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IN THE SUPREME COURT OF THE UNITED STATES

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CHICKASAW NATION, :
Petitioner :
v. : No. 00-507
UNITED STATES. :
- - - - -X

Washington, D.C.
Tuesday, October 2, 2001

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:03 a.m.

APPEARANCES:

GRAYDON D. LUTHEY, JR., ESQ., Tulsa, Oklahoma; on behalf
of the Petitioner.
EDWARD C. DuMONT, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the United States.

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CHIEF JUSTICE REHNQUIST: We'll hear argument first this morning in No. 00-507, the Chickasaw Nation v. the United States.

Mr. Luthey.

ORAL ARGUMENT OF GRAYDON D. LUTHEY, JR.

ON BEHALF OF THE PETITIONER

MR. LUTHEY: Mr. Chief Justice, and may it please the Court:

The Chickasaw and Choctaw Nations ask this Court to hold that Congress has afforded tribes the same exemption from Federal wagering taxes enjoyed by State governmental wagering operations.

We do not base our claim on policy untethered to statutory text, but instead we base our claim today on section 20(d) of the Indian Gaming Regulatory Act codified at 25 U.S.C., section 2719(d).

Unfortunately, for all concerned, that statutory text is ambiguous, as every appellate judge which has examined it has held either expressly or implicitly, and as we expect the Government to admit today if the question is put to them.

One of the possible constructions of that ambiguous statute, based on its text and structure and

1 giving effect to every word of the statute and bolstered
2 by its legislative history, is that the tax exemption
3 afforded States by Internal Revenue Code chapter 35,
4 expressly referenced in section 2719(d), applies equally
5 to tribal wagering operations.

6 QUESTION: Where do we find this exact text that
7 you're talking about in the brief or in --

8 MR. LUTHEY: I would direct Your Honor to the
9 petitioner's appendix 90a, to our appendix for certiorari.

10 QUESTION: Haven't you set it out on page 3?

11 MR. LUTHEY: Yes, sir. It's also there.

12 QUESTION: On page 3 of your brief? That's a
13 handier reference than I think.

14 MR. LUTHEY: Now, starting with the actual text
15 of the statute, we believe that the statute contains two
16 central textual commands: one that has to do with the
17 reporting and withholding of taxes from gaming -- from --
18 from the winnings from gaming, and also the application of
19 the Internal Revenue Code provisions concerning wagering
20 operations. It's the tribes' contention that these are
21 two distinct concepts involving distinct provisions of the
22 Internal Revenue Code.

23 And we find the basis for the distinction in two
24 places. One is the disjunctive or that connects gaming
25 and wagering operations, and the additional support we

1 find is in the parenthetical that precedes the reference
2 to these two discrete concepts.

3 And if the Court would look at the parenthetical
4 that leads in this statute and gives five separate
5 examples of portions of the Internal Revenue Code that
6 Congress intended to apply --

7 QUESTION: Before you -- before you proceed
8 further with this argument that you make in your reply
9 brief, did you present it, this or distinguishing gaming
10 on the one hand from wagering operations? Did you present
11 that to the Tenth Circuit?

12 MR. LUTHEY: Not directly like that, Your Honor,
13 we did not.

14 QUESTION: And did you present it in your
15 opening brief?

16 MR. LUTHEY: What we did, Your Honor, in the
17 opening brief is adopt the decision by the majority in the
18 Little Six decision from the Federal circuit.

19 QUESTION: Which does not make this argument.

20 MR. LUTHEY: No. We made this argument in
21 direct reply to the Government's assertion in its answer
22 brief that there is only one central textual command;
23 namely, the Government would have you believe that the
24 statute applies only to --

25 QUESTION: Well, you've answered the question.

1 You raised it for the first time in your reply brief.

2 MR. LUTHEY: To address specifically, Your
3 Honor, the Government's position which we claim is based
4 on a false premise.

5 QUESTION: Well, that was not a new position.
6 The Government had always said that this is how it should
7 be read, and the fact is that what you say is the -- is
8 the meaning of it was a meaning that didn't occur to you
9 until -- until the reply brief. I mean, I think that
10 suggests how implausible a reading it is. Surely, this
11 argument should have been made much sooner if -- if it was
12 so -- so evident.

13 I mean, the way -- why don't you read the
14 provision the way -- the way you would have us read it?
15 It is --

16 MR. LUTHEY: The way we would have the provision
17 read, Your Honor, is set out at page 9.

18 QUESTION: Page what?

19 MR. LUTHEY: Page 9 of the reply brief where we
20 suggest that concerning addresses two distinct central
21 textual commands in -- in contradiction, Your Honor, to
22 the Government's assertion that there is one central
23 textual command.

24 QUESTION: Right. And you would say that the
25 way to read it is, concerning the -- the way it reads, if

1 one would read it normally, is, concerning the reporting
2 and withholding of taxes with respect to the winnings from
3 gaming or wagering operations. Now, the normal mind would
4 say with respect to the winnings from gaming or wagering
5 operations, but you want to read it concerning, A, the
6 reporting and withholding of taxes with respect to the
7 winnings from gaming or, B, wagering operations. And
8 that's just a very strained reading of it, it seems to me.

9 MR. LUTHEY: Your Honor, if I could respond.

10 QUESTION: I wish you would.

11 MR. LUTHEY: I -- I think our reading is
12 informed by the parenthetical reference that precedes
13 these two concepts, and particularly the text and
14 structure of that parenthetical reference. The
15 parenthetical reference identifies five particular
16 portions of the Internal Revenue Code. The first three,
17 sections 1441, 3402(q), and 6041, clearly apply to
18 concerning the reporting and withholding of taxes with
19 respect to the winnings from gaming. There's no doubt
20 about that. The --

21 QUESTION: And not the winnings from wagering.

22 MR. LUTHEY: From gaming.

23 QUESTION: But not from wagering.

24 MR. LUTHEY: It's from gaming by players, Your
25 Honor.

1 Then you get to the second part of the
2 parenthetical --

3 QUESTION: But would you explain to me? I
4 thought that gaming -- a gaming operations or wagering
5 operations -- perhaps you can clarify what is the
6 difference between gaming as a noun and wagering
7 operations?

