



Department of Justice

STATEMENT

OF

THOMAS B. HEFFELFINGER
UNITED STATES ATTORNEY
FOR THE DISTRICT OF MINNESOTA

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

FEDERAL LAW ENFORCEMENT IN INDIAN GAMING

PRESENTED ON

APRIL 27, 2005

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**Committee on Indian Affairs
U.S. Senate**

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“Federal Law Enforcement in Indian Gaming”

Chairman McCain, Vice Chairman Dorgan, and Members of the Committee, I am Thomas B. Heffelfinger. I am the United States Attorney for the District of Minnesota. I am also the Chairman of the Native American Issues Subcommittee of the Attorney General's Advisory Committee. The membership of the Native American Issues Subcommittee (NAIS) consists of United States Attorneys from across the country whose offices enforce federal law within Indian Country in their districts.¹ The NAIS helps develop effective law enforcement policies for the Department of Justice in Indian Country. It is an honor to appear before you today to discuss the issue of federal law enforcement and Indian gaming.

Statutory and Regulatory Background

In the 1970s and 1980s, some federally recognized tribes and state governments developed an interest in gaming as an additional source of income. As a result, conflict arose when states attempted to regulate tribal gaming. The Indian Gaming Regulatory

¹ “Indian country” is the legal term used to describe reservations and other lands set aside for Indian use, such as Indian allotments, and lands held in trust for Indians or Indian tribes. 18 U.S.C. § 1151.

Act was enacted by Congress in 1988 shortly after the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In *Cabazon*, the Court invalidated the State of California's regulation of Indian bingo on the ground that such regulation was civil rather than criminal in nature and therefore was not authorized by Public Law 280. 18 U.S.C. § 1162(a). As a practical result of *Cabazon*, Indian tribes were free to offer gaming on tribal lands subject only to federal prohibitions and regulation, or state criminal prohibitions. Although Congress had been considering bills to regulate Indian gaming for several years, *Cabazon* left something of a regulatory vacuum that made the issue of Indian gaming regulation more pressing and resulted in the passage of IGRA. The IGRA defines the regulatory relationship between federal, state and tribal governments when gaming operations are sponsored by tribes.

Pursuant to IGRA, federal regulatory authority is exercised by the National Indian Gaming Commission (NIGC). The NIGC's primary mission is to regulate gaming activities on Indian lands for the purpose of shielding Indian tribes from organized crime and other corrupting influences; to ensure that Indian tribes are the primary beneficiaries of gaming revenue; and to assure that gaming is conducted fairly and honestly by both operators and players. The IGRA's purpose is to promote tribal economic development, self-sufficiency, and strong tribal governments through a statutory framework for tribal gaming.

Today, the IGRA and regulations promulgated by the NIGC pursuant to IGRA are the primary law governing gaming in Indian country. IGRA provides a statutory basis for the gaming operations of Indian Tribes. The IGRA also gives the FBI federal criminal jurisdiction over acts directly related to casino gaming establishments, including those located on reservations under state criminal jurisdiction. The Johnson Act criminally prohibits among other things the transportation and operation of all gambling devices, including slot machines, in Indian Country absent the existence of an approved Tribal-State compact.¹⁵ U.S.C. §§ 1171-1178.

Total revenues related to the Indian gaming industry have grown from approximately \$100 million in 1988 to more than \$16 billion in 2004, with projections for significant continued growth. According to the NIGC, there are approximately 400 Indian gaming operations currently operating in 28 states within the United States. The top five states, by number of Indian casinos or bingo halls are California, Oklahoma, Washington, Arizona, and Minnesota.

The IGRA establishes three classes of gaming. Class I gaming includes traditional Indian gaming and social games for prizes of a minimal value, and is regulated solely by the tribe. Gaming defined as Class II can be regulated by the tribe if the state allows any such gaming and the National Indian Gaming Commission approves the tribe's gaming ordinance. Class II games include bingo, whether or not electronic computer or other technological aids used in connection therewith, and other games similar to bingo such as

pull-tabs, lotto, punch boards, tip jars, and instant bingo, if in the same location. Class III gaming includes anything not classified as Class I or Class II and is often referred to as casino-style gaming.

The IGRA allows for compacting between state and tribal governments to permit the highest level of Class III gambling within a state. In order for a tribe to sponsor Class III gaming operations, the tribal gaming facility must be located within a state permitting such gaming, enter into a compact with the state approved by the Secretary of the Interior, and adopt an ordinance pertaining to gambling approved by the Commission of the NIGC.

There has been considerable litigation regarding tribal gaming enterprises stemming from the need to classify certain types of games as either Class II or Class III. In its administrative enforcement actions against uncompact Class III gaming, the NIGC makes classification determinations regarding the types of games being offered. It is the Department of Justice's position that whether machine gaming is characterized as Class II or Class III, the Johnson Act prohibits the gambling devices absent a Tribal-State compact. It is also the Department's position that the IGRA intended a clear distinction between Class III games that require a compact and Class II gaming which does not. Manufacturers of gaming equipment have attempted to use creative engineering to blur the line between these two classes.

