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# BETTING ON TRANSPARENCY: TOWARD FAIRNESS AND INTEGRITY IN THE INTERIOR DEPARTMENT'S TRIBAL RECOGNITION PROCESS

## HEARING

BEFORE THE

## COMMITTEE ON GOVERNMENT REFORM

## HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

MAY 5, 2004

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# BETTING ON TRANSPARENCY: TOWARD FAIRNESS AND INTEGRITY IN THE INTERIOR DEPARTMENT'S TRIBAL RECOGNITION PROCESS

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**WEDNESDAY, MAY 5, 2004**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
*Washington, DC.*

The committee met, pursuant to notice, at 10:04 a.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis of Virginia (chairman of the committee) presiding.

Present: Representatives Tom Davis of Virginia, Shays, Ose, Duncan, Maloney, Cummings, Kucinich, Watson, and Norton.

Also present: Representatives Johnson of Connecticut, Simmons, and Wolf.

Staff present: David Marin, deputy staff director/director of communications; Keith Ausbrook, chief counsel; John Hunter, counsel; Robert Borden, counsel/parliamentarian; Drew Crockett, deputy director of communications; Teresa Austin, chief clerk; Brien Beattie, deputy clerk; Shalley Kim, professional staff member; Robert White, press secretary; Michael Yeager, minority deputy chief counsel; Earley Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Chairman TOM DAVIS. Good morning. The quorum will come to order, and I want to welcome everybody to today's hearing on the process for recognition by the Federal Government of American Indian tribes as sovereign Indian nations. The committee will focus on the integrity, transparency, and accountability of tribal recognition decisions made by the Interior Department's Bureau of Indian Affairs.

Federal recognition of a particular Indian tribe can have a profound effect on the tribe, the surrounding communities, the State, and the Federal Government. For example, recognition is a prerequisite for a tribe to receive Federal assistance and obtain other rights. Recognized tribes receive exclusive Federal funding for health, education, and other social programs. Also, tribal lands are eligible to be taken into trust for a tribe or its members by the Federal Government. Today, over 45 million acres nationwide are held in trust, basically creating a nation within a nation.

This is particularly critical because tribal lands held in trust are exempt from most State and local laws, such as sales tax and gambling regulations. A tribe must meet additional requirements before it can exercise other rights. For instance, before a recognized

tribe can operate a casino on tribal land held in trust, the tribe must comply with the requirements set forth in the Indian Gaming Regulatory Act of 1988.

Today, the Secretary of the Interior has authority to recognize American Indian tribes under regulations administered by the BIA. Congress may also recognize a tribe through legislation. Congress terminated recognition by treaty in 1871.

Until 1978, the Interior Department made tribal recognition decisions on a case-by-case basis. Then, Interior established a formal regulatory process for recognizing tribes and adopted seven criteria that a petitioning tribe must meet to receive Federal recognition. Before Interior implemented the current recognition regulations in 1978, BIA received 40 petitions from groups seeking formal tribal recognition. Since 1978, BIA has received an additional 254 petitions. As of February 2004, a total of 57 petitions have been resolved, 13 petitions are ready for dispensation, 9 petitions are in active status, 2 are in post-final decision appeals, 1 is in litigation, and 213 are not ready yet for evaluation.

The Connecticut congressional delegation recently brought to my attention two BIA recognition petitions filed by Connecticut tribes and asked the committee to hold a hearing to explore questions about the objectivity and transparency of the BIA recognition process in connection with the decisions to recognize the Historical Eastern Pequot and the Schaghticoke tribes.

I readily agreed to hold this hearing because I think it is imperative that the integrity of the BIA process be preserved. Interested parties and the public have a right to be assured that a critical procedure such as this one administered by an agency of the Federal Government is completely fair, unbiased, transparent and in accordance with the law. That mission fits squarely within the jurisdiction of this committee.

Both the Schaghticoke and the Historical Eastern Pequot decisions are being challenged on various grounds by the Connecticut attorney general, municipalities subject to Indian land claims, and other interested parties. In both cases, final recognition was granted by the Assistant Secretary for Indian Affairs despite proposed findings by BIA that the tribes did not meet one or more of the seven mandatory criteria for status as a sovereign Indian nation.

Our goal today is to look at these decisions as a case study of the overall recognition process. Are these cases unique, or are they symptomatic of a larger problem that calls into question the integrity and fairness of the process? Do these cases demonstrate that the ground rules underlying the process are ever changing?

The committee will hear from witnesses who can help us evaluate the fairness and efficiency of the BIA recognition process, both generally and in the context of the two Connecticut tribal recognition decisions. We will hear from the Office of the Assistant Secretary for Indian Affairs of the Department of the Interior about the recognition process, as well as from the Interior inspector general. The committee will also hear from the Connecticut attorney general, several Connecticut municipalities affected by the decisions, and the Historic Eastern Pequot Tribal Nation. We invited the Schaghticoke Tribal Nation to testify, but they declined the committee's invitation. Other witnesses will discuss their assess-

ment of and recommendations to improve the BIA recognition process.

I want to thank all of our witnesses for appearing before the committee, and I look forward to your testimony.

I also would ask unanimous consent that Nancy Johnson and Rob Simmons from Connecticut, and Frank Wolf from Virginia be allowed to join today's hearing. Without objection, so ordered. And I welcome them to the committee this morning and invite them to participate in today's hearing.

I now yield to the vice chairman of the committee, Mr. Shays, for an opening statement.

[The prepared statement of Chairman Tom Davis follows:]

5/4/04

# Opening Statement

## Chairman Tom Davis

## Committee on Government Reform

"Betting on Transparency:
Toward Fairness and Integrity in the Interior Department's
Tribal Recognition Process"

## May 5, 2004

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the Interior Inspector General. The Committee will also hear from the Connecticut Attorney General, several Connecticut municipalities affected by the Schaghticoke and Eastern Pequot decisions, and the Historic Eastern Piquot Tribal Nation. We had invited the Schaghticoke Tribal Nation to testify, but they declined the Committee's invitation. Other witnesses will discuss their assessment of, and recommendations to improve, the BIA recognition process.

I would like to thank all of our witnesses for appearing before the Committee, and I look forward to their testimony. I now yield to the Ranking Member, Mr. Waxman, for his opening statement.

Mr. SHAYS. Thank you. And thank you, Chairman Davis, on behalf of the Connecticut delegation, for agreeing to hold this hearing.

While the need to reform American Indian tribal recognition procedures at the Department of the Interior is acutely felt in our State today, the flawed system has a truly national impact, affecting the sovereignty, social policy, and fiscal health of every State.

What was once a purely historical, anthropological, and genealogical inquiry has been transformed by the lure of casino revenues into a high-stakes, winner-take-all political campaign to possess a Federal gaming franchise. An academic investigation designed to acknowledge cultural continuity and restore political sovereignty is being overwhelmed and too often overturned by the intense pressures and voluminous submissions of tribal petitioners and their wealthy backers.

Two years ago, this committee's Regulatory Affairs Subcommittee examined tribal recognition standards and procedures. At that time, the General Accounting Office [GAO] found serious weaknesses in the process, including a lack of clear guidance on critical aspects of the mandatory recognition criteria. Even on the quality and quantity of evidence needed to demonstrate continuous existence, the criteria at the heart of tribal sovereignty, GAO found a lack of consistency and clarity.

About the same time, the Interior Department inspector general discovered inconsistencies and a determination by decisionmakers to recognize certain petitioners despite expert conclusions they did not meet mandatory criteria.

Today we know the procedural irregularities and murky standards that the Bureau of Indian Affairs [BIA] survive from administration to administration, Republican and Democrat, as the potent power of undisclosed gaming investors drives the process to a predetermined outcome.

Just how far the BIA had strayed from legal and factual reality was made starkly obvious last January. In an internal briefing on recognition of the Schaghticoke Tribal Nation of Connecticut, the staff offered guidance on how to recognize the tribe "even though evidence of political influence and authority is absent or insufficient for two substantial historical periods of time." The options presented: recognize the tribe anyway by using State law recognition as an unprecedented surrogate for required evidence, or decline to recognize based on the regulations and BIA precedent, or acknowledge the Schaghticokes outside of the regulations.

That the BIA even considered the first or third option is a scandal. That they chose the first proves the process is irreparably skewed, adrift in a sea of guilt, paternalism, and greed. Substituting indirect evidence, such as State recognition, for one or more of the mandatory criteria means the process is utterly without objective standards. Arbitrary, outcome-driven sophistry injected into final decisions puts BIA procedures beyond the view of interested parties and communities whose rights hinge on the opportunity to participate meaningfully in a transparent, fair process.

Any lack of transparency denies the public the fundamental right to know with whom their government is really doing business. As we will hear in testimony today, casino backers have spent many

millions of dollars on experts and lobbyists to gain Federal recognition and the substantial rights and privileges that come with it, but neither the BIA nor the Indian Gaming Regulatory Commission has any power to compel disclosure of the real parties at interest before them until it is too late to detect improper or corrupting influences.

We look forward to our witnesses' recommendations on how to ensure the integrity, objectivity, transparency, and timeliness of the tribal recognition process. They are here today because they believe in the value of open discussion and honest dialog, and we appreciate their being here. For reasons of their own, some other invited witnesses declined our invitation to testify.

I ask unanimous consent to insert into the record letters from Mr. Thomas C. Wilmot, Sr., who is reported to have spent $10 million supporting a tribal recognition application; Attorney Robert Reardon, Jr., representing Mr. Donald Trump in litigation to recover more than $9 million from a tribe and its new backers; and Chief Richard Velky of the Schaghticoke Tribal Nation, who initially agreed to attend but withdrew only late yesterday.

If the committee concludes these individuals have information essential to oversight, I know they will be invited or, if necessary, compelled to provide that evidence in the future.

Thank you, Mr. Chairman. I appreciate this hearing.

[The prepared statement of Hon. Christopher Shays follows:]

TOM DAVIS, VIRGINIA,
CHAIRMAN

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INDEPENDENT

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Christopher Shays, Connecticut
Chairman
Room B-372 Rayburn Building
Washington, D.C. 20515
Tel 202 225-2548
Fax: 202 225-2382

# Statement of Rep. Christopher Shays
# May 5, 2004

Let me first thank Chairman Tom Davis, on behalf of the entire Connecticut delegation, for agreeing to hold this hearing. While the need to reform American Indian tribal recognition procedures at the Department of Interior is acutely felt in our state today, that flawed system has a truly national impact, affecting the sovereignty, social policy and fiscal health of every state.

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THOMAS C. WILMOT
1265 SCOTTSVILLE ROAD
ROCHESTER, N.Y. 14624

April 27, 2004

VIA FEDERAL EXPRESS

Lawrence Halloran, Esq.
Staff Director and Counsel
Subcommittee on National Security
2175 Rayburn House Office Building
Room B-372
Washington, D.C. 20515

Dear Mr. Halloran:

I am writing in response to the draft letter prepared for the signature of Congressman Tom Davis, Chairman of the Committee on Government Reform, United States House of Representatives, that you telefaxed to me on April 15, 2004. The draft letter states that the Committee intends to conduct a hearing on May 5, 2004, on the status of the American Indian tribal recognition process as currently administered by the United States Department of the Interior's Bureau of Indian Affairs. The draft letter also invites me to appear and testify, and provides guidance on issues the Committee considers to be of importance.

Please extend to Chairman Davis my deepest regret for not being able to accept this invitation to appear before the Committee and provide testimony on this issue. As Chairman of a company that owns and manages a number of shopping centers in the United States, I have a series of commitments that I cannot alter that precludes my attendance during this period of time.

Although I am unable to appear, I would like to take this opportunity to share with the Committee the following thoughts. First, I have not closely followed the recent BIA federal acknowledgment decisions involving the Eastern Pequot and Schaghticoke Tribal Nations of Connecticut. Accordingly, I cannot speak to the legal sufficiency, objectivity and procedural fairness issues raised in those matters. Since each of those acknowledgment decisions is presently

under review, I trust that the appellate bodies charged with those matters will speak to those issues.

With respect to the larger question of federal acknowledgment generally, you may know that the Golden Hill Tribe found it necessary to sue in federal court to force the Department of the Interior to agree to a schedule to consider the Tribe's application. That initial step of the acknowledgment process is almost complete; we expect a decision from the Office of Federal Acknowledgment in the near future. However, I have no idea of when this matter will be resolved conclusively and finally. This seems to be due to the hostility of the State Attorney General of Connecticut to federal recognition of Tribes, even though those tribes have been recognized by Connecticut since Colonial times.

Thank you very much for your consideration of these thoughts. Please note that I have no objection should the Committee wish to include this letter in the record of the hearing.

Sincerely,

Thomas C. Wilmot, Sr.

TCW/mc

THE REARDON LAW FIRM, P.C.

Personal Injury and Wrongful Death Litigation

April 23, 2004

**Via Facsimile and Mail**

Mr. Lawrence Halloran
Staff Director and Counsel
Subcommittee on National Security
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington DC 20515-6143

Re: Hearing on Indian Tribal Recognition Process
May 5, 10:00 a.m.

Dear Mr. Halloran:

On behalf of Mr. Donald J. Trump, I wish to thank you for the invitation to appear and testify on May 5. Unfortunately, Mr. Trump's schedule will not allow him to attend or offer written testimony. Should you have any questions, do not hesitate to contact my office.

Very truly yours,

Robert I. Reardon, Jr.
*Signed in Attorney Reardon's absence to avoid delay*

RIR:mll

ROBERT I. REARDON, JR.* ♦ ROBERT T. RIMMER ♦ JENNIFER L. BOOKER ♦ TRACY L. POPPE ♦ ERIC G. BLOMBERG
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# SCHAGHTICOKE TRIBAL NATION
# CONNECTICUT

The Honorable Tom Davis, Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

May 4, 2004

Dear Chairman Davis:

Thank you very much for the invitation to testify before your Committee on May 5, 2004. While I appreciate Congress' interest in the process by which the Federal government acknowledges the existence of Indian tribal governments, I regret that I cannot participate at this time. As you are certainly aware, the Schaghticoke Tribal Nation, after a 25 year effort, has recently received a positive Final Determination in favor of recognition from the Assistant Secretary for Indian Affairs. Only yesterday, I received a copy of the nearly 200 page appeal filed contesting that determination. My legal counsel has advised me that my focus now must be on analyzing and responding to that appeal which is now in active litigation. While I am certain that the appeal totally lacks merit, I have been advised by my counsel that my responsibility, at this time, is to undertake a full and complete examination of the appeal before undertaking any public comment on its substance or other matters relating to it.

I request that this letter be read into the Committee's record so that all members are aware of my reasons for not testifying.

Thank you again,

In Brotherhood,

Richard L. Velky, Chief
Schaghticoke Tribal Nation

Cc: Larry Holloran

Schaghticoke Reservation: Schaghticoke Road, Kent, CT 06757 • P.O. Box 893 • tel. 860-927-8050
Business Address: 22 Elizabeth Street, 4th floor, Derby, CT 06418 • tel. 203-736-0782 • fax 203-736-0875

Chairman TOM DAVIS. Well, thank you very much. That is the correct statement, and I agree with it. Thank you very much, Mr. Shays.

Ms. Watson, any opening statement?

All right, Mr. Simmons.

Mr. SIMMONS. Thank you, Mr. Chairman, and in particular for the courtesy of including me. And on the basis of that courtesy, I will ask that my full statement be entered into the record, and I will make a brief summary, if that is OK.

First of all, I notice on the panel and in the audience friends and constituents from Connecticut, Attorney General Richard Blumenthal, who has been working these issues for many years. I first started working with Dick on these issues when I was a State representative, and it is good to see you here today. We look forward to your testimony.

I also see Nick Mullane, first selectman from the town of North Stonington, who is my constituent as a State representative and as a Member of Congress, and as somebody who has been very involved in the impacts of Indian casinos on our small municipalities.

Mark Boughton, who is the mayor of Danbury. We served together in the legislature. I see Marcia Flowers, who is a friend and a constituent, who will be part of, I think, the second or the third panel. And I also see Jeff Benedict, who is a constituent and a friend, and who wrote a book called "Without Reservation," which is a very complete summary of these issues.

Among these friends and neighbors there will be disagreement, but I think we all agree that the issue is very significant and has great impact on the State of Connecticut. The advent of Indian casinos to Connecticut comes as a mixed blessing. We have two of the largest casinos in the world in my district. Two of the largest casinos in the world. And they bring revenue to the State, they provide jobs, especially at a time when defense contracting and other types of manufacturing are in decline. And members of tribes have been personally generous in the community and in the State, and we welcome that.

At the same time, there is considerable negative impact. Local municipalities have no taxing authority, they have no zoning authority. State and town roads which are used to provide transportation to these facilities are maintained at the cost of the local municipalities. Emergency services, in many cases provided by volunteers, are overwhelmed and in some cases have closed. So these are very real municipal impacts that we face.

And the process itself, I believe, is corrupt and unfair: corrupt in the sense of broken; unfair in the sense that it does not deliver a fair product either to the petitioners or to those who have to deal with the impacts of the petitions. And I think probably the reason for that is because the promise of money that comes with a Federal recognition and a casino is what has distorted the process.

As a member of the Connecticut delegation, I met recently with the Secretary of Interior and reiterated again to her my concern that the seven mandatory regulatory criteria for recognition be placed in statute, something that the delegation has been trying to do for several years. Her response to us at the time was "she had no immediate objection to it." No immediate objection to it.

I also expressed my concern about the revolving door, which means officials of the Bureau of Indian Affairs can make decisions that affect tribes, petitioning tribes, and then leave the Bureau of Indian Affairs and, with no cooling off period, go to work to represent or be employed by some of those very same people who are affected by those decisions.

Both of those recommendations have been placed in a piece of legislation that I introduced with the full delegation a few weeks ago. We want more control over the process. We want more transparency in the process. And we want relief provided to our localities for what can be a very expensive battle on a very uneven playing field.

And for those members who are not familiar with the political organization of Connecticut, we do not have county government in Connecticut. We have 169 small towns, and then we have the State, and those small towns are not equipped and are not resourced to deal with the lengthy legal battles that often occur when the petitioning groups have multimillionaires supporting them and the towns simply have the working citizens and a small tax base.

It is time for Congress to step in and solve this problem by reforming the system by statute and closing the revolving door.

And with that, Mr. Chairman, I thank you again and look forward to hearing from the witnesses. I will conclude by saying that I do have a bill on the floor today, probably around 11, the Alternative Minimum Tax. So I apologize if I have to leave in the middle of the testimony.

[The prepared statement of Hon. Rob Simmons follows:]

# TESTIMONY
# HOUSE COMMITTEE ON GOVERNMENT REFORM
# HON. ROB SIMMONS (CT-2ND DISTRICT)
# May 5, 2004

Mr. Chairman, Mr. Shays, and other members of the Committee,

Thank you for holding this hearing, and for allowing members from Connecticut to testify on behalf of our home state. There are few other issues more important to our state and my congressional district.

Mr. Chairman, no other state in America has felt the impact of BIA's flawed recognition process than Connecticut. We are host to two of the world's largest casinos: Foxwoods Resort Casino run by the Mashantucket Pequot Tribe and Mohegan Sun run by the Mohegan Tribe. And with two recognition decisions looming, we face the potential of at least two more casinos in the immediate future.

Connecticut has seen both the benefits and the adverse effects of tribal recognition. One benefit is that Indian gaming has produced jobs at a time when defense contracting and manufacturing have been on the decline. Foxwoods Resort and Mohegan Sun purchase goods and services, and contribute upwards of $400 million a year into the state budget in slots revenue. Tribal members have also been personally generous with their wealth, supporting numerous community projects and charities.

But there is also a considerable negative impact. In Connecticut, recognition means the right to operate a casino and that places pressure on small local municipalities who have no right to tax, zone or plan for these facilities. Small rural roads are overburdened with traffic, understaffed local police departments are routinely working overtime, and volunteer fire and ambulance services are overwhelmed with emergency calls. The small towns that host and neighbor these casinos are simply overwhelmed by this strain. My friend Nick Mullane, the First Selectman of North Stonington, can speak to this issue at further length.

In year's prior, many in Connecticut questioned the presence of tribal casinos because they wondered whether the federal process was fair. The people of Connecticut no longer wonder. They know the federal system is broken.

BIA's recent actions involving groups in Connecticut seeking status as Indian tribes under federal law demonstrate that the acknowledgement process is unfair and corrupt. This, of course, is not the fault of the petitioning groups, some of whom I have considered friends and neighbors for many years. It is the fault of the federal government. Congress must act promptly to correct these problems.

Over the last two years, BIA has issued final determinations that would grant federal tribal status to two groups in Connecticut. The first of these was the "Historic Eastern Pequot" tribe, located in the town of North Stonington in my congressional district. The second was the Schaghticoke Tribal Nation, in the town of Kent in the congressional district of Ms. Johnson.

The BIA also will soon issue decisions for the Golden Hill Paugussett group, located in Colchester and Bridgeport, and the two Nipmuc groups, located in Massachusetts but targeting land in northeastern Connecticut – in my congressional district.

With such significant decisions pending before a federal body, it is our duty in Congress to ensure that a fair and objective procedure is used to make these decisions. This is an important point, Mr. Chairman. Under the Indian Commerce clause to the Constitution, Congress has plenary authority over Indian affairs. Indeed, this body has in the past recognized tribes. Congress has *never* delegated the authority to acknowledge tribes. Court decisions may have established that the executive branch has the responsibility to oversee Indian affairs, but no judicial decision has ever explicitly delegated to the executive branch the authority to decide the fundamental question of what groups will be granted federal recognition.

Moreover, Congress has never taken the constitutionally necessary step of defining and placing in statute the seven standards under which BIA is to rule on tribal acknowledgment petitions. Absent this statutory guidance from Congress, BIA has time and again flouted their own regulations. The seven criteria are mere suggestions or guidelines, easily ignored or bypassed when necessary to reach a desired result.

Tribes need to be granted the federal status they deserve and accorded their sovereign rights, but the determination to acknowledge such tribes cannot and should not be made unless these groups clearly meet all seven of the criteria. To make certain these standards are met, I recently introduced legislation that would codify each of these seven criteria, ensuring that "federal acknowledgement or recognition shall not be granted to an Indian tribe unless the Indian tribe has met all of the criteria listed." This law will provide an equitable process to groups that clearly meet all seven tests, while preventing claims from groups that fall short of one of these standards. No longer will the BIA be able to pick and choose among these criteria to find in favor of a petitioner.

Indian recognition carries with it the possibility of operating a casino. Over the years this has been a tremendously lucrative proposition. In 1999, federally recognized tribes reported about $10 billion in gaming revenue, which was more than Nevada casinos collected that year. By 2001, Indian gaming revenues rose to $12.7 billion. Predictably, wealthy individuals and corporations have begun to lobby on behalf of groups seeking federal recognition. Most

disturbing, individuals have gone directly from BIA into the private sector to lobby their ex-colleagues on behalf of these wealthy gambling interests. This is because BIA is currently exempt from the federal law that makes other federal officials - including members of Congress - wait at least one year before lobbying the federal government. If *any* federal agency needs this law it is the BIA. The legislation I introduced on behalf of the Connecticut House delegation would end the exemption and stop the rapidly spinning revolving door.

Mr. Chairman, as we will hear today from some of our distinguished guests, the revolving door issue is representative of a greater issue -- the influence and success of recognition petitions that are backed by powerful gambling interests. In March, the *New York Times* detailed in a front-page story the ties between these powerful money interests and petioner groups. Included in this article was a troubling reference to the business relationship between the current head of BIA, David Anderson, and the primary backer of the Massachusetts and Connecticut Nipmuc groups, Lyle Berman. Mr. Anderson and Mr. Berman were founding partners of what is now Mr. Berman's casino development company, Lakes Entertainment. Lakes Entertainment has provided nearly $4 million to the Nipmucs in their effort to obtain federal recognition.

Further, it was reported, in a story that ran this past Sunday in the *New London Day*, that Mr. Anderson has "recused himself from all federal recognition decisions" as he wants to "avoid the appearance of conflict." Mr. Chairman, when the head of the entity that has come to make Indian recognition decisions must remove himself from these decisions because of *his own* ties to gambling interests I think the problem becomes self-evident.

The Connecticut delegation recently met with Interior Secretary Gale Norton. At that meeting, I raised the two issues I've just discussed - putting the seven recognition criteria in statute and ending the "revolving door." With regard to putting the seven criteria in statute, Secretary Norton said that she had no "immediate objection to it." When asked about ending the "revolving door" exemption, she responded even more favorably, saying that since coming to the Interior Department she had been "troubled by it". Mr. Chairman, I am encouraged that we have found common ground with Secretary Norton on these two key issues and I'm hopeful that our delegation can work with her and the BIA to pass this bill

In conclusion, federal recognition policies are turning the "Constitution State" into the "casino state." We want more control over the process. We want more transparency and definition to the process. We want relief provided to our localities for what can be a very expensive battle on a very uneven playing field. And we want to get the money out of the process and ensure that recognition decisions are obtained by who can meet a defined set of standards, not those who can plow the most money into an application.

The victims of the situation include all parties to the acknowledgment process - petitioning groups, states, local communities, and the public. It is time for Congress to step in and solve this problem by reforming the system by statute and closing the revolving door. This is the only way to ensure fair, objective and credible decisions.

Thank you for considering my testimony and allowing me to join this important hearing today.

Chairman TOM DAVIS. It is an important bill, we understand, and thank you again for helping call this issue to the committee's attention.

Any other members wish to make opening statements?

Mr. CUMMINGS. Just a very brief statement, Mr. Chairman.

Chairman TOM DAVIS. Yes, Mr. Cummings.

Mr. CUMMINGS. Mr. Chairman, I want to also thank you for holding this hearing to assess the legal sufficiency and procedural fairness of the American Indian tribal recognition process administered by the Interior Department's Bureau of Indian Affairs. Recognized tribes receive exclusive Federal Government funding for health, education, and other social programs. As such, tribal lands are eligible to be taken into trust by the Federal Government. The integrity of the BIA process is very important.

Recently, the Assistant Secretary for Indian Affairs acted on acknowledgment petitions filed by two Connecticut tribes, the Eastern Pequot and the Schaghticoke tribes. These actions raise questions about the tribal recognition process, since, under BIA findings, these tribes did not meet any of the mandatory criteria for status as a sovereign Indian nation. The Assistant Secretary of Indian Affairs granted final recognition to the tribes.

Federal recognition of an Indian tribe acknowledges that the tribe is a sovereign entity which establishes a government-to-government with the United States and makes the tribe eligible for Federal programs through the Interior Department's Bureau of Indian Affairs and the Indian Health Service. More importantly, it allows gaming on Indian lands under the Indian Gaming Regulatory Act.

Mr. Speaker, the potential for profit through gaming is extremely high. In fact, Indian gaming is a $15 billion a year business, and, as such, many existing Indian tribes, as well as would-be tribes, are spending millions of dollars on political campaigns, lobbying, and State ballot initiatives to preserve the tax-free status of casinos, expand gaming operations, and protect their sovereign immunity. Two-thirds of the groups currently awaiting determinations on their applications are reportedly financed by outside casino investors.

In order to maintain the accuracy and legitimacy of the tribal recognition process, there must be a clear basis for determining tribal status. The potential for exploitation of the BIA process or tribal communities that might be linked to the gaming industry must be avoided.

And with that, Mr. Speaker, I look forward to hearing from all of our witnesses today, and, Mr. Chairman, I yield back.

Chairman TOM DAVIS. Thank you very much.

We have a distinguished panel today.

Mr. OSE. Mr. Chairman?

Chairman TOM DAVIS. Mr. Ose, you want to make a statement?

Mr. OSE. Yes, please.

Chairman TOM DAVIS. The gentleman is recognized.

