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BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITES STATES SENATE
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Mr. Chairman, I want to thank you and the members of the Committee for inviting me here today to talk about the regulation of Indian gaming.

Over the last decade, my Office has conducted a number of audits on issues directly related to Indian gaming regulation such as the implementation of the Indian Gaming Regulatory Act (IGRA), the financial management activities of the National Indian Gaming Commission (NIGC) and, more recently, tribal gaming revenue allocation plans and the taking of land into trust. In addition, we have investigated and prosecuted numerous individuals for theft and/or embezzlement from Indian gaming establishments, investigated allegations surrounding the federal recognition process and we are currently working with our Federal law enforcement partners on several criminal investigations related to the Indian gaming industry.

All of these audits and investigations, coupled with my personal observations and background as a federal law enforcement professional for over 30 years, lead me to believe that it is time to seriously consider regulatory enhancements and potential legislative changes to reflect the realities of this \$18.5 billion burgeoning industry. My law enforcement experience and intuition also tell me that when there is this much money involved, bad guys will come. To think otherwise, or to imagine that Indian gaming will somehow escape the evils faced by non-Indian gaming, equates to the proverbial ostrich sticking its head in the sand. The gaming industry in Las Vegas estimates that all casinos

typically lose 6% of their revenues to fraud and theft. Applying that same percentage, Indian gaming operations potentially lost \$1.1 billion in 2004.

While the investigations we have conducted into allegations involving particular tribal recognitions made by the Department have rarely uncovered any improper behavior, we are nevertheless troubled by the invariable presence of wealthy individuals and companies invested heavily in the recognition outcome for seeming one reason only – that is, to ultimately fund and then reap the financial benefits of a new gaming operation.

As this Committee well knows, one of IGRA's primary purposes was to ensure that the proceeds from tribal gaming were used to fund tribal operations, economic development and the general welfare of its members. Therefore, any loss of gaming revenue as a result of criminal behavior will obviously negatively impact the ability of the tribes to provide vital services such as health care, law enforcement, housing and education.

IGRA envisioned a regulatory scheme where tribes, states and NIGC would all play a vital role. Since my office has never actually evaluated the capacity or the effectiveness of tribes and states to implement IGRA's vision in this regard, I will confine my comments today to the role the NIGC and Federal law enforcement play in this regulatory scheme.

Our audits of IGRA and the NIGC, dating back as far as 1993, chronicle the lack of federal resources available to effectively oversee Indian gaming. For instance, in our 1993 audit report, we reported that the NIGC only had a staff of 24 and a budget of \$2 million dollars to oversee the 149 tribes which had already initiated 296 gaming

operations. When we recently took a snapshot of NIGC we found the Commission with a budget cap of \$11 million, and only 39 auditors and investigators tasked with overseeing more than 200 tribes with over 400 gaming. By contrast, in 2003 the Nevada Gaming Commission had a budget of \$35.2 million dollars with 279 auditors and investigators to oversee 365 gaming operations with total reported revenues of \$19.5 billion.

One also has to consider the fact that today's Indian gaming operations range from a 30 seat bingo parlor in Alaska to a tribal operation in Connecticut with 6 separate casinos, nearly 7,500 slots, 388 table games, 23 restaurants and three hotels. A giant step forward was achieved in 2002 when NIGC promulgated the Minimum Internal Control Standards (MICS) which established minimum standards and procedures for Class II and Class III gaming. However, the MICS also placed a training, guidance and monitoring burden on an already beleaguered NIGC. In our opinion, the NIGC needs additional resources to fulfill their expanding role commensurate with the escalating growth of the Indian gaming industry.

As the members of this Committee also may recall, the National Gambling Impact Study Commission's report, issued in June of 1999, encouraged Congress to assure adequate NIGC funding for the proper regulatory oversight of the industry's integrity and fiscal accountability.