DOJ INDIAN COUNTRY DEDICATED PERSONNEL AND COMPONENTS

The United States Constitution, treaties, federal statutes, executive orders, and court decisions establish and define the unique legal and political relationship that exists between the United States and Indian tribes. On September 23, 2004, President Bush re-affirmed the longstanding policy of the United States to work with federally-recognized tribes on a government-to-government basis and to support and respect tribal sovereignty and self-determination for tribal governments. The Office of Tribal Justice is the entity within the Department of Justice which serves to coordinate activities pursuant to this relationship within the Department, and between the Department and outside entities. Federal law vests the Department of Justice with primary jurisdiction over most felonies that occur on Indian lands.² The Federal Bureau of Investigation (FBI) and the United States Attorneys' Offices are the federal law enforcement agencies responsible for investigating and prosecuting felony crimes that occur in Indian country.

A variety of FBI sub-programs and seven federal agencies have varying degrees of interests in the enforcement and/or regulation of the Indian gaming industry. To coordinate these various interests and to better use investigative resources in Indian gaming cases, the Indian Gaming Working Group (IGWG) was created by FBI's Indian Country-Special Jurisdiction Unit. The Indian Gaming Working Group's purpose is to identify resources through a multi-agency, multi-program approach to address the most

² 18 U.S.C. §§ 1152, 1153.

pressing criminal violations in Indian gaming. This group consists of representatives from the FBI, the United States Attorneys' Offices, the Department of Interior Office of Inspector General, the National Indian Gaming Commission (NIGC), Internal Revenue Service-Office of Indian Tribal Governments, the Treasury Department's FINCEN, and the Bureau of Indian Affairs-Office of Law Enforcement Services.

The Indian Gaming Working Group met several times during FY2003, and since early FY2004 and into FY2005 it utilizes monthly conference calls to address Indian Gaming matters which have national significance. The Indian Gaming Working Group is currently providing analysts, financial assistance, functional area expertise, and coordination assistance in cases deemed to have a significant impact on Indian communities and/or the Indian gaming industry.

LAW ENFORCEMENT AND PROSECUTOR TRAINING

The FBI's Indian Country-Special Jurisdiction Unit has offered regional training conferences during FY 2004 and FY2005 on the topic of Indian Gaming in Groton, Connecticut; San Diego, California; and Oklahoma City, Oklahoma. The purpose of such regional conferences is to encourage establishment of local working groups. Recent regional conferences, held earlier this year, have already resulted in the formation of local Indian working groups in Oklahoma, which has scheduled its first meeting in May, and in Arizona. A local Indian Gaming Working Group had previously been established in Minnesota.

The Criminal Investigative Division of the FBI sent a communication to all field offices in February 2004 to provide information on the Indian gaming industry, further define the FBI's roles and responsibilities in respect to Indian gaming, provide recommended actions so that its divisions can quickly identify and apply resources to criminal activity impacting the Indian gaming industry, and provide information on how to obtain resources via the Indian Gaming Working Group.

Current investigations impacting the Indian gaming industry involve primarily internal theft or embezzlement of proceeds derived from Indian gaming. Some investigations, however, involve potential organized crime, public corruption, financial institution fraud, criminal enterprises involved in cheating scams, and tribes operating illegal gambling enterprises.

In September 2003, the NAIS held a three-day summit of federal, state and tribal agencies engaged in Indian gaming regulation and enforcement. As a result of this summit, its experience and discussions with federal law enforcement in the context of tribal gaming, the NAIS has developed the following "Best Practices" for United States Attorney's Offices. Each United States Attorney's Office with Indian Country jurisdiction should consider :

- outreach to and consultation with their respective state gaming regulator and the tribal gaming operators and tribal governments conducting gaming in his or her District;

- designating one or more Assistant United States Attorneys (AUSAs) to be responsible for enforcement of federal laws related to Indian gaming and for coordination with other federal, state and tribal organizations responsible for Indian gaming issues;
- training for AUSAs, agency counsel, and investigators on issues related to Indian gaming;
- for crimes committed in or against Indian casinos, tribal enterprises, or tribal organizations, being flexible when considering the prosecution of theft cases with loss amounts lower than what the Office would typically accept, because the federal government has a unique relationship with Indian gaming operations arising from the government's trust relationship with Native American tribes and Congress' passage of the IGRA. Cases which have a "significant impact" on tribal organizations and enterprises, including gaming operations, should be considered for prosecution despite lower loss thresholds in order to facilitate prosecution and deterrence;
- as a general policy, actively supporting the activities of the Indian Gaming Working Group established by the FBI, Department of Interior - Office of Inspector General, and the NIGC. The Indian Gaming Working Group focuses on criminal cases with a national impact, including any cases that

might involve public corruption and nationally significant crimes which could arise from gambling activities on Indian reservations;

- establishing an Indian Gaming Task Force to investigate criminal cases with a local impact. Such coordination activity will significantly increase the flow of information between national and local investigators and prosecutors;
- as a general policy, supporting the development of a national information sharing system and/or cooperation arrangements either by the NIGC and/or the industry, *e.g.* the National Indian Gaming Association. Such information sharing and national cooperation is essential to having effective background investigations and internal/criminal investigations.
- supporting the development and implementation of refined data collection and case-tracking within the Department of Justice for capturing Indian gaming statistics.

Conclusion

The Department of Justice is making important strides in prosecution of crimes arising from gaming on Indian reservations. As with most law enforcement efforts, limitations exist due to lack of resources. However, the creation of the IGWG has allowed the efficient coordination of law enforcement resources among a number of federal agencies. The degree of inter-agency cooperation, however, as evidenced by the

IGWG, and the local “best practices” evidences the Department’s commitment to this effort.

Thank you for the opportunity to address the Committee. I look forward to answering any questions you may have.