Mr. OSE. Thank you, Mr. Chairman. First of all, let me thank you for calling this hearing. We have been struggling with this issue of tribal recognition for many decades. It has been brought to my attention in previous Congresses by Mr. Shays. We had a

number of hearings on that. We are faced with a diverse array of existing tribes numbering over 550, I believe, already federally recognized tribes, and the task of acknowledging a new group as a sovereign entity remains one of our most difficult and complicated tasks.

As you heard from the other Members here, the recognition of a tribe has a significant effect not only the tribe, but on the surrounding communities. In my district, we have had some very successful recognitions in which the tribes have gone on to significant progress. We have also had some difficulty in terms of tribes or groups of folks who have filed for recognition who have been unsuccessful in getting that.

We have a process in place that has seven tests for identifying groups who would otherwise quality as tribes. It is not an easy test or an easy series of tests to accomplish. I do think it is important that we review that periodically. I am hopeful that this hearing will eventually lead to that.

In California, one of the overwhelming aspects that is on the table, so to speak, from tribal recognition is the issue of gaming and how many tribes wish to use that as the economic vehicle for progress. It has had remarkably positive effects for many tribes. There are many communities in which the tribes are located which might otherwise suggest that the ancillary impacts of that gaming have not been all that positive.

In that context, Mr. Chairman, I am pleased that you called this hearing to examine this issue, and look forward to the testimony of the witnesses.

[The prepared statement of Hon. Doug Ose follows:]

**Congressman Doug Ose**
**Opening Statement**
**Tribal Recognition Process –A Hearing to Review**
**May 5, 2004**

Thank you, Mr. Chairman for holding this hearing on an issue of the utmost importance to my district and many other parts of the country. Faced with a such diverse array of existing tribes –at last count there were over 550 federally recognized tribes, the task of acknowledging a new group as a sovereign entity is probably one of the most difficult and complicated tasks facing the Department of the Interior (DOI).

The Federal recognition of an Indian tribe can have a tremendous effect not only on the tribe but also on the surrounding communities and the Federal government. Recognition establishes a formal government to government relationship between the United States and a tribe. This special relationship also confers a unique type of dominion, or sovereignty upon Indian tribes. This sovereign status exempts tribal land from many State and local laws, such as sales tax and gambling regulations.

In 1978, DOI's Bureau of Indian Affairs (BIA) established a regulatory process intended to provide a unique and objective approach to recognizing tribes. The regulations established seven criteria that groups must meet in order to be recognized. In 1994, BIA revised its regulations to clarify what evidence was needed to support the requirements for recognition. BIA further updated its guidelines and clarified its procedures in 1997, and again in 2000.

Despite these changes, criticism of the process has continued. In my district alone, there are three Federally recognized tribes, two with active leadership disputes, and one more attempting to become Federally recognized in the near future. Third-party groups claim that the process is opaque, with little opportunity for public input. Both sides argue that the current process produces inconsistent decisions.

I continue to be concerned about how the public perceives the recognition of tribes. Although this hearing is focused on the issue of tribal recognition, the attention paid to the content would be far less fundamental were it not for gambling. Failure to mention this fact would be to ignore a deep-seated concern among the public and among many tribes themselves.

Eighteen years ago, Indian gaming was unfamiliar to the most. In 1999, Indian gaming generated $9.8 billion in revenues, more than that of the casinos of Las Vegas. There is little doubt that such large amounts of money are changing both the nature and content of the debate we will see here today.

Chairman TOM DAVIS. Thank you very much.

We are now ready for our first panel. We are very pleased to have a very distinguished panel. We start with the Honorable Richard Blumenthal, who is the attorney general of the State of Connecticut; the Honorable Theresa Rosier, who is the Counselor to the Assistant Secretary for Indian Affairs at the Department of the Interior. I understand you are accompanied by Lee Fleming, so we will swear Lee in, who is the Director of the Office of Federal Acknowledgment, Bureau of Indian Affairs; and the Honorable Earl E. Devaney, the inspector general for the Department of the Interior.

Thank you all for being here. It is the policy of this committee that we swear all witnesses, so if you would rise with me and raise your right hands.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you very much.

We have lights in front. Your total statements are in the record. After 4 minutes the light will turn from green to orange; in 5 minutes it will turn red. If you could try to move to summary as soon as it turns red, we can move ahead to questions.

Before we start, Mr. Shays?

Mr. SHAYS. Thank you, Mr. Chairman. I should have mentioned this in my opening statement, and I appreciate your indulgence. I just, first, wanted to welcome the attorney general. I served with him in the State House and while he was in the Senate, and he has truly been a leader in this effort and just has been both very strong, but very bipartisan and, frankly, nonpartisan on this issue. He has confronted the previous administration in a very real way, and so I just have immense respect for him. And I do want to thank the Department of the Interior and welcome our witness there and acknowledge, as well, the good work of the Inspector General's Office.

I also want to say to our second panelists, that I have tremendous respect for Marcia Flowers, the chairwoman, and want her to know, as she hears these strong statements, that we understand your role and will be very respectful of that.

And also Mark Sebastian, welcome. You have a wonderful reputation. You are both wonderful people, terrific people, and we thank you for coming to testify.

And let me just conclude by saying that we will have three mayors, really, a mayor and two first selectmen. They are all distinguished leaders in their community, and particularly those nearest my community, Mr. Boughton, the mayor, as well as First Selectman Marconi. They have bipartisan support, overwhelming support in their communities because they have done wonderful jobs, and it is very important that they participate, and I thank them.

And just end by saying that Jeffrey Benedict has been extraordinarily informed and has been leading this effort. We will learn a lot from him.

So we have a wonderful three panels, and thank you for giving me the opportunity just to express my appreciation to all of them.

Chairman TOM DAVIS. Thank you. And before I start, Mr. Wolf just came in. He has been a leader in terms of the gaming issue

in the Congress. I just want to allow him to make a statement, and then, General Blumenthal, we will move to you.

Mr. WOLF. Thank you, Chairman Davis. I spent some time last night putting this together, and I appreciate your giving me this opportunity. And I want to thank you and Mr. Shays for having this hearing. I feel very strongly about this, and I just want to get this on the record.

As the author of the legislation which created the National Gambling Impact Study, I have long had serious concerns about the harmful effects of gambling on society and on Native American tribes. If you look at a snapshot of what is happening today, 80 percent of Native Americans live in poverty, poor schools, inadequate infrastructure, and abysmal health care, and the Congress and the administration can and should do more to help Native Americans.

Consider the snapshot: a broken—it is so broken—broken tribal recognition process subject to severe abuses, wealthy investors and lobbyists, and this town is becoming full of lobbyists in a way that is fundamentally corrupt, and yet nobody seems to do anything about it; making money from exploiting Native Americans while trying to get them recognized and eventually engaged in gambling, and no one says anything about it. Have the standards changed in this town and in this Congress and in society? Money being made at the expense of Native American tribes while few Native Americans ever, ever see a dime from gambling and continue to suffer in poor conditions.

This is the state of tribal recognition and Native American gambling today. And I thank Mr. Davis for having this opportunity where people can say something. The tribal recognition process is broken. If this administration doesn't realize it, then there ought to be changes at Interior where they are willing to allow these things to exist. Congress and the administration should take steps in light of the mounting evidence.

When Time Magazine published a two-part cover story about the many problems, no action was taken. Two parts, feature, cover story, Time Magazine; Interior takes no action. Nothing was done. There are countless news reports. My goodness, just look at the news reports. Day after day of questions and unethical, immoral, and maybe fundamental illegal activity is taking place.

With all the evidence there is about the problems with Native American gambling, Congress and the administration has to take some proper steps. This process is supposed to be marked by integrity—and I worked at Interior under Secretary Roger C.B. Morton for 5 years when there was integrity there. Now the Congress and the administration are not using the opportunity to institute the needed reforms.

I have written the administration time after time after time, and you almost never get a response from the Department of the Interior. When there is a response it is not adequate. This is a bipartisan failure. Both the Clinton administration and the Bush administration and their respective Secretaries of the Interior, Bruce Babbitt and Gail Norton, have stood by and allowed Native Americans to continue to be exploited by gambling interests.

Nearly 80 percent of Native Americans receive nothing from gambling. Most tribes remain mired in poverty. Just go onto the Indian reservations, and many are in areas whereby they cannot take advantage of gambling because people are not going to go to those areas to gamble, and tribes that are questionable are reaping all the benefits, and the Native American community in this country, 80 percent are living in abject poverty.

Congress has to act to turn around the tribal recognition process. It is filled with abuses. They are stunning. In the last administration, the Clinton administration, two officials reversed the opinions of Interior Department staffers to recognize three groups as Indian tribes, allowing them to open casinos. The decision was made in the last days in office, against the recommendation of the professional staff. Then the two officials who decided to recognize the tribes took positions representing Indian tribes. Clearly the seven criteria that BIA applies to recognize tribes are being skirted, and those making the decisions impacting tribes can leave the Interior Department through a revolving door and then represent tribes in the private sector. And, frankly, some of these law firms that hire these people, these were law firms that were distinguished firms, and now to be involved in this type of activity is shocking.

In March, a Connecticut newspaper reported that Bureau of Indian Affairs documents revealed that the BIA knew—knew—that the tribe didn't meet the BIA rules for recognition, but the staff in the BIA Office of Federal Acknowledgment wrote a memo to the agency's director showing how to recognize the tribe anyway.

Lobbyists and investors have exploited Native Americans in order to use them. Frankly, those who may be with those law firms, those of you who may have left the administration at different times, how can you live with yourselves knowing the exploitation that is taking place with regard to the poverty on the Indian reservations?

The Government has walked away from its obligation to Native Americans and, instead, relied on gambling as the panacea for the problems. In fact, almost every administration in Congress has said, well, if there is a problem, let them have gambling. That is why you have seen the BIA budget has not been increased and the programs for Indians have not been increased. This approach has resulted in a Federal recognition process with standards that are unevenly and unpredictably applied, influenced by big money and harmful to the tribes and those petitioning for recognition.

I am not going to get into the Connecticut situation, you have Connecticut Members, but imagine if you lived in a community in your State, in your region that was going through what some of these Connecticut towns are going through. To all of the big lobbyists out there, let us put a tribal operation where you live and see how you would respond if you saw the corruption and the abuse that was taking place.

Today, Mr. Chairman, I think there ought to be a moratorium. The representatives of the Interior Department ought to announce today they are going to have a moratorium. The Bush administration ought to say we are going to have a 1-year moratorium on the recognition process so there is time for the Congress—because now there is enough information—and the administration to review and

fix the many problems. You have to get the money interests out of the picture, do what is right for the Native Americans, and really change, change this process.

I will end by just quoting a 2002 GAO report: "Weakness in the process have created uncertainty about the basis for recognition decisions, calling into question the objectivity of the process." And for anyone who wonders about it, the National Indian Gaming Commission, where there are 330 Indian gambling tribes, reported at the end of fiscal year 2002 in 28 States with revenue of $14.5 billion and 67 people at the National Indian Gaming Commission to carry out Federal oversight, 67 people; and that may have changed, maybe there is 69, maybe there is 75. But in Atlantic City, for 12 casinos, they have over 700 with oversight.

I have much more I would say. I will just submit the full statement for the record. I appreciate the chairman having this hearing.

I don't know who from the administration is there, but you all have to change this. If you don't change it, there will be major corruption scandals on this, and it will come back to wash up on the shores. I implore this administration. Frankly, the Clinton administration did nothing. They watched things go on that were horrible. I happen to be a Republican who supports this administration. I call on this administration. I call on Secretary Gail Norton to do the right thing. They should say how they feel if this were taking place in their own community.

And, last, to the administration, you should be more aggressive in representing the interests of the Native Americans. You think you are helping the Native Americans by doing this. You are allowing them to be exploited by powerful money interests and lobbyists in this town, and, frankly, this administration is failing on that issue.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman TOM DAVIS. Thank you very much.

Mr. Blumenthal, thank you very much for your statement and your continued interest in this. Your reputation precedes you. We are honored to have you here today. Thank you very much for being with us.

**STATEMENTS OF RICHARD BLUMENTHAL, ATTORNEY GENERAL, STATE OF CONNECTICUT; THERESA ROSIER, COUNSELOR TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, BUREAU OF INDIAN AFFAIRS; AND EARL E. DEVANEY, INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR**

Mr. BLUMENTHAL. Thank you very much. Thank you, Mr. Chairman. I am honored to be back with you. Thank you for the invitation, and I want to thank you for your leadership, most especially Representative Shays for his continuing courage and conviction on this issue, and Representative Simmons, who has shown great determination and vision, as well as other members of the panel who will probably be joining us.

And I want to join in thanking you for the Department of the Interior being here, most especially Inspector General Devaney,

whose staff has recently visited Connecticut and is doing excellent work; and the local officials who are joining us today from Connecticut, as well as Chairman Flowers, because she has shown great determination to be here as well, and I thank her for her leadership.

I am not going to give in depth or detail my testimony, I assume it will be in the record, but the comments—very eloquent and articulate comments—made so far lead me to say that we are at a historic turning point. I sense from the comments that have been made so far this morning that there is a clear recognition that reform is vital, that we have a unique and historic opportunity, and really a window of opportunity to make these changes before we do further damage to my State and to the Nation, and not just in specific decisions that may be incorrect or illegal, but further damage to the credibility and trust of the entire recognition process.

Reform is no longer a luxury, it is a necessity, and Vice Chairman Shays used a word, scandal, to describe the present process. That is exactly the word that Senator Daniel Inouye used to describe this process. Senator Ben Nighthorse Campbell said that it is driven by money and politics. There is a bipartisan consensus now that we need fundamental, far-reaching reform.

I have described this agency as being lawless. I did so most recently before the U.S. Court of Appeals for the Second Circuit when I argued last week. It is an agency that is lawless, out of control, arbitrary, capricious, and we need to impose standards that assure the rule of law. In the Schaghticoke decision, for example, my view is that the outcome is as unprincipled as it is unprecedented. Never before has the BIA recognized a tribe that is admitted by the agency itself to completely lack evidence on two key required standards over decades, seven decades for one of them. Never before has the BIA combined in this way two such hostile factions, neither accepting the other's legitimacy. And never before has the BIA so twisted and distorted State recognition to cover its deliberate disregard for absent evidence.

I must say, Mr. Chairman, that I am also very, very deeply troubled by an order that was issued literally within the past few days by the Secretary of the Interior that completely delegates authority over all recognition and gaming decisions within the BIA to the principal deputy, delegates that decisionmaking power from the Assistant Secretary, who was confirmed by the U.S. Senate to fulfill these responsibilities, and who has recused himself, apparently, from all decisionmaking relating to recognition or gaming activities. In my view, that across-the-board general, complete delegation, not a specific recusal on a case-by-case basis where there may be a conflict of interest based on the facts, but a complete delegation raises very, very profound and serious questions of law. For example, the over-breadth of delegation, the lack of oversight and accountability to the U.S. Congress which confirmed this official to fulfill those responsibilities I think merits immediate and urgent scrutiny, and I intend to give it, and I know Members of Congress will be interested in these issues as well.

I agree that there ought to be a moratorium on Bureau of Indian Affairs tribal acknowledgment decisions or appeals affecting Connecticut, and probably the United States, and there ought to be a

full and far-reaching investigation, perhaps by this committee, but at the very least by the U.S. Congress, of the BIA's actions. And I would join Congressman Shays in urging that certain of the parties be invited again to appear. If they are unable or unwilling to do so, they ought to be subpoenaed to appear. We have used the subpoena as attorneys general, as have other law enforcement agencies. This issue raises profound issues of integrity and lawfulness that I think go to the heart of the credibility and integrity of the process.

I have proposed a number of reforms, and I will just repeat them very briefly. I believe that one of those fundamental reforms has to be creating an independent agency that is insulated from politics and lobbying and personal agendas to make these tribal recognition decisions, out of respect, a profound respect that I share, for the sovereignty of tribes that are recognized. The tribal groups that meet the criteria, and they are sound criteria, in the law now ought to be recognized. Those that fail to meet those criteria should not be accorded this sovereign status. And an independent agency much like, perhaps, the Federal Communications Commission or the Federal Trade Commission, should be appointed to exercise those powers.

Those criteria ought to be embodied in statute so there is no question about how rigorously and faithfully they should be applied, and resources ought to be provided to interested parties, towns, cities, States, as well as the tribes themselves, so that they can participate meaningfully in this process.

And may I just summarize by saying that this issue really is one that is bipartisan. It is not about party, it is not about geography, or about interest group allegiance one way or the other; it is about a common interest, which is the public interest, and most importantly a public trust in the integrity of these decisions that affect our Nation so vitally and so irreversibly once they are made. And I believe, again, that we are at a turning point when we can save ourselves from going into a thicket of irreversible and mistaken decisions that ultimately harm the Nation. We still have time to turn from that thicket and avoid continued mistakes.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Blumenthal follows:]

***TESTIMONY OF***
***ATTORNEY GENERAL RICHARD BLUMENTHAL***
***BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM***
***MAY 5, 2004***

I appreciate the opportunity to testify on the federal tribal recognition process.

Continuing evidence of money, politics and personal agendas impacting tribal recognition decisions has led the Department of Interior's Inspector General to initiate yet another review of improprieties in the BIA's recognition process. This investigation, whatever its outcome, adds credibility to our repeated criticism that the BIA is skirting and subverting the law, and defying fundamental fairness. It is an agency that is lawless, out of control, arbitrary and capricious.

Critically and immediately, Congress should enact a moratorium on Bureau of Indian Affairs (BIA) tribal acknowledgment decisions or appeals affecting Connecticut and perhaps the Nation, and initiate a full and far-reaching investigation of the BIA's actions.

The need for a moratorium is demonstrated dramatically by an internal BIA memorandum -- discovered during review of documents for our administrative appeal in the Schaghticoke decision -- which provides a blueprint for BIA senior officials to disregard and distort the law. This unconscionable pattern and practice cannot be permitted to continue.

Equally important is immediate, complete and accurate disclosure of all the lobbyists, lawyers, and other similar influences - and amounts paid to them by petitioning tribal groups or related financial interests and investors. Sunshine would be a particularly powerful disinfectant in this morass of money, politics and personal agendas. The BIA memorandum opens a window on a concealed world of result driven decisions -- overreaching that skirts and subverts the rule of law.

Who will force legal compliance and accountability? Not the newly appointed Assistant Secretary for Indian Affairs, David Anderson, who was recently confirmed by the U.S. Senate. We have learned that he has recused himself from all recognition decisions. As a result, Secretary of Interior Gale Norton has delegated these critical powers to his principal deputy, Aurene Martin—whose position does not require Senate confirmation. I submit for the Committee's record a copy of the Secretary's order. I am deeply troubled that Mr. Anderson will be unable to perform some of the key responsibilities of the office for which he was nominated

and confirmed by Congress. Recusal on individual cases may be appropriate for particular ethics or conflict of interest reasons specific to the case at hand. But such general, across the board delegation is severely problematic, raising constitutional and statutory questions about overbroad illegal delegation and avoidance of proper responsibility. At the very least, this delegation of powers circumvents Congressional authority to review and confirm the person entrusted with making critical tribal recognition decisions. Very significantly, it bypasses Congressional oversight and scrutiny of the inherent legislative function of according government to government status to Indian tribes. These issues merit immediate, critical scrutiny.

On Monday, I was joined by a powerful statewide coalition composed of city, town and citizens groups in an appeal to the federal Interior Board of Indian Appeals (IBIA) of the decision to accord federal recognition to the Schaghticoke Tribal Nation. Although I am hopeful that the IBIA will review this decision in an objective fair, impartial manner and determine that the decision was critically lacking in evidence necessary for a finding of Indian recognition, the problems with the recognition process are so deep and pervasive that they require immediate sweeping Congressional changes.

Far reaching, fundamental reform is critical to restoring the integrity and credibility of the process. Indeed, the argument may be made that the Department of Interior currently has an unavoidable conflict of interest -- responsible for advocating and protecting Native American interests as trustee on the one hand, and at the same time deciding objectively among different tribes which ones merit federal recognition and all the benefits that flow from it.

First, Congress should create an independent agency -- insulated from politics or lobbying -- to make tribal recognition decisions. It must have nonpartisan, disinterested members, staggered terms, and ample resources. There is compelling precedent for such an independent agency -- the Securities and Exchange Commission, for example, or the Federal Communications Commission, and the Federal Trade Commission, which deal professionally and promptly with topics that require extraordinary expertise, impartiality, and fairness, and where the Commissioners have no stake in the outcome of the decision. Sufficient resources in staff and other capabilities – now lacking in the BIA – also must be provided.

Second, Congress should adopt the tribal recognition criteria in statute, reducing the likelihood that the BIA – or a new, independent agency-- will be able to stretch or ignore regulatory standards in an effort to recognize an undeserving petitioner. Congress should also enact measures to ensure meaningful participation by the entities and people directly impacted by a recognition decision -- including equitable and equal rights to all information submitted by all parties. One of the most frustrating and startling consequences of the current review process in the BIA is the potential for manipulation and disregard of the seven mandatory criteria for recognition—a potential that the General Accounting Office (GAO) and Inspector General reports found has occurred in recent petitions.

Finally, Congress should provide additional much-needed, well-deserved resources and authority for towns, cities and Indian groups alike in an effort to reduce the increasing role of gaming money in the recognition process. Federal assistance is necessary and appropriate, in light of the increasing burdens that tribal members, towns, cities and the state must bear in

retaining experts in archeology, genealogy, history and other areas -- all necessary to participate meaningfully in the recognition process. Because recognition has such critical, irrevocable consequences, all involved—petitioning groups, the public, local communities, states -- must have confidence in the fairness and impartiality of the process. That confidence has been severely compromised in recent times. I urge the committee to approve these bills and begin the process of overhauling the system so that public faith and trust can be restored.

The central principle of this reform should be: Tribes that meet the seven legally established criteria deserve federal recognition and should receive it. Groups that do not meet the criteria should not be accorded this sovereign status.

The present system for recognizing Indian tribes is fatally and fundamentally flawed. It is in serious need of reform to ensure that recognition decisions -- which have such profound ramifications -- are lawful, fair, objective and timely. After more than a dozen years of experience with tribal recognition issues, I strongly and firmly believe that fundamental, far-reaching reform is necessary.

In a January, 2004, ruling involving a petition from the Schaghticoke Tribal Nation, an Indian group in Connecticut, the BIA inexplicably reversed its preliminary decision to deny federal recognition to the Schaghticoke petitioner, finding that the petitioner had met all seven mandatory criteria, despite the lack of any evidence to establish that the group met two of the mandatory criteria -- political autonomy and social community—for long periods of history. The basis for this decision—which directly conflicted with not only the preliminary negative decision in the same petition but also with prior BIA precedent and regulatory requirements-- remained a mystery until several weeks later, when an internal staff briefing paper became available. The briefing paper created a road map -- as close to a smoking gun as we've seen -- for the agency to reverse its prior negative finding, despite the admitted lack of credible evidence of at least three of the seven mandatory criteria. I have attached that briefing paper to my testimony.

The briefing paper sets forth options to Acting Assistant Secretary Martin for addressing two issues staff acknowledged were potentially fatal to the Schaghticoke petition: (1) little or no evidence of the petitioner's political influence and authority, one of the mandatory regulatory criteria, for two substantial historical periods totaling over a century; and (2) serious problems associated with the internal fighting among two factions of the group.

With respect to the lack of evidence, the memo demonstrates, by its owns words and analysis, its disregard for the legal standards and precedents in order to arrive at a particular desired result. While acknowledging that Option 2-- declining to acknowledge the group—would "maintain[] the current interpretation of the regulations and established precedents concerning how continuous tribal existence is demonstrated," the memo posited a way to achieve a positive finding even though the petition lacked evidence of mandatory criteria for two historical periods: Option 1, which was to "[a]cknowledge the Schaghticoke under the regulations despite the two historical periods with little or no direct political evidence, based on the continual state relationship with a reservation and the continuity of a well defined community throughout its history."

In other words, declining to acknowledge the group meant following the law and the agency's own precedent. Yet, despite this clearly correct legal path, the BIA chose option 1, and acknowledged the petitioner by substituting state recognition in lieu of evidence for large periods of time. The BIA chose this option despite its own concession that it would create a "lesser standard," and despite the clear evidence in the record showing that the "continual state relationship" was not based on the standards necessary for federal recognition.

This BIA memo confirms that recognition of Schaghticoke petitioner required the BIA to disregard its own regulations and long accepted precedents, ignore substantial gaps in the evidence, and "revise," yet again, its recent pronouncements on the meaning and import of the State's relationship with the group. In fact, the BIA has now "revised" the legal import of state recognition no less than four times in only two years, each time adopting a view that would permit it to reach the result it wished, regardless of whether the group met the standards required by the regulations and precedents.

This result- driven agenda and attitude are mirrored in our experience with other recognition petitions. In the Eastern Pequot and Paucatuck Eastern petitions, the former head of the BIA unilaterally overturned civil service staff findings that the two Indian groups failed to meet several of the seven mandatory regulatory criteria. He also issued an illegal directive barring staff from conducting necessary independent research and prohibiting the BIA from considering information submitted after an arbitrarily-selected date without notice to interested parties in pending recognition cases.

Not content to stop there, the BIA went even further in recognizing a single Eastern Pequot tribe in Connecticut comprised of two competing groups-- the Eastern Pequot and the Paucatuck Eastern Pequots-- despite the fact that these groups had filed separate, conflicting petitions for recognition, and despite the substantial gaps in evidence in both tribal petitions. To circumvent the law, the BIA again distorted the relationship between the state of Connecticut and the Eastern Pequot group in an attempt to bridge those gaps, contrary to the BIA's own regulations. That decision is currently on appeal before the IBIA.

The criteria for federal recognition as a Indian Tribe have been carefully developed over 30 years, and are based primarily on Supreme Court precedent articulating the relationship of Indian tribes to the federal government. Present legal rules require any tribal group seeking federal recognition to meet seven distinct criteria -- aimed at proving the petitioning tribe's continuous existence as a distinct community, ruled by a formal government, and descent from a sovereign, historical tribe, among others. Distorting and defying these rules, as the BIA memo clearly demonstrates, the BIA's political leaders have disregarded these standards, misapplied evidence, and denied state and local governments a fair opportunity to be heard.

Connecticut's experience is not unique. In 2002, the GAO issued a report documenting significant flaws in the present system, including uncertainty and inconsistency in recent BIA recognition decisions and lack of adherence to the seven mandatory criteria. The GAO report also cited lengthy delays in the recognition process -- including inexcusable delays by the BIA in providing critical petition documents to interested parties like the states and surrounding towns.

The United States Department of the Interior's Office of the Inspector General (OIG) also found numerous irregularities in the way in which the Bureau of Indian Affairs handled federal recognition decisions involving six petitioners. The report documents that the then Assistant Secretary and Deputy Assistant Secretary either rewrote professional staff research reports or ordered the rewrite by the research staff, so that petitioners who hadn't met the standards would be approved. This Assistant Secretary himself admitted that "acknowledgement decisions are political," although he himself later expressed concern that the huge amount of gaming money behind petitions would lead to petitions being approved that did not meet the standards.

To date, the BIA has done nothing to cure these dramatic defects in the recognition process, and as a result of the BIA memo, the Inspector General has once again initiated an investigation of this clearly flawed process.

The impacts of federal recognition of an Indian tribe cannot be understated -- underscoring the urgent need for reform. A decision to acknowledge an Indian tribe has profound and irreversible effects on tribes, states, local communities and the public. Federal recognition creates a government-to-government relationship between the tribe and the federal government and makes the tribe a quasi-sovereign nation. A federally recognized tribe is entitled to certain privileges and immunities under federal law: They are exempt from most state and local laws and land use and environmental regulations. They enjoy immunity from suit. They may seek to expand their land base by pursuing land claims against private landowners, or seeking to place land into trust under the Indian Reorganization Act. They are insulated from many worker protection statutes relating, for example, to the minimum wage or collective bargaining protections as well as health and safety codes.