While we support additional resources for the NIGC, we continue to be concerned with the dual role that NIGC civil investigators perform. One is to act as NIGC's liaison to the gaming tribes. In this capacity, the investigators consult with gaming tribes and provide compliance training regarding IGRA's statutory requirements and NIGC regulations. On the other hand, these same investigators issue preliminary violation

notices against the tribes for civil gaming violations and refer criminal matters to the FBI. While I understand that the NIGC does not see this as a conflict, our view is that these dual roles are wholly incompatible and contrary to advancing compliance in Indian gaming. Put another way, it is hard to wear a white hat on Monday and Tuesday and switch to a black hat on Friday and Saturday.

Historically, Federal law enforcement has been severely challenged to address crime in Indian Country. Violent crime alone consumes most of the available resources. As a result, white collar crime relating to Indian gaming has, regrettably, often gone unattended. Recently, however, under the direction of the Attorney General's Indian Country Sub-Committee, and specifically under the leadership of Tom Heffelfinger, the U.S. Attorney for the District of Minnesota, various law enforcement entities came together to form the Indian Gaming Workgroup. We are proud to be part of this effort. None of the Federal, State or local law enforcement members of this Workgroup, alone, has the resources to address the potential crime in the Indian gaming industry. Leveraging our investigative resources in a common alliance not only makes perfect sense to us but, I would submit, is the kind of good government action that the American public would expect us to take.

Mr. Chairman, my greatest fear is not that the integrity or accountability of Indian gaming will be compromised from inside the actual Casinos, but rather by the horde of paid management advisors, consultants, lobbyists and financiers flocking to get a piece of the enormous amount of revenues being generated by Indian gaming. I would now like to briefly mention a number of obstacles and challenges that we have identified over the years that hinder effective monitoring and enforcement in Indian gaming.

When gaming tribes enter into management contracts for the operation of gaming activities, those contracts are submitted to and approved by the Chairman of the NIGC. Included in NIGC's review is a background investigation of the principles and investors. Some tribes have circumvented the review and approval process by entering into consulting agreements which, although called by a different name, do not differ significantly in substance from management contracts.

As a result, the terms of these consulting agreements, including the financing and compensation, are not subject to review and approval by the NIGC, nor are the backgrounds of the consultant's principles and investors scrutinized. Ancillary agreements related to gaming operations (such as construction, transportation, and supplies) are also ripe for abuse.

This has resulted in the management and operations of some tribal gaming enterprises under financial arrangements unfavorable to those tribes. It has also opened the window for undesirable elements to infiltrate the operations and management of tribal casinos. During a recent FBI-sponsored conference on investigations of crime in tribal gaming, it was the consensus of those law enforcement officials in attendance that if they could only change one element of IGRA, it would be to ensure that gaming consultants are subject to the same requirements as management contractors.

Another obstacle we have identified is the Federal statute that carves out an exception to the usual recusal period for departing Department of Interior officials. 25 U.S.C. § 450i(j) permits former officers and employees of the United States to represent recognized Indian tribes in connection with any matter pending before the federal government. The statute requires only that the former federal employee advise the head

of the agency with which he is dealing of his prior involvement as an officer or employee of the United States in connection with the matter at issue.

This exemption was enacted because Indian tribes, at the time, lacked effective representation in front of federal agencies. When the provision was enacted in 1988, virtually the only persons with expertise in Indian matters were federal employees. Today, that dynamic has changed. Indian law experts (attorneys and lobbyists) are much more widely available to represent tribal interests.

Having outlived its original intent, this statutory exemption now perpetuates a “revolving door” where federal employees who leave the government, after handling sensitive tribal issues in an official capacity, go on to represent the very same tribes on the same or similar issues before the government. Without the exemption, this would be a violation of the criminal conflict of interest laws that apply to all other departing federal employees.

IGRA prohibits gaming on trust lands acquired after October 17, 1988 unless the lands meet specific statutory exemptions. BIA and NIGC share responsibility for reviewing applications for converting trust land use to gaming.

Our recent evaluation of the process of taking land into Federal trust status for Indian gaming found 10 instances in which tribes converted the use of lands taken into trust by the Bureau of Indian Affairs after October 17, 1988 from non-gaming purposes to gaming purposes without approval of BIA or NIGC. We determined that neither the BIA nor NIGC has a systematic process for identifying converted lands or for determining whether the IGRA exemptions apply. Therefore, unless a tribe abides by the rules and applies for approval, conversion of trust lands to gaming purposes goes

essentially unchecked. Neither the Department nor NIGC has a way to ensure that Indian gaming is being conducted only on approved lands.

