defendants were dismissed from the case. This case is part of the Southwest Border Initiative.

Italian Government Seeks to Depose Aldrich Ames. The Government of Italy has submitted a mutual assistance request to depose Aldrich Ames in its continuing investigation into the attempted assassination of Pope John Paul II. OIA sent the request to the Eastern District of Virginia for action.

Department's ICITAP Deploys Consultant to Bosnia-Herzegovina. In response to a request for a senior American police expert, ICITAP deployed a consultant to Bosnia-Herzegovina for a period of 45 days. The consultant will serve as an advisor to the U.N. High Representative responsible for implementation of the civilian components of the Bosnian peace accord, as well as a liaison to NATO's Implementation Force. Funding for this consultancy was provided by the Department of State.

Peruvian Citizen Extradited to Peru. Peruvian citizen Jaime Bedoya Garreta was extradited from the Southern District of Florida to Peru. Bedoya is wanted in Peru on charges of grand larceny, fraud, and embezzlement. Bedoya allegedly participated in a scheme to defraud the Government of Peru of more than \$8 million through the illegal use of a Peruvian economic program that permitted Peruvian airline companies to buy U.S. dollars at a substantial discount from the official exchange rate in order to pay for imports of aircraft parts.

Justice and Treasury Begin Voice of America Series on International Fugitives. Representatives from the FBI, USMS, ATF, Customs, and OIA's Fugitive Unit videotaped the first of a series of the Voice of America (VOA) Today programs featuring international fugitives. The first program focused on the formation and operation of OIA's Fugitive Unit and its work with international fugitive coordinators from federal law enforcement agencies and State extradition coordinators. Future programs will describe the work of the other law enforcement agencies. Also each week, the program will present descriptions of one or two high profile fugitives believed to have fled the United States. The first program aired worldwide Sunday, February 11.

Administrative Claim filed by Individual Detained in Connection with Oklahoma City Bombing. Abraham Ahmad, who holds dual Jordan-U.S. citizenship, has filed an administrative claim against the U.S. Government in connection with his detention and questioning on April 19 and 20, 1995, when British authorities held him at the request of the United States on suspicion of complicity in the Oklahoma City bombing. The claim names six government agencies, including the Department of Justice and the FBI, and alleges that U.S. authorities mistreated him during detention. British authorities expelled Ahmad from London-Heathrow International Airport the day after the Oklahoma City bombing. OIA is cooperating with the Civil Division's Torts Branch to evaluate the claim in anticipation of an ACLU lawsuit on Ahmad's behalf.

Fourth "Three Strikes" Sentence in Nation Issued. A Rhode Island defendant was sentenced to life in prison without parole under the Three Strikes provision of the 1994 Crime Act. In October 1995, a jury convicted the defendant of extortion charges in the attempted shakedown of two Rhode Island businessmen.

Because of the current conviction and the defendant's long and violent criminal history, which includes convictions for robbery and murder conspiracy, he was given the life sentence.

Two Former Kentucky National Guard Officers Indicted on Charges Relating to Improper Political Fundraising. The Former Adjutant General and a Lieutenant Colonel of the Kentucky National Guard were indicted on various charges arising from an investigation into improper political fundraising within the Kentucky National Guard during the campaign of former Governor Brereton Jones.

Tiger Trap Fugitive Located in China. On February 9, China's Public Security Bureau admitted, after the repeated prompting of DEA Hong Kong, that Li Chia-Cheng was in "custody" (though not under arrest) in Kunming, China. Li is an Operation Tiger trap fugitive wanted for conspiracy to import heroin into the United States. Chinese officials have stated that they require an official request before considering Li's expulsion; DEA Bangkok is now working with the embassy to prepare an official request for Li's expulsion to Thailand, where a provisional warrant for his arrest exists.

Methamphetamine Lab Uncovered at Nuclear Submarine Base. On February 7, DEA Seattle, in conjunction with the Naval Investigative Service, arrested two contract employees at the Bangor Nuclear Submarine Base for manufacturing methamphetamine on the base. The suspects were in the process of producing methamphetamine in their work area when taken into custody, and subsequent information revealed that they had manufactured methamphetamine on the base at least five times previously. A search of one suspect's residence resulted in the seizure of a functional methcathinone laboratory.

290 Kilograms of Cocaine Seized in Southern California. On January 31, DEA Riverside and Los Angeles, in conjunction with state and local police, seized 290 kilograms of cocaine from a Rialto, California, warehouse.

Record Crack Seizure in New Hampshire. On February 2, DEA Concord and the New Hampshire Drug Task Force arrested eight members of a crack distribution group at a Manchester apartment. One of those arrested is believed to be the crack supplier for the 45 street traffickers arrested during a June 1995 enforcement sweep. Agents also seized 2 ounces of powdered cocaine and 21 ounces of crack, the largest crack seizure ever in New Hampshire. The arrests and seizures grew out of undercover investigation into a Vietnamese trafficking group selling large quantities of crack and cocaine in the Manchester area. The investigation--still ongoing--has identified New York-based Dominican traffickers as the Vietnamese group's suppliers of cocaine and, possibly, heroin.

Four Sailors Arrested for LSD Trafficking in Hawaii. On February 7, DEA Honolulu and the Naval Criminal Investigative Service arrested four U.S. Navy servicemen after an undercover purchase of 100 "hits" of LSD. The four, crew members of a nuclear-armed submarine, had been targeted for investigation because their LSD trafficking was focused on supplying U.S. Navy and Marine Corps personnel serving on similar vessels.

Man Charged with Kidnapping Minor after Television Report Inspires Citizen Response. The defendant was indicted on charges of kidnapping and transporting a minor across state lines for illegal purposes. The defendant allegedly enticed the minor to accompany him from Wisconsin to Texas, and held the minor for illegal purposes. The minor was recovered in Houston as a result of a citizen's report to the FBI following a segment of the television program, "America's Most Wanted."

Indictment for Threat to Federal Judge in South Dakota. A defendant was indicted for obstruction of justice, threatening a federal judge, and submitting a false claim to the IRS. It is alleged that after an unfavorable ruling against the defendant involving a foreclosure action, he mailed a "Notice of Treason" to the residence of the judge hearing the case. The "Notice" states that treason is punishable by death and asserts that the District Court Judge committed treason. It is further alleged that the defendant mailed the IRS a phony check in an amount greater than the debt he owed and then demanded a refund of the difference on several different occasions.

Federal Facilities Not Immune from INS Worksite Enforcement. Agents from the INS District Office in Atlanta, GA, conducted two worksite enforcement operations recently and arrested 42 illegal aliens working on Federal construction sites. On February 8, INS agents worked with officers from the Naval investigative Service and the Department of Labor to inspect a construction project at Camp Lejeune Marine Corps Base, NC, and found 22 illegal workers employed by six different contractors. On February 12, the INS agents inspected the site where the Atlanta Federal Center is under construction and found 20 illegal workers performing skilled jobs at wages up to \$14 per hour. In both cases, INS is conducting a continuing investigation of the employers, who were Federal Government contractors.

Wildlife Expert Pleads Guilty to Wildlife Smuggling. A Chicago-area writer, known around the world for his books and articles urging greater protection and care for endangered wild birds, pled guilty to charges of wildlife smuggling and filing a false income tax return. Tony Silva entered his plea after a federal indictment revealed a secret life that betrayed his better-known image as a wildlife conservationist and advocate.

Solicitor General to Defend Indecency Provisions of 1992 Cable Act. On February 21, in Denver Area Education Telecommunications v. FCC, we will defend against a First Amendment challenge provisions of Section 10 of the Cable Television Act of 1992, which give cable operators and viewers increased control over whether they will choose to transmit or receive indecent programming.

Solicitor General to Argue That Labor Union Has Standing to Sue Employer under Worker Adjustment and Retraining Notification Act. On February 20 we will present oral argument in United Food and Commercial Workers Union v. Brown Group as amicus curiae, taking the position that a labor union has standing under Article III of the Constitution to sue an employer under the Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. 2101 et seq. The WARN Act requires certain employers to notify unions 60 days prior to the closure of facilities or the layoff of 50 or more employees. The Act expressly authorizes unions to sue on behalf of aggrieved employees, and designates backpay and benefits to terminated employees as the appropriate remedy.

Solicitor General to Defend Court of Appeals Reversal in Case Arising out of Rodney King Beating. On February 20 we will present oral argument in the Supreme Court in Koon v. United States, which involves the conviction of two Los Angeles Police Department officers for using excessive force in the arrest of Rodney King. The issue before the Court concerns the standard of appellate review of departures from the indicated sentencing ranges under the federal Sentencing Guidelines. The district court departed downward by three levels because it believed that the officers would suffer punishment in addition to that imposed by the court; that there was no need to protect the public from further crimes by the defendants; and that the prosecution in federal court following the state acquittal raised a "specter of unfairness." The court also departed downward by five levels because it believed that the victim's conduct contributed significantly to provoking the offense. The court of appeals reversed those departures, finding that they were unjustified in the context of the Sentencing Guidelines. We will argue that a court of appeals should review de novo a district court's determination that a particular sentencing factor may form a permissible ground for a departure, and that the court of appeals' holdings in this case were correct.

VIII. Schedule of the Attorney General

FRIDAY, FEBRUARY 16, 1996

1:15p Address National Parks and Recreation Assoc.
Re: Juvenile Justice

FRIDAY, MARCH 1, 1996

TRAVEL to Miami, FL

THURSDAY, MARCH 7, 1996

11:00a Women's History Program with Justice Ginsburg
DOJ Great Hall

1:00p White House Conference on Drug Use and Violence
Roosevelt High School, Greenbelt, MD

IX. Sub-Cabinet Schedule

Jamie S. Gorelick
Deputy Attorney General

Tuesday, Feb. 20, 1996 Induction of Kwesi Mfume as NAACP
Director

John Schmidt
Associate Attorney General

Wednesday, Feb. 21, 1996 Address the Knight Center for
Specialized Journalism DOJ

Thursday, Feb. 22, 1996 Address the National Community
Oriented Policing Resources Board
Mayflower Hotel, Washington, D.C.

Deval Patrick
AAG, Civil Rights Division

Friday, Feb. 16, 1996 Address the National Black Gay and
Lesbian Leadership Forum Dallas, TX

Kathleen M. Hawk
Director, BOP

Tuesday, Feb. 20, 1996 Director will visit the Low
Security Correctional Institution,
Butner, North Carolina.

THE WHITE HOUSE
WASHINGTON

James -

The highlighted line was taken out, on the ground that it wasn't strictly speaking accurate. I've talked to folks in the Chief of Staff's office with about the impropriety of making any further contacts w/ DOJ or taking on this matter.

E. Jones

MEMORANDUM TO LEON PANETTA

FROM:

SUBJECT: Indian Gaming Issues in New Mexico and California

Over the past year, two serious legal conflicts involving Indian Gaming issues have arisen in New Mexico and in California. Because both issues are the subject of pending U.S. Attorney actions, the White House is not legally allowed to take any action on these issues, nor even contact the agencies for updates and information. However, based on newspaper and other reports on these issues, we have put together a brief summary of each issue for your information.