Also, the enactment of the Indian Gaming Regulatory Act (IGRA) more than a decade ago has changed the face of recognition dramatically by permitting federally recognized tribes to operate commercial gaming operations in many states. This law has vastly increased the financial stakes involved in federal recognition, providing an incentive to wealthy non-Indian backers to bankroll the petitions of tribes in states where gaming is permitted on the promise of riches once recognition is achieved and casinos are built. Investors in the Schaghticoke and the Eastern Pequot petitions have sunk tens of millions of dollars into the quest for recognition and casinos. A number of other groups are seeking recognition, most with the avowed intention to own and operate commercial gaming establishments if approved.

The enormity of the interests and the financial incentives at stake make public confidence in the integrity and efficacy of recognition decisions all the more essential. Sadly, due to the maneuverings that we have experienced, public respect and trust in the current process have completely evaporated. The current system is totally lacking in safeguards to protect the petitioning groups and the BIA from undue influence by monied interests. In addition, the process is shrouded in secrecy. State and local governments and private citizens directly impacted by a recognition application do not have effective or equal access to information submitted by the applicant or to the historical evidence and research by BIA staff. The BIA not only assists the applicant -- an applicant often financed by investors with far greater financial resources to devote to federal recognition than the state, towns and citizens affected by the

application -- it fails to provide basic information to those who may be opposed to the application.

The BIA's delay in providing necessary documents to Connecticut and local interested parties in the Eastern Pequot/Paucatuck Eastern petitions forced the state and towns to sue in federal district court to compel the BIA to produce the records in time for the state and local parties to have a meaningful opportunity to submit comments in the acknowledgment proceeding. Although the BIA complied with the court order to produce records, the federal action remains pending before the United States Court of Appeals for the Second Circuit with respect to the State's remaining claims that the BIA refuses to abide by its own regulations, and continues to change the rules of the game without notice to the parties or legal basis.

I ask Congress to act swiftly and strongly to reform the present system, remove the incentives for abuse, and restore credibility and public confidence in the process and the result.

I wish to thank the committee for allowing me this opportunity to address this important issue and urge the committee's further consideration of these proposals.

Chairman TOM DAVIS. Thank you very much, Mr. Blumenthal.

Ms. Rosier, thanks for being with us.

Ms. ROSIER. Good morning, Mr. Chairman and members of the committee. My name is Theresa Rosier, and I am Counselor to the Assistant Secretary for Indian Affairs. I would like to submit my full testimony for the record, but will abbreviate my statement here today. In addition, I would like to recognize Lee Fleming, who is the Director of the Office of Federal Acknowledgment, who is here with me today.

I am pleased to be here on behalf of the Department of the Interior to discuss the Federal acknowledgment process, recent improvements to this process and proposed potential improvements to provide a more transparent, clear, and efficient acknowledgment process. I understand this issue is of importance to this committee, as Vice Chairman Shays and others who are here today cosponsored H.R. 4213, which is a bill that codifies the criteria established at 25 C.F.R. Part 83, and which also repeals certain exemptions for formal Federal officials and employees representing Indian tribes.

Although the Department supports it's current Federal acknowledgment process, we do recognize that improvements can be made. The Department is generally supportive of legislation that maintains the criteria at 25 C.F.R. Part 83, but that also promotes increased transparency, integrity, and time sensitivity to the process.

When the current administration came into office, Federal acknowledgment quickly became a high priority. In November 2001, the General Accounting Office issued a report entitled "Indian Issues: Improvements Needed in the Federal Recognition Process." The two primary findings of this report was that the process was not timely and that the decisionmaking was not transparent to others.

In response to this GAO report, the Assistant Secretary developed and implemented a strategic plan to provide strategies to communicate more clearly the acknowledgment decisionmaking process and also to improve the timeliness of this process. Today I would like to discuss some of the accomplishments the Department has made in implementing its strategic plan.

First, to provide for more increased clarity and transparency in the process, all technical assistance review letters, proposed findings, final determinations, and reconsider petitions have been put on a CD-ROM such as this. The CD-ROM has been made available to the general public and to interested parties. We are hopeful that this information will be available on the Internet once the BIA is able to access the Internet.

No. 2, to increase the ability of the Office of Federal Acknowledgment in reviewing petitions and accompanying documentation in a more time-sensitive manner, resources have been provided to fill two professional staff vacancies. These additional staff members have resulted in the formation of three professional research teams. As you know, each team has a member that represents who can talk about the history, the genealogy, and the anthropology behind each petition.

Third, to increase the productivity of the office, we have hired two sets of independent contractors. The first set of contractors are

two Freedom of Information Act specialists. As you can tell from our two petitions I brought today, many of our records are quite voluminous, and FOIA requests often tie down our staff, so we have hired independent contractors to help us with our FOIA requests. The second set of contractors helps with our FAIR system, which I will discuss in a minute, which is a computer data base system which scans and indexes documents. Having the FAIR system has helped expedite the process as petitioners and interested parties may access the information on CD-ROM.

Let me talk a little bit more about our FAIR system. The BIA has implemented the Federal Acknowledgment Information Resource system. This is a computer data base system which provides on-screen access to all documents in the administrative record. The system allows researchers to have immediate access to the records and also allows petitioning groups, interested parties such as State and local governments, to have the entire administrative record on CD-ROM. In addition, all data entries made by our researchers are included on the FAIR system.

Another significant improvement made to the Federal acknowledgment process was in the realignment of the Bureau of Indian Affairs. The former branch of Acknowledgment and Research has been entitled now the Office of Federal Acknowledgment, which now reports directly to the Principal Deputy Assistant Secretary for Indian Affairs.

Due to the above-mentioned improvements to the Federal recognition process, the Office of Federal Acknowledgment has completed 14 major decisions since January 2001. We have completed six proposed findings, six final determinations, and two reconsidered final determinations.

On April 1, 2004, Secretary Norton requested Indian Affairs to review our strategic plan and ensure that all appropriate steps are being taken to implement the plan. As we have discussed, the Department has completed many of these action items; however, we have some more long-term action items which are underway. We plan on completing most tasks by the fall of this year; however, there are some items that may require statutory or regulatory amendments or access to the Internet, which may not be done or accomplished by this fall.

In addition, we are also planning to formalize an already internal policy of the Assistant Secretary's office that prohibits the Federal acknowledgment decisionmaker from having contact or communications with a petitioner or interested party within 60 days of an acknowledgment decision. Formalization of this process will ensure that all parties are aware of the 60-day period and protect the integrity of the process.

In conclusion, the Department believes that the acknowledgment and existence of an Indian tribe is a serious decision for the Federal Government. When the Government acknowledges a tribe, it recognizes that an inherent sovereign has continued to exist from historical times until present. These decisions have significant impacts on the surrounding community; therefore, these decisions should be made with a thorough evaluation of the evidence in an open, transparent, and timely manner.

I thank you for the opportunity to be here today. I will answer any questions you have.

[The prepared statement of Ms. Rosier follows:]

**TESTIMONY**
**OF**
**THERESA ROSIER**
**COUNSELOR TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS**
**U.S. DEPARTMENT OF THE INTERIOR**
**AT THE HEARING**
**BEFORE THE**
**COMMITTEE ON GOVERNMENT REFORM**
**U.S. HOUSE OF REPRESENTATIVES**
**ON THE**
**FEDERAL ACKNOWLEDGMENT PROCESS**

**May 5, 2004**

Good morning, Mr. Chairman and Members of the Committee. My name is Theresa Rosier and I am the Counselor to the Assistant Secretary - Indian Affairs. I am pleased to be here today to speak on behalf of the Department of the Interior about the Federal acknowledgment process, recent improvements to this process, and other potential improvements that can be made to promote clarity, transparency and efficiency in acknowledgment decisions. I understand this issue is of importance to this Committee. On April 22, 2004, H.R. 4213 was introduced and cosponsored by Mr. Shays. That bill would codify the criteria established at 25 C.F.R. Part 83, and repeal certain exemptions for former federal officers and employees representing Indian tribes.

The Federal acknowledgment regulations, known as "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," 25 C.F.R. Part 83, govern the Department's administrative process for determining which groups are "Indian tribes" within the meaning of Federal law. The Department's regulations are intended to apply to groups that can establish a substantially continuous tribal existence and, which have functioned as autonomous entities throughout history until the present. See 25 C.F.R. Sections 83.3(a) and 83.7. When the Department acknowledges an Indian tribe, it is acknowledging that an inherent sovereign continues to exist. The Department is not "granting" sovereign status or powers to the group, nor creating a tribe made up of Indian descendants.

Under the Department's regulations, in order to meet this standard petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;

(2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) provide a copy of the group's present governing document including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion is considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

For the past few years, Congress has considered legislation almost annually to modify the criteria for groups seeking acknowledgment as Indian tribes or to remove the process altogether from the Department. Although the Department supports the current Federal acknowledgement criteria, we do recognize that improvements could be made to encourage more timely decisions and increased transparency. Generally, the Department is supportive of legislation that maintains the criteria established by 25 C.F.R. Part 83 and that promotes increased integrity, transparency and time sensitivity to the federal recognition process.

The Federal acknowledgement process is implemented by the Office of Federal Acknowledgment (OFA), formerly the Branch of Acknowledgment and Research. OFA is staffed with a director, a secretary, three anthropologists, three genealogists, and three historians. There is a high volume of work within this office. The current workload consists of nine petitions on active consideration and 13 fully documented petitions that are ready, waiting for active consideration. The administrative records for some completed petitions have been in excess of 30,000 pages. There are 213 groups that have submitted only letters of intent or partial documentation. These groups are not ready for evaluation and require technical assistance. Two final determinations representing three petitioners are under review at the Interior Board of Indian Appeals in response to requests for reconsideration. In addition, there are currently four lawsuits directly involving Federal acknowledgment or the Freedom of Information Act (FOIA) related to Federal acknowledgment.

## RECENT IMPROVEMENTS IN THE FEDERAL RECOGNITION PROCESS

In November of 2001, the General Accounting Office (GAO) issued a report entitled "Indian Issues: Improvements Needed in the Federal Recognition Process." The two primary findings made by the GAO in this report are that the Federal acknowledgement decision making process is not transparent nor is it equipped to respond in a timely manner.

In response to the GAO report, the Assistant Secretary – Indian Affairs implemented a Strategic

Plan to provide strategies to communicate a clearer understanding of the basis used in making federal recognition decisions, and to improve the responsiveness of this process. As illustrated below, many of the strategies developed in the Strategic Plan have been implemented and completed.

1. In response to the GAO report, all technical assistance review letters, proposed findings, final determinations, and reconsidered petitions have been electronically scanned and indexed and are now available on CD-ROM. This CD-ROM has been made available to the general public. Immediate and user-friendly access to all prior decisions enhances both transparency and consistency in the decision making process. We are hopeful that interested parties will have access to this information via Internet once the BIA is able to access it.

2. Additional resources have enabled the OFA to fill two professional staff vacancies. The addition of these new staff members resulted in the formation of three functioning teams composed of one professional from each of the three disciplines. With three teams, the OFA has increased its ability to review petitions and their accompanying documentation in a more time sensitive manner.

3. OFA has also hired two sets of independent contractors to assist in administrative functions. The first set of contractors includes two FOIA specialists/records managers. The second set of contractors includes three research assistants who work with a computer database system, scanning and indexing the documents to help expedite the professional research staff's evaluation of a case. Both sets of contractors assist in making the process more accessible to petitioners and interested parties, while increasing the productivity of the OFA researchers by freeing them from many administrative duties.

4. Implementation of the Federal Acknowledgment Information Resource (FAIR) system, a computer database system that provides on-screen access to all the documents in the administrative record of a case has made a significant positive impact in the efficiency of the OFA. The FAIR system scans all submitted documentation and then the data is extracted, linked, and indexed to create a searchable administrative record. This system allows the OFA researchers to have immediate access to the records and allows them to make more efficient use of their time. This system also allows petitioning groups and interested parties, such as States and local governments, to have the record on CD-ROM and thus have "on screen" access to the administrative record and to any data entries made by the OFA researchers. We anticipate that the next generation of scanning for FAIR will allow electronic redaction of privacy information from the documents, which will save the Department a tremendous amount of time otherwise spent photocopying cases for interested parties or FOIA requests.

Another significant improvement made to the Federal acknowledgement process as the realignment of the OFA. Effective July 27, 2003, the staff of the Branch of Acknowledgement of Research were realigned and renamed. OFA now reports directly to the Principal Deputy Assistant Secretary – Indian Affairs. Previously, the Branch of Acknowledgement and Research

reported through the Office of Tribal Services and the Bureau of Indian Affairs to the Assistant Secretary – Indian Affairs. This realignment eliminated two layers of review and now provides more direct and efficient policy guidance.

Due to these above mentioned improvements made to the federal recognition process, OFA was able to assist the Department in completing 14 major decisions regarding Federal acknowledgment since January 2001. During this time, OFA completed six proposed findings, six final determinations, and two reconsidered final determinations.

## OTHER IMPROVEMENTS TO THE FEDERAL ACKNOWLEDGEMENT PROCESS

On April 1, 2004, Secretary Norton requested that Indian Affairs review the Strategic Plan and ensure that all the appropriate steps were being taken to implement the strategies developed in the plan. As discussed above, the Department has completed many of the action items identified in the strategic plan. We plan to have all the remaining tasks (that are within the control of the Department) completed by this fall. We do recognize however, that some tasks will take longer to implement because they may require congressional action, regulatory amendments, or access to the Internet.

In addition, we are planning to formalize an already internal policy of the Assistant Secretary's office that prohibits federal acknowledgement decision-makers from having contact and communications with a petitioner or interested party within 60 days of an acknowledgment decision. Formalization of this policy will ensure that all parties are made aware of this 60 day period and that the integrity of the process is protected.

## CONCLUSION

The Department believes that the acknowledgment of the existence of an Indian tribe is a serious decision for the Federal Government. It is of the utmost importance that thorough and deliberate evaluations occur before the Department acknowledges a group's tribal status, which carries significant immunities and privileges, or denies a group Federal acknowledgment as an Indian tribe.

When the Department acknowledges an Indian tribe, it recognizes an inherent sovereign that has existed continuously from historic times to the present. These decisions have significant impacts on the petitioning group as well as on the surrounding community. Therefore, these decisions must be based on a thorough evaluation of the evidence using standards generally accepted by the professional disciplines involved with the process. The process must be open, transparent, and timely.

Thank you for the opportunity to testify about the Federal acknowledgment process. I will be happy to answer any questions you may have.

Chairman TOM DAVIS. Thank you.

Mr. Devaney, thanks for being with us.

Mr. DEVANEY. Mr. Chairman and members of the committee, I want to thank you for the opportunity to address the committee this morning on issues——

Chairman TOM DAVIS. Is your mic on?

Mr. DEVANEY [continuing]. On issues attendant to the tribal recognition process. I have submitted my full statement for the record and would now like to make some brief remarks and then answer any questions the committee has for me today.

Mr. Chairman, I am here today to testify about my office's oversight activities concerning the tribal recognition process administered by the Department of the Interior. As you know, tribal recognition, or the acknowledgment process of the Department, has been severely criticized by GAO and others for its lack of transparency. I don't disagree with that criticism, and I am an advocate for more of it. However, relatively speaking, it is actually one of the more transparent processes at the Interior, especially after the recent changes noted earlier. As a point of fact, the process generally follows the due process requirements of the Administrative Procedures Act, which includes giving notice, providing an opportunity to comment, and an appeal mechanism.

When conducting an investigation of a program such as tribal recognition, we naturally identify all the key players and then interview them. This includes not only DOI personnel, but individuals outside of the Department. In tribal recognition matters, this may include individuals identified by our own investigators, by the Office of Federal Acknowledgment, or simply parties who have specifically signaled an interest in the acknowledgment process, such as a State attorney general. Accordingly, when we conduct interviews in a given tribal recognition matter, we always begin with those OFA team members who are charged with the petition review process. Based on our experience, these are the most likely sources to provide evidence of any inappropriate influence of the process.

In our 2001 investigation, which included the Eastern Pequot Indian petition, we quickly heard from these folks about some rather disturbing deviations from the established processes that occurred at the end of the previous administration. Several recognition decisions, including the Eastern Pequot petition, had been made by the acting Assistant Secretary for Indian Affairs which were contrary to the recommendations of the acknowledgment review team. In fact, we even found one of these decisions was signed and backdated by the former acting Assistant Secretary after he had left office.

Mr. SHAYS. Who was that?

Mr. DEVANEY. I believe that was Mr. Anderson.

We were only recently asked to investigate the Schaghticoke tribal acknowledgment decision. Unfortunately, our investigation of the Schaghticoke decision is not yet complete; therefore, I can't comment on its outcome. I can, however, assure you that we are conducting a thorough investigation to determine whether there was any deviation from the established process in the consideration of this petition. We are, of course, interviewing OFA staff, acknowl-

edgment review team members, and senior Department officials to determine if any undue pressure may have been exerted. We have also spoken to Attorney General Blumenthal and members of his staff, as well as tribal representatives and officials from the Town of Kent to better understand their concerns. Their perspective is very important to us, and several investigative leads were developed out of those discussions.

Given the recent media reports of alleged improper lobbying influences relating to Indian gaming, my office now routinely includes in its scope of investigation inquiries into any lobbying influences that might bear on a particular Indian issue or program with a view toward targeting improper lobbying influences on any employee of the Department. In the end, I am confident that we will be able to present a thorough and complete report regarding the way this petition was acknowledged.

Finally, Mr. Chairman, I recently sent Congressman Wolf a list of issues which we consider to be impediments to good oversight and enforcement. One of those issues is the statute which permits recently departed DOI employees to go out and immediately represent recognized Indian tribes in connection with matters pending before the Federal Government. This exemption was created in part because Indian tribes, at the time of its enactment in 1975, had little or no access to persons with expertise in Indian matters. Today, that dynamic has obviously changed. We simply believe that this statute has outlived its original intent and that this exemption now perpetuates the proverbial revolving door. Without this exception to the normal cooling-off period that all other departing executive branch employees must adhere to, this would obviously be a violation of the criminal conflict of interest laws.

Recently, in a prosecution stemming from one of our investigations, the U.S. Attorney's Office in the Northern District of New York secured a guilty plea by an individual who had submitted fraudulent documents in an effort to obtain Federal recognition for the Western Mohegan tribe and nation. Evidence presented at trial demonstrated that this fraudulent application was made in the hope of initiating gaming and casino operations in upstate New York. We are hopeful that this conviction will send a clear message to others who would attempt to corrupt the tribal acknowledgment process.

Finally, Mr. Chairman, we have recently increased our investigative efforts and have now joined forces with the FBI in several matters to leverage our limited mutual resources. In some cases we are operating in a task force setting where one of our agents is always paired up with one of theirs. Coupled with a strong commitment recently made to us by the 26 U.S. attorneys who prosecute cases in Indian Country, I am confident that you will begin to see the results of our labors in the near future.

Mr. Chairman and members of the committee, this concludes my remarks, and I would be happy to answer any questions.

[The prepared statement of Mr. Devaney follows:]

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
MAY 5, 2004

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning. At the outset, let me say that I have been pleased with the working relationship my office has developed with your staff, Mr. Chairman, and I appreciate the respect and professionalism that has been exhibited in our working relationship together.

I am here today to testify about my office's oversight activities concerning the tribal recognition 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.

My office 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 tribal recognition, which typically involves 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 determine the impact of that deviation on the resulting decision or action and determine 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 tribal recognition since I assumed the position of Inspector General in August 1999, including the most recent – concerning the recognition of the Schaghticoke tribe – which is still ongoing.

As you know, the tribal recognition, or acknowledgement process at the Department of the Interior is governed by regulations which set forth the process by which petitions seeking acknowledgement 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, especially after several recent changes to the program. 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 tribal recognition, 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 tribal recognition matters, this may include other parties identified by the Office of Federal Acknowledgement or parties who have expressly signaled an interest in the acknowledgement process, such as an affected State Attorney General.

Accordingly, when we conduct interviews in a given tribal recognition process, we typically begin with those OFA 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. In our 2001 investigation of six petitions for acknowledgment – which included the Eastern Pequot Indians of Connecticut – we discovered that pressure had been exerted by political-decision makers on the OFA team members who were responsible for making the acknowledgment recommendations. The team members who reported this pressure were, at the time, courageous in their coming-forward, as my office had not yet established its 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 the now-established Whistleblower Protection Program, we feel confident that if any inappropriate pressure has been applied we will hear that from the members of the OFA team.

For instance, in 2001, we did find that there was some rather disturbing deviation from the established process during the previous Administration. At that time, several recognition decisions – including the Eastern Pequot petition – had been made by the acting Assistant Secretary for Indian Affairs, which were contrary to the recommendations of the acknowledgement review team. In several instances, the acknowledgement review 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 these particular instances that significant pressure had been placed on the review teams to issue a predetermined recommendation, that the decisions were hastened to occur prior to the change in Administration, that the decision makers used a consultant with questionable qualifications to support their decisions, and that all decision documents had not been

properly signed. In fact, we even found that one of these decisions was signed and back-dated by the former Acting Assistant Secretary after he had left 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 had identified in our report.

In July of 2002, five months after our report was published, the Assistant Secretary for Indian Affairs issued a Final Determination to Acknowledge the Eastern Pequot Indians of Connecticut as a portion of the historical Eastern Pequot Tribe. That Final Determination is presently before the Interior Board of Indian Appeals for reconsideration.

We were only recently asked to investigate the Schaghticoke tribal acknowledgement decision. Unfortunately, our investigation of the Schaghticoke decision is not yet complete; therefore, I cannot definitively comment on its outcome. I can, however, assure you that we are conducting a thorough investigation to determine whether there was any deviation from the established process in the consideration of the Schaghticoke petition and the decision rendered on the petition. We are, of course, interviewing OFA staff and acknowledgement review team members and senior Department officials to determine if undue pressure may have been exerted. In this case, we have spoken to the Connecticut Attorney General and members of his staff, as well as affected citizens, to ascertain their concerns. In this, as we have in all other such investigations, we are also looking for any inappropriate lobbying pressure that may have attempted to influence a decision one way or another. In the end, I am confident that we will be able to present a thorough and complete report regarding the process by which this petition was ultimately acknowledged in January of 2004.

If I may digress for a moment, but only slightly, I would like to comment on outside influences that impact the tribal recognition and Indian gaming. In your invitation letter to me, you asked about any safeguards implemented since the adoption of the Indian Gaming Regulatory Act to prevent undue influence by undisclosed financial backers supporting tribal recognition petitions. To answer your inquiry directly, I know of no statutory or regulatory safeguards that preclude such financial backing of the tribal recognition process. That being said, however, given the recent media reports of alleged improper lobbying influences relating to Indian programs, my office now includes in its scope of investigation an inquiry into **any** lobbying 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.

Recently, I sent Congressman Frank Wolff a list of issues which those of us who conduct investigations in Indian Country consider to be impediments to oversight and enforcement. One of those issues is the statute which permits recently departed DOI employees to represent recognized Indian tribes in connection with matters pending before the federal government. This exemption was created because Indian tribes, at the time, lacked effective representation in front of federal agencies. When the provision

was enacted in 1975, virtually the only persons with expertise in Indian matters were federal employees. Today, that dynamic has changed. We believe that this statute has outlived its original intent, and that this 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 to the normal "cooling off" period that all other departing Executive Branch employees must adhere to, this would be a violation of the criminal conflict of interest laws that apply to departing federal employees.

Another impediment to oversight and enforcement in the gaming arena is the use of consultant contracts by the tribes, instead of management contracts. Gaming tribes may enter into management contracts for operation of gaming activities if those contracts are submitted to and approved by the Chairman of the National Indian Gaming Commission (NIGC). Included in NICG's review is a background investigation of the principals and investors. Some tribes have circumvented the review and approval process by entering into "consultant" contracts which, although called by a different name, do not differ significantly from management contracts.

As a result, the terms of these consultant contracts, including financing and compensation, are not subject to review by NIGC, nor are the background of the consultants' principals 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 operation of some tribal gaming enterprises under financial arrangements unfavorable to those tribes. It has also opened the window for undesirable elements to operate and manage tribal casinos. During a recent FBI sponsored conference on investigations of crime in tribal gaming, the U.S. Attorney for the District of Minnesota said "many officials have stated that if they could only change one element of IGRA, it would be to ensure that management consultants are subject to the same requirements as management contractors."

The degree of transparency that lends itself to the tribal recognition process itself often fades when it comes to those who would use the recognition process as an instant opportunity for opening a casino. As a recent example, six days into trial in the 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 recognition for the Western Mohegan Tribe and Nation. 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 will send a clear message to others who would attempt to corrupt the tribal acknowledgement 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. In response to this concern, we have increased our efforts and joined forces with the FBI in order to leverage our mutual resources, sometimes in task force settings, where one of our agents is always paired up with one of theirs. Coupled with the strong commitment recently made by the twenty-six U.S. Attorneys who prosecute cases in Indian Country, I am confident that. you will begin to see the results of these efforts in the near future

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

Chairman TOM DAVIS. Thank you all very much.

Let me start with a question. This will not be our last hearing on this, and we probably will issue some subpoenas, particularly the unwillingness of one of the tribes to come forward today, I think, raises some additional issues for us. Do you know if legislatively or administratively there is a way to decertify a tribe if something was amiss in the original certification, if fraud could be proved and the like? Does anybody have any thoughts on that?

Ms. ROSIER. Congress has the authority to terminate Indian tribes, and they did that during the termination era, so Congress could do that.

Chairman TOM DAVIS. We could do it by act? Could you do it administratively?

Ms. ROSIER. Well, at this point, if they are at the IBIA, once the decision is issued by the IBIA, then it becomes a final agency action, and then it goes to Federal District Court.

Mr. BLUMENTHAL. If I may supplement and agree with the statement that has just been made. Recognition, in effect, is an act of Congress, and one of the points that I have made in challenging a number of the decisions on recognition is that right now that delegation is over-broad. And I have urged that Congress, in effect, reassume or take back some of the authority that it seems to have delegated, and I agree that Congress could reverse a decision to recognize a tribe because, ultimately, the authority stays with Congress.

Administratively, these decisions are irreversible, and that is one of the very profoundly important facts here. And if I may just again draw the analogy, you know, when the U.S. Government makes a decision to issue a broadcast license or approve a corporate merger or permit a stock offering, it goes to an independent agency that has rules and standards. The same is not true of recognition decisions whose consequences are even more profoundly far-reaching and important to the Nation.

Chairman TOM DAVIS. One of the things that is most disturbing to me as an outsider, somebody who represents the Washington suburbs where this has not been an issue, is the vast amounts of money that go into these things, money spread across the political spectrum in a bipartisan way, huge money to lobbyist insiders, very disturbing, and it raises just a host of issues that I think somebody needs to pursue. This committee has that authority; we are the major investigative arm. We don't have the legislative authority of the Resources Committee on some of these other Indian matters, but we do have broad investigative authorities and subpoena power. Maybe that is where it needs to begin, because everyone else has kind of walked away from this gingerly, and yet Members come up to me on the floor and express concerns about some of the money they see changing hands on this and the like. So we intend to pursue this. I just want to make that clear.

I appreciate everybody being here.

Mr. BLUMENTHAL. And if I may just add, the financial stakes here and the money involved is the elephant in the room that no one wants to acknowledge. It is driving the process, and the reason is quite simply that the stakes have become so enormous. It is the reason that the financial backer of the Schaghticokes, Fred

DeLuca, has acknowledged he has already spent $10 million. The amounts of money for other tribes, each of them $10 million or more, acknowledged and on the record, and they are not even nearly complete with the process. So I think that the presence of gambling interests and the stakes involved have enormously raised the stakes in the lobbying game as well, Mr. Chairman.

Chairman TOM DAVIS. Well, when you take a look at the membership of some of these tribes and the revenue, it doesn't pass the smell test to a lot of us. I think we just need to understand it a little better, and nobody has gone beyond the first or second layer of questions to delve down. That is why we are interested in what the IG comes forward with in terms of some of the procedures, but we intend to ask more.