8 MR. LUTHEY: It's our -- and you hit right
9 exactly on the point, Your Honor. It's our position that
10 gaming is a noun and the wagering refers to operations.
11 And the way that you can see that is by the specific
12 division in the parenthetical examples. The first three
13 have to do with the reporting and withholding of taxes
14 from winnings by players from gaming. The last two,
15 section --

16 QUESTION: But not the winnings by players from
17 wagering.

18 MR. LUTHEY: No. From gaming. That's correct.

19 QUESTION: And what -- what is the difference
20 between those two?

21 MR. LUTHEY: The difference is how it is used in
22 the context of this statute. And the difference is again
23 illustrated by the division within the five express
24 illustrations contained in the parenthetical.

25 QUESTION: If you could tell me concretely what

1 is the difference between winnings from gaming and
2 winnings from wagering operations.

3 MR. LUTHEY: Winnings from gaming here refers to
4 winnings by the players from gaming, money paid to players
5 as a result of gaming, winnings from what the players do.

6 QUESTION: Is there a difference, just in the
7 English language, between gaming and wagering?

8 MR. LUTHEY: They -- they could be regarded
9 synonymous if both are used as nouns, Mr. Chief Justice,
10 or both are used as adjectives.

11 Here we -- we contend that the distinction is
12 informed by the parenthetical. If you look at the last
13 two --

14 QUESTION: May I just ask? Under your reading,
15 what -- using Justice Scalia's A and B, what function does
16 A play?

17 MR. LUTHEY: What function A plays is that the
18 tax is imposed on the winnings from gaming as a result of
19 what the players have won.

20 QUESTION: Wouldn't that have been picked up
21 anyway, just in your reading from wagering on?

22 MR. LUTHEY: Not necessarily because when you
23 get to the second set, Your Honor, particularly 6050I and
24 chapter 35, the text of those provisions have nothing to
25 do with winnings.

1 QUESTION: No. But -- but if it just read
2 concerning wagering operations, just leave out all of the
3 A part, if it said concerning wagering operations, it
4 would pick up those provisions that require wagering
5 operations to withhold and report the winning -- the
6 winnings of players. The provisions you're referring to
7 are not the provisions that imposed the tax on the
8 players. They're the provisions that require the wagering
9 operations to withhold that tax and to report it. Isn't
10 that right?

11 MR. LUTHEY: Well --

12 QUESTION: So, wouldn't that have been covered
13 just as easily by simply saying concerning wagering
14 operations?

15 MR. LUTHEY: Well, section 1441 and 3402
16 actually do impose a tax, a percentage of tax, that is on
17 the winnings from gaming. Chapter 35 --

18 QUESTION: That's the chapter we're -- okay,
19 that's the --

20 MR. LUTHEY: Chapter 35 is different, Your
21 Honor. Chapter 35 imposes no tax on anyone from winnings.
22 Chapter 35 imposes a -- a tax on the operator based on the
23 wagers that have been received, not the money that the
24 operator has paid out.

25 QUESTION: All right.

1 QUESTION: Let me put it this way, and it's
2 suggested by Justice Ginsburg's line of questioning. Does
3 the Internal Revenue Code require any withholding of
4 winnings from wagering operations?

5 MR. LUTHEY: Yes, sir.

6 QUESTION: Well, then that, it seems to me,
7 destroys your argument because you -- you are -- you want
8 to say that gaming covers the entire universe of winnings
9 that are subject to withholding. But then you answered my
10 question there are also winnings from wagering that are
11 subject to withholding. And your way of parsing the
12 statute does not permit withholding for that.

13 MR. LUTHEY: If you --

14 QUESTION: So, it seems to me that -- that
15 destroys the distinction you're trying to make which is
16 what Justice Ginsburg's line of questioning, it seemed,
17 suggested to me at least.

18 MR. LUTHEY: With respect, Your Honor, if you
19 look at wagering and gaming as nouns, they could be read
20 to refer to the same thing. If you look at wagering
21 operations on one hand as a concept that's distinct from
22 the reporting and withholding of taxes from gaming, it's
23 another matter entirely.

24 And the problem is here chapter 35, which is
25 expressly referenced in the parenthetical, applies to

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1 wagering operations, not to the reporting and withholding
2 of taxes on gaming. It has nothing to do with it.

3 QUESTION: The oddity of the argument to me is
4 that the -- you're -- I think your explanation is assuming
5 that the basic activity that's going on in a casino, which
6 is giving rise to each of these different kinds of
7 liability, is the same activity. And -- and you're
8 calling it -- you're calling it gaming when the card
9 player plays blackjack, but you're calling it wagering
10 when the blackjack casino has to withhold money. And that
11 seems very odd to me, but maybe I don't understand your
12 argument.

13 QUESTION: I guess you're calling it wagering
14 operations, not wagering. Is that right?

15 MR. LUTHEY: That's -- that's exactly correct,
16 Your Honor.

17 QUESTION: Yes, but the operation -- the
18 wagering operation for one purpose is gaming for another
19 purpose, and that -- as I understand your argument, and
20 that's just a very strange and confusing usage to impute
21 to the Congress.

22 MR. LUTHEY: With respect, Your Honor, if -- if
23 the statute is read closely, the first three provisions of
24 the parenthetical apply to concerning the reporting and
25 withholding of taxes with respect to the winnings. Then

1 we're told what the winnings come from. We have taxes on
2 winnings.

3 QUESTION: They come gaming under your argument.

4 MR. LUTHEY: They come from gaming.

5 Then we have two additional provisions
6 identified: 6050I of the Internal Revenue Code and
7 chapter 35 --

8 QUESTION: That's reporting and withholding, and
9 the activity of the reporting and withholding is not
10 gaming, but wagering operation. Is that right?

11 MR. LUTHEY: No.

12 QUESTION: Is that your argument?

13 MR. LUTHEY: I'm not being clear here. 6050I
14 and chapter 35 have nothing to do with reporting and
15 withholding. Nothing to do with reporting and
16 withholding. And that's been our position consistently,
17 and the Government will concede that.

18 QUESTION: Well, don't they impose -- don't they
19 impose an excise tax on operators?

20 MR. LUTHEY: They do.

21 QUESTION: Gaming and wagering? If you -- if
22 you have a casino, you have to pay an excise tax?

23 MR. LUTHEY: That's correct.

24 QUESTION: A Federal excise tax.

25 MR. LUTHEY: Yes, Your Honor.

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1 QUESTION: And you're arguing that the Indian
2 tribes that operate the casinos were given somehow the
3 same exemption from that that States are when States
4 operate lotteries or some kind of gambling operations.