ISSUE #1: LEGALITY OF INDIAN GAMING COMPACTS IN NEW MEXICO

Issue:

Are the Tribal/State Class III gaming compacts that were signed between the Governor and Tribes/Pueblos in New Mexico (and approved by the Secretary of Interior) valid in light of two recent New Mexico Supreme Court Decisions: Citation Bingo v Otten, which held that casino gaming is illegal in New Mexico, and; Clark v Johnson, which held that the Governor needed legislative authorization to sign the compacts with the Tribes in New Mexico.

Summary:

A number of Indian Tribes and Pueblos in New Mexico negotiated gaming compacts with the Governor of New Mexico in 1994 and 1995. The compacts allow various forms of Class III (casino) gaming on Indian lands. Fourteen signed compacts were submitted to the Secretary of Interior for approval, and the Secretary approved all 14 in early 1995.

The Clark Decision was issued by the New Mexico Supreme Court in July of 1995, which held that the Governor of New Mexico lacked the authority to enter into gaming compacts with the Tribes/Pueblos. The court amended its decision in August and went further, stating that the Indian Gaming Regulatory Act (IGRA) does not expand state gubernatorial power and that the compacts executed by the Governor are without legal effect. Because the question of compacting is a matter of Federal law, it is unclear what impact this decision has at this point.

The Citation Bingo Decision was issued in late November of 1995. It ruled that, contrary to popular belief, casino gaming (including charitable gaming) was never legal in New Mexico. Since IGRA authorizes gaming compacts only if some form of casino gaming is legal in the state, this ruling removed the legal basis for Indian Gaming in New Mexico.

Current Status: The Department of Justice and the U.S. Attorney are working with the Tribes and the state to try and find a legislative resolution.

VIDEO GAMING INJUNCTION IN SOUTHERN CALIFORNIA

Issue:

Can the Barona, Sycuan, Viejas, Rincon, and other southern California Indian reservations continue to operate video-gaming operations in the absence of a compact with the State of California?

Summary:

Under the Indian Gaming Regulatory Act (IGRA), Tribes must enter into a compact with the state to operate certain types of casino-style games -- called Class III games. However, Tribes have the authority to operate Class II games (mostly bingo and similar games) without state approval. One of the major weaknesses of the IGRA is that it is vague in dealing with video-based versions of games (it is unclear in some cases whether a video version of a game is considered a Class II or Class III game). Several court cases, and DOI regulations, have resolved this grey area (video games are considered Class III -- although these rulings are under appeal), but a number of Tribes in Southern California moved to install video gaming operations in the early 1990s before these rules were clarified.

In the early 1990s, some southern California Tribes began installing video gaming machines in large numbers, taking advantage of the grey area that IGRA had provided. When court cases and regulations provided the necessary clarification, several tribes were left running illegal video gaming operations.

This problem has been compounded by the fact that Governor Wilson has refused to negotiate gaming compacts that cover video games with these tribes, contending that these devices are illegal under state law. The Tribes contend that state-run video lottery terminals are the functional equivalent to their video-gaming operations, and therefore they have the right to operate these games under IGRA.

Current Status:

A Federal Judge is currently ruling on this issue, and the U.S. Attorney is working with the court and the Tribes to try and negotiate a solution to this problem. Negotiations are in their preliminary stages.

James Castello

Room 566

See page 8

THE PRESIDENT HAS SEEN
2120196

THE WHITE HOUSE
WASHINGTON

96 FEB 16 P7:39

February 16, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: KITTY HIGGINS *Kitty*
SUBJECT: Summary of Cabinet Weekly Reports
February 9 - February 16

DEPARTMENT OF TREASURY

- **Secretary's Activities:** On Tuesday, Secretary Rubin will travel to Bal Harbor to address the AFL-CIO conference. On Wednesday, he will meet with Chairman Greenspan, Leonid Kuchma, President of Ukraine and Dick Grasso, Chair of the New York Stock Exchange.
- **House Appropriations Law Enforcement Hearing:** On March 6, Secretary Rubin will testify before the House Treasury-Postal Subcommittee, and the heads of each of the Department's enforcement bureaus will also testify. The purpose of the hearing is to draw attention to Treasury's broad role in the Federal law enforcement community and the need for continued funding of the bureaus. The Committee will hold a similar hearing on March 12, to focus on Treasury's role in combatting financial crimes. IRS, FinCEN and the law enforcement bureaus will testify on their current efforts in this area.
- **International Crime and Counterfeiting:** On February 28, the House Banking Committee will hold a hearing on international organized crime. It's focus will be counterfeiting, money laundering and fraud schemes based in Russia, the Middle East and Africa.
- **IRS Hearings:** IRS will be subject to a large number of oversight hearings as this year's tax filing season comes to a close. The IRS expects to be called to testify at three Appropriations hearings, two Government Reform hearings, and two hearings before the Ways & Means Committee before April 15, 1996. Most of the hearings will concentrate on IRS' budget and its progress in implementing its computerized filing and tax return processing systems.
- **Historically Black Colleges and Universities Capital Financing Program:** Three HBCU loan applications, totalling approximately \$35 million, have been approved for financing

through the program. The Department expects these loans to be made the end of February. On February 14, Under Secretary Hawke, President of the Federal Financing Bank (FFB), authorized the FFB to offer forward interest rate caps. The FFB Board intends to adopt a resolution on the decision by Friday, February 16. Treasury officials will meet with Department of Education representatives on February 20 to discuss loan documentation and program implementation.

- **Youth Crime Gun Interdiction Initiative Status:** In this upcoming ATF program, groups in selected pilot cities will focus on interdicting the supply of guns to juveniles. Roll-out plans, including coordination with the Department of Justice, are to be discussed shortly.
- **Pastors for Peace Announce Another Attempt to Violate Embargo:** The Pastors for Peace announced intentions to violate and protest the Cuban embargo again by exporting computers to Cuba with two caravans crossing the border at San Diego, California and Highgate Springs, Vermont, on February 17, 1996. Office of Foreign Asset Control (OFAC), Customs and DOJ are planning a response to the anticipated violations.

*Yes - started
with
curriculum*

• **Brady Law Second Year Anniversary Approaches:** The second anniversary of implementation of the Brady Law is February 28, which is also the anniversary of the failed effort at Waco. Treasury and Justice are working together to produce information to be released on Brady accomplishments and implementation on or shortly before February 28.

Troops in Bosnia: Officials consulted with representatives of the Defense Department regarding a proposal to provide similar tax benefits for troops in the Bosnia region that now apply to troops in a designated "combat" zone. It would simplify combat zone rules as they relate to income tax withholding. Discussions are ongoing with DOD to resolve pending issues, including the specific geographic boundaries of the relief. House Ways and Means Committee Chairman Bill Archer has announced that he will have a markup session on legislation related to this issue during the last week of February.

- **Secret Service Investigation:** In cooperation with federal and local law enforcement officers, the Secret Service broke a credit-card ring that stole and counterfeited thousands of credit cards over the last four years, resulting in millions of dollars in losses. The ring used magnetic tape, embossing and encoding machines, and holograms to make counterfeit cards. The defendants were charged in a 200-count indictment and are awaiting trial.
- **Coca-Cola Barred From Supplying Iranian Distributor:** Coca-Cola requested permission to direct its Irish subsidiary to commence sales of concentrate to an Iranian soft drink company. The OFAC denied the request on the ground that the Coca-Cola Company exercises direct control over the affairs of its Irish subsidiary.

DEPARTMENT OF COMMERCE

- **Trade mission to Sub-Saharan Africa:** Secretary Brown will lead a trade mission to Sub-Saharan Africa from February 17 - February 26, 1996 with a focus on emerging markets and increased trade with African countries. The trip will include stops in Cote D'Ivoire, Ghana, Uganda, Kenya and Botswana. The mission seeks to expand U.S. African business development and commerce, and to advocate on behalf of U.S. companies with contracts pending in Sub-Saharan Africa.
- **Town-hall meeting:** On February 28, 1996 Secretary Brown will be joined by Under Secretary Ev Ehrlich, Census Director Martha Riche and OMB Director Alice Rivlin in presentation of the 2000 Census plan at a half-day, town hall meeting at the Department of Commerce.
- **Census 2000 Congressional Hearing:** The House Government Reform and Oversight Committee, chaired by Rep. Clinger (R-PA), is scheduled to hold a hearing on the plan for the 2000 Census on February 29, one day after ESA and Census roll out the plan to the public.
- **Economic Indicators:**
 - Value of New Construction Put in Place February 16
(November and December 1995)
 - Manufacturing and Trade: Inventories and Sales February 16
(November 1995)
 - Fourth Quarter (advance) Gross Domestic Product February 23
 - Third Quarter (revised) Gross Domestic Product February 23
 - Housing Starts February 23
 - Retail Trade (January 1996) February 27
 - Manufacturing and Trade: Inventories and Sales February 28
(December 1995)
 - U.S. International Trade in Goods and Services February 28
(December 1995)
- **Senate Commerce Committee to Hold Oversight Hearing:** The Senate Commerce Committee, chaired by Senator Pressler (R-SD), has scheduled an oversight hearing on Thursday, February 29.
- **Biological Weapons Related Controls:** BXA is seeking interagency clearance on a draft rule to revise the scope of export controls applicable to items related to biological weapons (BW) development. This new policy implements decisions made in an October 1995 Australia Group meeting of biological weapons experts increasing the licensing activity

slightly for certain BW - controlled equipment. The rule will introduce new nomenclatures for several pathogens, clarify terms for biological items, relax BW export controls on immunotoxins, and revise technical parameters for controlled biological equipment.

- **MD Not in Compliance with Weakfish Regulations:** The National Marine Fisheries Service (NMFS) has determined that the State of Maryland is not in compliance with the Atlantic States Marine Fisheries Commission's Interstate Coastal Fishery Management Plan for Weakfish. Maryland has failed to implement measures that are necessary for their conservation. Therefore, a moratorium on fishing for Weakfish will become effective on April 15, 1996, unless Maryland adopts measures to come into compliance by April 1.

DEPARTMENT OF LABOR

- **AFL-CIO:** On Tuesday, February 20, Secretary Reich will travel to Bal Harbour, Florida, to attend the Annual Winter Executive Council Meeting of the AFL-CIO. He will speak to the Executive Council regarding attacks on worker protection programs and the Administration's accomplishments on behalf of working Americans.

*Henry
the issues
to clarify
A.C.*

Unemployment Compensation: Next week, the Advisory Council on Unemployment Compensation will issue its final report to you and Congress. This report will include the findings and recommendations of the Council during its final year of deliberations. The latest findings and recommendations focus on what the Council views as administrative issues. The report addresses measurement of performance outcomes, data needs, reporting requirements and administrative funding.

