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BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning.

I am here today to testify about the Office of Inspector General's oversight activities concerning the federal acknowledgment process administered by the Department of the Interior. As you know, the Office of Inspector General has oversight responsibility for all programs and operations of the Department. However, because, the Inspector General Act specifically precludes the Office of Inspector General from exercising any programmatic responsibility, we cannot – and do not – substitute our judgment for substantive decisions or actions taken by the Department or its bureaus.

The Office of Inspector General is simply not large enough to have subject-matter experts in all of the program areas in which we conduct our audits, investigations and evaluations. This is especially true in the area of federal acknowledgment, which typically involves the review and evaluation of evidence by professional historians, genealogists and cultural anthropologists. Therefore, when we undertake to address concerns – whether those concerns are raised on our own accord or through another body such as Congress – about the operation or management of a DOI program, we first look at the established processes by which decisions or actions in that particular program take place and the controls over those processes. After we determine what the established process is to address the issue at hand, we then look to see whether there has been any

deviation from that process. If we determine that deviation occurred, we will go on to attempt to determine the impact of that deviation on the resulting decision or action and whether any inappropriate behavior was involved by either Department employees and/or external participants. This is exactly how we have conducted investigations of matters relating to the federal acknowledgment process since the Inspector General, Earl E. Devaney, assumed his position in August 1999.

As you know, the tribal recognition, or federal acknowledgement process at the Department of the Interior is governed by regulations that set forth the process by which groups seeking federal acknowledgment as Indian tribes are handled. While this process has been harshly criticized for its lack of transparency, based on our experience, it is, relatively speaking, one of the more transparent processes in DOI. The process follows the requirements of the Administrative Procedures Act, which include notice, an opportunity to comment, and an appeal or review mechanism. When we conduct any kind of inquiry, my office is always advantaged if a program has the backdrop of a well-established process with documented requirements and guidelines.

When conducting an investigation of a program such as federal acknowledgment, we also identify all the key participants and endeavor to strategically interview as many of these individuals as possible. This includes not only DOI personnel, but other interested parties outside of the Department as well. In federal acknowledgment matters, this may include other parties identified by the Office of Federal Acknowledgment (OFA) or parties who have expressly signaled an interest in the acknowledgment process, such as an affected State Attorney General.

Accordingly, when we conduct interviews in a given federal acknowledgment process, we typically begin with those OFA research team members who are charged with the petition review process. By beginning at this level, we have had some historical success at discovering irregularities at the very heart of the process. For example, in our 2001 investigation of six petitions for federal acknowledgment, we discovered that pressure had been exerted by political-decision makers on the OFA team members who were responsible for making the federal acknowledgment recommendations. The OFA research team members who reported this pressure were, at the time, courageous in their coming-forward, as my office had not yet established our now well-known Whistleblower Protection Program. At the time, we had to assure each individual who came forward that we would do everything necessary to protect them from reprisal; today, however, we have a recognized program in place which publicly assures DOI employees that we will ensure their protection. In other cases, we have had considerable success in obtaining candid information from lower-level employees intent on telling the Office of Inspector General their concerns. Therefore, given their track record in our 2001 investigation and our now-two-year-old Whistleblower Protection Program, we feel confident that if any inappropriate pressure is being applied we will hear that from the members of the OFA team.

In 2001, we did find that there was some rather disturbing deviation from the established process during the previous Administration. At that time, several federal acknowledgment decisions had been made by the acting Assistant Secretary for Indian Affairs, which were contrary to the recommendations of the OFA research team. In

several instances, the OFA research team felt so strongly that they issued memoranda of non-concurrence, at some risk to their own careers.

Although any Assistant Secretary for Indian Affairs has the authority to issue his or her decision even if contrary to OFA's recommendation, we found in those particular instances that significant pressure had been placed on the OFA research teams to issue predetermined recommendations, that the decisions were hastened to occur prior to the change in Administration, and that all decision documents had not been properly signed. In fact, we even found that one of these decisions had been signed by the former acting Assistant Secretary after leaving office.

When we reported our findings in February 2002, the new Assistant Secretary for Indian Affairs undertook an independent review of the petitions. This action alleviated many of our concerns about the procedural irregularities we identified in our report.

In March 2004, we were asked by Senator Christopher Dodd to investigate the Schaghticoke Tribal Nation acknowledgment decision. Subsequent to Senator Dodd's request, the Secretary of the Interior, Gale A. Norton, specifically requested that we to give this matter high priority. In conducting this investigation, we interviewed OFA staff, research team members, and senior Department officials to determine if undue pressure may have been exerted. We also spoke to the Connecticut Attorney General and members of his staff, as well as affected citizens, to ascertain their concerns. In this case, as we have in all other such investigations, we were also looking for any inappropriate lobbying pressure that may have attempted to influence a decision one way or another. In the end, we found that although the Schaghticoke Tribal Nation acknowledgment decision was highly controversial, OFA and the Principal Deputy Assistant Secretary for

Indian Affairs conducted themselves in keeping with the requirements of the administrative process, their decision-making process was made transparent by the administrative record, and those parties aggrieved by the decision sought relief in the appropriate administrative forum – each, as it should be.

If I may, I would like to comment briefly on outside influences that impact the federal acknowledgment process and Indian gaming. As this Committee recently demonstrated, greater care must be exercised by gaming tribes when they are approached by unsavory Indian gaming lobbyists promising imperceptible services for astonishing fees. We know of no statutory or regulatory safeguard protections against such lobbying efforts or the often-questionable financial backing of the federal acknowledgment process. That being said, however, given the spate of recent media reports of alleged improper lobbying influences relating to Indian programs, the Office of Inspector General now includes in its scope of investigation an inquiry into any lobbying or other financial influences that might bear on the issue or program at hand, with a view toward targeting improper lobbying access and/or influence on the Department of the Interior.

The transparency that attaches itself to the federal acknowledgment process itself is often obscured when it comes to those who would use this process as an instant opportunity for opening a casino. Last year, in a prosecution stemming from one of our investigations, the U.S. Attorney's Office for the Northern District of New York secured a guilty plea by an individual who had submitted fraudulent documents in an effort to obtain federal acknowledgment for a group known as the Western Mohegan Tribe and Nation of New York. Throughout trial, the prosecution contended that the fraudulent application was made in the hope of initiating gaming and casino operations in upstate

New York. We are hopeful that this conviction has sent a clear message to others who would attempt to corrupt the federal acknowledgment process, particularly when motivated by gaming interests.

This murky underbelly is fraught with potential for abuse, including inappropriate lobbying activities and unsavory characters gaining an illicit foothold in Indian gaming operations. We will continue to aggressively investigate allegations of fraud or impropriety in the federal acknowledgment process. We are presently conducting an exhaustive investigation into the genesis of questionable documents that were submitted into the record for a group known as the Webster/Dudley Nipmuc Band pending before the Interior Board of Indian Appeals. In addition, as the Inspector General testified before this Committee, as recently as last month, our office has been reviewing our audit and investigative authorities in Indian country to determine whether we can establish an even more vigorous presence in the gaming arena.

Mr. Chairman, members of the Committee, this concludes my formal remarks today. I will be happy to answer any question you may have.