5 MR. LUTHEY: Other type of wagering operation,
6 Your Honor. That's correct.

7 And one of the things that we believe informs
8 our construction of this has to do with the legislative
9 history --

10 QUESTION: Before you get to that -- I can take
11 a break when you get to that.

12 (Laughter.)

13 QUESTION: Before you do, I have -- I have
14 another textual problem with your interpretation, and for
15 this purpose, you can't use page 3 of your brief. You
16 have to look on page 90a of the appendix to the petition
17 for a writ of certiorari, which -- which contains the
18 whole provision and not just the -- the portion of it that
19 page 3 quotes.

20 You want us to read the -- the phrase with
21 respect to the winnings from gaming -- A, with respect to
22 the winnings from gaming or, B, wagering operations in the
23 middle of that paragraph as a separate A and B. But the
24 paragraph continues: shall apply to Indian gaming
25 operations conducted or under blah-blah in the same manner

1 as such -- as such provisions apply to State gaming and
2 wagering operations.

3 Now, does it mean in the same manner as such
4 provisions apply to State gambling -- to, A, State gaming?
5 Do any State constitutions allow the State to -- you know,
6 to gamble with the public funds? See what I'm saying? At
7 the end of it, State -- you can't possibly read it as:
8 apply to State gaming on the one hand and wagering
9 operations on the other because States don't game. You
10 have to read it as an adjective there. State gaming
11 operations.

12 MR. LUTHEY: At the end of -- at the end of the
13 statute, Your Honor.

14 QUESTION: Yes. You want to read it one way at
15 the end and another way in the middle. That doesn't --

16 QUESTION: Well, when you say gaming at the
17 middle, don't you mean gaming by a player in a casino?

18 MR. LUTHEY: Yes, sir.

19 QUESTION: Okay, and isn't that what you would
20 also mean when the word gaming is used at the end?

21 MR. LUTHEY: Well, this is --

22 QUESTION: I may not buy your argument, but I'm
23 not sure that I see the inconsistency.

24 MR. LUTHEY: That's right. And this is part of
25 the ambiguity.

1 QUESTION: If you're going to go to legislative
2 history, why doesn't it all become clear? Originally
3 there was a bill that had the word not only the reporting
4 but also taxation. As the bill was originally reported,
5 it said you apply to Indian tribes the same way as you
6 apply to States laws that concern, one, taxation; two,
7 reporting of taxes; three, withholding of taxes.

8 Now, we have two possible explanations of what
9 happened. They cut out the word taxation and they changed
10 it to the present. Explanation number one which would
11 justify what you just said in the last 15 minutes. It got
12 into the hands of a real drafting nut.

13 (Laughter.)

14 QUESTION: Now, I've met people who can clear
15 statutes and make them totally obscure. Choice one is
16 that's what happened.

17 Choice two is what happened is they changed it
18 to mean just what the Government said. They cut out
19 taxation, they left reporting, and the number 35 is there
20 as an accident, an error, a leftover, a number that no one
21 caught and no one changed, though they should have done
22 it.

23 Now, I see explanation one and explanation two,
24 and maybe you have a third one. If so, I'd like to know
25 it; if not, I'd like to know why not adopt two.

1 MR. LUTHEY: I'd like, Your Honor, to offer a
2 third explanation in response to your direct question. If
3 you look at H.R. 1920, section 4, which was the first
4 version of IGRA that was -- that was put forward -- and
5 this is contained in our opening brief at pages 29 and 30
6 -- you will see that the initial draft, after -- after
7 mentioning provisions of the Internal Revenue Code,
8 identified two specific areas concerning the taxation and
9 the reporting and withholding of taxes. Two areas.

10 There was a committee report from the House that
11 is set forth in our brief at page 30 that commented on
12 that text, and it noted that related provisions of the
13 Internal Revenue Code, such as section 3402(q) and chapter
14 35, then it said concerning taxation. So, it appears that
15 you could conclude that the initial phrase, concerning
16 taxation, referenced chapter 35.

17 QUESTION: Yes.

18 MR. LUTHEY: That Congress ended. A new
19 Congress began. Senate bill 555 was introduced with
20 largely the same language and presumably with Congress
21 being informed by the prior committee report.

22 Then there was testimony before the Senate
23 committee on IGRA in 1987, and tribal interests at those
24 hearings specifically objected to the phrase, concerning
25 taxation, rightly or wrongly -- rightly or wrongly --

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1 because they were concerned that it would give the
2 impression that this was somehow providing for taxation by
3 the Federal Government of tribal gaming. We -- we know
4 that in the legislative history.

5 The next thing that happened is the text was
6 changed. Concerning taxation was deleted, and the synonym
7 for concerning taxation contained in House of
8 Representatives Report No. 99488 that accompanied the
9 prior bill -- the synonym for taxation, chapter 35, was
10 inserted in the text.

11 And when you see that legislative history, how
12 the synonym for concerning taxation was removed from the
13 legislative history committee report and brought to the
14 text, and then you see what the text consisted of, which
15 is the parenthetical that contains five references, two --
16 two of which have nothing to do with the reporting and
17 withholding.

18 QUESTION: But, counsel --

19 QUESTION: I get the third explanation, but the
20 third explanation then depends on the testimony of the
21 Indian tribal interests that say they don't want the word
22 taxation. Where is the reference to that? How do I find
23 -- I don't notice it in your brief, but I haven't read it
24 that --

25 MR. LUTHEY: You will -- you will find that in

1 the amicus brief filed by Little Six at page 25.

2 QUESTION: Counsel, it seems to me you have two
3 different kinds of presumptions that we face with language
4 that can be said to be ambiguous. One is that you don't
5 presume exemptions from taxation from ambiguous language.
6 On the contrary, we have said that there are presumptions
7 that favor Indian tribes when there's an ambiguity. And
8 it seems to me these presumptions are maybe a little bit
9 in tension with each other, and which one should we rely
10 on here, do you think?

11 And is there anything -- in the Mescalero Apache
12 case, which this Court decided, we did refuse to read an
13 exemption into vague statutory language for tax purposes.
14 How do you distinguish the principles we applied in
15 Mescalero?