- **Garment Enforcement Sweeps:** Recent raids across the country reveal that minimum wage and overtime abuses remain widespread throughout the garment industry. This week, investigators from the Department's Wage and Hour Division visited garment contracting firms in Texas, California, and New York. In California, only one of 12 shops was found to be in compliance with labor laws. Investigations in Dallas revealed numerous wage and overtime abuses. In New York, an investigation of 32 shops found 18 in violation.
- **Service Contract Act:** The Jonathan Corporation of Norfolk, Virginia, entered into an agreement last week that will permit the payment of nearly \$3 million in back wages and fringe benefits to more than 400 of the company's workers. Although the company is in bankruptcy, the Department achieved the significant recovery in this case by having contract funds released directly by the Navy to the Labor Department.
- **ERISA:** On February 14, the Department filed suit against the Bank of America for alleged ERISA violations in connection with the bank's activities as trustee of the Norcal and Envirocal Defined Benefit Plans. The Plans suffered losses of approximately \$5.6

million as a result of the alleged ERISA violations. The suit is the product of several months of settlement discussions that did not produce a negotiated resolution of this matter.

- **Occupational Safety and Health:** On the eve of a trial that was scheduled to begin this week, the Department settled an OSHA civil penalty case against a contractor that had been performing lead paint removal work at the Old Executive Office Building. The contractor, **M.P. Industries, Inc.**, agreed to pay **\$147,500 in penalties for violating OSHA's lead-in-construction standard.** The **Stone Container Corporation**, which operates a **Panama City, Florida, pulp mill**, has agreed to pay **\$690,000 in OSHA penalties**, and to assure that all of its "pulp digesters" are properly repaired and maintained. The action stemmed from February 16, 1996 an accident in which a pulp digester ruptured, killing three workers and injuring two others.

DEPARTMENT OF TRANSPORTATION

- **Flooding in Montana:** Widespread flooding is occurring throughout western Montana due to unusually warm weather melting deep snow packs. As a result, 24 of 56 counties are currently under a State of Emergency. Road closures are widespread, including Interstate 15 southbound immediately north of Helena. No reports of damage have been received as of yet.
- **Burlington Northern Santa Fe Derailments:** On February 14, a Burlington Northern Santa Fe (BNSF) freight train, consisting of two locomotives and 89 cars (8,528 tons) derailed, at the runaway freight train came to a halt and derailed at the Canadian Pacific's (CP) Pigs Eye Yard, in St. Paul, MN. Nine injuries were reported, none of which were life threatening. BNSF stated that, prior to the derailment, the train had stopped in an area that was prone to vandalism. There were no hazardous materials involved in the derailment. Previously on February 1, a Burlington Northern Santa Fe (BNSF) freight train derailed while descending from Cajon Pass just west of Barstow, California, causing the deaths of two crew members, release of hazardous materials and a massive fire. Area residents were evacuated and highways including Interstate 15 were closed. The FBI has sent investigators to both accident sites and will work in conjunction with the Federal Railroad Administration. The National Transportation Safety Board also dispatched an investigator to the scene.
- **U. S. - Japan Talks:** The third round of cargo talks with Japan took place in Tokyo February 5-7, 1996. The Japanese continued to make proposals aimed at constraining U.S. operations beyond Japan. In the context of an acceptable exchange, they indicated a willingness to allow United Parcel Service (UPS) to serve Kansai and to allow one other U.S. entrant to serve a second Japanese city. In exchange, Japanese all-cargo operators, NCA and JAL, would obtain greater access to the United States. The two sides agreed to

resume talks in Washington February 28 - March 1. A fifth, and possibly final round is anticipated for later in March in Tokyo.

- **U. S. - Germany Agreement:** On February 1, Secretary Pena announced that the U.S. and Germany had agreed on a new "open-skies" aviation framework, and that formal negotiations would be held in Washington to complete a final agreement (scheduled for February 22). Our success with Germany represents a major achievement in our goal of creating an open market for air services to Europe.
- **Emergency Relief:** Severe natural disasters around the country have overtaxed the Federal Highway Administration's (FHWA) Emergency Relief (ER) program. FHWA has statutory authority to borrow Interstate discretionary money, and has tapped \$70 million of it to meet needs this year in the Northeast and mid-Atlantic regions. However, estimates of recent flood damage in Washington, Oregon, and Idaho are still incomplete. Legislation to provide additional funding (perhaps as much as \$300 million) will be needed.
- **New York City - Port Authority Dispute:** The Department of Transportation has received arguments both from New York City and the Port Authority of New York and New Jersey, stating their respective views on whether passenger facility charge (PFC) revenues at Kennedy and La Guardia airports must be included in the Port Authority's gross revenues, on which its lease payments to the City are based. The Port Authority argues that including PFCs in the revenue base would undermine the PFC capital improvement program and violate federal law. The city claims that the DOT/FAA should not interfere in this landlord-tenant dispute. The Department of Transportation is reviewing the arguments to determine whether Federal laws apply to this situation.

UNITED STATES TRADE REPRESENTATIVE

- **U.S.-Russian Agreement on Firearms:** Amb. Kantor this week announced the conclusion of an agreement that will control the importation of inexpensive, easily concealable hand guns and ammunition from Russia which the FBI has determined to be attractive to criminals. This agreement promotes the President's objectives on crime and domestic security.
- **Philippines and Hungary Fail to Implement WTO Commitments in Agriculture:** Agencies have agreed that USTR should request dispute settlement consultations with Hungary and the Philippines under Article XXII of the WTO should both Governments not cooperate in reforming subsidies practices. The Administration will seek additional meetings with both governments in the coming weeks in an effort to reach an amicable solution before seeking WTO recourse.

DEPARTMENT OF JUSTICE

- **Three Suits Challenge Indecency And Abortion Provisions Of The Telecommunications Act Of 1996 (the "Telecommunications Act") Filed:** As part of the Telecommunications Act, Congress enacted the Communications Decency Act (CDA), which makes it a criminal violation of criminal law for individuals to transmit "indecent" speech over the Internet and other interactive computer systems. In addition, Section 507 of the CDA amended a provision of 18 U.S.C. § 1462, which had criminalized the transportation of information, goods or products relating to abortion, extending the ban to means of telecommunications. The Civil Division is defending the "Internet indecency" provisions of the CDA, but has advised the courts in Philadelphia and Brooklyn that the Attorney General will not prosecute under the abortion provision in light of the Department's long-standing view that such speech restrictions are not constitutional.
- **Supreme Court To Hear Arguments In Koon And Powell:** On February 20, the Supreme Court will hear oral argument in Koon v. United States, and Powell v. United States. Koon and Powell were convicted for their role in the beating of Rodney King in Los Angeles, California. The district court departed downward from the sentencing range prescribed by the Sentencing Guidelines for their offense. The Ninth Circuit affirmed their convictions, but vacated the sentences and remanded for resentencing, ruling that the reasons given by the district court for the downward departures were invalid. The Supreme Court granted certiorari on the sentencing issues. The U.S. will argue that the court of appeals properly reviewed the departures de novo, and that it correctly concluded that each of the grounds for the departures cited by the district court was invalid.
- **Sara Lee To Pay Record Civil Penalty:** On February 6, a civil antitrust suit and proposed settlement were filed with the court in U.S. v. Sara Lee Corp. The complaint alleges that a Sara Lee subsidiary negotiated an acquisition of more than \$15 million in U.S. shoe care product assets from London based Reckitt & Colman plc in 1991 and avoided making premerger Hart-Scott-Rodino filings. Sara Lee will pay \$3.1 million if the settlement is approved by the court. **This is the largest civil penalty any company has ever paid for violating the antitrust premerger requirements.**
- **First Case Filed Under the Civil Remedy Provision of the Violence Against Women Act:** On January 19, Christy Brzonkala, a former student at Virginia Tech in Blacksburg filed the first federal lawsuit alleging a violation of the civil rights provision of the Violence Against Women Act of 1994. The suit alleges that two students raped Ms. Brzonkala on the campus in September 1994, and that the attack was motivated by animus against women, a necessary element of the claim.
- **DOD Set-Aside Case Settled:** On February 6, parties filed settlement agreements and joint stipulations for dismissal in McCrossan Construction Co. v. Perry et al., and McCrossan

Construction Co. v. Carney et al.. These two Adarand-related cases were brought by a non-disadvantaged contractor seeking DOD contracts designated for small disadvantaged businesses (SDB) pursuant to DOD's statutory set-aside program.

D.C. District Court Denies Tribe's Request To Enjoin The Department From Taking Enforcement Action Against Gaming Casino; U.S. Files Counterclaim For Declaratory Action In Related Case: On February 5, in Apache Tribe of the Mescalero Indian Reservation v. Reno and Babbitt, the district court denied a request by the Mescalero Apache Tribe to prevent the DOJ from taking an enforcement action against the tribe's gaming casino. On February 12, in the related case Pueblo of Santa Ana, et al. v. Kelly, et al., the United States filed its answer and counterclaim against the tribes (and joining NM as a defendant), seeking a declaration that Indian Class III gaming is illegal in NM because that state's highest court ruled recently that no such gaming is permitted in the State for any purpose. Under IGRA, Class III gaming is therefore illegal regardless of whether the compacts are valid. Our pleading explicitly took no position on the validity of the compacts.

Defendants Plead Guilty to Drug Counts Arising from Southwest Border Initiative: In the Jesus Hernandez-Valenzuela, et al., case, 5 of 8 defendants pleaded guilty to conspiring to possess with intent to distribute cocaine. The case arose from the August 3, 1995, seizure of 304 kg. of cocaine (wholesale value of \$6.08 million) from a semi-tractor trailer at a Southwest border checkpoint, 15 miles west of Las Cruces, NM, and its subsequent controlled delivery to Los Angeles. Two of the co-conspirators cooperated with the government and participated in the controlled delivery.

Italian Government Seeks to Depose Aldrich Ames: The Government of Italy has submitted a mutual assistance request to depose Aldrich Ames in its continuing investigation into the attempted assassination of Pope John Paul II.

Administrative Claim filed by Individual Detained in Connection with Oklahoma City Bombing: Abraham Ahmad, who holds dual Jordan-U.S. citizenship, has filed an administrative claim against the U.S. Government in connection with his detention and questioning on April 19 and 20, 1995, when British authorities held him at the request of the United States on suspicion of complicity in the Oklahoma City bombing. Justice anticipates an ACLU lawsuit on Ahmad's behalf.

Fourth "Three Strikes" Sentence in Nation Issued: A RI defendant was sentenced to life in prison without parole under the Three Strikes provision of the 1994 Crime Act. In October 1995, a jury convicted the defendant of extortion charges in the attempted shakedown of two RI businessmen.

Is this going to be a problem with the tribe?

Is this going to be a problem with the tribe?