I appreciate your leadership, too, Mr. Blumenthal, on this.

Mr. BLUMENTHAL. Thank you.

Chairman TOM DAVIS. Ms. Rosier, let me ask you. Most of the improvements to the Federal acknowledgment process you discussed are procedural, but major criticisms of the current process concern lack of objectivity or susceptibility to undue influence. What measures are being taken to overcome those criticisms?

Ms. ROSIER. Well, for example, in my testimony I stated that we have imposed an informal 60-day period that when a petition is either going for the proposed finding or a final determination, that the decisionmaker does not speak to interested parties or to the petitioning group. We are going to formalize that policy. I can say that in every Federal recognition decision that I have been involved in at the Department, I have not seen the type of impropriety that has been alleged here. I have seen a collaborative process where the staff has come with recommendations, the solicitor's office has talked to us about the law and the spirit and intent of the law, we have made decisions that we found to be good public policy.

Chairman TOM DAVIS. You know, if I were to write a letter to the FCC on behalf of an application for somebody in my district, every letter, every phone call from the administration is all logged in at the FCC. Does that happen at Interior? If somebody else in the administration calls over, if somebody calls from the White House or somebody says this is important, is that logged in? Is that transparent for the public? And do your regulations and informal procedures take that into account?

Ms. ROSIER. That is not in our regulations at this time.

Chairman TOM DAVIS. I would submit that is where a lot of this occurs. And it is not transparent. None of these procedure touch that, and yet a lot of times, when you are doing political influence, it usually doesn't go to the Deputy Secretary level or sometimes even to the decisionmaker. It goes above them, and the pressure comes down. If someone wants to make a recommendation that a status be granted, that is fine. People are free to do that; they are free to state their opinion. But there ought to be a record of that and we ought to know where it is coming from, because some of the decisions that have come out here don't seem to meet the criteria, at least the way the testimony before us today has shown and from the information that this committee has.

Why were they granted? I think there were clearly communications in this case that were not appropriately logged, and any kind

of procedure that you have ought to take those into account. We have those in other Federal agencies, and I hope you will consider this.

Let me ask this. How do you explain the Assistant Secretary's reversal of the Branch of Acknowledgment's recommendation to deny both of these tribes' recognition applications consistent with BIA procedural requirements?

Ms. ROSIER. We have actually in the past, I think, with the Wampanoag Gay Head Band, and I think it was in the 1980's, we had actually had a proposed finding that was a negative and the final determination was a positive. Also, in the Mohegan situation in Connecticut, the proposed finding was also a negative and the final determination was a positive.

The proposed finding is simply like a draft environmental impact statement, it is a chance to point out deficiencies and the petitioners have an opportunity to cure those deficiencies. And in both these situations the petitioners cured the deficiencies?

Chairman TOM DAVIS. But my questions don't go to those two tribes. My question goes in this case to the other tribes.

Ms. ROSIER. Schaghticoke and Eastern Historical Pequot?

Chairman TOM DAVIS. Correct, the two Connecticut tribes.

Ms. ROSIER. Although I can't talk about the specifics of those situations, since they are both at IBIA appeal and Schaghticoke is under an inspector general investigation, I can talk to the generalities. We feel that our petitions speak for themselves, and that the proposed finding gave them an opportunity to cure their deficiencies, and they did that.

Chairman TOM DAVIS. So, in your opinion, they cured the deficiencies.

Ms. ROSIER. The staff's recommendation was that they cured those deficiencies, and that was the decision that was made.

Chairman TOM DAVIS. And that was driven completely by the staff?

Ms. ROSIER. It was driven by the anthropological history and genealogical research that was done by my staff.

Chairman TOM DAVIS. Mr. Blumenthal, you proposed several specific proposals for reforming the recognition process, including the creation of an independent agency adopting recognition criteria, providing assistance for municipalities. That is what you propose?

Let me just ask Mr. Devaney, do you have any reaction to those proposals?

Mr. DEVANEY. Could I address one of the questions you asked earlier about lobbyists registering?

Chairman TOM DAVIS. Yes, please.

Mr. DEVANEY. I think that is a terrific idea for a number of reasons. First of all, it obviously adds to the transparency. To have somebody that wants to come in and get involved in this process to be in the administrative record of having done so. It also protects people that work at the Department from unfounded allegations later on. And, finally, it is obviously a good starting point for us when we do one of these investigations that comes our way, either by our own volition or maybe a congressional request. So I think that would have an enormous benefit.

Chairman TOM DAVIS. Mr. Devaney, you stated that you found some rather disturbing deviation from the established process of processing Indian recognition decisions that were made in the previous administration. When the inspector general finds a serious violation that was committed by a government official who is no longer in his or her position, what authority do you have at that point?

Mr. DEVANEY. Well, we have authority there, and we took that to the U.S. Attorney's Office, and they declined prosecution.

Chairman TOM DAVIS. All right. This committee has authority, of course, too.

Mr. DEVANEY. Yes.

Chairman TOM DAVIS. We have subpoena power as well.

Mr. DEVANEY. Yes.

Chairman TOM DAVIS. OK. Thank you very much.

Mr. Shays.

Mr. SHAYS. Thank you, Mr. Chairman. With your indulgence, I would like to defer and let Mr. Simmons ask questions, and I will follow.

Chairman TOM DAVIS. Great. He has to get over to the floor on an important bill, so, Mr. Simmons, you are recognized.

Mr. SIMMONS. I thank the distinguished gentleman from Connecticut's Fourth District.

Two questions. First to Mr. Devaney. Pages 4 and 5 of your testimony refer to the revolving door and the fact that the revolving door at the Bureau of Indian Affairs derives from a decision that was made in the mid-1970's. And I gather from your testimony that you now feel that this exemption is no longer a good exemption, it should be changed. You stated that the statute has outlived its original intent and the exemption now perpetuates a revolving door.

Am I to understand, then, that the official position of the Department of the Interior is to support the elimination of the revolving door provision for BIA officials?

Mr. DEVANEY. Congressman, I don't speak for the Department. Inspector generals are independent entities. Yes, we work for the administration. We also work for Congress. We also work for you. That is my personal view, and I think it would be enormously helpful to the process if that became enacted, but I don't speak for the Department.

Mr. SIMMONS. Well, I guess earlier today the chairman swore you and others have testimony here in your name as inspector general of the Department of the Interior which states very clearly that you believe this revolving door exemption has outlived its original intent, and that without the exemption of the normal cooling-off period that all other departing executive branch employees must adhere to, this would be a violation of the criminal conflict of interest laws that apply. That is a pretty strong statement. And one of the problems that we have had over the last several years, and I have to say it is very frustrating, is we hear the nice words and we hear the nice intentions, and then nothing is done.

We have had legislation over the last 3 years to try to close the revolving door, which is such an obvious thing to do, and yet that legislation goes nowhere. And as far as I can tell, the administra-

tion, the Department of the Interior takes no ownership of that sort of thing. It is such a simple thing. And even the Secretary of Interior says that she has concerns about it, it has troubled her, and yet we cannot seem to get a concrete statement out of the Department of the Interior even on something this simple.

You testify that it is your personal view.

That is not good enough, Mr. Chairman. We swear witnesses, we ask for written testimony, we try to assess what they are saying in the context of what other people are concerned about, and it can't be personal anymore; it has to be the position of the administration, it has to be the position of the Department. So my question really I guess is going to go unanswered. We are not getting a solid answer, a policy answer from the Department of the Interior, and it is so frustrating.

But let me just stop and shift my focus.

Mr. DEVANEY. Can I try one more time?

Mr. SHAYS [presiding]. Let me just interrupt a second.

When it comes to the inspector general and the GAO, they are going beyond, I think, their requirements to express an opinion about a law. So we want you to do findings and then we will evaluate. So I think the Chair cuts you a little slack on that.

Mr. DEVANEY. Thank you.

Mr. SHAYS. Not so true of the Department of the Interior, however.

Ms. ROSIER. Would you like me to answer the question?

Mr. SIMMONS. Yes.

Ms. ROSIER. I cannot give the official position on your legislation here today, but I can say, as my testimony did, that we would be supportive and would be willing to work with you on this situation.

Mr. SIMMONS. I thank you for that.

Now I have a second question regarding the first page of your testimony. You refer to the seven mandatory criteria. Mandatory conveys to me that they are required, that they must be done, they must be followed. There are seven. All seven must be followed. And yet there is factual evidence and we have received testimony even this morning that there is evidence that they are not being followed in a mandatory way, that people adjudicating these decisions can pick or choose. That is why the Connecticut delegation has sponsored legislation to place the seven mandatory criteria in statute.

What is your understanding of what these mandatory criteria are? Must they all be followed? And, two, does the Department of the Interior support placing them in statute?

Ms. ROSIER. I will answer the latter half first. As my testimony stated, although I cannot give an official position on H.R. 4219, I believe, we would be supportive of legislation that was consistent with 25 C.F.R. Part 83 and that kept our seven mandatory criteria. In the Schaghticoke decision—and I know we are going to disagree on this—we believe that the seven mandatory criteria were fulfilled. That was our recommendation.

Mr. SIMMONS. Is there any case that has come to the attention of any of the witnesses, Mr. Blumenthal, where you feel that the seven mandatory criteria were not met?

Mr. BLUMENTHAL. With all due respect, I know you may have to leave shortly. In the Schaghticoke decision, as well as the Eastern

Pequot decision, those seven criteria have not been met, very clearly and unequivocally by the admission of the BIA itself. And it uses evidence that is clearly improper about State dealings to compensate for the acknowledged lack of evidence on those seven criteria. For example, it admits a seven decade gap, 1801 to 1875, on the existence of political authority, which is one of the key criteria, a gap that simply cannot be overcome by supposed State recognition that was not begun until 1973, even if it were proper to use that fact, which we contend it is not.

And I just want to say, in response to your point, which I think is a very, very central one, where is the Department of the Interior today? Why are they not here? Without any disrespect to the two representatives, where is the Assistant Secretary for Indian Affairs today? And why is he not speaking for the Department of the Interior on the two core questions that he was confirmed by the U.S. Congress to decide and deliberate and, presumably in the public interest, speak to the U.S. Congress and the American people? I don't mean any disrespect to Ms. Rosier or Mr. Devaney; their roles are limited. But this Congress deserves answers from the Assistant Secretary for Indian Affairs on these central questions.

Mr. SIMMONS. Mr. Chairman, let me extend my apologies to the two witnesses if I got a little hot. I am Irish. But I will tell you, as the attorney general and others know, I have been punching this pillow for a decade, and as the attorney general has pointed out, whenever it comes time to get concrete answers on the record, it just doesn't come to pass. So it is very frustrating.

Mr. SHAYS. I thank the gentleman. We are going to have some votes. I know that Mr. Wolf just wants to make a comment, and then I am going to recognize Mr. Duncan.

Mr. WOLF. Thank you, Mr. Chairman. I am not going to have any questions. I appreciate Attorney General Blumenthal's comments. I want to thank Mr. Davis and you, Mr. Shays, and Mr. Simmons.

To the Department, having worked there for 5 years under Secretary Roger C.B. Morton, if he could see what you are doing, all previous Secretaries, you would be held in disgrace. I ask you as a Republican Member of the Congress who supports this administration on most issues, go back and clean up your house. As the attorney general said, it is the elephant in the room. This whole town, and now the whole country, knows about the corrupt process with regard to money. You have an opportunity, and I ask you to one, have a 1-year moratorium and two, follow—and I want to commend the IG, he has done nice work, and I understand you can't be making policy, but follow the recommendation of your IG. Listen to Attorney General Blumenthal. Be for Mr. Shays' and Mr. Simmons' bill. Show us over the next couple of months that you can—you know, maybe you missed it. We all make mistakes. But now that the whole world knows, this is your opportunity. And, at a minimum, you really need a 1-year moratorium whereby this Congress and this committee and others can come back and make a difference. Otherwise, as the attorney general said, this is a key time. If we fail now, the fault will lie at the steps of Secretary Gail Norton and this administration.

With that, Mr. Speaker, I yield.

Mr. SHAYS. Mr. Duncan, you have time, and I am going to hold the panel in recess afterwards, because I have about 15 minutes of questions.

Mr. DUNCAN. Well, just let me say I agree with Mr. Wolf. You know, I will go back to Mr. Blumenthal's comment about people not being willing to acknowledge the elephant in the room. I can tell you it is obvious to everybody that this is all about money. This is all about big money. And the most interesting thing is in the briefing memorandum that we were given, it says prior to the implementation of the current recognition regulations in 1978, BIA had received 40 petitions from groups seeking formal tribal recognition. Since 1978, BIA has received an additional 254 petitions. I mean, it is obvious.

So I ask when was the first Indian casino opened? And they told me in 1979 the Seminole Tribe opened a high-stakes bingo parlor. If this isn't all about gambling and big money, then ask these tribes that are seeking recognition will they sign a waiver of their right to open up a casino. I think it is also, in addition, to some extent about all the benefits they receive from the BIA and the Indian Health Service, because there are billions involved in that too. But it is all about the gambling, and I think everybody has been shocked by the huge, huge, huge money that has been spent on the lobbying. And then we have been given this book, "Without Reservation" by Jeff Benedict, who is on the third panel, and it says in 1973 an old American Indian woman dies with nothing left of her tribe but a 214 acre tract of abandoned forest. And it seems to be about the end of the tribe, but it is just the beginning, and then it exploded because of the gambling.

I mean, this is getting totally out of hand, it is getting ridiculous. I am from Knoxville, TN. I even had a man who came to see me in my office, a couple men who came to see me in my office in 1990 in Knoxville because they wanted to get involved in the casino business up in Connecticut with this tribe. I mean, this is getting totally out of hand.

And I appreciate the interest of Mr. Shays in calling this hearing, and I agree with the comment that was just made that there needs to be a moratorium. And once again I will say if it is not about gambling and it is not about big money, ask them will they sign a waiver and give up their right to open up a casino in return for recognition, and I think you will see how fast this is all about big money and all about gambling.

Thank you, Mr. Chairman.

Mr. SHAYS. I thank the gentleman.

We will be in a brief recess, just, I think, one vote, and then we will be right back. Thank you.

[Recess.]

Mr. SHAYS. We are back on the record.

I will start by asking Department of the Interior the reason why Gail Norton's secretary, Gail Norton of Interior, wrote on April 12th, "As you requested I have completed the attached order delegating authority for gaming-related matters to Principal Deputy Assistant Secretary Aurene Martin. Thank you for initiating this action to avoid any appearance of conflict." And then there is the order.

I would like an explanation of this.

Ms. ROSIER. The recusal of Mr. Anderson, Assistant Secretary for Indian Affairs, off of gaming, Federal recognition, and land into trust for gaming is very personal to his background before he became Assistant Secretary for Indian Affairs, and he wanted to avoid any appearances of impropriety and just asked to recuse himself from those issues.

Mr. SHAYS. But he didn't ask to recuse himself from one particular tribal application. He is basically asking for a blanket exemption from ruling on any Indian gaming?

Ms. ROSIER. It is a blanket recusal to avoid appearance of impropriety.

Mr. SHAYS. And he is in charge of the Bureau of Indian Affairs?

Ms. ROSIER. Yes. He is Assistant Secretary.

Mr. SHAYS. So we have the Assistant Secretary for Indian Affairs saying that he wants to have no responsibility for the very job he was assigned to do. Doesn't that strike you as being a little strange?

Ms. ROSIER. Actually, we have a responsibility on a number of matters, not just gaming and Federal recognition and land into trust. We have land into trust that is non-gaming related. Half of our employees and half of our budget is for our Bureau of Indian Affairs school system.

Mr. SHAYS. So he can do part of his job; he just can't do all of his job.

Ms. ROSIER. He can do a vast majority of his job. He has just recused himself from three issues.

Mr. SHAYS. That involve the recognition of Indian tribes, which is a huge, essential part of the Department. Wouldn't you agree this is an important element?

Ms. ROSIER. It is a very serious responsibility.

Mr. SHAYS. Now, this delegation of power, was it delegated to someone that has to come before Congress, the Senate?

Ms. ROSIER. No. It was delegated to our Principal Deputy Assistant Secretary. She is not Senate confirmed.

Mr. SHAYS. So you have taken a Senate confirmed person and you have delegated that power to someone who is not Senate confirmed. Does that seem appropriate to you?

Ms. ROSIER. It has been reviewed within the Department, and the Department, before the Secretary signed it, it has been reviewed.

Mr. SHAYS. I would invite the inspector general to maybe respond about this, and then I will ask the attorney general.

Mr. DEVANEY. Well, I really don't know the circumstances under which the Assistant Secretary made his recusals. My understanding is the same as just stated, that he needed to recuse himself from three issues principally because he used to be in the gaming business.

Mr. SHAYS. Which makes me question whether he should have ever gotten the appointment, if you can't do a significant part of your job. But that is obviously we will talk to the Secretary about.

Mr. Blumenthal.

Mr. BLUMENTHAL. Yes. Mr. Chairman, as I have stated, my office discovered this fact when we were reviewing testimony that the

Principal Deputy, Aurene Martin, offered to one of the congressional committees that was reported off-handedly, well down in a story, on the substantive testimony. And we followed up, we pursued it with the Secretary of the Interior's Office and, in fact, I have with me and I have submitted to this committee a copy of the order which is unprecedented, I believe. It is the equivalent of appointing the administrator of the Food and Drug Administration and then saying that administrator will have nothing to do with drugs, period, and instead will delegate those decisions to deputies who are not confirmed by the U.S. Senate and are not accountable to the U.S. Congress for powers that this body delegates to that official.

The issue of accountability is front and center, and the lack of accountability is certainly profoundly troubling, if not illegal. In fact, I think there are very great legal questions raised by this delegation and also by the testimony that was offered by Assistant Secretary Dave Anderson during his confirmation proceedings when he said that he would recuse himself only on specific decisions, as I understand it.

So I think that there are lots of different analogies that could be drawn, but fundamentally this subject matter is at the core of the responsibility of the Assistant Secretary for Indian Affairs and cannot ethically and legally be delegated in this way.

Mr. SHAYS. We, the Connecticut delegation, Nancy Johnson, Rob Simmons, and myself, as well as Frank Wolf, met with the Secretary. We also then, as a full delegation from Connecticut, met with the Secretary. I don't recall this issue coming up for discussion. Do you have any information that this was provided to us? Who was notified about this?

Ms. ROSIER. I am sorry, I was not at the meeting.

Mr. SHAYS. Let me go through a number of different questions, but I am unclear as to the Department's position on moratorium.

Ms. ROSIER. I can take that recommendation back to the Department.

Mr. SHAYS. And our recommendation is, obviously, that there be a 1-year moratorium, in part for this very fact here. You basically have someone who has a responsibility dealing with tribal recognition who basically can't fulfill his statutory responsibility.

I am unclear as to the Department's position on the legislation that Mr. Simmons and Mrs. Johnson and others are promoting. As my daughter would say, one time when I agreed with her position and she kept trying to convince me about it, and I started to say, sweetie, you know, when you have made a sale, you don't have to keep making the sale; and she said to me, but, dad, you don't believe passionately enough.

And I don't feel your passion. And "working with" does not describe to me the position of the administration on this. Do you support this proposal or are you going to simply work with us?

Ms. ROSIER. Because this is not a legislative hearing and this is an oversight hearing, I am unable to give the official position of the Department on the legislation. I think our written testimony and my oral testimony has alluded that we would like to work with you on this.

Mr. SHAYS. Thank you.

I am going to go through a series of questions.

Mrs. Johnson, do you have a little bit of time to stay or would you like to be recognized next?

I am going to go through a few and then turn to Mrs. Johnson to ask some questions. And we have written these down because I want to make sure we cover them. And these are to you, Mr. Blumenthal.

With regard to both Pequot and Schaghticoke petitions, the BIA staff issued proposed findings that the tribes had failed to demonstrate they met one or more of the mandatory regulatory criteria for recognition. Is this correct?

Mr. BLUMENTHAL. Correct.

Mr. SHAYS. In the case of the Pequots, what new evidence was submitted and reviewed by all interested parties that justified the final determination of Federal tribal status?

Mr. BLUMENTHAL. In our view, there was insufficient evidence on two key criteria: continuous community existence and continuous political authority. There were gaps during critical periods of time that were admitted by the BIA. Instead of the evidence that was required, the BIA submitted that recognition should be granted because of State dealings with the supposed tribe. The nature of the dealings was with individuals, if any. They may have been individuals who were decendents of tribal members. But the key question is whether a tribe existed continuously as a community and with political authority, and there was insufficient evidence, in fact, key gaps of evidence, that was not corrected in the final recognition either as to the Eastern Pequots or the Paucatuck Easterns or the Schaghticokes.

In the case of the Schaghticokes, the Department did one other thing that I think is unprecedented and ought to be brought to the committee's attention. It combined two groups, as it did with the Eastern Pequots and the Paucatuck Easterns, but did not consider the petition of one of those groups. So that if you go down this slope, and it is an extraordinarily slippery slope, at some point the BIA could simply bring into a petitioning group anyone that it wanted to do and say that those individuals or that petitioning group, regardless of its merits, should be made part of the petitioning group.

And so I think on that score and many others we have appealed. The appeal is a very lengthy and voluminous one, and I don't want to exhaust the time or the patience of this committee.

Mr. SHAYS. In your testimony you say that the BIA has changed its view on the significance of State recognition four times in the past 2 years. Would you describe for the committee how the BIA has assessed the evidentiary weight of tribal designation and reservation lands under State law?

Mr. BLUMENTHAL. The existence of reservations under State law has been one of the factors that the BIA considered in applying State recognition to overcome the gaps of evidence. The fact is, as you well know, Mr. Chairman, State recognition of a reservation and Federal recognition of a tribe are like apples and oranges; all they have in common is the use of the word recognition; and the meaning of definition for those two purposes is completely different.

So the answer is that State recognition has been morphed in the BIA's use of it over this period of years to overcome gaps of evidence, in some cases to apply to the recognition of a reservation, in other cases to benefits that are provided to individuals who live on the reservation, in other cases to the fact that overseers had dealings with members or decendents of the tribe over some period of time. The State recognition factor has been a moving target.

Mr. SHAYS. Let me say that a previous administrator of BIA secretary, Mr. Gover, he had a close relationship with the Golden Hill Paugussetts, who was a petitioning tribe in the fourth congressional district. They also have huge land claims. Those land claims become more valid if they are federally recognized. That is a concern that we have. Maybe not valid enough, but more valid. And he said he would not in any way decide on the Golden Hill Paugussetts, but he made a decision in another State that State recognition would be a factor in Federal recognition.

Now, let me just tell you the impact of what that decision had on the Golden Hill Paugussetts, and then I want a comment from you. They are State recognized, but the State recognizes a reservation. There may be a house on that reservation, there may be some residents, or there may not be. They still recognize that State tribe's reservation. And what Mr. Gover basically did was give a huge benefit to a tribe that he was recognizing, because, in fact, they could be State recognized, have no political, social, or economic continuity pre-colonial times, and then that is the back door in which they then get Federal recognition.

Is there anything that I have said that you would disagree with?

Mr. BLUMENTHAL. I don't disagree at all with the point that you are making, and I think it is a very, very important and valid one, that the use of State recognition in a case that seems to be unrelated may establish a precedent that then can be expanded, and it has been vastly expanded, in other cases. And I think that point is very well taken.

You know, part of the problem here, Mr. Chairman, is that this agency is legally rudderless. And I respect the suggestions that have been made or the changes that have been made and enumerated for the committee in some of the procedures, but they are a little bit like rearranging the chairs on the deck when the ship needs to be reconstructed. And Mr. Devaney makes a very important point which I think comes back to the one you have just made, and that is that this agency does not have the basic rules that the FCC or the FTC or the SEC would have and would rigorously follow: the logging of contacts, the transparency of correspondence, the registration of lobbyists, the prohibition against revolving door employment.

Those kinds of requirements are a first basic minimal tier of requirements that are necessary for integrity in the decisionmaking process. There is a second tier which deals with the standards and the criteria that should be statutory. But your point comes back to the sort of ad hoc, make it up as we go along, let us make a deal, nature of many of the decisions that are made without anticipating what the long-run precedent-making consequences will be.

Mr. SHAYS. Thank you.

I have three more questions, Mrs. Johnson, and then I am going to recognize you.

I would like, Ms. Rosier, to ask you the following question. Do you believe that it is an absolute requirement that a Indian tribe demonstrate social and economic and political continuity pre-colonial times, in other words, they never stopped? Do you believe that is a requirement in recognition?

Ms. ROSIER. I believe the requirement and recommendation as outlined in 25 C.F.R. Part 83 is that all seven mandatory criteria must be met, and the burden of proof is that it is the reasonable likelihood of the validity of the facts. That is my job and the staff's job, to ensure that of those seven criteria, this burden of proof has been met.

Mr. SHAYS. So in this room, if I turned out the light switch for a little bit of time and then turned it back on, even though you saw the lights on, that wouldn't be good enough, correct? The light has to be on the whole time.

Ms. ROSIER. What we are recognizing at the Department of the Interior is a continuous political entity as a tribe, and we look at the community and we look at——

Mr. SHAYS. Without interruption, correct?

Ms. ROSIER. We are looking at continuity.

Mr. SHAYS. Continuity means without interruption, correct?

Ms. ROSIER. We are looking at a continuous relationship.

Mr. SHAYS. Continuous relationship means it never stopped.

Ms. ROSIER. A continuous relationship that meets the seven mandatory criteria.

Mr. SHAYS. Well, I don't want you to be evasive here. You are here to testify before the committee, and the bottom line is doesn't the tribe have to prove that they were always a tribe, socially, politically, economically, and that they never stopped being a tribe? Isn't that correct?

Ms. ROSIER. Yes, that is correct.

Mr. SHAYS. OK. And do you understand that in the State of Connecticut we can recognize a State tribe where they actually had interruption? Are you aware of that?

Ms. ROSIER. Not specifically, no.

Mr. SHAYS. Well, it is a fact. The fact is that State tribes in Connecticut don't have to show continuity.

Ms. ROSIER. Congress can do that also, too. Congress can recognize a tribe too.

Mr. SHAYS. I understand that, but we are not talking about Congress recognizing a tribe. I am just trying to have you understand something, because I am under the impression you want to do the right thing, and the right thing requires that there be continuity. Mr. Gover made a huge decision that is impacting improperly, and you heard the testimony from Mr. Blumenthal. The bottom line is we are telling you in the State of Connecticut we may recognize a State tribe that doesn't exist except in land. They may not have political, social, or economic continuity. There may just be one person living on that reservation. That doesn't meet the Federal standard, but it meets the State standard. And that is what is so outrageous about Mr. Gover and this Department continuing with the process of State recognition.

Just three more questions to you, Mr. Blumenthal.

Would you explain the legal and political significance of Indian land claims in this process?

Mr. BLUMENTHAL. Well, the legal significance is that various of the tribal groups have made land claims. We are in litigation right now with the Schaghticokes over 2,100 acres in the Kent area. The first selectwoman of Kent is here today, and her town is one of the defendants. So is the Kent School, one of our major utilities, Northeast Utilities, and the State of Connecticut. So we have litigated with the tribes against land claims that we believe are unfounded, especially when they have made them against individual property owners, as the Golden Hill Paugussetts did some years ago, and we were successful in dismissing them, the State was, in representing the interests of the landowners when they were brought at that time.

Certainly, as you have said, those land claims have additional force and credibility when they are accompanied by recognition or when they are made by a federally recognized tribe. And in Federal court, under Federal law, they can have additional legal force because of the impact of the Non-Intercourse Act on the litigation.

This area is enormously complex, and I apologize to the committee that I am not able to summarize it in a couple of sentences, but the answer is these land claims are a big deal, and they become bigger when there is Federal recognition.