16 MR. LUTHEY: In Mescalero, Your Honor, there
17 were actually two particular taxes at issue. One was a
18 gross receipts tax on off-reservation ski resort receipts,
19 and in that the Court went through the various statutes
20 that were being cited for the purpose of an exemption --
21 the New Mexico Enabling Act, the Indian Reorganization Act
22 -- and found no ambiguity. So, there was no need to
23 provide application of the Indian law canon. Specifically
24 the Court said on the face of 465 there is no reason to
25 hold that it forbids income taxes. No ambiguity.

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1 Then there was a second part that this Court
2 decided in part 2(b), and that's whether or not section
3 465 of title 25's lands tax exemption extends to a use
4 tax. And in that course -- in that case, the Court
5 construed the statute, actually used the word construed.

6 QUESTION: There's a well recognized
7 presumption, Mr. Luthey. Where the -- you're talking
8 about a treaty negotiated between the Indians and the
9 United States, ambiguities are read to favor the Indians.
10 But what is the reason for carrying that presumption over
11 into a statute?

12 MR. LUTHEY: The underlying trust relationship,
13 Your Honor, between the United States and the Indians, its
14 wards, as recognized by this Court in the County of Oneida
15 decision.

16 QUESTION: Well, but give me a better reason
17 than that. I mean, the underlying presumption between the
18 United States and its wards. Why should that affect the
19 construction of a statute?

20 MR. LUTHEY: Because the statute is imposed by
21 Congress on its wards, and this Court has long recognized,
22 including in the Montana v. Blackfeet Tribe, that statutes
23 concerning Indians that have ambiguity are to be construed
24 in favor of the Indians. And the underlying strong,
25 powerful policy underpinning is that trust relationship.

1 QUESTION: Mr. Luthey -- I'm sorry. Go ahead.

2 QUESTION: No.

3 QUESTION: No, no. You had -- you had your
4 finger on your button before I did.

5 (Laughter.)

6 QUESTION: Thank you.

7 What -- what do you say in response to your
8 friend's argument on the other side that the presumption
9 in favor of the Indians should not apply because we're
10 dealing here with a -- a taxing statute over which -- over
11 Indian activities as to which the Government has plenary
12 power under the Indian Commerce Clause. What's your
13 response to that?

14 They -- I mean, they're contrasting the States.
15 They say, look, the States tax by -- by sufferance when
16 they -- when they tax tribes. The National Government
17 has -- has plenary authority, and therefore there should
18 be different rules. And the presumption shouldn't --
19 presumption favorable to the Indians shouldn't operate.
20 What's your response to that?

21 MR. LUTHEY: I direct Your Honor to *Squire v.*
22 *Capoeman* at 351 U.S. 1 where this Court dealt with a
23 Federal tax, a claimed exemption from Federal taxation,
24 and applied the Indian canon in favor of the tax exemption
25 sought by the Indians.

1 QUESTION: Mr. Luthey --

2 QUESTION: Mr. Luthey, could I ask you? You say
3 they're just making the Indian tribes similar to the
4 States. I know there are State lotteries, but are there
5 -- are there any State-run casinos in which, you know, you
6 have State employees who are croupiers saying, you know,
7 Monsieur et madame, mettez bon jour? You know.

8 (Laughter.)

9 QUESTION: A State GS-7 or something.

10 (Laughter.)

11 QUESTION: Are -- are there such entities?

12 MR. LUTHEY: I'm not aware of any at this time,
13 Your Honor.

14 QUESTION: So -- so the plausibility of -- of
15 giving an exemption from tax here to the -- to the Indian
16 casinos, because after all the States have it, is really
17 not all that plausible because I don't know any State that
18 has gone into the casino business, nor do I think any is
19 about to.

20 MR. LUTHEY: With respect, Your Honor, I must
21 disagree with you. The underlying policy for State
22 governmental gaming and gaming under IGRA is exactly the
23 same. It is gaming to raise money to take care of
24 governmental purposes. And in fact, under IGRA, that's
25 what the money must be spent on.

1 QUESTION: Do some --

2 QUESTION: Mr. Luthey, may I ask you one
3 question on -- on the text that supports Justice Breyer's
4 notion that maybe this was just a crazy drafter? The
5 section starts out, the provisions of the Internal Revenue
6 Code of 1986. I take it that means all the provisions of
7 the Internal Revenue Code of 1986. And including -- well,
8 that seems to be redundant, because you already have the
9 provisions of the Internal Revenue Code, all the
10 provisions of the Internal Revenue Code, and naturally
11 they would include these and everything else in the code.

12 MR. LUTHEY: I -- I would suggest to Your Honor
13 that the provisions of the Internal Revenue Code of 1986
14 are then explained after the parenthetical by specifically
15 what the provisions concern that are to be applied in the
16 same way as States, and specifically included in that is
17 chapter 35 which contains the exemption for States. And
18 in fact --

19 QUESTION: Well, wouldn't you expect the
20 sentence then to start sections so and so and so and so
21 concerning? Why have the provisions of the Internal
22 Revenue Code?

23 MR. LUTHEY: The -- the lead-in, the provisions
24 of the Internal Revenue Code, is limited by its -- by the
25 part of the statute that identifies what the internal

1 revenue concerns that shall be applicable equally for
2 State gaming, as well as for the tribal activity here.
3 The parenthetical is illustrative.

4 Mr. Chief Justice, with that, I'd like to
5 reserve.

6 QUESTION: Very well, Mr. Luthey.

7 Mr. DuMont, we'll hear from you.

8 ORAL ARGUMENT OF EDWARD C. DuMONT

9 ON BEHALF OF THE UNITED STATES

10 MR. DuMONT: Mr. Chief Justice, and may it
11 please the Court:

12 QUESTION: You must be excited about defending
13 this statute.

14 (Laughter.)

15 MR. DuMONT: I'm always excited to appear before
16 you, Your Honor.

17 There are three statutory provisions really that
18 are relevant here or sets of provisions, and if I can just
19 go through them very briefly.

20 Chapter 35, that we've talked about, imposes a
21 Federal wagering excise tax on certain limited kinds of
22 wagering, including lotteries. It exempts State
23 lotteries, but not tribal lotteries by its terms, from the
24 tax.

25 The second is section 7871 --

1 QUESTION: It makes no reference to Indian
2 wagering operations in chapter 35? Just States?

3 MR. DuMONT: Chapter 35 makes no --

4 QUESTION: It exempts the States, makes no
5 reference to the tribes.

6 MR. DuMONT: Makes no reference, and it does
7 not, I should point out, exempt States from all taxes.
8 It's a fairly limited exemption for State lotteries. So,
9 if a State were to enter the gaming business, then parts
10 of the wagering excise tax would apply to the State. But
11 there's an exemption for State lotteries and not for
12 tribal lotteries.