- **Methamphetamine Lab Uncovered at Nuclear Submarine Base:** On February 7, DEA Seattle, in conjunction with the Naval Investigative Service, arrested two contract employees at the Bangor Nuclear Submarine Base for manufacturing methamphetamine on the base.
- **290 Kilograms of Cocaine Seized in Southern California:** On January 31, DEA Riverside and Los Angeles, in conjunction with state and local police, seized 290 kilograms of cocaine from a Rialto warehouse.
- **Record Crack Seizure in New Hampshire:** On February 2, DEA Concord and the NH Drug Task Force arrested eight members of a crack distribution group at a Manchester apartment.
- **Federal Facilities Not Immune from INS Worksite Enforcement:** Agents from the INS District Office in Atlanta conducted two worksite enforcement operations recently and arrested 42 illegal aliens working on Federal construction sites. On February 8, INS agents worked with officers from the Naval Investigative Service and the Department of Labor to inspect a construction project at Camp Lejeune Marine Corps Base, NC, and found 22 illegal workers employed by six different contractors. On February 12, the INS agents inspected the site where the Atlanta Federal Center is under construction and found 20 illegal workers performing skilled jobs at wages up to \$14 per hour. In both cases, INS is continuing an investigation of the employers, who were Federal Government contractors.
- **Solicitor General to Defend Indecency Provisions of 1992 Cable Act:** On February 21, in Denver Area Education Telecommunications v. FCC, we will defend against a First Amendment challenge provisions of Section 10 of the Cable Television Act of 1992, which gave cable operators and viewers increased control over whether they will choose to transmit or receive indecent programming.
- **Solicitor General to Argue That Labor Union Has Standing to Sue Employer under Worker Adjustment and Retraining Notification Act:** On February 20, we will present oral argument in United Food and Commercial Workers Union v. Brown Group as amicus curiae, taking the position that a labor union has standing under Article III of the Constitution to sue an employer under the Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. 2101 et seq.
- **Attorney General's Schedule:** On February 16, the Attorney General will address the National Parks and Recreation Association on juvenile justice. On February 20, Attorney General Reno will participate in a HHS hotline announcement with the President as well as in the NAACP Swearing-In Ceremony at DOJ. On February 21, the Attorney General will address the KY Legislature regarding domestic violence.

DEPARTMENT OF HEALTH AND HUMAN Services

- **Nationwide Domestic Violence Hotline Announcement:** Next week, you will announce a new, nationwide 24-hour toll-free domestic violence hotline. The hotline will provide immediate crisis intervention assistance, and can also be connected directly to help in their communities, including emergency services and shelters. HHS, DOJ and the White House are working on the details of the announcement event.
- **Hawaii Welfare Reform Plan:** Hawaii has developed its own welfare reform plan aimed at encouraging AFDC recipients to get jobs, an education, and saving the state's money to help offset expected federal funding cuts. Hawaii State Senate and House committees are now holding hearings on the state's proposal and other reform plans.
- **Wisconsin Welfare Reform Plan:** Governor Thompson is considering changing a provision in his "W-2" welfare reform plan to require payment of the full minimum wage for welfare recipients whose employment options are limited to community service jobs. The plan currently calls for paying them only 75% of the minimum wage. Under the proposed "W-2" welfare reform plan, Wisconsin would compare with Michigan in imposing the toughest requirements in the nation on new mothers receiving welfare.
- **Conference on Managed Care:** The Administration on Aging will hold a conference on "Emerging Trends in Managed Care: Opportunities for the Aging Network" from February 28-March 1. The purpose of the conference is to discuss the philosophy, history and experience of managed care for acute-care and long-term care as it relates to older people.
- **Welfare Reform:** On February 20, the House Ways and Means Subcommittee on Human Resources will hold a hearing on the National Governors' Association's proposals regarding welfare reform. Governors Carper and Engler, among others, have been invited to testify. On February 28, the Senate Finance Committee will hold a hearing on proposals offered by several governors regarding welfare reform.
- **Medicaid Proposals:** On February 21, the House Commerce Committee will hold a hearing on the proposals of the National Governors' Association regarding changes in Medicaid.
- **Welfare and Medicaid Reform:** On February 22, the Senate Finance Committee will hold a hearing on the National Governors' Association's proposals to change welfare and Medicaid.
- **Immigration Bill Mark-up:** On February 29, the Senate Judiciary Committee is expected to begin mark-up of the Immigration Reform Act of 1995 (S. 1394. Simpson).

- **HHS Approves First Welfare Waiver for the Empowerment Zone/Enterprise Community Initiative:** On February 14, Secretary Shalala announced the approval of the first waiver of federal welfare rules under this Administration's Empowerment Zone/Enterprise (EZ/EC) initiative. The waiver was provided for Oakland, California for its Community Building Team Demonstration Project.
- **Congressional Request for Information on Medicare Trust Funds:** Per their request, Representatives Bill Archer, Thomas Bliley, Jr., Bill Thomas, and Michael Bilirakis have received information on the status of the Hospital Insurance (HI) Trust Fund. Secretary Shalala clarified that the HI Trust Fund is not broke; rather, for the first time, expenditures slightly exceeded revenue and the Trustees projections in 1995 were that, without further action, the Trust Fund would be depleted early in the next decade.
- **Sutter Hospital Agrees to Settle Case:** On February 14, the U.S. Attorney for the Eastern District of California entered into a settlement with Sutter Hospital in Sacramento involving the implantation of investigational devices on Medicare patients. Under the settlement, the hospital will pay the U.S. government \$1.265 million in fines and overpayment recoveries arising out of these uncovered services.
- **Nicorette and Rogaine Receive OTC Approval:** On February 9, FDA granted over-the-counter marketing approval to SmithKline Beecham's Nicorette gum, the first smoking cessation aid available without a prescription to adults, and Upjohn's Rogaine, the first nonprescription drug to treat hair loss.
- **CA Notified That Data Provided Inadequate to Justify Medicaid HMO Rates:** On February 5, HCFA notified the State of California that the information it provided on November 20 and 27, 1995, did not respond to HCFA's request that its 1995 Medicaid HMO payment rates be demonstrated to be actuarially sound, as required by law. HCFA explained why the State's letters were not responsive, and spelled out methods that the State could use to support the rates as actuarially sound. The letter advised the State to respond within 30 days, and that, if a response is not received within 30 days, HCFA would proceed with a disallowance of Federal financial participation for the State Fiscal Year 1995 HMO contracts at issue. While the letter was just released to the State, HCFA was previously required to set forth the substance of the letter in a January 25, 1995, response to an interrogatory in a lawsuit by HMOs challenging the actuarial soundness of the rates in question.

Leon
 watch
 this -
 council
 trouble

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- **Address to Gangs and Churches in South Central L.A.:** On February 21, Secretary Cisneros will give the keynote address at the Hope in Youth Summit in South Central Los Angeles. The Summit, hosted by Cardinal Mahoney, will convene 700 members of

religious organizations and current and former gang members to discuss strategies to draw low-income inner city youths away from gangs and into positive activities.

- **100 AmeriCorps Volunteers Begin Work with Low-Income Families:** FHA Commissioner Nic Retsinas will be in Detroit on February 21, to participate in a swearing-in ceremony for over 100 AmeriCorps/VISTA volunteers who will be helping working and low-income families living in federally-assisted apartment complexes coordinate employment, youth and crime prevention programs and other services. The ceremony will kick-off a three-day training and orientation session for volunteers before they are placed in sites across the country.
- **Post-State of the Union Amplification: Implementing "One Strike and You're Out":** HUD is working with the White House and DOJ to meet the President's State of the Union challenge to crack down on crime in public housing. Next week, HUD will send a draft "one strike and you're out" guidance to the White House General Counsel's office for review. As part of the release of these guidelines, we are working with the White House to set up a possible Presidential visit to a successful anti-crime effort at a public housing development and to prepare a White House crime summit in mid- to late March involving top Administration officials, local police chiefs, and public housing directors. HUD will have more details in the weeks to come.
- **Implementing Motor Voter Law in Public and Federally-Assisted Housing Communities:** HUD is prepared to send a draft notice to OMB next week that will provide guidance to public housing authorities on how to implement the National Voter Registration Act. HUD intends to organize a press event with ACORN, other low-income advocacy groups, nonpartisan voter registration groups, residents and public housing agencies in March to announce the notice.

OFFICE OF NATIONAL DRUG CONTROL POLICY

- **Response to Story on Drug Legalization:** A letter to the editor was sent to New York Magazine responding to their cover story on drug legalization.

VETERANS AFFAIRS

- **General On-line:** General H. Norman Schwarzkopf has been making the first telephone calls to hospitalized veterans at five VA medical centers around the nation to activate their new bedside telephone systems under the PT Phone Home program. You participated in the original announcement of PT Phone Home on Veterans Day 1995.

- **Address to the Veterans of Foreign War Annual Winter Conference:** Secretary Brown will address the Veterans of Foreign Wars Annual Winter Conference in Washington, D.C. He will speak on the President's commitment to maintain veterans benefits.
- **Persian Gulf Issues Hearing:** The House Government Reform and Oversight Subcommittee on Human Resources and Intergovernmental Relations is scheduling three hearings on Persian Gulf issues on March 11 and 29, with the third hearing to be determined. The VA witness is to be determined. The Presidential Advisory Committee on Gulf War Veterans' Illnesses has also been invited to testify.

SOCIAL SECURITY ADMINISTRATION

- **USA Today is Studying Successful Toll Free Telephone Customer Service:** As a result of the significant amount of publicity that SSA has received regarding its toll-free, 800-number telephone service, USA Today has begun studying SSA's system in an effort to enhance service to the paper's customers through its own 800-number telephone system. USA Today is particularly interested in techniques used by SSA to serve customers through automated scripts. Last year, SSA was rated as the best telephone customer service provider from a list of nine world-class service providers, including AT&T Universal Credit Card, Disney Companies, L.L Bean and the Saturn Corporation, in a study by Dalbar Inc., a financial services industry consulting firm.

DEPARTMENT OF INTERIOR

- **Ward Valley Announcement:** Deputy Secretary Garamendi announced a new supplemental environmental impact statement on the proposed transfer of Federal land in the California desert to California for use as the site of a low-level radioactive waste disposal facility. In addition, the Department of Energy has agreed to conduct new tests at the Ward Valley site that may help answer questions about its suitability. The study and tests will not be complete for up to a year, meaning a final decision on transfer cannot be made until then. Reaction was predictable; project opponents (including Senator Boxer, environmentalists and local governments) hailed the decision; project proponents (including the State) criticized it. An unconditional transfer of Ward Valley was in the vetoed Budget Reconciliation bill; there may be new attempts to legislate the transfer.
- **Habitat Conservation Plans in California:** Deputy Secretary Garamendi has been coordinating efforts toward completing several important Habitat Conservation Plans in California. Most recently, he worked to secure a Federal commitment of \$3 million to the Riverside HCP to ensure continued support by the local governments of the project. HCPs

are also being developed in San Diego (multi-species with the city and county), Orange County (Irvine Company and Santa Margarita Company) and in Sacramento (fairy shrimp). The goal is to complete them by the end of the summer.

*Committed
New York*

- **Executive Order on Wildlife Refugees:** The Department is working with the CEQ to develop an Executive Order addressing wildlife-dependent recreation in the 92 million acre National Wildlife Refuge System. Hunting, fishing and environmental education, are examples of wildlife-dependent recreational activities which an Executive Order will highlight as the "priority public uses" of the refuge system. The Department will forward a draft Executive Order during the week of February 19.