Mr. SHAYS. You could have a circumstance when a tribe is federally recognized, that it gives more credence to the land claims, and even though the State of Connecticut has passed legislation no longer allowing charity gambling, if they are then given Federal recognition and they have land claims that are valid under the eyes of the court, then the only recourse to the community is to settle; and the settlement is clear: they will want land for an Indian gaming facility.

Why did the U.S. District Court in Connecticut enter an order requiring notice of all interested parties before the Schaghticokes or any other non-Federal party could contact the Department of the Interior?

Mr. BLUMENTHAL. Well, I am grateful for that question. The reason is very simply that we sued the Department of the Interior. The State of Connecticut sued the Department of the Interior because we were denied documents—basic materials like the petition itself—submitted by the Eastern Pequot and Paucatuck Eastern petitioning groups, and we claimed that there were ex parte contacts, secret meetings, and other correspondence that was being kept out of the public realm.

Mr. SHAYS. By the Department of the Interior?

Mr. BLUMENTHAL. Correct.

Mr. SHAYS. Why is that happening?

Ms. ROSIER. Actually, in the Schaghticoke situation, we worked quite well with Mr. Blumenthal, and the interested parties in that situation were treated almost similar to the petitioners; everybody had equal access, petitioners and interested parties shared documents directly with one another.

I was not at the Department at that time, but I know right now, and we continue, and the regulations have always had the attorney

general and the Governor as interested parties, so that is how we operate.

Mr. SHAYS. Has the cooperation gotten better, Mr. Blumenthal?

Mr. BLUMENTHAL. In fairness to Ms. Rosier, the court orders entered in the Schaghticoke and Eastern Pequot cases followed our legal action. She may not have been there when we took that action to compel the kinds of scheduling orders and other cooperation, which has proceeded now; we are interested parties.

Mr. SHAYS. So your bottom line is that has been corrected, but it took a court order to do it, and it preceded your time, I gather.

Mr. BLUMENTHAL. And it goes back, I think, to the point that Mr. Devaney was making about the APA process. We have been obliged to go to court to enforce the APA process. We sought these documents under the Freedom of Information Act. The sovereign State of Connecticut had to go to court under the Freedom of Information Act to obtain petitions so that we would be adequately informed about what would happen within our own boundaries.

Mr. SHAYS. Let me just take the last question, and that is what would be the significance of putting the recognition criteria into statute, as opposed to leaving them as purely regulatory standards? I will ask both of you.

Ms. Rosier, what would be the significance of that?

Ms. ROSIER. Without seeing language right in front of me, I don't think that there would be much change in how we continue to do Federal recognition.

Mr. SHAYS. Basically, what we are trying to do is codify.

And, Mr. Blumenthal, what would be the value of that?

Mr. BLUMENTHAL. Well, let me state the obvious. It would give those criterion standards the full force of congressional support. It would define them clearly, unequivocally, and irrevocably, so that, for example, the Department of the Interior could not disregard them, as it does now in many instances, skirt or subvert them; and it would also eliminate any possibility of rulemaking changes in those regulations, which emanate, by the way, from 30 years of precedent beginning with U.S. Supreme Court cases that first articulated them.

So we would contend that right now they have the force of law, but it would make sure that legal action brought based on them would have even greater force than it does now when we are obliged to do so. And so I think it would send a very strong and important message.

Mr. SHAYS. Thank you.

Mrs. Johnson, thank you for your patience. And let me say that the chairman welcomed you to this hearing and has asked unanimous consent, so you are a full participant. Welcome. It is wonderful to have you here.

Mrs. JOHNSON. Thank you very much, Mr. Chairman. And thank you very much for the thoroughness of your questions and, to Mr. Blumenthal, for the thoroughness of his testimony. And I thank the Department for being with us today too. This is an extremely important matter. If Mr. Blumenthal's comments about being in litigation over 2,100 acres doesn't grab your attention, let me tell you that many of the people who live on those acres have tilled those acres for more than 150 years, and they are being told now by your

decision that they belong to someone else, who may or may not have tilled them before or after, where there is no continuity of existence. This is an extremely serious matter in the part of the country that is far older in its settlement roots than any other part of the country. So the implications of recognition decisions in New England, and particularly in Connecticut, are far different from the implications of those decisions in the West, a younger part of the country, a more open part of the country, and a part of the country where reservations became part of the very early history of those States.

So I want to ask you a couple of sets of questions. First of all, the Department of the Interior is responsible for our most important programs that encourage historic preservation, are you not? The historic preservation tax credit and things like that.

Ms. ROSIER. We have historic preservation activities at the Department.

Mrs. JOHNSON. Yes. And I have worked through your Department and got many very important buildings and areas preserved through working with your Department. The criteria for historic preservation is that a building or a site must be of historic significance. For instance, you have helped us preserve the early iron mines out in this very part of the State, one Beckley furnace right in Connecticut. So you have been, as an agency, interested in the preservation of the history of America through the homes of famous people and the sites of historic importance economically and politically in terms of wars and battlegrounds and so on.

The definition of historic preservation and the criteria for what is worthy of historic preservation is entirely different than the criteria for tribal recognition, would you not agree with that?

Ms. ROSIER. Yes, it is entirely different.

Mrs. JOHNSON. The State reservation criteria is a historic preservation criteria, it is not a tribal recognition criteria.

Ms. ROSIER. For tribal recognition, actually, for the first element, 83.7(a), State recognition is explicitly stated for evidence.

Mrs. JOHNSON. Right. But what I am saying is that the existence of a reservation is a historic preservation type decision, it is not a tribal recognition decision, and it doesn't meet tribal recognition criteria, and that is why you are using that now, when you can't demonstrate continuous political continuity and you can't meet the other important criteria that are associated with continuity of tribal existence and continuity of influence, is a real travesty of both the concept of historic preservation and of the underlying demand of the recognition process.

I just wanted to point that out and put that clearly on the record. The Department of the Interior knows the difference and they are mixing that difference in the tribal recognition process, and that mixing is going to have an extraordinary impact on the lives of millions of citizens in the district that I represent and other members of the congressional delegation from both parties represent, and that is why our attorney general is so extremely concerned with your actions.

The tribes are not allowed to take land once they have been recognized, but they lien property. Are you familiar with that process?

Ms. ROSIER. I don't know what you mean by tribes are not allowed to take land once they are recognized.

Mrs. JOHNSON. Well, I am told that they can't just take land, they have to buy it. Then they can take it into their reservation. That they can't just expand their reservation arbitrarily.

Ms. ROSIER. When a tribe acquires new land in a trust——

Mrs. JOHNSON. But they have to buy it, correct?

Ms. ROSIER. Well, it is fee to trust, yes.

Mrs. JOHNSON. That is right. And so I was assured, don't worry about this recognition; they would have to buy any land they want to expand. You don't understand. They put a lien on it because they claim it. You can't sell the property. The town can't fund its schools, because our schools are funded through local property taxes, primarily. Elderly people can't sell their property and use the money to support themselves. Small businesses can't sell their property and move to a larger site. So it paralyzes the life of the community and the economic base necessary to support public education, the repair of roads and bridges, and all the other things that local governments do.

So this isn't just about the one decision. It is about the fallout, it is about the power. The attorney general has talked about the impact on the suits around the 2,100—was it 1,000 acres or 100 acres?

Mr. BLUMENTHAL. 2,100.

Mrs. JOHNSON. So the Department needs to look at this liening issue. And you need to begin to make some very clear rules about that kind of activity. If we give recognition, we have to be clear about what it is for and we have to be clear about prohibiting practices that are the equivalent of forcing purchase because they paralyze a community. And that is our obligation if we are going to recognize. So there are some additional issues that the Department of the Interior needs to look at and needs to take a stand on, and if we need to clarify the law, we will do that. I am told we don't need to clarify the law, but I don't see exactly how that is true. I hope you will begin to take into account the unique consequences of recognition in the densely populated eastern States of the country, and to understand how using a teeny tiny web to get to that definition is not right.

Now, I understand that there are two petitioning groups, and you responded to the petition of one but not the petition of the other. Are you aware that now one group of Schaghticokes is suing the other group of Schaghticokes?

Ms. ROSIER. Well, they have appealed the decision to the Interior Board of Indian Appeals.

Mrs. JOHNSON. No. This is in addition. They are suing the other part of the tribe for not recognizing the tribe's interest and for taking the interests of others, that is, the big money-backers, to undermine the tribe's interest. Are you aware of that?

Ms. ROSIER. I was not aware of that.

Mrs. JOHNSON. Well, I will send you those materials, and I want your experts to notice that. I want them to stop papering over this disagreement amongst the "members of the tribe," because it is by overwriting those disagreements, by ignoring what people are saying about the tribe, or who are the tribal members or its continuity,

that you can override your own criteria about continuity. So one subversion or distortion of a piece of evidence is leading to a ladder of distortion that is leading to a decision that is extremely destructive of the public interest.

You will hear in the testimony of the panel that follows the extremely negative consequences that will follow from this recognition, because this isn't a recognition about tribal history. This is about casinos; it is about big, big money; it is about gambling. It is a David and Goliath battle, and David is losing. Big money is winning. And you are not looking at your system to see whether that is true.

And I appreciate the hard work of our attorney general and of the local people. I am very glad that Lori Shishel is here, I didn't realize she was going to be down here. Oh, there she is. She has come down before to testify on this issue. It has taken us a long time to get attention to it. Our Senators in the Senate, where you have a little different set of rules, have brought it to the floor to get more attention to it. We will continue to do that, but you have a variety of first selectmen and mayors and others today who for years at the local level have studied this, and I hope you will listen to the facts that they have and make sure that in the review, as you respond to the appeal, that you have an open mind for what your top people in Washington did not pay attention to, because, in the end, the law is about all of us.

So I appreciate your being here, and I appreciate the time of the attorney general and his leadership on this issue, and the acumen with which he and his staff have pursued every avenue, and I particularly appreciate the local first selectmen, selectwomen, and mayors for the testimony they are going to give; and I am not going to try to summarize it because it will be very fresh from their mouths, but it is very powerful. And I think the Department has to look at this issue of liening, because it completely undermines and circumvents aspects of our laws and of our concept of recognition in a modern world. So thank you very much. I look forward to working with you on this issue.

And thank you, Mr. Chairman, for your indulgence.

Mr. SHAYS. Thank you.

I am going to have two questions after you, Mr. Ose, to the IG, and then we will get to the next panel. But you have the floor.

Mr. OSE. Thank you, Mr. Chairman.

I want to followup on something that Congresswoman Johnson brought up. I am not familiar with this and, Ms. Rosier, I guess it would be directed at you. If a tribe is established, they have trust lands, then they seek to add to their holdings, they can go out and buy in fee property adjacent thereto and then apply to have that property taken into trust status, is that correct?

Ms. ROSIER. Yes, they can apply to have that property taken into trust status.

Mr. OSE. The aspect that Mrs. Johnson mentioned that intrigues me is this issue of placing a lien on properties that a tribe may wish to take into trust. Does that happen?

Ms. ROSIER. I am a little unfamiliar with that, and I would have to——

Mr. OSE. A little or completely?

Ms. ROSIER. I am unfamiliar with that. I would have to get back to you on that matter.

Mr. OSE. Mr. Blumenthal, do you know anything about that?

Mr. BLUMENTHAL. Could you repeat the question, please?

Mr. OSE. The question relates to a tribe's interest in taking land into trust prior to fee ownership. Mrs. Johnson indicated that they were placing liens, perhaps, on adjacent properties, thereby encumbering those properties in terms of the interests of the adjacent landowner. Does that occur under current BIA regulation or law?

Mr. BLUMENTHAL. Well, it has occurred in the State of Connecticut, I suspect elsewhere in the country too, done by petitioning groups at various stages of the recognition process. For example——

Mr. OSE. That is what I want to examine. Let us say I own a piece of property in Sacramento, CA, and a tribe seeks to establish aboriginal claim to a certain piece of property right next door. They can establish their claim, perfect it through the BIA, establish their reservation, then turn around and file a petition saying that the property next door is also aboriginal in nature and thereby encumber my property?

Mr. BLUMENTHAL. I am not sure that they could simply take the property. They would need to present evidence that it was in fact aboriginal. Under some circumstances if they were recognized as a tribe and could meet the criteria under a Federal law called the Non-Intercourse Act, they could take title to that property. The Non-Intercourse Act, as you may know, says essentially that a federally recognized tribe can't sell or divest itself or transfer property without the approval of the Federal Government, and so if there were no Federal approval and there had been a transfer at some point, and that fact could be established, the answer to your question, I believe, is yes, that it could take title to that property. And, at the very least, what many of these groups have done is to encumber, place liens on property, and thereby interfere with the normal lives of landowners in the way that Congresswoman Johnson has described.

Mr. OSE. This is what I want to come at, because a fundamental piece of our history is respect for private property rights. Are you telling me that the law, as written today, allows a third party, in this case Indians, to waltz down to the county recorder and put a lien on my property without anything more than a claim, somebody's oral history?

Mr. BLUMENTHAL. Well, if I may answer the question this way, sir. Claims can be asserted in court by anyone. The courthouse doors are open, and liens may be placed and encumbrances by anyone with an interest. We went to court back in the mid-1990's when those claims were placed on property and succeeded in having them dismissed. So claims can be made, but obviously they can be refuted and they can be dismissed, whether they are made by petitioning tribes or a tradesman who has a claim for work that he says he has done on your property, which is typically how a lot of them result.

Mr. OSE. That one I understand. I can figure that part out. But it is just the distant third-party waltzes down to the county re-

corder and slaps a lien on my property, I have to tell you I react very negatively to that, having come out of the real estate business.

Mrs. JOHNSON. If the gentleman would yield.

Mr. OSE. I would be happy to yield.

Mrs. JOHNSON. The very first time this tribe came to see me, which was many years ago, I can't quite remember how many, but they showed a map. And it may be that the first selectwoman of Kent can clarify this more than my memory over that many years. They laid claim to all the land in five towns. Now, in this part of the State these are rather large land-mass towns because Connecticut eliminated our counties' government many years ago and merged a lot of little towns into big towns, so this is a lot of land mass. And they said that is really what we are entitled to, but we aren't going to exert all those claims.

Well, in another part of the State they did try to lien all the properties in that area to put pressure on the recognition process, and we had to go to court. Now they are starting to do that, and it has had a very chilling effect on the real estate market; values have already suffered an impact. And others know more about that than I. I only know it from anecdotal evidence of people walking up to me and say, you know, I was going to sell my house for this, and as soon as the recognition process took place, this happened, and now this is happening.

So whether they stand up in court isn't the whole issue. It is true we have worked hard not to allow them to stand up. Whether this group we would be able to step back on it or not, I don't know; each one is a different case. But, in the meantime, what it does to the ability of that town to raise the resources they need to educate their children, which is the biggest cost in these town budgets, or maintain their roads, or do anything else—they are very interested in land preservation, these towns—all those things, it cripples them; and it is not fair from the point of view of individual property rights.

So we need to clean up our act here in Washington. We need to do all those things Attorney General Blumenthal mentioned about transparency and cleaning up the process, but then we need to have criteria everybody knows, understands, and agrees to.

Mr. SHAYS. Let me make sure Mr. Ose gets his time back. We need to move the panel.

Mr. OSE. We have individuals coming forward, seeking tribal status. I understand that. I understand that same group coming forward, saying this is our aboriginal territory, and we want to establish trust lands here. But in that process, if the group comes forward and says this is our aboriginal territory, and we want to establish trust grounds somewhere in that, does the existing law allow the filing of a recordable lien on every single piece within that aboriginal range? I have to tell you, if that is the case, if that is the law, we are going to have a second revolution, because you are not coming to my house or my property and taking it on the basis of some speculative aboriginal claim. Now, you need to tell me whether or not that is the way the law is written today.

Mr. Blumenthal, you are an AG, you tell me.

Mr. BLUMENTHAL. Well, I will give you my answer as the attorney general of the State of Connecticut. We have actively opposed

those claims. We believe they are unfounded. We have successfully defeated them, and we believe that the law is on our side and factually we have the merits. But the claims are made, and the claims themselves can often be extraordinarily damaging. I just want to emphasize here, to finish the answer, the point that both Congressman Johnson and Congressman Shays made. In many instances, innocent property owners have been taken hostage to bring pressure to bear on you, on them, on other elected officials, and the pressure simply hasn't worked; the tactics have failed, but the law is there. And any of these groups have rights, and those rights have to be respected. The problem is the misuse of the process by certain groups.

Mr. OSE. So, Ms. Rosier, what does Interior or the Assistant Secretary for Indian Affairs do to prevent the types of situations that Mrs. Johnson has highlighted occurring in her district and which I can tell you if ever occur in my district will cause a problem?

Ms. ROSIER. We try to work with entities, State and local governments, with tribes and petitioners; we try to bring parties together. Connecticut, for whatever reason, just has been an example of where State and recognized tribes and petitioners have not worked well together. We have other situations where we have been able to bring groups together and try to bring parties who don't normally see eye-to-eye, try to bring them together and work together.

Mr. SHAYS. If the gentleman would yield, I can explain why that happens.

Mr. OSE. Yes.

Mr. SHAYS. This is a real-life story for me. I live in Bridgeport, CT. I represent that district. In the early 1990's, the Golden Hill Paugussetts took a claim against all the property in Ridgefield, in Fairfield, and so on. I live in a house that is claimed by the Golden Hill Paugussetts, and I think it is still a decision pending. Judge Dorsey wants to know if you all are going to recognize them as a Federal tribe.

Is that correct, Mr. Blumenthal?

Mr. BLUMENTHAL. That is correct, Congressman Shays. Although we succeeded in State court in having those claims dismissed, they are still pending in Federal court. The Federal claims do involve, I think, 20 acres in Downtown Bridgeport. I was unaware that it included your house. But certainly the claim is a wise one because your house is a beautiful one and they have obviously exercised sound judgment.

Mr. SHAYS. Well, it may have been it was just the State, but what they did do, though, is they came to my office and said we will have these claims disappear; all you have to do is submit a bill before Congress giving us Federal recognition. That is what they did. And then when that chief left, his brother came and did the same thing; and then when he was done, the financial backer came and said the claims—and at that time I didn't own the property in Bridgeport, but I represented the district. So it is one mess.

Mr. BLUMENTHAL. Can I just interrupt? And I really apologize, Mr. Chairman, but I want to make clear whom we are talking about here, because we are not talking about the Eastern Pequots and we are not talking about the Schaghticokes. I believe that you are referring to the Golden Hill Paugussetts.

Mr. SHAYS. Correct.

Mr. BLUMENTHAL. And I want to just correct one point that Ms. Rosier made, because she said there is a history of hostility or conflict, whatever word you used; I apologize, I don't remember exactly. We actually have very cooperative and good relationships with the tribes, two of them, that have been federally recognized. I want to emphasize—and this point may be one of the most important that I make all morning—we never opposed the Mohegan recognition in the way that we have the Schaghticokes or the Eastern Pequots. We never appealed that recognition decision, because it was right on the merits, on the law and the facts. And there is not a necessity for this kind of disagreement. I think it has to do with the way this process has been broken and shows how it needs to be fixed. I think it is a disservice to the relationship between States and tribes because it aggravates those disagreements.

Mr. SHAYS. Let me just quickly ask two questions to the inspector general.

On page 2 of your testimony you say you found pressure had been exerted by political decisionmakers in the OFA—Office of Federal Acknowledgment—team members responsible for making the acknowledgment recommendations on the Connecticut Eastern Pequot petition. What kind of pressure?

Mr. BLUMENTHAL. Congressman, as I recall, there was an awful lot of harassment going on at the end of the administration. Some of these team members were being told they had to do certain things they weren't comfortable doing. The delegations were being rushed to judgment at the end of the administration. This was perhaps a week before inauguration. So there was an awful lot of pressure being put on these OFA team members.

And I might say these are, for the most part, very honorable people that work in this office. From my perspective, they seem to be caught in this sort of perfect storm of emotion, politics, and big money. And I think they do a good job, but there is an awful lot swirling around them.

Mr. SHAYS. Well, it is important that be made part of the record.

Would you describe the elements and operation of your whistleblower protection program? Why didn't the Department of the Interior have such a program before?

Mr. BLUMENTHAL. That is my office's program. I don't know why the inspector general before me didn't have it, but I certainly believe that people who come forward and want to tell the inspector general something should be free from reprisal. And I do my very best in each and every case. If I hear that, I step forward and address that with the Assistant Secretary or, if I have to, go right to the Secretary about it.

Mr. SHAYS. Just two questions for you, Ms. Rosier. And I apologize, I have been calling you Rossier, and it is Rosier, correct?

Ms. ROSIER. It's Rosier.

Mr. SHAYS. Rosier? OK.

How do you respond to the argument that the Department faces an inherent conflict of interest and the BIA helps petitioners meet recognition criteria through technical assistance and other means, sits as the judge of what amounts to its own work produce, then acts as a regulator of the tribes?

Ms. ROSIER. One example of how the Federal family has tried to separate that conflict of interest is potential petitioners who are seeking Federal funding for putting together petitions, they go to the administration for Native Americans, which is outside of the Department of the Interior. So we don't provide any funding for the petitions; we give them research, technical assistance.

Mr. SHAYS. But you are basically telling them how they can become a tribe through helping them, and then you basically are passing judgment on whether they meet the criteria. Isn't that a bit of a conflict? It is nothing you established, but isn't that process a conflict?

Ms. ROSIER. I think our process is very rigorous and thorough. Since we have had this process, we have acknowledged 15 groups.

Mr. SHAYS. That is not what I am really asking, though. If you care not to respond to it, that is fine. But I am asking whether this process, where you are actually helping them become a tribe through assistance, and then you are passing judgment on whether they meet the standard, is that not a potential conflict of interest?

Ms. ROSIER. We provide technical assistance to tribes every single day on a number of matters.

Mr. SHAYS. But the difference is you are giving them something that in Connecticut makes them a billion dollar operation: you are giving them sovereignty, you are passing judgment on whether they meet the test, and you are helping them meet the test.

So, Mr. Blumenthal, how would you respond to that?

Mr. BLUMENTHAL. Well, as I have said in my testimony, I do believe there is an inherent conflict of interest. It is not the result of some purposeful individual corruption, but it is inherent in the assignment of two conflicting tasks to a single agency, and then having that agency be beyond the normal rules of accountability and transparency that would apply to an independent agency.

Mr. SHAYS. We wrote the law. You didn't write the law, but it strikes me as a tremendous conflict.

This is the last question, Ms. Rosier. How and when do you find what financial interests are supporting recognition petitioners? Would you like to know sooner? Would you like to be able to compel disclosure of all financial interests behind a petition?

Ms. ROSIER. Currently, right now, financial disclosure is not part of the Federal recognition process. As I have discussed, it is an anthropological history and genealogical look at the entity. So, as of right now we do not look at financial information unless it has been voluntarily disclosed.

As for in the future, whether we would seek language or we could be supportive of language that asks for financial disclosure, I could not give official comment on that, but I will take that back to the Department.

Mr. SHAYS. Thank you.

Is there anything that you all maybe spent last night thinking about that we needed to ask that you want to put on the record? Is there anything you don't want to put on the record that we should have asked?

Mr. BLUMENTHAL. If I may take that invitation, Mr. Chairman. I didn't start thinking about this last night, I have thought about it for a long time, as you have too. But it follows the question that

you just raised. If this committee does nothing more than impose rules of disclosure, it will have made a tremendous contribution. And those rules of disclosure wouldn't be novel or unprecedented. They would simply require the kinds of information that are absolutely mandatory when dealing with other independent agencies showing the kinds of financial details that are elemental and profoundly significant to this process.

You will hear, later, testimony about numbers of dollars that have been invested by individual financial backers. That information comes from disclosures they have made themselves, not required by any government agency. And it doesn't indicate second and third and fourth levels of information about where they obtained that money, including other financial investors, and it doesn't relate to lobbyists. And so going back to Mr. Devaney's point, I think there, at the very least, ought to be clear, irrefutable consensus that this kind of information, whether you call it registration or disclosure, clearly should be required.

Mr. SHAYS. Mr. Delaney, anything we need to put on the record that isn't put on the record? Anything you need to point out before we go to our next panel?

Mr. DELANEY. No, sir.

Mr. SHAYS. Ms. Rosier, any comments?

Ms. ROSIER. No, sir.

Mr. SHAYS. We thank all three panelists for their cooperation. It has been a longer morning, but I think we have learned a lot. Thank you so much.

At this time, we will call Ms. Marcia Flowers, invite her to come and testify. I would also invite Mark Sebastian to come and be sworn in, as well, in case you want to respond to any question, even though you don't have a statement. I think that might make sense, if you would like to.

If you would both stand, we will swear you in. And welcome to both of you.

[Witnesses sworn.]

Mr. SHAYS. I will note for the record that both of our witnesses have responded in the affirmative.

We may not have as many questions. I want you to feel, Chairman Flowers—and, Mr. Sebastian, you were former chairman, is that correct? We are going to allow you to make your testimony, and feel free to go over the 5-minute limit. I want to make sure that you put on the record everything you want to put on the record. And let us just see how that mic picks you up. If you would lower it a little bit. Just tap it, I just want to see if it is on. No, it is not on. OK.

Welcome. Thank you for being here. I want to say, again, you are here, and we invited another tribe who decided not to be here. I wish they followed your good example.

## STATEMENT OF MARCIA FLOWERS, CHAIRWOMAN, TRIBAL COUNCIL, HISTORICAL EASTERN PEQUOT TRIBAL NATION, ACCOMPANIED BY MARK SEBASTIAN, FORMER CHAIRMAN

Ms. FLOWERS. Thank you. Thank you, Mr. Chairman, members of the committee, and especially our Congressman from Connecti-

cut, Chris Shays, for inviting us to testify today on behalf of our tribe, the Eastern Pequot Tribal Nation.

Before I begin, I would like to just, for the record, the Eastern Pequot Tribal Nation has never filed a land claim. Another issue that I have to bring up before I begin, the attorney general for the State of Connecticut made a comment that the State did not appeal the Mohegan decision. I have to point out, and I and Chairman Brown speak of this often, the Mohegan tribe was detribalized in the 1700's, and when the tribes came back together in the 1970's under the Connecticut Indian Affairs Commission, all the five tribes were in the five State recognized tribes. And I have to make that point because the Eastern Pequot tribe never was detribalized. And thank you for that statement.

I am here today to tell you about one tribe's experience with the recognition process. Our opponents try to keep the focus on casinos and their impact, but my tribe is suffering a different impact: the impact of unwarranted delays in the process. I don't think anyone here will claim the recognition process is working properly. When the regulations were implemented in 1978, the process was to operate within 3 to 5 years. The Eastern Pequot Tribal Nation filed its original letter of intent to seek recognition in 1978, 26 years ago. We have traveled the path to recognition through five Presidential administrations, seven Secretaries of the Interior, nine Assistant Secretaries of the Interior for Indian Affairs, four State Governors, and four State attorneys general. We have followed every step prescribed by the regulations, and we are still not done yet.

In your invitation to me to address this committee, you asked about transparency. This process could not have been more transparent. Just look at our procedural history. After 3 years of active review by the Bureau of Acknowledgment and Research, in March 2000, our petition received a positive preliminary finding.

Mr. Chairman, I must note, to clear for the record, that on the Web site the tribe noticed that it was noted that we received a negative preliminary finding. This is incorrect. The Eastern Pequots' petition received a preliminary positive and a positive on final, and we would like that corrected. Thank you.

Mr. SHAYS. On the Web page of? I may have missed it. You said on the Web page. On the committee's Web page?

Ms. FLOWERS. Noted for this hearing on the resource.

Mr. SHAYS. OK. Thank you.

Ms. FLOWERS. Yes.

And I brought a copy of the Federal Register of our final determination. It does go over that. And I think Mark has a copy.