13 QUESTION: Just -- not just lotteries. There
14 would be an exemption for State casinos, I assume, if the
15 State should open a casino.

16 MR. DuMONT: I think actually that the exemption
17 is more limited than that. It's an exemption for State
18 lotteries.

19 QUESTION: In chapter 35?

20 QUESTION: Is that in the papers before us?

21 QUESTION: Then why do we have a problem here?
22 Aren't we talking about casinos here?

23 MR. DuMONT: If you look at page --

24 QUESTION: If the exemption only applies to
25 lotteries, gee, we don't have a problem.

1 MR. DuMONT: It's page 92a of the petition
2 appendix, reprints section 4402 which lists the
3 exemptions. There's one for parimutuels. There's one for
4 slot machines, and then there's the third one for State-
5 conducted lotteries. It's on any wager placed in a
6 sweepstakes wagering pool or lottery conducted by an
7 agency of a State acting under authority of State law.

8 QUESTION: And is that what they're relying on
9 in this case, that -- that exemption as exempting casinos?

10 MR. DuMONT: That's the exemption, although the
11 -- the gambling at issue here is so-called pull-tabs which
12 are a form of lottery, not a form of table gaming. So, I
13 think it's true that pull-tabs are -- are considered a
14 lottery for purposes of this tax.

15 QUESTION: What is a pull-tab? I've never
16 pulled --

17 MR. DuMONT: A pull-tab is a little card about
18 like this with three to five little windows, like an
19 Advent calendar, that you can pull up and reveal something
20 underneath them.

21 (Laughter.)

22 QUESTION: What a weird analogy.

23 (Laughter.)

24 MR. DuMONT: And if you find under it three
25 angels, for instance, you may --

1 (Laughter.)

2 MR. DuMONT: -- you may win something. So, you
3 pay a dollar for the ticket. If you get the right
4 combinations of symbols under the tickets, then you win
5 something. If you don't, you don't.

6 QUESTION: Of course, in Calvinist theology,
7 it's not weird at all.

8 (Laughter.)

9 QUESTION: So, in any event, we're not taking
10 here about Indian casinos, gambling casino operations,
11 because they wouldn't be covered by the exemption in title
12 35 even if it applied.

13 MR. DuMONT: That's correct. They would not be
14 covered by the exemption. They would be covered by the
15 tax.

16 QUESTION: Well, that depends on how broadly one
17 construes the word lottery, and that's been broadly
18 construed in some cases.

19 MR. DuMONT: That's true. There's a fairly
20 specific --

21 QUESTION: But in any event, in this case we do
22 have an Indian lottery.

23 MR. DuMONT: We have an Indian lottery. We --
24 we are prepared to concede that, yes.

25 QUESTION: Well, is -- are we talking about --

1 is the excise tax, .25 percent on the amount of each wager
2 in 4401(a)(1) -- does that apply to Indian gaming? It
3 says, there shall be imposed on any wager authorized under
4 the law of the State in which accepted excise tax equal to
5 0.25 percent of the amount of such wager. Is that the
6 kind we're talking about here?

7 MR. DuMONT: That's the tax. It's the .25
8 percent on any wager.

9 QUESTION: That is the tax we're talking about.

10 MR. DuMONT: That is the tax we're talking
11 about. Now, wager -- the definitions exclude most kinds
12 of table games like blackjack and so on where, if you look
13 at the definitions, which are on page 90 --

14 QUESTION: See, that's -- what I'm thinking of
15 -- what I'm thinking about is since 44(a) -- 4401(a)(1);
16 i.e., there shall be a quarter of 1 percent tax on every
17 wager authorized under the law of the State, except later
18 on, A, B, C, D. If that's what we're talking about in
19 this case, I'm trying to understand the testimony to which
20 they pointed by Mr. Lionell John who said, I object to
21 that word taxation because it would impose -- give
22 authority to impose a tax on Indian tribes. But there
23 already was that authority in 4401(a). Is that right?

24 MR. DuMONT: That's -- that's certainly correct.
25 This tax applies, by its terms, to anyone who accepts a

1 wager and we would certainly say that includes a State or
2 a tribe. Now, States are specifically exempted under
3 chapter 35; tribes are not.

4 Now, let me use that to point out that an
5 explanation, a good explanation, for the presence of
6 section 2719(d) in the Indian Gaming Regulatory Act is the
7 exquisite sensitivity to tax issues in all these matters
8 relating to Indian gaming. And what 2719(d) does is to
9 make clear that a State -- a tribal lottery operation,
10 like the State lottery operation, would in fact have to
11 comply with the withholding and reporting requirements of
12 the Internal Revenue Code.

13 QUESTION: I can understand --

14 MR. DuMONT: Now, that would not be a foregone
15 conclusion to many tribal lawyers.

16 QUESTION: I can understand that. What I can't
17 understand is the reference to chapter 35. You don't
18 really have a good explanation for that, do you? What --
19 what does the -- what does the reference to chapter 35
20 cover that's of any relevance?

21 MR. DuMONT: We do not have a good explanation
22 for that.

23 QUESTION: Thank you.

24 QUESTION: That was -- you subscribe to the
25 position that Judge Dyke took in the Federal circuit

1 because he said there wasn't a good explanation for it
2 either.

3 MR. DuMONT: That's right. We have suggested --
4 the Tenth Circuit suggested possibly incorporating the
5 definitions of lottery and wager from chapter 35. That's
6 not a strong explanation.

7 QUESTION: How about the reference to section
8 6050I? Do you have an explanation for that?

9 MR. DuMONT: It's a lot more understandable for
10 the following reason. What 6050I relates to is anyone
11 operating a business who receives \$10,000 or more in cash
12 from anyone in a business transaction or a series of
13 transactions, and that is required to be reported. It's a
14 regulatory measure.

15 Now, one can certainly understand why that does
16 and should apply to these operations like other business
17 operations. And it's in the same family as tax reporting
18 obligations, but there's certainly attention in the
19 language with respect to that one as well.