- **5-year Outer Continental Shelf (OCS) Plan:** Last week, the Department issued a Proposed 5-Year OCS Oil and Gas Leasing Program for 1997-2002. Interior is currently in the 90 day-comment period which includes outreach meetings in TX, LA, MS, AL and AK. The proposed plan includes 16 oil and gas lease sales for the 5-year period: 11 in the Gulf of Mexico and 5 off Alaska. A Proposed Final Program will then be prepared and submitted to Congress and the President in August of this year. The program reflects a consensus of interested and affected parties. The Gulf of Mexico part of the program reflects the acceptance for OCS oil and gas activity in Texas, Louisiana, Mississippi, and Alabama while recognizing the Governor of Florida's position opposing new leasing within 100 miles of that State. The Alaska part of the Proposed Program is consistent with the recommendations of the Alaska Regional Stakeholders Task Force which the Department established to assist in the development of the new 5-year program. The program also recognizes that it would be premature to propose new leasing off the Atlantic and Pacific coasts, and such proposals should be deferred until after 2002.

UNITED STATES DEPARTMENT OF AGRICULTURE

- **USDA Responds To Northwest Floods:** In response to flooding in the Pacific Northwest, USDA has mobilized efforts to provide assistance. Food and Consumer Services (FCS) is working with each of the affected states to provide commodities where needed and is discussing possible modifications to the Food Stamp Program. In each of the affected states, USDA has initiated damage survey reports. Once these surveys are completed, the information will be used to determine eligibility for several Department programs. Both programs have serious funding problems, and USDA has sent a letter to OMB detailing these needs. USDA has also made available to eligible producers the Farm Services Agency (FSA) emergency loan program, which provides low-interest loans to those who cannot find credit else-where. FSA is also working with producers who participate in the crop insurance program to survey their damages so that timely claims can be made.
- **Rice Program Announcement To Be Made:** On February 16, to ease uncertainty caused by Congress' failure to pass a farm bill, Secretary Glickman will announce proposed terms of

a rice program for the 1996 crop year. Authority for this announcement comes under the Commodity Credit Corporation Charter Act to determine the provisions of the program. The interim provisions are not designed to take the place of a rice program adopted by Congress. In the absence of new legislation, the industry can be assured that these provisions will provide an adequate safety net.

- **Tentative Agreement Reached On Tongass Timber Issue:** On February 10, USDA reached a tentative agreement with plaintiffs in AWRTA (Alaska Wilderness Recreation and Tourism Association v. Morrison that will permit the Forest Service to offer 141 million board feet (mmbf) from the Tongass National Forest (Alaska) to small and independent timber companies in FY96. This agreement, which has not been made public, coupled with sales already planned and sold, should ensure that the independents actually cut about 100 mmbf this fiscal year, more than double the average historic level they harvest annually from the Tongass.
- **Secretary's Schedule:** On February 19-20, Secretary Glickman will travel to Idaho to tour the National Interagency Fire Center and address the Idaho Agriculture Summit and Boise City Club. At the end of February, the Secretary will travel to the Northwest on timber related issues.

DEPARTMENT OF ENERGY

- **Privatization of Department's Largest Cleanup Challenge:** The Department will issue the Hanford, Washington Tank Waste Privatization proposal on Tuesday seeking qualified firms to treat and solidify millions of gallons of highly radioactive wastes in 177 underground tanks. The tank waste, resulting from decades of nuclear weapons production, have been an ongoing environmental concern to the Northwest, particularly to Senator Ron Wyden. This project, where the financial, design and operation risk is on the contractor -- not on the taxpayer -- will reduce the Department's tank cleanup costs by about \$10 billion over the next two decades when it's expected to be completed.
- **Newsweek:** Newsweek is planning to run a profile of the Secretary in next week's magazine. The Department anticipates a negative story that focuses on travel.

ENVIRONMENTAL PROTECTION AGENCY

- **Everglades Restoration:** On Monday, Administrator Browner will travel to Florida with the Vice President to attend an event to highlight your Administration's plan to restore the South Florida Everglades. EPA is currently working with OMB, CEQ, and other Agencies to develop a blueprint for the full restoration of South Florida's Everglades that provides a long-term, reliable funding stream for critical land acquisition and ecosystem management.

*Plan
man
for
better*

Project XL: Since the first participants were announced by you last November, EPA has received over 30 additional project proposals for EPA's Project XL Initiative highlighted in your State of the Union Address. Project XL will help facilities, industries, and communities demonstrate their excellence and leadership by reducing the costs of environmental management and achieving environmental performance beyond that required in existing regulations.

EPA recently accepted the following proposals:

- Union Carbide proposes to institute a plant-wide, process to improve environmental performance at their Taft, Louisiana petro-chemical plant.
- Wyerhaeuser proposes to operate its Flint River, GA plant with a comprehensive approach to minimize the impact of the mill on the environment.
- IBM proposes to achieve better environmental results at less cost by biologically treating its wastes on site rather than shipping them off site for incineration.
- The Florida Department of Environmental Protection and the Berry Corporation jointly proposed to combine multiple environmental permits into a single Environmental Management System-based comprehensive operating plan at an orange juice processing facility in LaBelle, FL.

*Important
element
for bad
ahead of
globalizing
y work
last section*

Methyl Bromide: Last night, ABC ran a story on methyl bromide, focusing on state legislative activity surrounding this chemical. One of the first acts of your Administration was to approve a proposed phase-out of methyl bromide, which is harmful to the ozone layer. This phase-out would be completed by the year 2001 under the Clean Air Act. Farmers, however, have raised concerns about their ability to find alternatives for central uses, and other developed nations will not face a phase-out until 2010. EPA is working with Congress, affected parties, the White House, and other agencies to devise a proposal that will maintain these significant public health protections while recognizing economic concerns.

International Environmental Leadership: Adm. Browner will lead the US Delegation to the Organization for Economic Cooperation and Development (OECD) Environmental Ministerial Meeting in Paris. She will deliver the keynote speech highlighting environmental progress in the United States over the past three years.

Toxic Release Inventory: OECD Ministers will create some form of a toxic release inventory, work toward improving the environmental performance of governments and approve a resolution on lead risk reduction and phase-out of lead in gasoline. The new OECD report found that the US has been a leader in environmental programs for the past

25 years and is entering "a new phase in the evolution of environmental protection, one that emphasizes the positive relationship between a healthy environment and a healthy economy."

- **Meeting With Environmentalists:** Next Thursday, Adm. Browner will meet with CEO's of 25 major environmental groups to amplify your State of the Union Address and discuss ways your Administration can work together to advance it's priorities.

DEPARTMENT OF EDUCATION

- **Vocational Education Formula:** The Department has identified potential technical problems that may impede the Department's ability to run the Perkins Act Basic State Grants program for FY 1996. It appears that legislative drafting errors provide two different minimum ("hold harmless") levels for funding, which could result in an unintended reallocation of funds across states. Department staff members are exploring possible solutions. It may be advisable to suggest attaching legislation addressing this problem to the next continuing resolution, or to the Department's FY 1996 appropriation.
- **Continuing Resolution Hearing:** Senator Arlen Specter has scheduled a hearing February 21 in the Appropriations Subcommittee on Labor, HHS, and Education. The Secretary will be testifying, along with Secretaries Shalala and Reich, at the hearing, which will focus on the impact the CR and the absence of a final budget will have on various domestic programs.

GENERAL SERVICES ADMINISTRATION

- **Missing Children Notices:** GSA is working with DOJ to implement your memorandum on the posting of missing children notices.
- **Tobacco Vending Machines:** Notice is being given to the Treasury, Postal Service, and General Government Subcommittee that all tobacco vending machines have been removed from all Government-owned and leased space under the custody and control of GSA.
- **Director Johnson met with CNN to discuss an hour long Special:** The Special is concerning the 1 year Memorial of the Oklahoma City bombing. Interests included: Security, Childcare, personal stories and the memorialization of the site.
- **Work Site Childcare:** CBS New's 48 Hours is looking into doing a story relating to the Memorial of the Oklahoma City Bombing (April 19) with a focus on work site childcare. GSA had a background meeting with the reporter who is sympathetic to the need and the benefits of the federal childcare program, but the reporter will definitely look at the flip side also. The producers have not yet agreed to do the story.

- **Credit Card Program:** NBC News is working on a story relating to the American Express Government credit card program and policies and regulations relating to travel. GSA sent the card program report, travel regulations, and also some of the benefits of the program to both customers and the Government.

DEPARTMENT OF STATE

- **Rome Meeting to Address Bosnia Issues:** At the State Department's instigation, Presidents Izetbegovic, Milosevic and Tudjman will meet in Rome this weekend with Contact Group representatives, Carl Bildt, and COMIFOR Snith. Dick Holbrooke will lead the U.S. delegation.
- **Tension Between China and Taiwan:** State Department officials have delivered to Beijing and Taipei messages designed to emphasize their strong interest in reducing tensions in the Taiwan Strait. In February 7 public testimony before the Senate, Assistant Secretary Winston Lord stressed that we would be gravely concerned by any resort to force and would respond appropriately in consultation with the Congress. They reinforced this message to visiting PRC Vice Foreign Minister Li Zhaoxing last week. They have also--through their office in Taipei and in conversations with visiting Taiwan officials--urged Taiwan to avoid actions the PRC would see as provocative and to concentrate on easing the cross-Strait relationship. They are also calling on other Asian and European countries to deliver a similar message to Beijing and Taipei.
- **Olympic Games:** The Department hosted a briefing on the Olympics for the diplomatic corps on Wednesday, February 14. Representatives from 170 Embassies attended the briefing given by Under Secretary Tarnoff and Mack McLarty, vice chairman of the White House Task Force on the Olympic Games. A separate informal briefing was held later in the day for representatives from Taiwan and the Palestinian Authority.
- **Japan/Prime Minister Hashimoto's Visit:** Secretary Christopher met with Japanese Ambassador Saito on February 15 as a prelude to your meeting with PM Hashimoto in Santa Monica February 23. The Santa Monica meeting provides an important opportunity to prepare for a successful April Summit in Japan.
- **Cuba:** Representative Richardson visited Cuba February 9-10. He returned with three political prisoners whom Castro had agreed to release following Richardson's visit to Havana last month. The State Department coordinated closely with Richardson on both trips, but the initiative was his own. Representatives Boucher and Pastor will travel to Cuba on separate trips later this month.

DEPARTMENT OF DEFENSE

- **Haiti:** The Government of Haiti has now formally requested the extension of UNMIH. A Canadian-UN-USG meeting this week revealed Canadian plans to deploy by middle April, with the new UNMIH mission to be operational by the end of the month.

Meanwhile, our withdrawal remains on-track. The Preval Government is not taking shape as quickly as hoped, and the police and security services continue to be weak due to politicization, inefficiency and corruption. The economy shows no improvement.

- **Taiwan:** DoD officials met with numerous Taiwan Joint Staff and Service Chief leaders in early February to discuss the organization, strategy, and doctrine of the Taiwan Armed Forces. Taiwan's military leaders consistently made three points: 1) they consider direct PLA action unlikely; 2) the greatest threat to Taiwan stems from "political miscalculation" and 3) DoD's engagement strategy with the PRC reassures them.
- **HIV Provision:** Reactions from the Congress to the Administration's announcement that it would not defend the HIV provision in court have been mixed. DoD is continuing to work with the Interagency Working Group and the HNSC and SASC staff on ways to change the HIV language during the upcoming legislative cycle.