In a detailed 152-page decision of over 500 pages of exhibits, BAR provided its analysis of our petition strengths and weaknesses. The regulations allow for a comment period for tribes and all interested parties to respond to the preliminary finding. In our case, the usual 6-month period was extended to 18 months. That was because of a request filed by the Connecticut attorney general and his demands through a Freedom of Information Act lawsuit. During the comment period, the States and towns had open access to the BAR staff and participated in a 2-day marathon technical assistance hearing. They grilled the staff about the process, our evidence, the BAR's view of the evidence, and the grounds for the pre-

liminary decision. Without exception, they received every document they requested. Nothing has been hidden.

The tribe ultimately submitted 566 pages of additional material and nine boxes of exhibits in response to BAR's comments. The attorney general and towns submitted a total of 879 pages of material.

After months of analyzing this information, BAR issued a positive final determination in 2002. We are the only tribe to receive a positive preliminary and a positive final decision in the State of Connecticut. As allowed by the regulations, the Connecticut attorney general appealed to the Interior Board of Indian Appeals. All briefs in the appeal were completed in March 2003, and after 13 months we are still waiting for a judge to be assigned to our case.

You asked about integrity. Our opponents claim we have used inappropriate political influence in the recognition process. The Eastern Pequot Tribal Nation employs one lobbying firm in Washington, DC, whose principal role is to track legislation that might affect us. We pay our lobbyist $120,000 per year. We began our relationship with this firm during the Clinton administration, and it continues today under the Bush administration. At no time have we ever asked any lobbyist to try to influence the outcome of any decision regarding recognition, and at no time has any lobbyist represented to us that they have any ability to do so.

We have met approximately once each year with the Connecticut delegation and other leaders in Washington, such as Senator Inouye and Campbell. These meetings have been arranged well in advance and appear in public records. The only meeting we have had with any Department of the Interior official in the past 2 years was with then Assistant Secretary McCaleb, at his invitation, not ours. At no time during any of these meetings have we asked any elected or appointed official to influence the outcome of any recognition decision.

Political influence is at work here, but it is not being exercised by our tribe. Rather, incredible influence is being brought to bear by a small group of people whose real goal is to stop Indian gaming in Connecticut. Mr. Benedict, for example, is representing a group called Connecticut Alliance Against Casino Expansion. He has raised millions of dollars and stages frequent public rallies against casinos. In fact, Mr. Benedict himself, I believe, is a registered lobbyist. Elected officials in our State, paid by taxpayers' dollars, have appeared regularly at his rallies, claiming they oppose recognition of our tribe, but really what they oppose is gaming. Elected officials here in Washington have used their political influence and taxpayers' dollars to introduce legislation that would halt recognition decisions and stop us, even though we have faithfully followed the regulations for 26 years. A recent example is the Connecticut attorney general's unscheduled ex parte meeting with the Secretary of the Interior on March 17th, where he specifically asked her to stop recognizing tribes.

Our opponents have tried to delay us every step of the way. They attack our recognition decision, most often using three arguments: the so-called merger of two tribes, the claim that the Assistant Secretary overruled his staff's recommendation, and the supposed reli-

ance on State recognition used by the BAR in reaching our decision.

On the first issue, this is what the final determination actually said, "This determination does not merge two tribes, but determines that a single tribe exists which is represented by two petitioners."

Regarding the second issue, the staff at the BAR simply has no decisionmaking authority in this process. The Assistant Secretary makes the decisions to issue a positive preliminary decision. In our case, Mr. Gover's decision in the Clinton administration was ultimately confirmed in the positive final determination in the Bush administration. I am sure each of you has on occasion disagreed with your staff.

Third, again quoting from the decision: "The continuous State recognition is not a substitute for direct evidence. Instead, this longstanding State relationship and reservation are additional evidence which, when added to the existing evidence"—and I will stress that, the existing evidence, which we submitted—"demonstrates that the criteria are met at specific periods in time."

You asked about accountability. We have had to account for every day of our history since 1614, to the BIA and the interested parties. We have provided tens of thousands of pages of information documenting our petition. Many of these documents came right out of the State archives and files. The interested parties received each piece of our evidence and had the right to comment on them. All that material, including the comments, has been reviewed and analyzed by a team of highly qualified professionals to reach a final decision of almost 200 pages detailing the evidence that demonstrates our tribe meets the seven criteria. We have been accountable for every professional we have hired and every source of information we have used. The very nature of the recognition process mandates accountability, especially for tribes whose first contact dates back into the 1600's.

Unlike many of the western tribes, the eastern tribes never entered into treaties with the United States, so they do not have automatic access to Federal programs. Instead, they had relationships with the colonies before this country was even formed. The colony of Connecticut established the Eastern Pequot Reservation in 1683, and it remains one of the oldest continuously occupied reservations in the country. The State took over the relationship with our tribe in 1784, and that protected relationship continues to today. The recognition process adopted in 1978 was designed to give tribes like ours the opportunity to gain access to Federal, social, health, and educational programs that were established for our benefit.

When we started this process in 1978, there was no Indian gaming. The Indian Gaming Regulatory Act was not passed until 1988.

Mr. SHAYS. I am going to let you finish your statement, even though we are going on. But I want you to read a little faster.

Ms. FLOWERS. OK.

Mr. SHAYS. I don't usually do that; I usually tell people to slow down. I want your entire statement. You want to deliver it; I want it delivered. I want it quicker. Just read a little more quickly.

Ms. FLOWERS. OK.

The Indian Gaming Regulatory Act was not passed until 1988, 10 years after we first applied for recognition. In 1978, our tribe had no money, no expertise, and no access to the professionals who could help us. We did the work ourselves, holding bake sales, car washes, and selling our crafts to scrape together the money to file our first petition. We learned quickly that we needed substantial professional assistance to get through the process.

With the introduction of Indian gaming in Connecticut, and the opening of the first casino in 1993, the landscape changed completely. IGRA allowed an investor to get a realistic return on the very high-risk funds tribes need to hire a team of professionals to help them with the recognition process. Whether we wanted a casino or not, we had no other way to find the funding to hire the best historians, genealogists, anthropologists, and lawyers.

You asked about the cost. Beginning in 1993, our tribe entered into a series of arrangements with investors who agreed to finance our recognition efforts in return for future casino management fees as provided by IGRA. Through 2000, this financing totaled approximately $5 million. In 2000, we entered into our current development agreement with Eastern Capital Development of Southport, CT, a group of private investors, none of whom have any ties to the gaming industry.

Mr. SHAYS. But just happen to live in my district.

Ms. FLOWERS. I confirm to you that they do not employ any other lobbying firms.

To date, they have loaned our tribe about $11 million. Approximately 70 percent went directly to our effort to meet the recognition criteria. The professional team includes a set of lawyers to coordinate the research on our petition and ensure regulatory compliance, other lawyers to represent us in court suits filed by the attorney general, and a third group of lawyers to coordinate the attorney general's IBIA appeal. The team that helped us compile our petition includes six senior researchers in anthropology, history, and law—four Ph.D.s, two LLDs—two research assistants, two genealogists, and an archivist. This team has worked continually since 1997 to meet the challenges, requirements, and scope of the recognition process and accounts for most of the expense.

In all this time, with all their rhetoric, our opponents have not submitted one shred of evidence that disproves our right to recognition. Without such evidence to stop our recognition, those who want to stop us from building a casino have no tactics left other than delays, confusion, and distortion. Years ago, our opponents received one piece of advice from their lawyers that they have taken to heart: the best way to stop a casino and land claims is to stop a tribe's recognition; and the best way to stop recognition is to derail the process. Recognition does not automatically create a casino. There are many steps along the way where the State's and towns' concerns about gaming will be properly addressed. We have to go through a rigorous approval process before we can even dream about a casino. We must take land into trust and negotiate a gaming compact, which in our State requires the ratification of the full legislature. Both of these also mandate extensive public participation.

I don't think a wholesale restructuring of the process needs to take place. The process is thorough, transparent, and has provisions for adequate accountability. What must happen is that the BIA must be given additional funding to increase its staff so they can deal with the tremendous backlog of recognition decisions. The IBIA needs similar resources to help them deal with the many complicated cases they review.

This committee should not confuse opposition to gaming with the need to improve the recognition process. Congress should not take away any tribe's right to Federal programs to satisfy a small group of people fundamentally opposed to gaming. After all, the two casinos in Connecticut employ over 20,000 people and pay the State over $400 million per year.

Many people have complained that this process is not fair. Please focus on these statistics: since September 2002, when the Connecticut attorney general filed the appeal against our final determination, 154 decisions have been issued by the Interior Board of Indian Appeals. Of those 154 cases, 95 were filed after ours. Once again, 95 of the 154 decisions were for cases filed after ours. And we are still waiting.

Again, thank you for giving me the opportunity to speak to you today, and I would be happy to answer your questions.

[The prepared statement of Ms. Flowers follows:]

**Marcia Jones Flowers**
**Chairwoman, Eastern Pequot Tribal Nation**
Written Statement for Committee on Government Reform

Thank you Mr. Chairman, members of the Committee, and especially our Congressman from Connecticut, Chris Shays, for inviting me to testify today on behalf of the Eastern Pequot Tribal Nation.

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Chairman TOM DAVIS. I want to thank you. Your statement is pretty comprehensive. I think you make a very strong argument for your case. I might disagree with a number of points. I do want to say, though, that I think you have put on the record what you wanted to put on the record. Is there anything else before we go to the other panel that we have?

Is there anything, Mr. Sebastian, that you would like to just say for the record? Not a statement, but any general comments? A statement would be fine, but not a long statement.

Mr. SEBASTIAN. We have some documents we would like to submit for the record, a resolution from the National Congress of American Indians in support of the Eastern Pequot Tribal Nation and a State of Connecticut General Assembly report from David Leff, a senior attorney to Honorable John Thompson in regard to the dispute between the tribe and the ruling that the State of Connecticut General Assembly that there was one tribe in 1989.

Mr. SHAYS. Well, we will put those in the record, if you would like. Any other document for the record?

Mr. SEBASTIAN. And just a list of the cases that were assigned after our IBIA appeal and that have been resolved.

[The information referred to follows:]

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

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Jamestown S'Klallam Tribe

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Central Council of Tlingit and Haida

MIDWEST
Norman Adams, Jr.
Bay Mills Band of Ojibwa

EASTERN OKLAHOMA
Jefferson Keel
Chickasaw Nation

NORTHEAST
Kevin Seneca
Seneca Nation

WESTERN
Arlan Melendez
Reno-Sparks Indian Colony

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Leslie Lomax
Pasqua Band of Mission

SOUTHEAST
Eddie Tullis
Eastern Band of Cherokee Indians

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## The National Congress of American Indians
## Resolution #ABQ-03-135

Title: **Support for Continued Federal Recognition of the Eastern Pequot Nation**

**WHEREAS,** we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS,** the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS,** over the preceding four centuries, the United States and other foreign countries who occupied North American prior to the formation of the United States, did everything they could to eliminate many Tribal nations; and

**WHEREAS,** members of tribal nations that were not formally recognized by the Federal government continued to maintain their tribal affiliation and heritage, and have now been seeking federal recognition as Indian tribes pursuant to federal law and regulation; and

**WHEREAS,** the Eastern Pequot Tribal Nation (EPTN) was recent recognized by the Federal government, under the federal process for recognizing Indian Tribes as provided in Federal law and regulation; and

**WHEREAS,** the members of the EPTN reside on one of the longest continuously occupied reservation in the United States; and

**WHEREAS,** the EPTN began its quest for federal recognition in 1978, shortly after the modern Federal tribal recognition process was established, made necessary because the EPTN had established a government-to-government relationship with Connecticut before the Declaration of Independence was signed and the United States was first formed; and

**WHEREAS,** in 1998, when the Bureau of Indian Affairs (BIA) was finally able to begin reviewing the tribe's position for acknowledgment, that petition received significant opposition from the Attorney General of Connecticut and local Connecticut towns; but despite this opposition, on June 24, 2002, the Assistant Secretary for Indian Affairs issued a final decision granting the tribe's federal acknowledgment; and

**WHEREAS,** less than 90 days following federal recognition, the Attorney General of Connecticut and 29 local Connecticut towns filed an appeal with the Interior Board of Indian Appeals, asking that the Assistant Secretary's final decision be reversed; and

**WHEREAS,** the State of Connecticut and the other appellants appear driven not by concerns about compliance with the recognition regulations, but instead by a desire to stop the expansion of Indian gaming and prohibit future acquisition of federal trust land in Connecticut to ensure that the EPTN can never bring a claim for land against the state; and

**WHEREAS,** the action of the State of Connecticut in appealing the federal recognition of the EPTN is an attempt to undermine the process of federal recognition of Indian tribes and hurts all tribes.

**NOW THEREFORE BE IT RESOLVED,** that the NCAI hereby urges the State of Connecticut, its representatives and its towns to recognize its legal, historical, and political relationship with those tribes within Connecticut whose tribal, social, and political structures predate the Constitution of the United States, to respect the inherent sovereignty of those tribes and to engage in good faith bargaining regarding land acquisition, gaming compacting and other issues of mutual concern, and to refrain from using the Bureau of Indian Affairs regulatory process and the courts to delay a legitimate federal tribal recognition decision; and

**BE IT FINALLY RESOLVED,** that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.

Tex Hall
President

**ATTEST:**

Juana Majel
Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.

Connecticut General Assembly

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ALLAN GREEN
DIRECTOR, ENVIRONMENTAL PROTECTION
OFFICE OF INDIAN AFFAIRS

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH
(203) 240-8400

LEGISLATIVE OFFICE BUILDING
Room 5300
HARTFORD, CONNECTICUT 06106

November 28, 1989 89-R-1071

TO: Honorable John W. Thompson

FROM: Office of Legislative Research
David Keith Leff, Senior Attorney

RE: Paucatuck Pequot Tribal Membership Dispute

You asked for a history of the Paucatuck Pequot tribal membership dispute.

**SUMMARY**

At the time of European settlement, the Pequots were the most powerful, if not largest tribe of Indians in New England. Not long thereafter a tribal dispute led to a factional split with some members becoming the Mohegan tribe. A subsequent war with colonists and their native allies broke the tribe and left them very weak. After a failed attempt by English authorities to eliminate the Pequots by absorbing members into other tribes, the Pequots regrouped into two distinct tribes, one the predecessor to today's Mashantucket Pequots, the other the predecessor to today's Paucatuck Pequots, the subject of this report.

The current dispute arose shortly after the establishment of the Indian Affairs Council (CIAC) in 1973 when there was a disagreement over who was the rightful tribal representative to that body. After hearings, the council ruled that only those with one-eighth Paucatuck Pequot blood were members of the tribe. The CIAC decision was upheld in a court challenge. Then in 1983, in response to petitions, the CIAC revised its previous decisions and ruled that other factors could be considered in determining tribal membership. This decision had the effect of greatly increasing the size of the tribe. But a lawsuit filed soon after the council's decision resulted in a stay of that ruling in early 1984. In 1987 the court dismissed the appeal

for lack of standing, but an appellate court reversed the trial judge in March 1989 and sent the case back to the trial court. Thus, who is a legitimate member of the tribe and who is to sit on the CIAC remains disputed. Legislation passed in 1989 which removes CIAC authority to decide who is an Indian may alter the focus of the litigation and begin a new phase in settlement of the dispute through use of the three person councils established in the legislation (PA 89-368).

**HISTORICAL BACKGROUND: FROM EUROPEAN SETTLEMENT TO THE TRIBE'S DIVISION**

**The Pequot Tribe**

When English settlement began in the 1630's the Pequot tribe was the largest and most powerful in what is now southeastern coastal Connecticut (M. Guilette, American Indians in Connecticut, 1979). Although not New England's largest tribe, they may have been the strongest. They had a population estimated at between 3,000 and 4,000 including 600 to 700 warriors. Tradition is that the tribe originally came from along the Hudson River south of Albany and migrated to southeastern Connecticut shortly before 1800. In New York they were called the Mahicans which was corrupted to Mohegan. Some of these Mohegans came to Connecticut for reasons that are not clear. They are said to have conquered tribes along the way and exacted tribute. After settling along the Mystic and Thames rivers the tribe expanded its territory and conquered other tribes. The Pequots eventually ruled the area from the Connecticut River to Rhode Island and north including the territory of the Nipmucks of Windham County. They exacted tribute from and overpowered tribes even farther away. The Narragausetts were the only area tribe to successfully resist the Pequots with whom they waged continual conflict. When the English first arrived there was a great and long-standing enmity between the tribes.

The Dutch were the first to encounter the Pequots, and traded with them and other tribes along the coast and Connecticut River from 1614 to 1632. They were interested only in trade and never established settlements. The peaceful relationship came to a sudden end when in 1631 or 1632 the Dutch killed the Pequot sachem (chief) Wopigwooit. This initiated an internal quarrel within the tribe over who should succeed as sachem. This dispute ultimately led to the secession of a part of the tribe led by Uncas. This group claimed a piece of Pequot territory in the northern part of New London County on the Western side of the Thames River at the confluence of the Shetucket, Quinnebaug, and Niantic Rivers within the current town of Montville. They established a new tribe called the Mohegans, after the original Pequot name, with Uncas as sachem. Estimates of tribal size vary greatly from about 70 warriors to 400 to 500 warriors.

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War and its Aftermath

In 1636 a trade-related war between the Pequots and Dutch erupted. Soon after the English, whose relations with the tribe had been civil, became involved in a series of skirmishes with the Indians. After a year of occasional attacks and increasing tension on both sides the colonists officially began a war with them on May 10, 1637. The causes of this war are complex, but the results were clear and deadly for the Pequots. The English assembled an army of 90 soldiers and were joined by 70 Mohegans under Uncas who sought revenge against the Pequots. The group of 160 men with the sanction and help of the Narragausetts launched a surprise attack on the Pequot fort on the Mystic River. Between 300 and 700 Pequot men, women and children were killed and few escaped. The English and their allies experienced two killed and 20 wounded.

This attack almost destroyed the Pequots. Survivors, who scattered all over Connecticut, were hunted not only by Connecticut forces, but by those of Massachusetts Bay and the Plymouth colonies as well. Other tribes, including the Mohegans, also joined. Some surviving Pequots found refuge with other tribes as far as North Carolina. A group remaining in southeastern Connecticut surrendered to the English. Some of the Pequots were sold as slaves or became servants. But most, about 200, were parcelled out to other tribes who had helped the English pursuant to a treaty between the English, Mohegans and Narragausetts.

The Pequots were poorly treated by those to which they were assigned and deserters gathered together to form a village on the Paucatuck River a year or two later. This village was destroyed, but deserters soon gathered again. They generally divided into two groups. One lived near the Paucatuck River in Stonington and the other near the Thames River in New London. When efforts to return the Pequots failed, the colonists accepted the existence of the two groups. After numerous requests, the two tribes were each given some land in 1655. The Thames River group which later became known as Mashantucket or western Pequot were given land along the Mystic River. The Paucatuck or Eastern Pequot were given land near the Paucatuck River. These lands were apparently not considered reservations. The two tribes became practically self-governing political entities although they operated under English laws and had little power. After much struggle, in 1667 the Mashantucket Pequots had a reservation of 2,000 acres set aside for them where it is today in Ledyard. In 1683 the Paucatuck Pequots finally obtained a 280 acre reservation on the eastern side of Lantern Hill and the west side of Long Pond in North Stonington near the Mashantucket reservation.



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THE PAUCATUCK PEQUOT TRIBAL DISPUTE

The Indian Affairs Council and the Paucatuck Pequots

The Connecticut Indian Affairs Council was established by an act of the General Assembly in 1973 (PA 73-660). It consists of one representative of the Schaghticoke, Paucatuck Pequot, Mashantucket Pequot, Mohegan and Golden Hill Paugussett tribes appointed by their respective tribes,and three people not of Indian lineage appointed by the governor. Tribes may appoint alternates. The council is authorized to provide services and formulate programs concerning the "Indian reservation community." The council also was empowered, until October 1, 1989, to decide the qualifications of individuals entitled to be designated as Indians. Otherwise, an Indian, until that time, was a person with at least one-eighth Indian blood of the five Connecticut tribes. By virtue of PA 89-368, determining tribal membership is the province of the tribe, but maybe settled by a three person council.

The law establishing the Indian Affairs Council became effective on June 22, 1973, and on November 16, 1973 Helen LeGault presented herself as representative of the Eastern Pequot Tribe (subsequently changed by law to Paucatuck Pequot). "Almost immediately her position was challenged by others, claiming Eastern Pequot membership, on the basis that she was not truly representative of the tribe." (Indian Affairs Council Eastern Pequot Membership Hearing, April 18, 1977). But, as an interim measure in December 1973 Helen Legault was seated as representative and Alton Smith as alternate because the tribe failed to show evidence of a tribal organization or roll. This was to continue until "a representative could be selected in a satisfactory manner" by the tribe.

In June 1975 CIAC regulations requiring tribes seeking council representation to file a tribal organization and roll took effect. Under the regulations, before the representative is seated the council must be satisfied that "the tribal organization is representative of the tribe, and that the tribe's representative to the council has been properly selected in compliance with the practice and usage of the tribe." (Conn Agencies Reg. Sec. 47-596-5.)

Early in 1976 two organizations, Eastern Pequot Indians of Connecticut (Sabastian faction) and Authentic Eastern Pequots (LeGault faction) each sought recognition. The council held a hearing on August 10, 1976 to determine the tribal usage and practice and to determine who qualified as Eastern Pequot. Evidence of pedigrees were offered and disputed and the Eastern Pequots sought to have their definition of membership adopted as tribal practice and



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usage. On September 15, 1976 the council ruled that there was no tribal practice or useage concerning membership and concluded that the one-eighth blood requirement must be relied upon. At a special meeting of October 20, 1976 Tamer Brushel Sebastian, progenitor of the Sabastian faction, was declared a full-blood Eastern Pequot Indian. But, due to procedural irregularities this vote was subsequently rescinded and a new hearing set for January 18, 1977.

In accordance with its regulations the council conducted a hearing on January 18, 1977 to gather information concerning the tribe's membership. Once again the only evidence of tribal membership practices offered at the hearing was from Eastern Pequot Indians of Connecticut. But in its April 18, 1977 decision the council did not accept this as representative of the entire tribe and again fell back on the one-eighth blood requirement as the basis of its decision. The Authentic Eastern Pequots, including Helen LeGault, claimed membership through the Gardener family, especially Marlboro Gardener. The Eastern Pequot Indians of Connecticut, which includes Alton Smith and primarily members of the Sabastian family, claimed membership through Tamer Brushel Sebastian. The council found Marlboro Gardener to be full blood and Tamer Brushel Sebastian to be at least half blood Eastern Pequot Indian. Therefore it was declared that all direct lineal descendants of the two with at least one-eighth Indian blood were members of the Eastern Pequot Tribe.

After the council decision, the Sabastian faction brought suit in Superior Court alleging that the council's determination that their membership practice was not representative of the entire tribe and that Tamar Brushel Sabastian was at least one half Eastern Pequot, but not full-blood "prejudiced substantial rights of the plaintiffs and were unlawful and erroneous." After finding that the individual Sabastian plaintiffs but not the Eastern Pequot Indians of Connecticut had standing, the court decision of November 30, 1979 held that the council had acted properly both in determining there was no sufficient tribal usage and practice for membership and that Tamar Brushel Sabastian was one-half Indian blood.

**The 1983 Council Decision**

Sometime after the 1979 court decision Richard Williams of the LeGault faction became the tribal representative on the CIAC. On December 7, 1982 the Sabastian faction challenged Williams' position after which hearings were held. As a result, CIAC issued another decision on December 3, 1983. In it the council notes that "several suggested practice and usage documents as well as tribal rolls,



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constitutions and by-laws were produced and were seen by various members of the CIAC". But the council found that there was no clear evidence these documents were developed, authorized and implemented by a fair representation of the tribe.

The CIAC found that "there is no evidence to indicate that historically, Conn. tribal membership practices were concerned with blood quotas. Therefore, it is not reasonable to assume that a 1/8 blood quota is a valid single criterion for membership in the Eastern Paucatuck Pequot tribe." As a result the CIAC decided to expand the definition beyond the one-eighth blood quota and decided to consider the following requirements on a case by case basis "with weight given to what enhances the strength of the tribe:"

1. Clear evidence that an individual or an individual's family has been historically recognized and accepted as a member of the Eastern Paucatuck Pequot tribe either by the state of Connecticut, the public community or by other Eastern Paucatuck Pequot tribal members recorded on tribal rolls.

2. The percentage of tribal blood that is Eastern Paucatuck Pequot.

3. The percentage of Indian blood of another tribe that has or had a historical relationship with the Eastern Paucatuck Pequot tribe.

The CIAC decided that it would recognize as tribal members any person presenting adequate evidence that they are eligible by virtue of the one-eighth blood requirement or the above criteria. They also decided that the Eastern Paucatuck Pequot seat is vacant until a new tribal government is created and the necessary prescribed documents are submitted to the council. The practical effect of this decision was to cause Richard Williams to lose his seat on the CIAC and allow entrance of the Sabastian faction into the tribe.

On December 23, 1983 the Paucatuck Eastern Pequots and several individual members of the LeGault faction filed an appeal of the CIAC decision in Superior Court (No. 290617). Their complaint seeks reversal of the CIAC decision due to various procedural defects, substantive violations of law, and because it was arbitrary and capricious.

On January 3, 1984 the council issued a proposed tribal membership list based on its decision of December 3, 1983. It includes 335 people, members of both the Sabastian and LeGault factions. Apparently this adds approximately 250 people to the tribe as it was constituted before the December 1983 CIAC decision.



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The Current Litigation

The plaintiff Paucatuck Eastern Pequots of Connecticut (LeGault faction) asked the Superior Court for a stay of the CIAC decision pending resolution of their appeal. On February 2, 1984 the request for a stay was granted by Judge Aspell because if the LeGault faction won their case "they would have been subjected to an unwarranted influx of individuals into the tribe. Such an occurrence has the potential of placing the plaintiffs in a situation whereby duly elected tribal officials are removed from office by a ballot which does not accurately reflect the actual members of the tribe. The potential for harm to the plaintiffs clearly outweighs the public harm which would result from delaying the effectiveness of the CIAC decision."

On July 17, 1987 the Superior Court affirmed the ruling of the CIAC and dismissed the appeal. The court did not consider the merits of the case, but rather held that both the Paucatuck Eastern Pequot Indians of Connecticut and the individual plaintiffs lacked standing to appeal. The tribe was found without standing because it had no interest apart from the personal interests of its members. The individual plaintiffs were found without standing because "no one living on the reservation was displaced as a result of the decision nor was anyone declared not to be an Indian. In short, the plaintiffs have failed to show a personal and legal interest that has been specially and adversely affected by the decision of the CIAC."

An appeal of this decision was brought and on March 28, 1989 the Connecticut Appellate Court reversed the trial court decision finding that the organization and the individual plaintiffs had standing to pursue the case (Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council, 18 Conn. App. 4 (1989)). The court found that the individual plaintiffs had standing because the CIAC decision stripped them of their status as tribal members leaving "a possibility that a legally protected interest, namely, tribal member status, has been adversely affected by the CIAC's decision." The Paucatuck Eastern Pequots as a group were found to have met the legal requirements for representational standing because individual members had a right to sue, the interests sought to be protected were germane to the tribe's purposes, and there was no necessity that individual members participate in the lawsuit because invalidating the CIAC decision does not require the court to consider the individual circumstances of aggrieved tribal members.

The March 28, 1989 Appellate Court decision is the most recent action in the case. As a result, the trial court will have to continue with further proceedings which may involve a decision on the merits of the appeal. In the meantime, the



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1983 decision of the CIAC is still subject to the 1984 Superior Court stay. The seat on the CIAC remains vacant and the composition of the tribe is unsettled.