20 Now, there are several things to point about --
21 out about all this. One is that we don't know what
22 happened in the committee that revised the statute, but
23 what we do know is that the statute went in to that
24 committee in a way that clearly would have referred to all
25 taxation, provisions of the Internal Revenue Code covering

1 all taxation of wagering operations, and that would have
2 imported chapter 35 and also the State exemption.

3 It came out in a very different form. It came
4 out not only with the word taxation deleted, the
5 parenthetical added, but also with the language about
6 winnings added, and that is why it's not, in fact,
7 possible to say that chapter 35 was just a substitution
8 for the deletion of the word taxation because it's not all
9 they did. They also added the limitation that it applies
10 to winnings from gaming or wagering operations. And
11 that's completely inconsistent with the application of
12 chapter 35.

13 QUESTION: Is there someone over in the IRS
14 whose job it is to look through bills, when they finally
15 emerge, and check the cross references and the numbers who
16 might have caught what seems to be, in your argument
17 certainly, an accidental error in not taking a number out
18 that should have been taken out? Is there anyone there
19 whose job it is to do that? I would think there was.

20 MR. DuMONT: There are a lot of people both at
21 the IRS and on the Hill whose job it is to comb through
22 tax legislation.

23 I would point out that this legislation came
24 through the Indian Affairs Committee. It was drafted by
25 people who are not expert Internal Revenue Code drafters,

1 and it bears a resemblance, but only a resemblance, to the
2 kind of precision that one sees in tax legislation and in
3 the provisions of the Internal Revenue Code itself.

4 QUESTION: After the split, though, between the
5 Tenth Circuit and the Federal circuit, did anyone call the
6 responsible committee's attention to this so that Congress
7 could fix up the statute?

8 MR. DuMONT: I'm not aware that anyone has
9 brought this issue to -- onto the legislative agenda. I
10 don't know that.

11 The other thing I would point out about the
12 language is that when they -- when the committee
13 reformulated this language to include the parenthetical,
14 the kind of parenthetical it is I think is important.
15 It's an example. It's exemplary parenthetical. We're not
16 in the habit of ignoring parenthetical qualifications in
17 statutes, particularly not in the Internal Revenue Code.
18 But this is a special kind of parenthetical. It's one
19 that says provisions of the Internal Revenue Code
20 concerning the reporting and withholding of taxes, and
21 then it has what is intended to be a helpful list of
22 examples, including 1441, 3402(q), and so on.

23 Now, I just think it's interesting to remember
24 that if all of those examples were perfectly apt, then one
25 could properly characterize the entire parenthetical as

1 superfluous. So, what's interesting here is that although
2 it's true that our interpretation will give no effect to
3 the reference to chapter 35, what my colleague's
4 interpretation would do is to give particular and
5 surprising effect to one anomalous cross reference in --

6 QUESTION: Well, it isn't surprising in the
7 broad sense that Congress clearly has favored Indian
8 gaming operations and has wanted to provide income to the
9 tribes for their purposes through those operations, and to
10 impose an excise tax on it when the Congress doesn't
11 impose it on the States would be perfectly consistent with
12 that overall objective, it seems to me.

13 MR. DuMONT: I think it would have been
14 perfectly consistent to grant the exemption. I think it's
15 perfectly consistent not to grant the exemption. And
16 therefore, I think the policy argument is sort of --

17 QUESTION: Maybe not as consistent because the
18 effort over there in Congress has been to support these
19 Indian gaming operations, not that I necessarily think
20 it's a good idea, but Congress obviously does. So, that
21 may well have been their overall objective.

22 MR. DuMONT: Well, but recall, Justice O'Connor,
23 that in the specific context of the Indian Gaming
24 Regulatory Act, what was going on was not a unilateral
25 project in favor of tribal interests. It was a very much

1 a long-term and hard-fought compromise between State
2 interests and tribal interests.

3 QUESTION: But the State interest is not -- I
4 mean, you're -- you're saying that part of the compromise
5 might be that the States end up without taxation and the
6 Indians get taxed. I -- I could understand that if we
7 were concerned about sort of allowing a disparity between
8 the States and tribes and the ultimate tax effect to them.

9 But I would have thought that the competition
10 between the States and the tribes would have been a
11 competition for gamblers, for money coming in. And this
12 taxation of the States at the other end wouldn't seem to
13 affect that at all. If somebody is going to wager a
14 dollar, he doesn't care whether -- whether the casino has
15 to pay a tax on his dollar or whether -- whether it
16 doesn't. He's just interested in the payout. And -- and
17 so I'm -- I don't quite see why it is plausible that
18 taxing the Indians but not taxing the States might have
19 been part of a -- a compromise in the competition between
20 States and Indians for -- for gambling business.

21 MR. DuMONT: I think your competitive analogy is
22 exactly right. Or that's the right lens through which to
23 view this statute. But I think it also points up that
24 it's a mistake to get wrapped up in the details of this
25 case and to think about section 2719(d) as a provision

1 that was -- was directed specifically at State wagering
2 taxes.

3 What it was directed at, I submit, is making
4 sure that from the point of view of the gambler, there
5 would be no difference -- the tax point of view of the
6 gambler, there would be no difference in going to a State
7 lottery or a tribal lottery or a State game or a tribal
8 game. And that's why what it says is provisions relating
9 to the reporting and withholding of taxes on winnings, on
10 the gambler's winnings, are to be observed by the tribe in
11 the same way that they would be observed by the State.

12 And the only thing that has gotten us -- and
13 that's a perfectly clear set of rules and there's a
14 perfectly good reason for it. The only thing that gets us
15 mixed up in this case is the fact that there is what would
16 appear to be a leftover or inadvertent reference to
17 chapter 35.

18 QUESTION: Yes. Is there something -- is there
19 something else?

20 May I go to --

21 QUESTION: Well, no. Before you depart from
22 that subject, I -- I assume that there would be a -- a
23 motive for the States to want to have these taxes imposed
24 on the Indian lotteries even though they are not imposed
25 on the State lotteries. Just sheer competitive reasons.

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1 True, it doesn't affect the gambler immediately, but that
2 lottery which does not have to pay the tax can give much
3 better odds and gamblers tend to bet with a lottery that
4 gives the better odds. So, this -- this does place the
5 State lotteries at a considerable advantage over the
6 Indian lotteries, if you read it the way you want.