UNITED NATIONS

- **War Crimes:** As Security Council President this month, Ambassador Albright hopes to obtain the Council's approval of Justice Goldstone's successor as Tribunal prosecutor, most likely Justice Louise Arbour of Canada.
- **Haiti:** For the next two weeks, the Council will consider the SYG's report on extending the UN peacekeeping force in Haiti (UNMIH). The Chinese are furious with the government of Haiti's warm reception of the Taiwanese Vice President at President Preval's inauguration last week and have threatened to block a renewal of UNMIH. Nevertheless, the Council expects to adopt a resolution authorizing a reduced UNMIH under Canadian command before the end of the month.

CENTRAL INTELLIGENCE AGENCY

- **General Colin Powell Hosts CIA Town Meeting:** Yesterday, Director Deutch invited retired General Colin Powell to address a Town Meeting of Agency employees. While he was at the CIA, he was briefed on a number of issues, including nuclear weapons states, Iraq, and the ongoing Greece-Turkey dispute.

cc: The Vice President

Leon Panetta
Evelyn Lieberman
Harold Ickes
George Stephanopoulos
Alexis Herman
Carol Rasco
Maggie Williams
Michael McCurry
Doug Sosnik
Marcia Hale
Donald Baer
Ron Klain
Rahm Emanuel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE APACHE TRIBE OF THE)
MESCALERO RESERVATION,)
P.O. Box 176,)
Mescalero, New Mexico 88340)

Plaintiff,)

v.)

JANET RENO, In Her Official Capacity)
as the United States Attorney General,)
and BRUCE BABBITT, in his Official)
Capacity as the United States Secretary)
of the Interior,)

Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

Plaintiff, for its cause of action against the above-named
defendants, alleges as follows:

INTRODUCTION

1. Plaintiff, the Apache Tribe of the Mescalero
Reservation, hereinafter the "Mescalero Apache Tribe" or the
"Tribe," hereby seeks a declaratory judgment (a) that the Tribal-
State Compact entered into by the Tribe and the State of New
Mexico pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §
2710(d)(3), is in effect, and (b) that the Tribe may lawfully
conduct certain forms of "class III" gaming on its lands within
the State pursuant to that compact. The Tribe also seeks to
enjoin the defendant Attorney General of the United States from
taking action against the conduct of such gaming by the Tribe on
such lands.

2. The Tribe seeks a declaratory judgment pursuant to 28 U.S.C. §2201 for the purpose of determining questions of actual controversy between parties as hereinafter more fully appears.

JURISDICTION AND VENUE

3. Jurisdiction of this action is based on 28 U.S.C. §§1331 and 1362 in that this is a civil action brought by a federally recognized Indian Tribe involving a matter in controversy arising under the laws of the United States.

4. Venue is proper in this District under 28 U.S.C. § 1391(b) inasmuch as the Defendants are located within this District and a substantial part of the events giving rise to the claim occurred within this District, to wit: the United States Secretary of the Interior approved the compact in question within this District on March 15, 1995; said compact was published in the Federal Register within this District on March 22, 1995; and the National Indian Gaming Commission approved the Tribe's Ordinance governing the conduct of Class II and Class III gaming on the Mescalero Apache Reservation within this District on January 10, 1996.

PARTIES

5. Plaintiff, the Apache Tribe of the Mescalero Reservation, is a federally recognized tribe of Indians within the meaning of 25 U.S.C. § 2703. The Tribe is composed of three cultural groups: the Mescalero Apache, the Lipan Apache, and the Chiricahua Apache. The Mescalero Apache have a treaty with the federal government (10 Stat. 979), as do the Lipan Apache (9 Stat. 844). The Tribe was organized governmentally pursuant to the Indian Reorganization Act, 25 U.S.C.

§ 476, and has a constitution duly approved by the Secretary of the Interior.

6. Defendant Bruce Babbitt is Secretary of the United States Department of the Interior, hereinafter "the Secretary," and as such is the individual empowered by Congress to approve a Tribal-State compact entered into pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §2710(d)(8)(A). The Secretary is the individual primarily charged with carrying out the federal government's trust obligation to the Tribe. 43 U.S.C. §1457(10). Defendant Janet Reno is Attorney General of the United States, hereinafter "the Attorney General," and as such is head of the United States Department of Justice and the chief law enforcement officer for the entire federal government. 28 U.S.C. §§ 503, 509, 516. Defendants are collectively referred to hereinafter as "Defendants" or "the United States."

7. The Mescalero Apache Indian Reservation, hereinafter the "Mescalero Apache Reservation" or the "Reservation," is located in Otero County and Lincoln County, New Mexico, within the Tribe's aboriginal homelands. The Reservation was originally established by Executive Order in 1873. The boundaries were subsequently adjusted by a series of Executive Orders. The final boundary comprises approximately 463,000 acres.

BACKGROUND

I. THE INDIAN GAMING REGULATORY ACT

8. The Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. §§ 2701-2721, 18 U.S.C. § 1166 ("IGRA"), was signed into

law on October 17, 1988. Its declared purposes are: "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; to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime ... to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and ... to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue." 25 U.S.C. § 2702.

9. The IGRA defines three classes of gaming. Class I gaming is social gaming played for prizes of minimal value, or traditional Indian gaming. 25 U.S.C. § 2703(6). Class II gaming includes bingo, pull-tabs, lotto, certain similar games, and card games authorized by state law. 25 U.S.C. §2703(7). Class III gaming is defined as all gaming that is not class I or class II. 25 U.S.C. § 2703(8). This case involves class III gaming.

10. The IGRA provides that an Indian tribe has the right to conduct Class III gaming on Indian lands within a state that allows such gaming for any purpose by any person, organization or entity, where such Indian tribe has entered into a compact with the state authorizing such gaming activity. 25 U.S.C. § 2710(d)(1).

11. The IGRA imposes a duty upon a state to negotiate in good faith with a tribe to conclude a Tribal-State compact to govern the conduct of Class III gaming on the tribe's lands. 25 U.S.C. § 2710(d)(3)(A).

JAN 26 '96 13:20 FROM USAO-DC/CIVIL DIU

PAGE.006

12. The IGRA does not dictate what form a Tribal-State compact must take, nor does it dictate who, within the state and tribal governments, must negotiate and conclude the Tribal-State compact envisioned by the Act. However, the IGRA endows only the Secretary of the Interior with the power to review and approve or disapprove the validity of a Tribal-State compact. 25 U.S.C. §2710(d)(8). The United States Attorney General has been granted no such power.

13. The only two criteria for a valid compact are (1) approval of the compact by the Secretary, and (2) publication of this approval by the Secretary in the Federal Register. 25 U.S.C. § 2710(d)(3)(8)(A)(B). When these criteria have been met, the compact takes effect, 25 U.S.C. § 2710(d)(3)(B), and governs the conduct of gaming on the Indian lands.

14. The IGRA provides that "[t]he Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a state governing gaming on Indian lands of such Indian tribe," 25 U.S.C. 2710(d)(8)(A) (emphasis added), and such compact takes effect when notice of such approval has been published by the Secretary in the Federal Register. 25 U.S.C. § 2710(d)(3)(B).

15. The IGRA does not provide any means for the Secretary to rescind his approval of a Tribal-State compact after notice of approval of the compact has been published in the Federal Register.

II. THE COMPACT BETWEEN THE TRIBE AND NEW MEXICO

16. On June 4, 1990, in a decision involving the Tribe, this Court upheld the validity of the IGRA. Red Lake Band of Chippewa Indians v. Swimmer, 740 F.Supp. 9 (D.D.C. 1990). Thereafter, on June 18, 1991, the Mescalero Apache Tribe requested that the State of New Mexico enter into negotiations for the purpose of entering into a Tribal-State Compact pursuant to the IGRA.

17. From that date and continuing through publication of Secretary Babbitt's approval of the Tribal-State compact between the Mescalero Apache Tribe and the State of New Mexico in the Federal Register on March 22, 1995, the State of New Mexico was under a legal obligation to negotiate in good faith.

18. On December 9, 1991, the New Mexico Attorney General, Tom Udall, issued a written opinion, in the form of a letter to then Governor Bruce King, stating that the Governor of New Mexico had the authority under state law to enter into a Tribal-State Compact to govern Class III gaming on the Mescalero Apache Reservation.

19. Governor King refused to enter into a compact with the Tribe, the Tribe filed suit to compel good faith negotiations. The State asserted its immunity to suit under the Eleventh Amendment to the United States Constitution is a defense. Compact negotiations did not recommence until after the Tenth Circuit Court of Appeals rejected the Eleventh Amendment defense in late 1994, in a case involving the Tribe, Ponca Tribe v. Oklahoma, 37

JAN 26 '96 13:20 FROM USAO-DC/CIVIL DIU

PAGE.008

F.3d 1422 (10th Cir. 1994), cert. dismissed, 116 S.Ct. 435 (1995), and until a new governor was elected.

20. On January 1, 1995, Governor Gary Johnson officially took office as the Governor of New Mexico and immediately proceeded to fulfill his campaign promise, and the State's obligation under the IGRA, to conclude a class III gaming compact with the Mescalero Apache Tribe.

21. Later that month, Attorney General Tom Udall orally reiterated, to Governor Johnson, his prior legal opinion that the Governor of the State of New Mexico had the authority to enter into a compact with the Mescalero Apache Tribe to govern the conduct of Class III gaming on the Mescalero Apache Reservation.

22. On February 13, 1995, pursuant to the IGRA, Governor Gary Johnson signed a Tribal-State compact to govern Class III gaming on the Mescalero Apache Indian Reservation ("Compact") and a Revenue Sharing Agreement in which the Mescalero Apache Tribe became contractually obligated to share a portion of its gaming revenues with the State of New Mexico. The Compact provides as follows:

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all Class III Gaming, that, as of the date this Compact is signed by the Governor of the State is permitted within the State for any purpose by any person, organization or entity, such as is set forth in the Recitals to this Compact (which Recitals are hereby incorporated herein by reference).

Section 3; emphasis added.

JAN 26 '96 13:21 FROM USAO-DC/CIVIL DIU

PAGE.009

The referenced "Recitals" refer to various New Mexico statutes, judicial decisions, and executive interpretations and enforcement practices under which various persons or entities within the State were permitted to engage in various types of Class III gaming activities, "including but not limited to all forms of casino-style games." Compact at 1.

23. On March 15, 1995, pursuant to the IGRA, 25 U.S.C. §2710(d)(8), the Secretary approved the Compact, and submitted it for publication in the Federal Register.

24. On March 22, 1995, notice of the Secretary's approval of the Compact was properly published in the Federal Register. 60 Federal Register 15,194.

25. At the time of Governor Gary Johnson's signing of the Compact, the State estimated that more than 1800 non-Indian video gaming machines were generating more than \$40,000,000 in revenues within the State.

26. At the time of Governor Gary Johnson's signing of the Compact, the State acknowledged its understanding that virtually all forms of casino gambling were authorized, and in fact were being conducted, pursuant to the State's Permissive Lottery Statute, 30-19-6, NMSA 1978. In fact, the State of New Mexico itself conducted wide-open gaming pursuant to this statute.