PA 89-368

As noted above, PA 89-368 stripped the Connecticut Indian Affairs Council of its authority to determine the qualifications of individuals entitled to be Indians. It also eliminated the requirement that a person have at least one-eighth Indian blood to qualify as an Indian in lieu of another decision by the CIAC. Instead, the law now recognizes that the tribe possess the power to determine tribal membership. It calls for disputes to be resolved in accordance with tribal usage and practice. Upon request of a party to a dispute, the dispute may be settled by a council. Each party must appoint a member of the council and the parties must jointly appoint one or two additional members provided the number of members is odd. If a joint appointment cannot be agreed upon, the governor must appoint a person knowledgeable in Indian affairs. The council's decision is final on substantive issues, but court appeals may be taken to determine if membership rules filed in the secretary of the state's office have been followed.

The 1989 changes in the law will likely alter the current litigation considerably. Since the CIAC no longer can decide who is an Indian, this part of the appeal may be rendered moot. Arguments over tribal membership may shift to a council established through the new law. On the other hand, the CIAC retains its power to determine that tribal representatives are properly selected, and this aspect of the case may be pursued in court. Much will depend on the wishes of the parties.

The new council process to decide membership disputes is untried. Its success is uncertain. Nevertheless, it allows the dispute to be transferred to what will hopefully be a more appropriate forum. To ensure it operates as smoothly as possible, the council legislation might be further refined by the Indian Affairs Task Force. Improvements may be made to better the speed and fairness of decisions. For example, a time frame for appointing council members and provision for failure to appoint could alleviate potential impasses. It might also be made clear what authority to decide disputes the council has in the event there are no written tribal membership rules, or such rules are themselves in dispute.

Whatever course the current litigation or the new councils take, this long festering dispute is unlikely to be resolved soon.

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Mr. SHAYS. Let me just suggest this to you so we are fair to you as well. We are going to go to the next panel, but if you would like to, after they have testified, if you would like to come up and respond to something you have heard, then we can question you about that particular issue. So I don't want you to interpret our lack of questions as being a lack of respect. We want you to participate in our process. You said you would like to testify separately, and we respected that. So what I will do is I will swear in the next panel. If there is something, after they have made their statements and we have asked questions, that you want to insert or respond to what you have heard, then we will question you about that. Does that seem to fit your need as well?

Ms. FLOWERS. That will be fine.

Mr. SHAYS. That will be our need, because we are going to have a vote at 2, and we are going to really try to get to this next panel.

Ms. FLOWERS. OK, thank you.

Mr. SHAYS. Thank you so much.

At this time, the Chair would recognize our next panel. It is the Honorable Mark Boughton, mayor, city of Danbury, CT; the Honorable Rudy Marconi, first selectman, town of Ridgefield, CT; the Honorable Nicholas H. Mullane II, first selectman, town of North Stonington, CT; and Mr. Jeffrey R. Benedict, Connecticut Alliance Against Casino Expansion.

Gentleman, we will invite you to stay standing and I would like to swear you in. Raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. Note for the record our witnesses have responded in the affirmative.

First Selectman, is it Mullane? I want to make sure I am pronouncing your name correctly. Is it Mullane?

Mr. MULLANE. Mullane.

Mr. SHAYS. Mullane. And I want to say to you that we have had many contacts, and I introduced and spoke well of the two elected officials closest to the Fourth Congressional District, but I do need to put on the record you are probably the most knowledgeable of anyone at the table about these issues; you have been fighting them for so many years, as I think both Mark and Rudy would agree. And so you do honor the committee as well, and I should have certainly recognized your incredible contribution over so many years. You have been fighting a long and lonely battle, and I think our two mayors on your right are hoping they don't have to go through the same process.

So, with that, Mayor Boughton, welcome.

I am going to ask that your testimonies be 5 minutes. If you trip over a little bit, we can live with that, but it would be nice if we could stay within the 5-minute area. Thank you.

**STATEMENTS OF MARK D. BOUGHTON, MAYOR, CITY OF DANBURY, CT; RUDY MARCONI, FIRST SELECTMAN, TOWN OF RIDGEFIELD, CT; NICHOLAS H. MULLANE II, FIRST SELECTMAN, TOWN OF NORTH STONINGTON, CT; AND JEFFREY R. BENEDICT, CONNECTICUT ALLIANCE AGAINST CASINO EXPANSION**

Mayor BOUGHTON. Thank you, Mr. Chairman. Let me just thank you for inviting us down here to testify today on a very important issue, and, on a personal note, we have often talked and I don't know if you remember that I was your intern, when I was in high school, in the legislature. You did a great job then; you are doing a great job down here.

Mr. SHAYS. Well, you did a great job then and you are doing a great job now.

Mayor BOUGHTON. I learned from the master.

Mr. OSE. Is this for the record?

Mr. SHAYS. This is definitely for the record. He is under oath.

Mayor BOUGHTON. That is right.

In addition, Congressman Simmons and I have worked together closely when I was in the legislature as well in Connecticut, and it is ironic that, today, the closing day of the legislature, we are no longer having this debate regarding Indian recognition in Hartford, we are now having it here in Washington, DC.

I want to just address one quick comment that Ms. Rosier made when she was here. It is unfortunate she couldn't stay, but she made the comment about how, in other communities in other States, the Native American tribes and the States and the local municipalities are working together to address some of those issues, and I think that really is the underlying fundamental flaw of this process. It really underscores the challenge that we face, because, in Connecticut, we are a geographically small region, and because of that the recognition of a tribe has a much greater impact when you have more tribes in a small region. So we are not talking about the west or the southwest, where there are literally hundreds of thousands of acres in various States and it is not a big deal. In Connecticut it is a big deal because this State, my State is rapidly approaching the point where we will be four or five sovereign nations in a very tight geographical area that will ultimately run every aspect of our lives: our culture, our politics, our industry, ultimately our sense of identity of who we are as a community. And that is really the problem for us, is how do we juxtapose the right of the Native American peoples to right a wrong that they have had over history, along with the huge forces that are engaged here in the gaming and gambling industry, and, of course, that is your problem that you have to deal with here.

Briefly, I want to mention just two issues. My testimony is on the record and everybody has had an opportunity to read it, but two issues that strike me as being somewhat challenging for all of us. The first is the issue of curing the deficiencies mentioned again by Ms. Rosier when she was here earlier in the day. This, to me, is mind-boggling and baffling the way the process works. And being an ex-history teacher and somebody who taught high school, the only way I can really look at this is that it is analogous to giving a test to a student, in this case recognition. You get back the test

with a failing grade, you say you didn't make it, you failed. You then go give the tribe the answers to the test. They turn the test back in and they fail again. Then you go to your colleagues, your fellow teachers and you say, hey, how do I give these people a passing grade? Tell me how to get there from here.

And that is ultimately what happened within the BIA. And we know that because of that internal memo that was circulated throughout the State and ultimately down here. They admit, the BIA admits this tribe does not meet the seven criteria. And in other cases of recognition, not meeting those two standards has been fatal to an application process. Those tribes were not recognized. And so for us to now turn around and do a 180 and say now you do become a tribe clearly is troubling for all of us. So the process in itself is absurd, and this issue of being able to cure the deficiencies, in my estimation, is absurd as well.

I think the other issue that we have to look at is what prompted the sudden change of heart by the BIA. Why would an organization ignore the very rules that has promulgated to arrive at a conclusion in its final determination that was different than one that was articulated in the preliminary determination? And for municipalities, we have to ask the question what is the point of having rules if we are not going to follow them? The rules become a moving target. We have talked about transparency today. There is no transparency because we have nothing to look at because the rules change every time we try to address them. So for my municipality and other municipalities dealing with this issue, the challenge for us is that, amongst all the other things we have to deal with, we now have to deal with a process that is undefined, open-ended, and in some cases has been in unchartered territories.

The other issue I think that merits discussion a little bit today is the post-recognition period. In the case of the Eastern Pequots, we are in a twilight zone, as a previous speaker has mentioned. We are not quite sure where we are because nobody has ever appealed the recognition of a tribe before. But the post-recognition of a tribe that proceeds to open a casino is really where the dollars are generated. Once the gaming operations have begun, as I mentioned in my opening comments, that is when life changes as we know it. And, in Connecticut, because, again, of our small geographic region, there will be a totally different way of life throughout the State of Connecticut if these tribes are allowed to go forward and open casinos. So I think it is critical that discussion happen.

I know it is important to talk about people like Fred DeLuca of Subway Sandwich Shops, or Donald Trump of the recent Apprentice fame, or Thomas Wilmot, a New York mall developer who has bankrolled these tribes, but ultimately it is the fallout of the tribes that we have to deal with in our municipality; and what do we do with issues like annexation, that we talked about earlier.

So those are some things that I think we should be discussing today, and I ask that you consider legislation that would gain control of this process. We mentioned some thoughts already today.

Take the seven criteria, make them Federal law so that we don't have a moving target any longer, and then certainly ask to help us participate in the recognition process by making these changes.

Thank you.

[The prepared statement of Mr. Boughton follows:]

**Testimony of Mark D. Boughton**
**Mayor- City of Danbury, Connecticut.**

**Before the Government Reform Committee**
**Hearing on status of the American Indian tribal recognition process**
**Administered by the Department of the Interior, Bureau of Indian Affairs.**

**May 5, 2004**

Mr. Chairman, members of the committee, I would like to thank you for the opportunity to address a critical issue that is facing our Nation, the great state of Connecticut, and the City of Danbury.

In the past I have testified to the House Committee on Resources regarding the issue of tribal recognition and the process that is laid out by the Bureau of Indian Affairs. I will tell you today, as I have said in the past, that the process is broken. Let me be even clearer, ***the process does not work.***

This process is not about recognizing a wrong that was perpetrated on a group of people who have suffered at the hands of a nation bent on repression and in some cases genocide. The tribal recognition process regarding the Schaghticoke Tribal Nation and the Eastern Pequot's is and always has been, about Casino gambling and the high powered investors who drive the recognition process. The key to recognition is that we must divorce the recognition process from gambling and the special interests who seek to corrupt the process.

Why do I say this? Let's take a look at the Schaghticoke Tribal Nation recognition. In this case, the ***preliminary*** finding of the BIA stated that the Schaghticokes ***were not a tribe*** and did not meet the criteria for recognition. Specifically, the BIA cited the lack of political authority for the tribe during several key times throughout our history and the failure to

exist as an intact social community from colonial times to the present without any significant gap in time. This is a critical component of the process and in the past has been fatal to an acknowledgment petition. I believe that the BIA was correct in making its finding. The BIA set its rules and then applied those rules to the Schaghticoke application to see if it met the criteria. The system appeared to work. As a mayor of a city that had been identified as a potential location for a casino we were thrilled by the BIA's ruling.

Then the shoe dropped. The recognition process allows a tribe to address the deficiencies that have been identified in an application before the final decision is made. As a former teacher, this would be analogous to giving a test to a student, giving back the test with a failing grade, give the student the answers, and then rescore the test. If the student still did not pass, I would then go to my colleagues and say "read this essay, tell me how I can give a passing grade to this student" sounds absurd right? This is exactly what happened in the case of the Schaghticoke Tribal Nation. How do we know this? Because of the internal memo that was drafted at the request of The Office of Federal Acknowledgement (OFA). In that memo, OFA admits that it "can't get there from here". In other words, the Schaghticoke application ***does not meet several critical parts of the steps necessary for recognition.***

What prompted the sudden change of heart by the BIA? Why would an organization ignore the very rules that it has promulgated to arrive at a conclusion in its final determination that is different than the one that was articulated in its preliminary determination? What is the point of having rules if the BIA itself does not follow them? One can only speculate at the forces that were at work at the BIA to change the proposed finding to one of recognition for the Schaghticoke Tribal Nation.

The result of the process is that the rules are a constant moving target. As a municipality involved with the recognition process, we have no idea what to address in an application because the BIA keeps changing the rules. This leads to a process that is suspect at best and deeply flawed at its worst. Without strict guidelines, the decision maker in the

recognition process is free to interpret the rules as he or she sees fit, or at worst, ignore the regulations all together.

The impact of recognition of a tribe on Connecticut is profound. Recognition in Connecticut is different than that of recognition of the tribes in the southwest and the far west. The tribes of the west are descendents of a noble people who experienced suffering and exploitation at the hands of the Americans who were settling on lands that had been lived on for thousands of years. In Connecticut, groups seeking recognition are backed by people like Fred Deluca owner of Subway Sandwich Shops, Donald Trump of recent "The Apprentice" fame, and Thomas Wilmot a New York mall developer. These gentleman are not bankrolling these groups because they are concerned about the plight of Native Americans in Connecticut, they are interested in only one thing. Opening a Casino in Connecticut. These gentlemen have an unlimited amount of resources they bankroll the applications and wait for their payday. As a mayor of a municipality that is still recovering from the fallout of 9/11 and an economy that is still mending, opposing a prospective recognition is one more costly problem. When the BIA continues to reinvent the rules of recognition, it is even more difficult. In my small state we currently have four tribes that are recognized and more applications are on the way. Because of our location between the metropolitan centers of Boston and New York, we are an attractive place for casino development and the investors know it.

The political influence of these entities is far and wide in our state. Soon, because of the high stakes that are involved, it is my fear that Connecticut will be carved up into 4 or 5 sovereign nations with gambling as the exclusive industry. This scenario is a real possibility unless action is taken by Congress. Because of the immense wealth available to the tribes with casinos, these tribes will dominate every aspect of our lives. Our politics, our culture, our social fabric will be changed forever.

My city, located just seventy miles from New York City and home to a diverse economic base ranging from pharmaceuticals to light manufacturing and corporate development. A city that has one of the lowest unemployment rates in the country, recently recognized as

one of the safest cities in the United States of America, will become a host to a casino that would service tens of thousands of visitors twenty four hours a day, three hundred and sixty five days a year.

Already, I have been notified by several of my CEO's of our major corporations that they will move if a casino is located in Danbury. This would be catastrophic to our economic base and our identity as a community. The Schaghticoke Tribal Nation as already placed land claims on thousands of acres in Connecticut. This entity will reign over every aspect of life in western Connecticut.

The recognition process is the only vehicle we have as a municipality to participate in the casino issue in Connecticut. I ask that you consider the transparency of this process. I ask that you level the field so that we can understand what the rules are and how best to address them. I ask that you consider legislation to gain control of the process and put in law the seven criteria necessary for recognition. Thank you for your time and I would be happy to answer any questions.

Mr. SHAYS. Thank you.

The Chair would now recognize the first selectman of Ridgefield, Rudy Marconi, who happens to be one of my 600,000 bosses.

Mr. MARCONI. And we represent a lot of people here today collectively. And thank you, Mr. Chairman, for inviting me here today to submit the following testimony on the Bureau of Indian Affairs Federal recognition process.

As the first selectman of Ridgefield, CT, a town of 24,000 people, I sit here today to ask you to consider a reform to the Federal recognition process. Over the past 2 years, our municipality, along with many others in the State of Connecticut, has spent considerable amounts of money in an effort to be heard in an otherwise broken process. I ask all of you why? Why isn't a city or a town notified and asked to participate in what I thought was an open and honest process, especially a decision that can have as serious and as long-term consequences as the BIA's recognition of the Schaghticoke Tribal Nation.

State and local governments work diligently to solve problems such as traffic, housing, education, and other quality of life issues that seriously impact our budgets. In one unjustified, ill-advised decision, the BIA has laid the foundation to destroy the quality of life that we have worked every day to preserve, without even asking for our thoughts. How can this system be permitted to continue without a serious overhaul?

In Chairman Davis' cover letter, he asked that I focus my comments on the integrity, transparency, and accountability of the recognition determinations. On integrity, there is no integrity in the system. Call it what you want, unimpaired, sound, honest, moral, trustworthy. It just doesn't exist. When the decision was made to recognize the Schaghticoke Tribal Nation, even though, "evidence of political influence and authority is absent or insufficient," and even though a substantial and important part of its present day social and political community are not on the current membership list, the decision lacks integrity.

On transparency, under no circumstances can anyone believe the Schaghticoke decision to be clear, obvious, or easily understood. At no time did the petitioner satisfy in total the seven mandatory criteria for recognition that should be enforced and relied on in the process. Instead, the decision was made to be, "consistent with the intent of the acknowledgment regulations." However, the regulations provide that a petitioner shall be denied if there is insufficient evidence that it meets one or more of the criteria. As a result, one must conclude that this decision is fraught with confusion and contradictions.

Accountability, a word that has been used by all of us during campaigns and promises to the people who elect us. The BIA must be held accountable for their decisions. As it exists now, they are accountable to no one. We now, as interested parties, must spend precious taxpayer dollars to protect our rights and to protect our quality of life. We must exhaust every appeal and whatever other legal remedy may exist to prevent the occurrence of another casino in Connecticut.

In previous testimony, an internal BIA memo has been cited, "acknowledged the Schaghticoke under the regulations, despite the

two historical periods with little or no political evidence." Ladies and gentlemen, this is exactly what has been done, and I ask you who will be held accountable for this decision, an action that is in direct violation of the regulations and can set a precedent for future petitions. The people who elect us expect and, in fact, demand that we, as elected officials, place integrity foremost in our responsibilities to them. They ask that we at all times be honest and clear with our decisions and open to the public. And, finally, we are required to be accountable to them, the residents and the taxpayers, so why is it unusual to expect this of any other government agency? Thank you.

[The prepared statement of Mr. Marconi follows:]

**Testimony Prepared for the House Committee on Government Reform, May 5, 2004**
**Prepared by Lynn-Marie Wieland**
**For CACE of Ridgefield, Connecticut**

First Selectman Rudolph Marconi believes the people of Ridgefield have a right to be a part of the decision making process in his administration. For this reason, he asked the people of Ridgefield to express their opinion of the BIA recognition process (Appendix I) and has allowed Citizens Against Casino Expansion (CACE) to submit their opinions of the process for inclusion in the Congressional Record.

In 1978, when the procedures for tribal recognition where established (25 U.S.C. section 83), full public disclosure of the process was not necessary. By and large, tribal recognition and federalization of Indian lands did not have a large impact on the surrounding communities. This has changed. With many Indian groups rushing from recognition to casinos, communities surrounding the reservations, and non-contiguous Indian lands find their way of life threatened by the establishment of casinos. This threat often comes with no prior warning as in the case of Ridgefield, Connecticut. In interviews conducted with the media, Chief Velky of the Schaghticoke Tribal Nation was stating his intention to construct a casino on the Danbury/ Ridgefield border before the First Selectman had been informed that the Schaghticokes had submitted a petition for acknowledgement. Mr. Marconi was attending a breakfast meeting in a local diner, when he learned of the intentions of Schaghticoke Tribal Nation's leader.

When a petition for acknowledgement is submitted, the BIA only needs to inform the governor and the attorney general of the state in which the petitioner is located (25 U.S.C. section 83.9). Not only are the affected communities left in the dark in the beginning of the process, but they also find their access to tribal submissions and BIA records impeded. There are no procedures for providing interested third parties with information, especially early in the procedure. Third parties are allowed to comment on the merits of a petition prior to a proposed finding, but there is no mechanism to provide any information so that the third party can understand the petition, and comment on it intelligently until after the proposed finding is made public. Even after the proposed finding is published, the Privacy Act hampers third party research. Membership lists and

demonstration of descent are considered to be sensitive information, therefore, not subject to release (GAO 2001: 19).

The recognition process has become linked to the establishment of Class III gambling on the reservations of the federally recognized Tribes. If anyone should doubt this, compare the two graphs in Figure 1 taken from the GAO report (2001: 15, 35). The rise in petitioning groups begins in 1989, the year following the passing of IGRA, as does the rise in Indian gambling revenues.

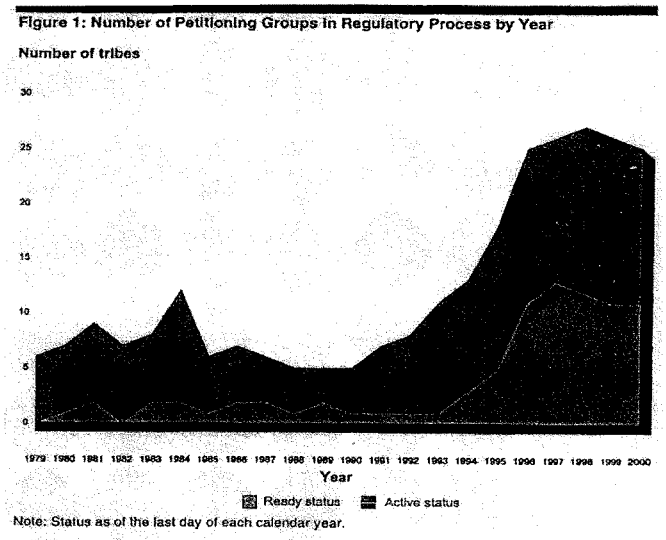
Special interest groups funded the research for the Schaghticoke Tribal Nation's recognition process. The towns had to find money within their own municipal budgets to fund research, pay legal fees, and administrative expenses to keep current in the petitioning process. The Town of Ridgefield, separately and as a part of the Housatonic Valley Council of Elected Officers (HVCEO), researched the effect of a casino in our area. The traffic impact study financed by HVCEO brought home how seriously a casino on the border would affect our town. The traffic in town would increase dramatically. For example, the traffic on Main Street would increase 100 percent (Appendix II). Our town and surrounding towns could be destroyed by a process over which we had no control. The recognition procedures does not encourage community participation in the process.

In his testimony, First Selectman Marconi commented on the lack of integrity and transparency of the recognition determinations. There are seven mandatory criteria that must be met by an Indian community before it can receive Federal Recognition as a Tribe (25 U.S.C. section 83.7). The criteria are good, if the BIA would follow them.

The BIA recognized the Schaghticoke Tribal Nation even though the community lacked political influence and authority for two historical periods, and the membership list was incomplete because of political conflict within the group. The BIA concluded, "*a single political body continues to exist, not withstanding the absence from the certified membership list of an important segment*[1] *of those involved in Schaghticoke Tribal Nation political processes....*" This part of the decision flies in the face of the criterion Section 83.7(e) that states, *"The petitioner's membership consists of individuals who*

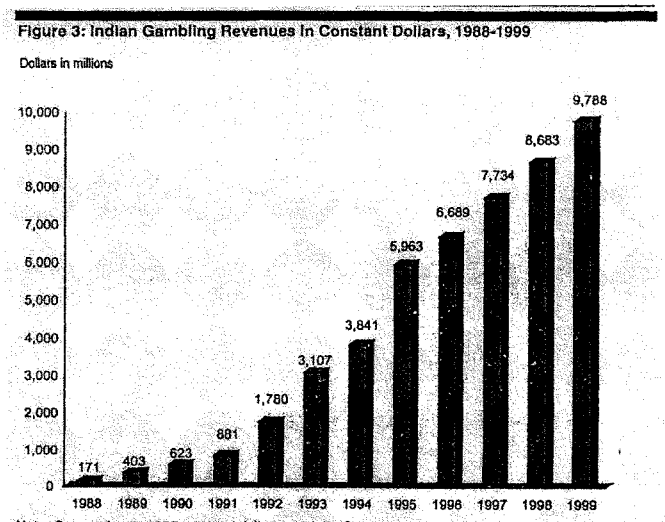
[1] Underlining the author's

**Figure 1. Petitioning Groups and Indian Gambling Revenues**




Note: Status as of the last day of each calendar year.

Source: BIA.




Note: Conversion to 1999 constant dollars used the Consumer Price Index.

Source: *Tax Policy: A Profile of the Indian Gaming Industry* (GAO/GGD-97-91, May 5, 1997) for years 1988 to 1994 and National Indian Gaming Commission data for years 1995 to 1999.

*descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity."*

Nowhere in the criteria are unenrolled members used to establish the identity of a political body or tribal membership. To the contrary, *an official membership list, separately certified by the group's governing body, of all known current members of the group* [Section 83.7(e)(2)] must be submitted to the BIA. The criteria do no good, unless they are followed.

The reason for recognizing the Schaghticoke Tribal Nation was given in a Schaghticoke Briefing paper (2004: 3). *"Recognition was given on the grounds that it is the most consonant with the overall intent of the regulations"*, or on page 4 same document *"as consistent with intent of the acknowledgment regulations."* There is nothing readily understood, clear, easily detected or perfectly evident about this decision. The First Selectman is correct, the process lacks transparency.

The BIA's application of the criteria or lack there of threatens the integrity of the process. The system is not sound. It is impaired. It lacks integrity. As long as the BIA follows the intent of the regulations and not the content of the regulations, the procedure will be governed by hidden agendas. The process will remain inaccessible to the citizens of towns and states affected by the partnership of Tribal Recognition and Class III gambling.

In its response to the GAO report (Appendix III), the BIA outlined changes that they were willing to make to repair the recognition process. To my knowledge, these changes have not been made. Like the criteria they have integrity and transparency and also like the criteria, the BIA does not implement them.

The Indians are using money given to them by gambling interests to influence the political process. Where does that leave the communities located near the reservations? *"The end result could be that the resolution of tribal recognition cases will have less to do with the attributes and qualities of a group as an independent political entity deserving of a government-to-government relationship with the United States and more to do with the resources that petitioners and third parties can marshal to develop a successful political and legal strategy."* (GAO 2001: 19).

Without the leadership of an informed, aggressive First Selectman, and private citizens willing to expend their own time, money and expertise, we would not have been able to protect ourselves and influence the political process as we have done. What happens in towns throughout the country without this combination of resources?

In his statement, First Selectman Marconi stressed his accountability to his electorate. He is not the only one accountable to us. You, too, are accountable to us, and it is time that you fix the Recognition Process that is threatening our towns and our quality of life.

**CACE Officers**

Ronald Koprowski Chair
David Wood Vice Chair
Patricia Baker Publicity Chair
John McVeigh Legislative Chair
Anthony Giobbi Logistics Chair
Lynn-Marie Wieland Research

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Buckhurst Fish and Jacquemart, Inc.
Traffic Impacts of a Danbury Casino on the Greater Danbury, CT Area.
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January 12, 2004.

United States General Accounting Office Report to Congressional Requesters. Indian Issues. Improvement Needed in Tribal Recognition Process.
2001.

**Appendix I**
**E-Mails From Ridgefield Residents**

**Summary**

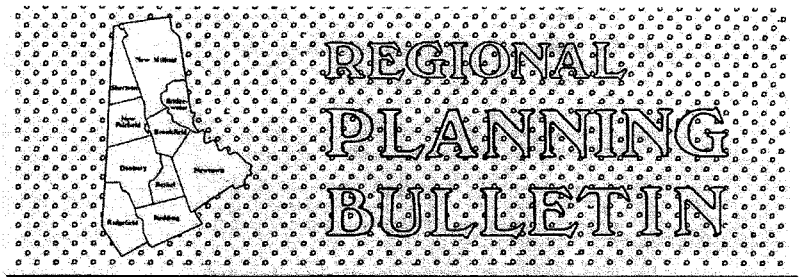
The overriding sentiment expressed by citizens is that recognition equates to casinos. Citizens are concerned that a federal bureaucracy has circumvented established procedures to make arbitrary recognition decisions ifluenced by gaming interests who seek to make extraordinary profits by exploiting a flawed process.

Citizens feel that their own government is discriminating against them because money is tilting decisions in favor of a select group of citizens, who are granted rights without meeting the federal criteria to the detriment of everyone else.

The second overriding concern expressed by citizens is that these arbitrary decisions will, if not reversed, will forever destroy a quality of life that they have worked so hard to preserve, and they have no voice to oppose these forces; somehow this has got to be unconstitutional.