7 MR. DuMONT: It's a very small tax, Your Honor.

8 QUESTION: It's a small tax.

9 MR. DuMONT: If it were a bigger tax --
10 (Laughter.)

11 QUESTION: The odds are pretty -- pretty close,
12 I mean.

13 QUESTION: May I now ask you to turn to -- to
14 something else? I asked counsel on the other side about
15 the significance of your argument that the presumption
16 favoring the -- the tribes in this situation should not
17 operate, even though it might in a case of State taxation,
18 because of the Government's plenary power over Indians as
19 -- as distinct from the States' right only by sufferance
20 of the Federal Government to tax. Why should that make a
21 difference?

22 MR. DuMONT: I think because of the historical
23 difference in the relations between the Federal Government
24 and the tribes on the one hand and the State governments
25 and the tribes on the other hand, and the best case I can

1 point you to on that is the Kagama case from the end of
2 the last century which talks about the trust relationship
3 and it talks about the fact that the tribes stand in a
4 very different relation to the Federal Government from the
5 relation in which they stand to the States.

6 QUESTION: Well, that -- that certainly affects
7 -- we'll assume the obligation of the Government, and it
8 certainly may well accept the -- the specific decisions
9 that the Government makes. But when we don't know what
10 decision the Government has made, when the statute is
11 ambiguous, why should the existence of the trust
12 relationship, in effect, be to the tribes' disadvantage in
13 construing the ambiguous statute?

14 MR. DuMONT: There are two things that I'd like
15 to --

16 QUESTION: It seems counterintuitive, I guess.

17 MR. DuMONT: Well, there are two things I'd like
18 to point out about that.

19 The first is that, of course, if we get down to
20 a battle of canons here, that we find the statute
21 hopelessly ambiguous and it must be interpreted with
22 reference to general principles, then the principle -- the
23 Indian canon certainly has some reference, but so does the
24 general canon of strictly construing Federal revenue
25 statutes. And that's, of course, a context in which the

1 Government has a trust relationship with all the people,
2 that we must apply revenue statutes in a way that --

3 QUESTION: What does the trust relationship tell
4 us that informs us in -- in construction? It tells us
5 something about the Government's obligations to various
6 groups of people, but I don't know what it tells us about
7 -- about meaning.

8 MR. DuMONT: I'm not sure it tells you very much
9 at all about meaning. In a case where you have -- where
10 you're using the canon as a true tie-breaker, then it may
11 be a salutary principle of construction for all the same
12 reasons --

13 QUESTION: That's what I'm assuming. That's
14 what I'm assuming. I'm assuming there are two tie-
15 breakers and they're at odds.

16 MR. DuMONT: -- for all the same reasons that
17 the trust relationship exists in the first place --

18 QUESTION: Yes, but you say they're -- they're
19 not -- or the -- the apparent loggerhead should -- should
20 dissolve when you realize that the Government has a
21 particular trust relationship to Indians. And my
22 suggestion is, if that's the case, why isn't it more
23 likely that the canon favoring the Indians would prevail?

24 MR. DuMONT: I don't suggest that in -- in cases
25 involving Federal taxation because there is an equally

1 strong and -- and, in this particular context, opposite
2 principle that exemptions from the exactions, the general
3 exactions, to support the Federal Government are to be
4 narrowly construed.

5 QUESTION: Mr. -- Mr. --

6 MR. DuMONT: And more to the point, they're not
7 to be inferred.

8 QUESTION: Mr. DuMont, supposing we didn't have
9 here an Indian tribe but an individual Indian who was
10 claiming an exemption from taxation. Would the same
11 principle of resolving ambiguities in favor of Indians
12 apply to that case?

13 MR. DuMONT: Not in the same -- not in the same
14 way. And the cases, of course, on that in the tax area
15 are very clear, The Cherokee Tobacco case and the other
16 cases that say that a general taxing statute, general
17 Federal taxing statute is to be applied in accordance with
18 its terms absent some specific treaty or statutory right.
19 Now, in interpreting an ambiguous treaty or statutory
20 right, there may be -- there may be room for applying that
21 canon.

22 But I'd like to come back, if I could, to the
23 other reason --

24 QUESTION: Mr. Dumont, before we get off of
25 canons, we've just been talking about two, but there's a

1 third one. Indians really have two canons on their side
2 and the third one is, to my mind, the strongest and -- and
3 the one that's -- that's the hardest for you to overcome.
4 And that is that you never read a statute so that any of
5 its provisions is inoperative or senseless. And --

6 MR. DuMONT: I agree with you, Your Honor.

7 QUESTION: To be sure, the Indians' proposed
8 interpretation here is strained, but you can do it;
9 whereas there is no possible way to read section 35 on
10 your interpretation as being relevant. What do you say to
11 that? I really think you have the burden of showing that
12 -- that the Indians' interpretation is not only strained,
13 but it's really so strained, it's just -- it's just an
14 impossible interpretation. Why is it an impossible
15 interpretation using, you know, that A, B, using the or to
16 mean -- you know.

17 MR. DuMONT: Right. First of all, I agree with
18 you that that's our biggest issue in this case.

19 Second, I also agree that our answer to that is
20 that the statute is not ambiguous, and this gets back to
21 the canon point. The statute is not ambiguous because it
22 cannot be fairly read to -- to impose the exemption that
23 my colleagues want. And I would say that not only because
24 it's not the natural reading, as you pointed out, Justice
25 Scalia, of the statute, but also because you put several

1 things together.

2 First of all, I'm looking at page --

3 QUESTION: 90a of the --

4 MR. DuMONT: 90a.

5 QUESTION: -- of the appendix to the petition.

6 MR. DuMONT: But -- page 90a.

7 The -- at the end of the -- what they want to do
8 is to split gaming -- winnings from gaming or wagering
9 operations. Now, first of all, the very last line of the
10 statute refers to State gaming and wagering operations,
11 and there it is used as a phrase. And we submit that
12 that's powerful evidence that it's used as a phrase a few
13 lines up.

14 Second, in the very next breath from where it
15 says, with respect to the winnings from gaming or wagering
16 operations, the statute says, shall apply to Indian gaming
17 operations. It doesn't -- doesn't say, apply to Indian
18 gaming. It says, apply to Indian gaming operations.
19 Again, clearly the statute is using those two together.

20 Third, even if we were to accept that
21 interpretation, I'm not sure where it would get the tribes
22 here because if you accept that interpretation, then you
23 are divorcing winnings and gaming -- or sorry -- wagering
24 and gaming. It means they don't mean the same thing. And
25 all the statute confers is a right to have these

1 provisions apply to Indian gaming operations conducted
2 pursuant to this chapter in the same manner as it applies
3 to the States.