27. For example, the Permissive Lottery Statute, Section 30-19-6(A), allows "lotteries" to be operated by tax-exempt organizations when the entire proceeds of the lottery go to the organization or the charitable purpose. "Lottery" is defined as "an enterprise ... wherein, for a consideration, the participants

JAN 26 '96 13:21 FROM USAO-DC/CIVIL DIV

PAGE 010

are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill."

Section 30-19-1(C), NMSA 1978.

28. At the time the Tribe and the State entered into the Compact, and for a long time before that, the Permissive Lottery Statute had been consistently construed by the New Mexico Attorney General and other State officials to permit charitable organizations to conduct "casino night" fund-raising events, featuring all forms of casino-style games, and others, for their fund-raising purposes.

29. The State of New Mexico permits pari-mutuel wagering on horse racing. 60-1-1 et seq. NMSA 1978 (1991 Repl.).

30. The State of New Mexico permits pari-mutuel wagering on bicycle racing. 60-2D-1 et seq. NMSA 1978 (1991 Repl.).

31. Pari-mutuel wagering on horse racing, pari-mutuel wagering on bicycle racing, the state-run lottery, and "casino night" wagering are all types of Class III gaming. 25 U.S.C. 2703 (8).

32. The State of New Mexico clearly allows "bingo blowers," i.e. mechanical receptacles that mix the bingo balls and, using air pressure, dispense one ball at a time so that the identity of the ball may be called in order to facilitate the game of bingo. Section 60-2B-8, NMSA 1978 (1991 Repl.).

33. The State of New Mexico allows devices necessary for the operation of the state-run lottery. Section 6-24-1 et seq., NMSA 1978 (1994 Supp.).

34. "Bingo Blowers" and devices necessary for the operation of the state-run lottery are "gambling devices" in that they are

"machine[s] or mechanical device[s] ... by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property." 15 U.S.C. 1171(a)(2)(B).

35. Therefore, some class III gaming and some gambling devices are permitted by the State of New Mexico.

36. When the State and the Tribe entered into the Compact, they understood and intended it to authorize the conduct of all forms of casino style gaming.

37. Subsequent to Governor Gary Johnson's signing of the Compact, the New Mexico State Legislature expanded the amount of legalized Class III gaming in the State by enacting a State Lottery law authorizing the State to conduct a State Lottery. Section 6-24-1 et seq., NMSA 1978 (1995 Cum. Supp.).

III. THE THREAT OF THE UNITED STATES TO SHUT DOWN THE TRIBE'S CLASS III GAMING ACTIVITIES

38. On or about December 13, 1995, John J. Kelly, the United States Attorney for the District of New Mexico, sent a letter to the Tribe stating his determination that, as the result of a recent decision by the New Mexico Supreme Court (Citation Bingo, Ltd. v. Otter, No. 22,736 (N.M., Nov. 29, 1995)) interpreting the Permissive Lottery Statute, the class III gaming conducted by the Tribe pursuant to the Compact was unlawful. In that letter, Mr. Kelly threatened to undertake a civil forfeiture action against the Mescalero Apache Tribe to seize all its gaming devices and to

JAN 26 '96 13:22 FROM USAO-DC/CIVIL DIU

"take all necessary and appropriate steps to close the casino," unless the Tribe closes its Class III gaming enterprise.

39. Mr. Kelly has not changed his position, and the Attorney General has refused to restrain Mr. Kelly from undertaking such actions against the Tribe. The Tribe is therefore in danger of having the United States Department of Justice institute civil forfeiture proceedings. In fact, Mr. Kelly has often repeated his threat to shut down the Tribe's class III gaming (as well as the class III gaming conducted by other tribes in New Mexico pursuant to their compacts). Mr. Kelly has also stated that, regardless of any action filed by a tribe seeking a declaratory judgment of its rights under its compact, he will not agree to forego instituting forfeiture or criminal proceedings unless the tribe agrees to forego its right to bring a lawsuit against the State seeking a determination of the validity of tribal-state agreements unrelated to the compacts.

40. The Tribe's gaming operation currently employs 100 employees. The Tribe expects to earn millions of dollars in revenues from its gaming operation in 1996.

COUNT I

Declaratory Judgment

41. The allegations of paragraphs 1-40 are incorporated by reference herein.

42. There exists an actual controversy between the Tribe and Attorney General Reno regarding whether the Compact is in effect. The Tribe contends and believes that the Compact is in effect by

JAN 26 '96 13:22 FROM USAO-DC/CIVIL DIU

PAGE.013

virtue of its approval by the Secretary and publication of notice of such approval in the Federal Register. The Attorney General contends and believes that the Compact is void or of no effect by virtue of one or two decisions rendered by the New Mexico Supreme Court subsequent to approval of the Compact (Citation Bingo Ltd. v. Otten, cited above, and State ex rel. Clark v. Johnson, ___ N.M. ___, 904 P.2d 11 (1995) (holding that Governor did not have authority under state law to enter into gaming compacts with tribes)). A declaration by this Court is necessary to resolve said dispute and to guide the parties in their future actions.

43. There exists an actual controversy between the Tribe and Attorney General Reno regarding whether the Tribe may conduct class III gaming on its lands pursuant to its compact. The Attorney General believes that the Tribe may not conduct such gaming, even if the Compact is in effect, because, as the result of the Citation Bingo decision, the State does not permit such gaming. The Tribe believes that it may conduct class III gaming allowed by the Compact, because the State does permit such gaming, or in the alternative, because such gaming was permitted at the time of compacting and the Tribe has vested rights to continue to conduct such gaming, or in the alternative because to apply the change in the law retroactively to the Tribe would violate the Constitutions of the United States and of New Mexico.

44. The IGRA provides that Class III gaming activities on Indian lands are lawful if they are (1) authorized by a tribal ordinance or resolution meeting the requirements of the Act and approved by the Chairman of the National Indian Gaming Commission

JAN 26 '96 13:23 FROM USAO-DC/CIVIL DIU

PAGE.014

("NIGC"); (2) located in a state that permits such gaming for any purpose by any person, organization, or entity, and (3) conducted in conformance with a tribal-state compact that is in effect. 25 U.S.C. § 2710(d)(1).

45. On September 29, 1995, the Mescalero Apache Tribal Council passed an ordinance governing Class III gaming on the Mescalero Apache Reservation.

46. This Ordinance was approved by the Department of the Interior, and by the National Indian Gaming Commission.

47. This Ordinance meets all of the requirements of 25 U.S.C. § 2710(b) as required by 25 U.S.C. § 2710(d)(1)(A)(ii).

48. The power to determine the validity of and to approve or disapprove of compacts has been specifically delegated by Congress to the Secretary. 25 U.S.C. § 2710(d)(3)(B). IGRA does not authorize or allow any other official, including the Attorney General, or any court to invalidate a compact approved by the Secretary. Neither the lack of actual authority of the state governor to execute the compact, nor a change in state law narrowing the scope of gaming, is grounds for invalidation of a compact after it takes effect upon publication of notice of approval thereof by the Secretary.

49. Courts lack specific criteria under which they may determine such an issue. Other practical factors also demand that a court abstain from inserting its discretion in the place of the Secretary of the Interior's. Therefore, the validity of the Compact is a political question which a federal district court may not answer in a manner inconsistent with the determination made by

JAN 26 '96 13:23

FROM USAO-DC/CIVIL DIU

PAGE.015

the Secretary of the Interior. Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663, 82 S.Ct. 691 (1962).

50. The Compact took effect upon publication of the Secretary's approval of the same on March 22, 1995. 25 U.S.C. § 2710(d)(3)(B).

51. The Compact is still in effect today.

52. The class III gaming conducted by the Tribe pursuant to the Compact is lawful under the IGRA either because the State of New Mexico permits such gaming for some purposes by some persons, organizations, or entities, or because it permitted such gaming at the time the Compact became effective, and because it cannot revoke such permission without an amendment of the Compact.

53. The State of New Mexico now permits some class III gaming to be conducted by various persons, organizations and entities for various purposes.

54. At the time it entered into the Compact, and at the time the Secretary published notice of approval of the same, the State of New Mexico permitted such gaming to be conducted by various persons, organizations and entities for various purposes.

55. The approval and publication of notice of approval of the Compact by the Secretary authoritatively and conclusively established for all purposes relevant to this complaint that the types of class III gaming authorized by the Compact are the types of gaming permitted by the State of New Mexico.

56. The United States is now estopped to deny that such gaming is lawful under applicable federal law and the Compact.

57. The Secretary has not repudiated the Compact at any time since he published a notice approving of the same in the Federal

JAN 26 '96 13:24 FROM USAO-DC/CIVIL DIU

016

Register on March 22, 1995. In fact, the Secretary has publicly declared his belief that the compact is valid.

58. To the extent that the Citation Bingo decision purported to prohibit electronic gaming devices and other forms of class III gaming that had previously been permitted in the State under the Permissive Lottery Statute and other state statutes, such ruling cannot invalidate the compact, or render unlawful gaming agreed to and conducted thereunder, or the Tribe's vested rights thereunder. Otherwise, this decision would completely undermine and invalidate solemn and binding contractual obligations and assurances freely entered into by the State with the Tribe.

59. Article X, section 1 of the United States Constitution provides that "No State shall ... pass any ... law impairing the obligation of contracts."

60. Article II, section 19 of the Constitution of the State of New Mexico provides that:

No ... law impairing the obligation of contracts shall be enacted by the Legislature.

61. The Compact constitutes a valid and binding contractual obligation having the force of federal law, allowing the Tribe to conduct all class III gaming that, as of execution of the Compact, were permitted in the State of New Mexico for any purpose by any person, organization or entity.

62. The Tribe has a vested contractual and constitutionally protected right under the Compact to conduct such gaming.

63. The State has no legitimate interest that would justify the direct and substantial impairment of the Compact that would be

accomplished by the New Mexico Supreme Court's change in the interpretation of the Permissive Lottery Statute.

64. Thus, Citation Bingo cannot be applied to affect the interpretation of the Compact or the lawfulness of the gaming activities of the Tribe thereunder. To do so would violate the federal and New Mexico constitutional provisions precluding the State from acting so as to impair the obligation of contracts.

65. Article II, section 18, of the New Mexico Constitution, provides that "No person shall be deprived of life, liberty, or property without due process of law."

66. The Fifth Amendment to the United States' Constitution provides that "No person shall be ... deprived of life, liberty, or property, without due process of law"

67. Any action by the United States to cause a forfeiture of the Tribe's gambling devices, or to prosecute the Tribe or its officers, agents, or employees for possession of such devices, would violate the above-referenced due process clauses of the State and federal constitutions in that the use of devices permitted by the Compact is lawful.

COUNT II

(Injunctive Relief)

68. The allegations of paragraphs 1- 40 and 42 - 67 are incorporated by reference herein.

69. The Tribe faces a Hobson's choice; it can either continue to conduct class III gaming, in which case it runs the risk of having its gaming machines seized, and being criminally

prosecuted, or it can close its Class III gaming enterprise, thereby suffering substantial economic and other harm.