In another OIG audit report issued in 2003, we discovered that neither the BIA nor the NIGC was monitoring Indian tribes to determine whether gaming tribes comply with BIA-approved revenue allocation plans (RAP) or whether tribes are making per capita distributions of gaming revenues without an approved plan.

IGRA provides that tribes may make per capita payments of net gaming revenues only after BIA's approval of their RAP. IGRA provides the NIGC authority to enforce RAP requirements, but does not provide either BIA or NIGC the authority to monitor. Absent a process for systematic monitoring of tribal revenue distributions, BIA's approval authority and NIGC's enforcement authority serve little practical purpose.

To illustrate this problem, we conducted a review of the per capita distribution of the Table Mountain Rancheria Tribe of California at the request of BIA. BIA was responding to complaints by tribal members. We determined that the Rancheria had significantly exceeded their authorized per capita distribution and referred the matter to NIGC. In reply to NIGC's letter citing the tribe with violating IGRA, the Rancheria said the problem was caused by prior leadership and they would comply with the plan. Without authority to do so, NIGC has been unable to make any further verification.

Finally, some Indian casinos and financial institutions are particularly vulnerable to becoming the victims of financial fraud. Gaming tribes' new-found wealth has only added to that dynamic, and unfortunately, many tribes have little experience managing or dealing with financial operations that are particularly vulnerable to a myriad of fraud schemes.

Because Indian casinos are a cash-rich enterprise, they are, in our opinion, particularly attractive to money launderers. In this example, criminals would use casinos to cash in illegal proceeds for chips, tokens, or coins in amounts that do not trigger reporting requirements. The criminals then game for short periods of time to redeem “clean” money.

The failure to provide background investigations on all individuals involved in tribal gaming is a serious weakness in the regulatory system. For example, in January 2005, a gaming regulator from the Santa Ynez Band of Chumash Indians was convicted for a felony offense. The offense occurred in November 2004. Rather than receiving notice from the tribe, the NIGC became aware of the conviction as a result of an article in the Los Angeles Times.

Tribal financial institutions without federal or state charters, and attendant regulation, are also particularly vulnerable to manipulation. In 1992 and 2001, the U.S. Reservation Bank & Trust (USRB&T), an Indian-controlled banking institution, was granted business licenses by the Rosebud Sioux Tribe in South Dakota and the Salt River Pima-Maricopa Indian Community in Arizona. Although represented as a bank to other financial institutions and investors, USRB&T is alleged to have been a financial institution established solely to execute a “Ponzi” scheme. \$20 million was seized by the Federal Government in Arizona shortly before the operators of USRB&T intended to wire the funds to an off-shore account.

Absent sound regulation, these Indian casinos and financial operations remain extremely vulnerable to criminal exploitation. As this Committee so 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.

Mr. Chairman and members of the Committee, as you can see, federal regulators and law enforcement personnel face a host of challenges in their effort to protect the interests of individual Indians and tribes that emanate from Indian gaming operations and proceeds.

My 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. In the meantime, we have had the opportunity to review the proposed technical amendments to IGRA advanced by NIGC. Overall, we support NIGC's effort in regard to funding flexibilities and regulatory enhancements, particularly the provisions that extend background checks to a broader category of individuals working in the Indian gaming industry.

The Office of Inspector General will continue to explore opportunities to identify weaknesses and gaps in the federal oversight and regulation of Indian gaming, and formulate recommendations to correct these shortcomings. We will also continue to conduct investigations into allegations of crime that adversely affects tribes and gaming establishments. Should this Committee have specific issues of concern that might benefit from an audit, evaluation or investigation by the Office of Inspector General, I stand ready to assist the Committee in any way I can.

Mr. Chairman, members of the Committee, thank you for the opportunity to testify here today. I am happy to answer any questions you may have.