4 Now, if we're going to divorce gaming from
5 wagering operations, then having the provisions that apply
6 to gaming by the States tells you nothing about chapter 35
7 because chapter 35 applies to wagering operations.

8 So -- and -- and finally, I think, as Justice
9 Ginsburg and some of the other colloquies pointed out
10 earlier, the implication of that reading would be that the
11 reporting and withholding requirements that we all agree
12 are central to this statute somehow only apply to the
13 Indian gaming piece and they don't apply to the wagering
14 operations piece. And that makes no sense out of the
15 statute.

16 QUESTION: But --

17 MR. DuMONT: So, for all those reasons, I don't
18 think it's just a strained reading; I think it's an
19 impossible reading of the statute.

20 QUESTION: But you do concede that, as I believe
21 Judge Dyke said, the only way to make sense out of the
22 statute is to treat it as though the reference to chapter
23 35 were not there.

24 MR. DuMONT: I think that's right. I think in
25 -- in effect what one has to do is ignore the

1 parenthetical, the examples in the parenthetical, and give
2 effect instead to the -- what we would call the operative
3 statutory text. And as I said, if you took out the entire
4 parenthetical, it wouldn't change anything about the --
5 the effect of this statute on sections 1441, 3402(q), or
6 6041 because those are provisions of the Internal Revenue
7 Code concerning the reporting and withholding of taxes
8 with respect to winnings, and so they would continue to
9 apply even if we deleted the entire parenthetical.

10 What wouldn't continue to apply are these two
11 inapt examples -- or the one inapt example of chapter 35
12 and possibly 6050I. And in a particular situation like
13 this, I take no joy in saying that there are some words
14 that have no effect in the statute, but that is the
15 position we're left with, and it is by far the better
16 position of the two that are possible.

17 QUESTION: Maybe I can just ask you one
18 clarifying question. Does this -- does this statute apply
19 to casino gambling generally or does it not?

20 MR. DuMONT: I'm sorry. Which statute?

21 QUESTION: Well, the one we're talking about in
22 the case. The whole -- this whole tax --

23 MR. DuMONT: The Gaming Regulatory Act or the --
24 or the wagering tax?

25 QUESTION: The wagering tax.

1 MR. DuMONT: The wagering tax -- the definitions
2 -- the definitions on page 97a exempt from -- they define
3 a wager as sports wagering or 4421(1)(c), any wager placed
4 in a lottery conducted for profit. And the definition of
5 lottery excludes games that are typically played where the
6 wagers are placed, the winners are determined, and the
7 distribution of prizes are made in the presence of all
8 persons. And that excludes both bingo, which is, of
9 course, a principal tribal gaming activity, and also most
10 table games like roulette or blackjack.

11 QUESTION: It does exclude them.

12 MR. DuMONT: It excludes those.

13 I'd like to point out one thing I haven't
14 mentioned yet which is there's an entire section of the
15 Internal Revenue Code -- and it's reprinted in the
16 appendix to our brief -- section 7871, which deals very
17 specifically and in excruciating detail with tax
18 exemptions that are or are not available to tribes under
19 the Internal Revenue Code. It was enacted by the Indian
20 Tribal Governmental Tax Status Act. In other words,
21 Congress was specifically focusing on this issue. And if
22 you look at page 2a of the --

23 QUESTION: Of what?

24 MR. DuMONT: Of the main gray brief, the gray
25 brief on the merits.

1 That reprints section 7871 starting on page 1a,
2 and at the very bottom of 1a, it says, subject -- sorry.
3 Starting up there at the top, 7871, a general rule, an
4 Indian tribal government shall be treated as a State. And
5 then there's series of things.

6 If you go down to the bottom of 1a, subject to
7 subsection (b), for purposes of any exemption from,
8 credit, or refund or payment with respect to an excise tax
9 imposed by chapter 31, chapter 32, chapter 33, chapter 36
10 of the Internal Revenue Code, but not chapter 35.

11 And so, that we think is very strong evidence
12 both that Congress has thought through this problem
13 carefully, and when it did, it chose not to extend the
14 wagering tax exemption to tribes.

15 And number two, when IGRA came along a few years
16 later, there would have been a very easy -- there would
17 have been two very easy and clear ways for Congress to
18 extend the exemption that the tribes are now claiming.
19 Number one, amend section 7871 to add chapter 35 in this
20 list. Number two, go to chapter 35 and where the State
21 lottery exemption is extended, say or a State -- or a
22 tribe. Congress didn't adopt either of those measures,
23 and we think the ease of doing that counsels very strongly
24 against --

25 QUESTION: That would have had to come up

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1 through the Ways and Means Committee if they had done
2 that?

3 MR. DuMONT: I suspect it would have had to go
4 through the tax writing committee certainly, yes.

5 It counsels very strongly against interpreting
6 difficult language in a collateral section of an entirely
7 different non-tax statute to extend a tax exemption that
8 Congress has not clearly granted.

9 If there are no further questions.

10 QUESTION: Thank you, Mr. DuMont.

11 Mr. Luthey, you have 1 minute remaining.

12 REBUTTAL ARGUMENT OF GRAYDON D. LUTHEY, JR.

13 ON BEHALF OF THE PETITIONER

14 MR. LUTHEY: Thank you, Your Honor.

15 With respect to 7871 that my colleague has
16 mentioned, that article -- that argument is impeached by
17 2719(d)(2) of the Indian Gaming Regulatory Act which says
18 that the provisions of this subsection, which includes the
19 statute we've been talking about today, shall apply
20 notwithstanding any other provision of law enacted before,
21 on, or after October 17th, 1988. So, that particular
22 section provides the preeminence.

23 At the end of the day, I think we know this.
24 The language in question that we've been wrestling with
25 here today is ambiguous. They call it cryptic. That's a

1 synonym for ambiguous, as the dictionary tells us.

2 Secondly, the Government's construction requires
3 a reading out. Our construction gives effect to every
4 word of the statute and is possible. If possible, under
5 the test of this Court in County of Yakima, the Indian
6 canons must be applied to resolve the ambiguity in our
7 favor.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Luthey.

9 The case is submitted.

10 (Whereupon, at 11:00 a.m., the case in the
11 above-entitled matter was submitted.)

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