70. The Tribe employs many people in its gaming operation, including many tribal members. With the Justice Department's threat to terminate Indian gaming in New Mexico, tribal employees feel that their jobs are not secure; some have begun looking for new employment. The Tribe will have difficulty attracting new employees. Further, if the Tribal gaming enterprise is shut down, even temporarily, it will interfere with the livelihood of many individuals.

71. The Tribe uses the income from the tribal gaming enterprise to provide essential government services to its members and other persons. With the future availability of these revenues called into question, it is very difficult to budget for governmental services in the future.

72. Because the Tribe believes that the class III gaming it is conducting pursuant to its Compact is lawful under IGRA, and because of the harm it would suffer if it discontinued such gaming, the Tribe will not voluntarily discontinue such gaming, and has so informed Mr. Kelly. The United States therefore may bring a forfeiture or other action to stop the Tribe's class III gaming, or may institute criminal proceedings against the Tribe, or its officers, agents, or employees the threat is real and imminent, see letter of U.S. Attorney Kelly to Wendell Chino, President of the Mescalero Apache Tribe, dated December 13, 1995.

73. The public threats by Mr. Kelly have instilled fear on the part of gaming patrons and have caused gaming patrons to stay away from the Tribal gaming enterprise.

74. There exists the distinct possibility that the actions of defendants may also adversely affect the relationship that the Mescalero Apache Tribe enjoys with its suppliers and its bankers.

75. The actions of the defendants have caused individuals associated with the Tribal gaming enterprise to fear for their liberty and property, the loss of which may accompany a criminal prosecution or a civil forfeiture action.

76. Defendant Reno's authority to act with respect to gaming activities within Indian country in New Mexico arises from § 23 of the IGRA, 18 U.S.C. § 1166, and from § 5 of the Act of January 2, 1951, 64 Stat. 1135, 15 U.S.C. § 1175 (the "Johnson Act"), but neither of those statutes authorizes the United States to take any action with respect to the Tribe's gaming activities.

77. Under 18 U.S.C. § 1166(a), state laws "pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian Country in the same manner and to the same extent as such laws apply elsewhere in the State," but as used in that paragraph,

the term "gambling" does not include --

...

(2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the

Interior under Section 11(d)(8) of the Indian Gaming Regulatory Act [25 U.S.C. § 2710(d)(8)] that is in effect.

Id. at (c).

78. Because the Tribe's existing class III gaming operations are authorized by the Compact, the state gambling laws made applicable to Indian country by 18 U.S.C. § 1166(a) do not apply to such gaming activities, and defendant Attorney General Reno has no authority under that Section to enforce any such laws against the Tribe or its agents, officers, or employees engaged in such activities.

79. The Johnson Act prohibits the manufacturing, reconditioning, repair, sale, transportation, possession and use of "any gambling device" within Indian country, 15 U.S.C. § 1175, but the IGRA provides, at 25 U.S.C. § 2710(d)(6), that the provisions of that section of the Johnson Act:

shall not apply to any gaming conducted under a Tribal-State compact that --

(A) is entered into ... by a State in which gambling devices are legal, and

(B) is in effect.

80. At the time the State entered into the Compact with the Tribe, the types of gambling devices being utilized by the Tribe in its class III gaming activities were legal in the State under the various State laws discussed above. Moreover, some gambling devices are still legal in the State, and the Compact is still in effect. Therefore, the provisions of 15 U.S.C. § 1175 have no applicability to class III gaming activities being carried out by the Tribes.

81. The Tribe's class III gaming activities are thus not in violation of any federal law, and the Attorney General is without any power or authority to undertake any action to interfere with the such activities, or to seize or require a forfeiture of gambling devices being utilized by the Tribe in such activities or of other assets, or to commence criminal prosecution of any officer, agent or employee of the Tribe on the ground that such person is engaged in an illegal gaming activity. Any such action by Defendant Reno or any person acting under her authority would be in excess of her authority and thus void.

COUNT III

(Breach of Trust)

82. The allegations of paragraphs 1 - 40, 42 - 67, and 69 - 81 are incorporated by reference herein.

83. The IGRA constitutes a comprehensive statutory and regulatory scheme for the conduct of class III gaming by Indian tribes on their lands, through which the federal government has pervasively assumed control or supervision over such gaming activities. In light of that pervasive regulatory scheme, the United States and its officers, including the defendants, has a fiduciary obligation and trust responsibility to act in the best interests of the Tribe with respect to the Tribe's class III gaming activities under the IGRA.

84. The Secretary specifically assumed a trust obligation to the Tribe in approving the Compact, including a fiduciary duty to

JAN 26 '96 13:26

FROM USAO-DC/CIVIL DIV

PAGE.022

protect the Tribe's right to conduct class III gaming in conformance with the Compact.

85. Any action by the defendants that interferes with the Tribe's right to conduct class III gaming in conformance with the IGRA and the Compact would violate defendants' trust obligation to protect the Tribe's right to engage in such activities.

86. The threatened interference by an officer of the Department of Justice under the direction of defendant Attorney General Reno with the Tribe's right to conduct class III gaming in conformance with the Compact would violate the United States' trust obligation to protect the Tribe's right to engage in such activities. In fact, the threats themselves violate the Trust obligation.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS:

- A. That this Court declare that the Compact between the Tribe and the State of New Mexico, approved by the Secretary, is in effect and allows class III casino gaming;
- B. That this Court declare that the class III casino gaming conducted by the Tribe on the Reservation pursuant to the Compact is lawful;
- C. That this Court issue preliminary and permanent injunctions restraining the Attorney General from instituting (a) any civil forfeiture action to seize the Tribe's class III gambling devices or other assets, (b) any criminal proceeding against the Tribe arising from the conduct of class III gaming, or

JAN 26 '96 13:27 FROM USAO-DC/CIVIL DIU

PAGE.023

(c) taking any other action to terminate or interfere with such class III gaming conducted by the Tribe; and

D. That this Court grant such other relief as it deems proper.

Respectfully submitted,

Michael L. Roy

Charles A. Hobbs,
D.C. Bar No. 018770
Michael L. Roy
D.C. Bar No. 411841
HOBBS, STRAUS, DEAN & WALKER
1819 H St., N.W. Suite 800
Washington, D.C. 20006
(202) 783-5100

Gregory M. Quinlan
FETTINGER, BLOOM & QUINLAN, P.C.
P. O. Drawer M
Alamogordo, NM 88310
(505) 437-6620

Attorneys for the Apache Tribe of the Mescalero Reservation

Dated: January 26, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE APACHE TRIBE OF THE)
 Mescalero Reservation,)
 P.O. Box 176,)
 Mescalero, New Mexico 88340)
)
 Plaintiff,)
)
 v.)
)
)
 JANET RENO, In Her Official Capacity)
 as the United States Attorney General,)
 and BRUCE BABBITT, in his Official)
 Capacity as the United States Secretary)
 of the Interior,)
)
 Defendants.)

MOTION OF THE APACHE TRIBE OF THE Mescalero
RESERVATION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff, the Apache Tribe of the Mescalero Reservation ("Tribe"), hereby moves pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, for an order temporarily restraining defendants from taking any action to interfere with the Tribe's class III gaming operations, including but not limited to institution of any civil action to enjoin or to declare unlawful in any respect the Tribe's gaming operations or to cause a forfeiture of any gambling devices utilized in such operations or of other tribal assets; seizure of any such devices or other assets; or institution of any criminal prosecution of any person engaged in the conduct of such operations or behalf of the Tribe, until this Court can hear and decide a motion for preliminary injunction.

In support of this motion, the Tribe submits herewith a Memorandum and the Affidavit of Wendell Chino. A proposed order is also submitted herewith.

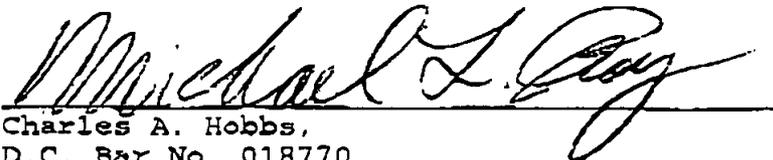
JAN 26 '96 13:27 FROM USAO-DC/CIVIL DIU

PAGE 025

The undersigned counsel certifies that this motion and the Memorandum and Affidavit herewith, are, simultaneously with the filing of this motion, being served along with the complaint and summons on all persons required to be served the complaint by Rule 4(i), Federal Rules of Civil Procedure. One copy of all pleadings will be served by hand on the Civil Process Clerk for the U. S. Attorney for the District of Columbia.

In addition, Wendell Chino, President of the Tribe, and Gregory M. Quinlan, undersigned counsel for the Tribe, will be delivering a copy of all pleadings to Mr. John J. Kelly, U. S. Attorney for the District of New Mexico, at a meeting scheduled for today at 11:00 a.m. (Mountain Standard Time).

Respectfully submitted,



Charles A. Hobbs,
D.C. Bar No. 018770
Michael L. Roy
D.C. Bar No. 411841
HOBBS, STRAUS, DEAN & WALKER
1819 H St., N.W. Suite 800
Washington, D.C. 20006
(202) 783-5100

Gregory M. Quinlan
FETTINGER, BLOOM & QUINLAN, P.C.
P. O. Drawer M
Alamogordo, NM 88310
(505) 437-6620

Attorneys for the Apache Tribe of the
Mescalero Reservation

Dated: January 26, 1996

JAN 26 '96 13:28

FROM USAO-DC/CIVIL DIV

PAGE 026

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE APACHE TRIBE OF THE)
MESCALERO RESERVATION,)
P.O. Box 176,)
Mescalero, New Mexico 88340)
)
Plaintiff,)
)
v.)
)
JANET RENO, In Her Official Capacity)
as the United States Attorney General,)
and BRUCE BABBITT, in his Official)
Capacity as the United States Secretary)
of the Interior,)
)
Defendants.)

ORDER

Upon the motion of plaintiff, and for good cause shown.

IT IS HEREBY ORDERED that defendants, and officers acting under the authority of defendants, refrain from taking any action to interfere with the Tribe's class III gaming operations, including but not limited to institution of any civil action to enjoin or to declare unlawful in any respect the Tribe's gaming operations or to cause a forfeiture of any gambling devices utilized in such operations or of other tribal assets; seizure of any such devices or other assets; or institution of any criminal prosecution of any person engaged in the conduct of such operations on behalf of the Tribe, until such time as the Court has ruled on a motion for a preliminary injunction.

United States District Court Judge

JAN 26 '96 13:29 FROM USAO-DC/CIVIL DIU

PAGE.027

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 1996, I caused a true copy of (1) Motion of the Apache Tribe of the Mescalero Reservation for a Temporary Restraining Order, (2) Memorandum of the Apache Tribe in Support of its Motion for a TRO, and (3) the Affidavit of Wendell Chino to be served on:

BY HAND TO:

Eric H. Holder, Jr.
U.S. Attorney for
The District of Columbia
555 4th St. N.W., 10th Floor
Washington, D.C.

BY REGISTERED/CERTIFIED MAIL TO:

Honorable Janet Reno
U. S. Attorney General
D.O.J.
10th and Constitution Ave. N.W.
Washington, D.C. 20530

Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

John J. Kelly
United States Attorney for
The District of New Mexico
P.O. Box 607
Albuquerque, NM 87103

Michael L. Gray