Prepared by Anthony Giobbi

**Appendix II**




Housatonic Valley Council of Elected Officials

Bulletin No. 105 October 2002

Executive Summary

Traffic Impacts of a

# DANBURY CASINO

on the Greater Danbury, CT Area

I-84 looking west near Exit 2 (Danbury, CT)

I-684 looking south, south of I-84 (North Salem, NY)

October 18, 2002

Prepared for the

**Housatonic Valley Council of Elected Officials**
**Greater Danbury Chamber of Commerce**
**Housatonic Valley Tourism Commission**
**Housatonic Valley Economic Development Partnership**

by

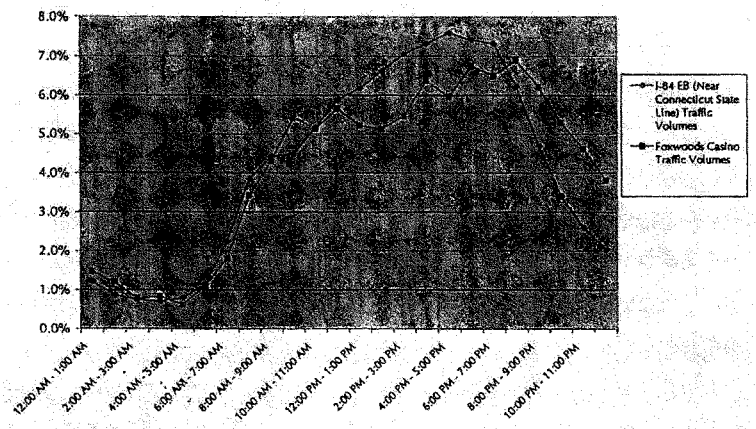
**Buckhurst Fish & Jacquemart Inc.**
in association with
**Urbanomics**

EXECUTIVE SUMMARY

Buckhurst Fish & Jacquemart, Inc. (BFJ) was retained to prepare a traffic impact study for the Housatonic Valley Council of Elected Officials (HVCEO) and other regional organizations in the Danbury Area to evaluate the traffic impacts associated with a potential casino development in Danbury, Connecticut. The goal of the study is to examine the extent to which a major gaming facility would affect traffic and economic conditions in the region. We assumed that the casino would be built on the former Union Carbide site located on the south side of I-84 between Exits 1 and 2.

We assumed a test casino with 15,000 gaming positions. This is 34% larger than the Foxwoods Casino and 160% larger than the Mohegan Sun in 1997. We consider this a conservative estimate of the potential size of the casino, because of its close proximity to the New York metropolitan region.

**Figure 2**
**Comparison between I-84 EB Friday Hourly Traffic Volumes and Foxwoods Casino Inbound Traffic Volumes**




Based on the accessibility analysis of the casino in relation to the primary market area, the distribution of the traffic was estimated for the principal directions of travel. This calculation led to the estimate that approximately 74% of the trips would come from the west and 21% would come from the east via I-84. It is assumed that 40% of the patrons coming from the New York Metro area (via I-684) and 25% of the patrons coming from the east would be traveling by bus or a combination of rail and local bus. To achieve such a high share of trips by mass transportation the casino operators would need to undertake an aggressive program to attract patrons and employees to the transit system.

Based on the above assumptions it is estimated that the Danbury Casino would generate a total of 52,000 vehicle trips on a Friday and 62,000 vehicle trips on a Sunday. Daily traffic volumes on I-84 west of the project site would increase by 49% to 56%, while daily traffic volumes east of the site between Exit 2 and Exit 3 would increase by 21% to 22%. Along I-684 daily traffic volumes would increase by 56% to 57%. Traffic demand will exceed available capacity to a substantial degree at the I-684/I-84 interchange for the south-to-east ramp as well as the east-to-south ramp, and along I-84 between the I-684 interchange and Exit 2 in Connecticut. Traffic demand also exceeds available capacities along Rte 7 south of I-84 and at Kenosia Avenue and Mill Plain Road.

**Percent Increase in Daily Traffic Demand**

| | Friday | Sunday |
|---|---|---|
| I-684 south of I-84 | 56% | 57% |
| I-84 west of Casino | 49% | 49% |
| I-84 east of Casino to Exit 3 | 21% | 22% |
| Route 7 south of I-84 | 14% | 14% |
| Rooute 7 north of I-84 | 2% | 2% |

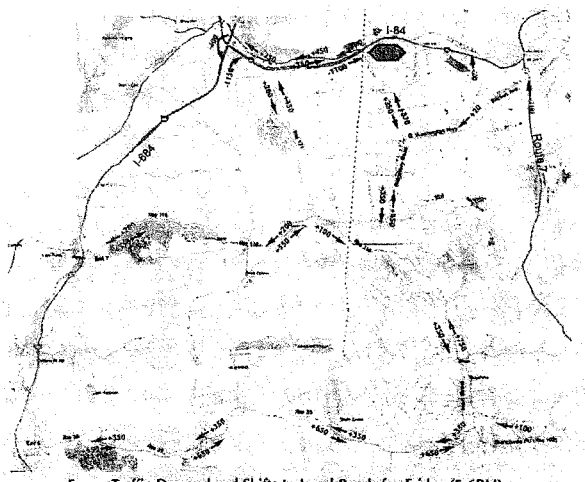
**Additional Vehicle Trips**

**Friday (24-Hr)**

| | Autos | Buses |
|---|---|---|
| Trips to and from the West | 35,219 | 1,277 |
| Trips to and from the East | 11,974 | 228 |
| Trips to and from Local Roads | 3,574 | 23 |
| **Total** | **50,767** | **1,528** |

**Additional vehicle trips for a typical Sunday are higher compared to a typical Friday**

During the hours when traffic demand exceeds capacity – primarily the afternoon and evening peak hours and on Sunday evenings – substantial amounts of traffic would shift from the regional freeways onto local roads in the Towns of North Salem, NY, and Ridgefield, CT and in the City of Danbury. Traffic shifts from I-684 and I-84 will most likely use Route 116, Route 121, Route 35 and Ridgebury Road, while traffic shifts from Route 7 will take Backus Avenue to George Washington Highway, as well as Branchville Road (Route 102) to Route 35 and Ridgebury Road. During the Friday and Sunday peak hours it is estimated that about 1,100 to 1,200 vehicles per hour would shift to Ridgebury Road. Peak-hour traffic volumes along Ridgebury Road north of Route 116 would almost triple, thus creating substantial delays and quality of life issues in this corridor. Peak-hour traffic along Main Street (Rte 35) in Ridgefield would increase by 75 to 100%.




**Excess Traffic Demand and Shifts to Local Roads for Friday (5-6PM)**

A casino at the former Union Carbide site in Danbury would have significant impacts on the I-84 portal to Connecticut and would negatively impact much of the State of Connecticut. Over the last 10 to 20 years this portal has become more vital to the state as the I-95 corridor has become more congested. A casino in Danbury would create tremendous bottlenecks at this portal.

A significant impact of the Danbury Casino would be the effect on the number of crashes along I-84, since the casino traffic is more prone to accidents than regular traffic. It is estimated that an additional 195 crashes per year could occur along the 12-mile section of I-84 between I-684 and Exit 8 in Connecticut as a result of the casino-related traffic. Of the total additional crashes per year, there would be 51 injury crashes and 2 fatalities each year. The annual cost of these crashes is estimated at $13.3 million.

*** Estimate of Additional Crashes and Crash Costs***

| | I-84 | |
|---|---|---|
| Crash Type | Crashes | Cost (2000$) |
| Fatal Injury Crash | 2 | $7,600,000 |
| Non-fatal Injury Crash | 51 | $4,992,900 |
| Property Damage Only Crash | 142 | $738,400 |
| Total per year | 195 | $13,331,300 |

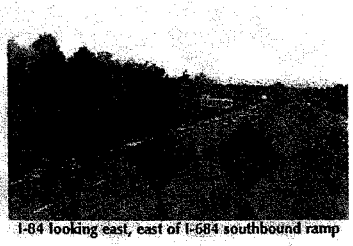
The additional vehicle miles of travel generated by the Danbury Casino are equivalent to the vehicle miles of travel of 6 Danbury malls or 25 Union Carbide Office Headquarters. The major reason for this substantial traffic impact is that the casino trips are much longer than the trips being made to a mall or to an office destination.

The travel delays caused by the casino traffic also have a significant impact on the region's economy. Direct economic costs related to increased traffic delays in the region have been estimated at a total of $8.6 million per year (2002 dollars). This cost only includes the annual time loss of the traffic circulating in the region and does not include any indirect costs.

A majority of this cost will be borne by businesses as a result of delays incurred by trucks and business travelers. Businesses in the region will lose $4.9 million annually due to lower productivity and loss of work hours as a result of travel delays.

In addition to the direct costs to the region, there are the indirect or induced costs related to the delays and reduced accessibility: relocation costs of businesses and households, loss of employee productivity and business earnings, property value reductions due to reduced accessibility, etc. These indirect or induced costs are expected to be substantial, such that the total economic disbenefits may be more than double the direct costs related to the delays. A more detailed economic impact analysis should be undertaken to estimate the full economic costs of the proposed casino.

I-684 northbound ramp to I-84 eastbound



I-84 looking east, east of I-684 southbound ramp

**Appendix III**

# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 10 2001

Mr. Barry T. Hill
Director, Natural Resources and Environment
General Accounting Office
Washington, D.C. 20548

Dear Mr. Hill:

Thank you for this opportunity to comment on the draft report of the General Accounting Office (GAO) entitled "Improvements Needed in Tribal Recognition Process." We have worked continuously with the GAO since November 2000 in a cooperative effort to explain the Federal acknowledgment process and its legal foundation.

The acknowledgment of the existence of an Indian tribe, which has inherent sovereignty and a government-to-government relationship with the United States, is a serious decision for the Federal Government. It is important that a thorough and deliberate evaluation occur before we acknowledge a group's tribal status, which carries with it certain immunities and privileges. These decisions must be equitable and defensible. The existing criteria should not be changed in an attempt to quicken the pace of the process. We are pleased that the GAO has recognized these points.

The GAO has recommended to the Secretary of the Interior that Federal acknowledgment decisions made in the regulatory process of the Department of the Interior be more predictable and timely. We concur with these two general recommendations. The GAO accepts the existence of an acknowledgment process within the Department of the Interior, but suggests that improvements be made to that process. We are enclosing a detailed response to the GAO's recommendations which outlines the steps the Bureau of Indian Affairs (BIA) will take to analyze the resources required for this function and to develop strategic action plans for implementing specific improvements in this process.

Your first recommendation is that the Secretary should direct the BIA to "provide a clearer understanding of the basis used in recognition decisions by developing and using transparent guidelines that help interpret key aspects of the criteria and supporting evidence used in federal recognition decisions." We believe that precedents from acknowledgment decisions, as well as from earlier court findings, statutes, and administrative actions which served as the basis for the acknowledgment regulations, provide guidance to petitioners, interested parties, the BIA staff, and the Department's decision makers. We agree that these precedents can and should be made more readily available. We will develop a plan both to make these precedents more accessible and to provide clearer guidelines to the regulations, and thus to assure consistency and improve public understanding of acknowledgment decisions.

Your second recommendation is that the Secretary should direct the BIA to "develop a strategy that identifies how to improve the responsiveness of the process for federal recognition." We have identified potential changes to improve the timeliness of the process and will develop a plan to implement effective reform. The GAO specifically recommends that the strategy "should include a systematic assessment of the resources available and needed" and the development of "a budget commensurate with workload." The GAO has found that since 1993 the resources available to the acknowledgment function decreased even as the demands on it increased. We will analyze the acknowledgment workload, prepare a needs assessment and develop a strategy that will result in decisions being made in a more timely manner.

An enclosed paper lists steps to respond to the GAO's recommendations and to the problems it has identified. The paper specifies both immediate actions and potential actions we will consider for inclusion in our strategic action plans. In addition, this paper includes substantive comments on aspects of the GAO's report other than its specific recommendations. We are also enclosing technical comments to correct or clarify certain statements or statistics contained in the GAO report.

We share the goal of improving this important Federal function to serve Indian tribes.

Sincerely,

Neal A. McCaleb

Assistant Secretary - Indian Affairs

Enclosures

THE ASSISTANT SECRETARY - INDIAN AFFAIRS'
RESPONSE TO THE GAO REPORT: OCTOBER 2001

The Assistant Secretary - Indian Affairs (AS-IA) submits the following substantive comments and plan of action in response to the two major "Recommendations to the Secretary of the Interior" listed on page 20 of the October 2001 draft GAO report, *Indian Issues: Improvements Needed in the Tribal Recognition Process*.

**Response to GAO Recommendation A**

To ensure more "predictable and timely" tribal acknowledgment decisions, the GAO Draft Report recommends that the Secretary of the Interior direct BIA to:

> **Provide a clearer understanding of the basis used in recognition decisions by developing and using transparent guidelines that help interpret key aspects of the criteria and supporting evidence used in federal recognition decisions.**

We concur with the GAO recommendation that there needs to be a clear understanding and presentation of the basis for evaluating evidence when making acknowledgment decisions. In response to this recommendation, we will develop expanded guidelines which will discuss in depth specific issues raised by GAO, such as "time gaps" and the percentage of members descending from historical tribes, and other topics, including some not raised by GAO. Unlike the 1997 *Official Guidelines to the Federal Acknowledgment Regulations*, which are aimed at the general public and focus principally on how the process works, these new guidelines will be aimed at researchers for the government, third parties and petitioners and explain in detail how evidence is evaluated and how precedents are used as a guide to evaluating evidence.

In addition, we also believe that many currently available documents, including the regulations at 25 CFR Part 83, previous decisions and technical reports, the 1978 *Regulations, Guidelines and Policies*, and 1997 *Official Guidelines to the Federal Acknowledgment Regulations*, court decisions on acknowledgment issues, policy statements, and letters to petitioners or others which furnish advice and interpretations of the regulations, provide useful sources and guidance for understanding how evidence is evaluated during the decision-making process. While these records have always been available to the petitioners, all interested parties, and the public, they have not been compiled as a single body of material and made available in easily accessible locations.

In response to the above concerns, the BIA will develop a strategic plan to provide petitioners, interested parties, and the public a "clearer understanding of the basis" of acknowledgment decisions. This will include some steps which may be accomplished in a very short time and other steps that will require more time to develop. Further additional steps may be identified during the

strategic planning process. The Branch of Acknowledgment and Research and the Office of Tribal Services will be the program offices charged with implementing the plan of action.

The Action Plan for Recommendation A

We will formulate a strategic action plan that will include developing guidelines that interpret key aspects of the criteria and the supporting evidence used in Federal acknowledgment decisions. As part of this plan, we will also compile and make easily accessible existing materials which interpret the criteria and the supporting evidence used in decisions. The development of the action plan will include careful consideration of the importance and means of implementing the following actions:

- Update and augment the 1997 *Official Guidelines to the Federal Acknowledgment Regulations*;

- Update the *Acknowledgment Precedent Manual*, and make it available on the BIA-BAR web-page; create an accompanying index system with links to discussions of topics in documents also on the BIA-BAR web-page [see below] so that researchers and evaluators can immediately access technical assistance letters, reports, decision and court documents on topics such as "gaps," "informal authority," "village-like setting," etc.;

- Develop a plan to update the *Acknowledgment Precedent Manual* as needed when new decisions are issued;

- Provide all acknowledgment decisions, including proposed findings, final determinations, reconsidered decisions, summaries under the criteria, technical reports and *Federal Register* notices, on the BIA-BAR web-page;

- Provide pertinent technical assistance letters, letters with advice, policy statements, and interpretations of the regulations, and any other guidance on the BIA-BAR web-page;

- Provide all unpublished court decisions involving acknowledgment issues and make them available on the BIA-BAR web-page; provide citations to published court decisions involving acknowledgment issues and provide links to such decisions;

- Provide all IBIA acknowledgment decisions and accompanying documents by creating links between those findings on the Department web-site and the BIA-BAR web-page;

• Assign a web-page manager to maintain and to add key documents to the web-page in a timely manner;

• Compile on CD-Rom the acknowledgment decisions and related documents, the 25 CFR Part 83 regulations, the updated 1997 *Official Guidelines* and the *Acknowledgment Precedent Manual*, and provide it to BIA agency and regional offices, state libraries, and other regional libraries or archives;

• Consider the creation of an official publication of acknowledgment decisions; and

• Develop any other actions relating to improving the guidance available on the acknowledgment process as may be determined through this strategic planning process.

Time line for completion of action plan: Strategic plan will be developed within six months.

**Response to GAO Recommendation B**

To improve the responsiveness of the Federal acknowledgment process, the GAO Draft Report recommends that the Secretary of the Interior direct the BIA to:

> **Develop a strategy that identifies how to improve the responsiveness of the process for federal recognition. This strategy should include a systematic assessment of the resources available and needed that leads to development of a budget commensurate with workload.**

The AS-IA concurs with the GAO recommendation to improve the responsiveness of the Feder acknowledgment process. The BIA will develop strategies that will address the immediate concerns regarding the current workload, as well as address the long-term goal of making decisions on all documented petitions for Federal acknowledgment in a timely manner.

The AS-IA believes that maintaining the standards of the regulations at 25 CFR Part 83 will ensure that the acknowledgment decisions are consistent with law, and that thorough and comprehensive review will ensure fair and accurate decisions. Therefore, the action plan to improve responsiveness will not be based on any change in the present standards or on a less thorough review of petitions.

The BIA action plan for Recommendation (B) includes three parts:

(1) Perform a needs assessment of current workload and resources;

(2) Examine possible refinements to the procedures, some of which may require regulatory changes or legislative action; and

(3) Implement immediate actions.

Part (1) The Action Plan for Recommendation B -- Needs Assessment

As recommended by the GAO draft report, the BIA will conduct an assessment of resources to support budget proposals commensurate with workload.

The needs assessment will address and make recommendations on all pertinent matters, including but not limited to the following:

- Review current workload, estimated work, and resources required to eliminate the "backlog" of decisions pending for petitioners on active consideration and those waiting for consideration;

- Analyze current non-case workload including administration, litigation, and Freedom of Information Act (FOIA) requests;

- Estimate future workload and resources required for case work, administration, litigation, and FOIA;

- Analyze skills needed to accomplish tasks;

- Assess non-staffing resources available currently, including equipment, computer hardware and software, space, and storage;

- Assess staff training needs, particularly in the areas of technology and management;

- Review staffing needs including overall staffing levels and office organization; number of administrative, professional, and managerial staff, and skill profiles needed to perform predicted workload in a timely and thorough manner;

- Evaluate the use of research assistants, program coordinators, administrative assistants, para-legals, and records managers to deal with FOIA and with other work supporting acknowledgment, including data entry, web-page maintenance, document duplication, and other aspects of electronic technology;

- Consider appropriate use of contracting, and temporary and term appointments for specific functions to decrease workload on professional and administrative staff and to increase flexibility of scheduling;

- Evaluate advanced technology for case analysis and records management;

- Project future equipment and hardware and software needs;

- Project future space and storage needs; and

- Consider whether to seek a separate budget line item for the acknowledgment process.

Time line for presentation of action plan for needs assessment: Strategic Plan will be produced within six months.

Part (2) The Action Plan for Recommendation B – Procedural and Other Changes

We will develop a strategic action plan to improve responsiveness and timeliness by reviewing and examining possible changes in the procedures, in the evaluation of evidence and in the distribution of documents under FOIA. The review will evaluate actions which can be accomplished with the existing regulations, and other actions which will require revised regulations or legislation. This Strategic plan will address impediments to a responsive and timely acknowledgment process and possible resolutions of these impediments, such as those listed below. There may be other actions, not listed below, which will become more evident during this review.

The placement of the acknowledgment function at a relatively low level in the Department's organizational scheme has sometimes been given as a reason the process has lacked predictability and responsiveness. The general question of where the acknowledgment function should be located organizationally and whether a different decision-making structure would facilitate efficient administration may also be reviewed as part of this strategic plan.

The review will consider the following, in addition to other items:

- Review the acknowledgment regulations to determine whether a "sense of urgency" could be instilled in the acknowledgment process by establishing more specific and predictable deadlines for the Department in providing technical assistance and making evaluations, for petitioners in preparing petitions and responding to technical assistance, and for petitioners and third parties in filing comments;

• Devise a priority ranking for petitioners currently on active consideration which defines the order in which their proposed findings and final determinations will be considered; investigate impediments to orderly consideration, such as extensions and other interruptions which compete for staff resources, and propose steps for resolving these impediments;

• Review the effects of allowing negative proposed findings to be issued on a single criterion;

• Review "Changes in the Internal Processing of Federal Acknowledgment Petitions," a "directive" published in the *Federal Register* on February 11, 2000, for possible revisions;

• Eliminate letters of intent to petition and drop groups with only letters of intent from the document maintained by the BIA showing the status of petitioners for acknowledgment; or, require that letters of intent include a governing document, membership list and names of individuals in the governing body and offices they hold.

• Limit each petitioner to one technical assistance review;

• Eliminate reviews prior to active consideration for previous "unambiguous" Federal acknowledgment and expedited negative reviews;

• Require a standard, more efficient format for the submission of petitions and evidence and third party comments;

• Change the evaluation of "continuous existence" from the creation of the U.S. or from the beginning of U.S. jurisdiction rather than from first sustained contact with non-Indians;

• Allow third parties to respond to petitioner's comments during the response period that follows the comment period;

• Allow for the negotiation of time lines with the petitioner and third parties appropriate for each case;

• Impose "sunset rule" deadlines on petitioners to submit completed petitions with supporting evidence and on Department to "close down" the process;

• Address the issues of FOIA requests in the context (1) of providing materials to third parties, (2) of the increase in activity by such third parties, noted by the GAO report, and (3) of the increased load and complexity;

- Ask Congress to provide limited statutory relief from the Privacy Act and FOIA exemptions to allow the release of all information of the documented petitioner, except membership lists and genealogical charts, to third parties;

- Explore whether to allow interested parties to receive copies of all non-privacy documents at specific periods in the process without invoking FOIA and require petitioners to provide copies of their documents directly to interested parties;

- Examine other possible changes to the procedures, the evaluation, the means of providing evidence to the government, and distributing documents to third parties.

Time line for making procedural modifications: Strategic Plan will be produced in six months.

Part (3) Immediate actions

Finally, two actions may be taken immediately, which are:

- The BIA fill the two existing vacant positions in the BAR; and

- New GPRA goals will be established to improve program performance.

Time line for immediate actions: Full current staffing will be achieved within six months. New GPRA goals will be established within six months.

Chairman TOM DAVIS. Thank you very much. You ask some very important questions that we need answers for.

First Selectman Mullane, thank you.

Mr. MULLANE. Thank you for having me here today. I really appreciate this opportunity. Mr. Shays, I want to thank you, Rob Simmons. Mr. Ose, I want to thank you. I made a few comments in front of your hearing 2 years ago, and I appreciate the effort you are making today to hear a subject that is very important to all of us.

There is talk about casinos, there is talk about impacts. My first issue with this subject is in regard to creating a tribe and a sovereign nation and granting land claims. There is nothing more important and significant to me and my town than that.

I testify also today on behalf of Susan Mendenhall, mayor of Ledyard, and Bob Congdon, first selectman of Preston.

I am going to try to jump around and not repeat some of the things that have already been said, and I want to talk about the tribal recognition that is under appeal, the Historic Pequot Tribe. And of yesterday there was an appeal filed for the Schaghticoke.

The historic eastern acknowledgment is a combination of petitioners from two groups, both of whom are longstanding rivals of each other. This is an unprecedented and unwarranted acknowledgment. If I look at the decision, I have to go back to comments that were made in the Department of the Interior Office of Inspector General, and this is some comments by Mr. Gover. The relationship between Gover and the BAR staff was strained from the beginning. Shortly after being appointed, Gover held a meeting with the BAR staff in which he said acknowledgment decisions are political. Our staff considered this an indication of how the Assistant Secretary would rule on findings. BAR and the solicitor who advises them were convinced that Gover did not like the regulatory process set forth and, as a result, would base his acknowledgment decisions on his personal interpretation of the regulations.

When Gover did issue his decisions regarding the Eastern Pequot, the Paucatuck Eastern Pequot, the Little Shell Chinook, contrary to the recommendations of BAR, the BAR staff issued a memoranda of nonconcurrence for each of the four decisions. BAR had never before documented its disagreement with an Assistant Secretary.

His additional comments, I will skip those, but what I want to do is go on and say how do we fix it. True reform must be more meaningful than streamlining. This committee is considering a series of measures, some of which have been introduced by members of the Connecticut delegation to address the shortcomings in the process. Few doubt the need for reform, but the details of actual reform remain in doubt. As a result, we offer five principles of reform to the acknowledgment process.

First, it is our position that Congress alone has the power to acknowledge tribes. It has never been delegated that power to the executive branch, the BIA, nor has it set standards for the BIA to apply in carrying out that power. If Congress must decide who should make these decisions, they have to set rigorous standards, ones that are strict, that cannot be violated, manipulated, moved, or changed.

Second, the acknowledgment process has to be procedures which have been invented by the BIA do not provide an adequate role for interested parties, nor do they ensure objective results.

Third, the acknowledgment criteria must be rigorously applied.

Fourth, if Congress is to delegate the power of acknowledgment to the executive branch, it should not delegate that authority to BIA. The BIA process has evolved into a result-oriented system, at the minimum, which is subject to bias inherent by having the same agency charged with advocating the interest of Indian tribes, also make acknowledgment decisions. The process is also subject to political manipulation. An independent commission created for this purpose would have the same shortcomings unless checks and balances are imposed to ensure objectivity, fairness, full participation by all interested parties and the absence of all political manipulation.

Fifth, because of the foregoing problems, it is clear that a moratorium is needed to be able to establish a proper process. There was a bill, S. 1392, which was a good start. There was another one, 1393, which contains some essentials. Still, I believe that there has to be an ongoing dialog between the towns, the State, the Federal Government that ultimately result in a fair and objective and, most important, a credible system.

I want to comment on one aspect, which is the procedure itself. I frequently hear the complaint, and I heard it today, raised by the petitioners over how long it takes to achieve a final decision and how much it costs. My town has spent $545,000 over an 8-year period of time. The time and cost of government procedures is a legitimate concern; however, I must note that the time problem is less than that of the Federal Government and more that of the petitioners themselves. These petitioners groups take years to develop their argument. For example, the Eastern Pequots spent 17 years developing for their case of acknowledgment; the Schaghticokes took 19. To a large extent, this appears to have been the result of millions of dollars spent on researchers, attorneys, lobbying, media consultants, and so forth, who are searching high and low for every available means to make a deficient tribal acknowledgment claim and establish the basis for positive results.

With the massive infusion of money and resources from petitioners' side, voluminous records are produced that are almost impossible for other parties to deal with or, for that matter, BIA. The petitioners' comments are it's all there, you just don't understand. Although I am not a defender of BIA and its approach to tribal acknowledgment, we must all recognize that a significant part of the problem comes from the petitioners. And what is most frustrating is the supposedly last piece of necessary evidence to complete an application is submitted in the last petitioner's comment period, when no one else can challenge the credibility of that evidence.

[The prepared statement of Mr. Mullane follows:]

TESTIMONY OF
NICHOLAS H. MULLANE, II
FIRST SELECTMAN,
TOWN OF NORTH STONINGTON
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

REFORM OF THE TRIBAL ACKNOWLEDGMENT PROCESS

May 5, 2004

**Introduction**

Mr. Chairman and Members of the Committee, I am pleased to submit this testimony on reform of the federal tribal acknowledgment process. I am Nicholas Mullane, First Selectman of North Stonington, Connecticut. I testify today also on behalf of Susan Mendenhall, Mayor of Ledyard, and Robert Congdon, First Selectman of Preston.

As the First Selectman of North Stonington, a small town in Connecticut with a population of 5,000. I have experienced first-hand the problems presented by federal Indian policy for local governments and communities. Although these problems arise under various issues, including trust land acquisition and Indian gaming, this testimony addresses only the tribal acknowledgment process.

Before providing my testimony, I want to thank this Committee, and Congressman Shays in particular, for convening this important and historic hearing. I also want to thank the Congressman for our District, Rob Simmons, for his leadership on the tribal acknowledgment reform issue.

The problems with Indian tribal acknowledgment and Indian gaming are endemic. They are deeply rooted and spreading quickly. The combination of a flawed acknowledgment process and poorly controlled Indian gaming system affects not only small towns such as ours, but also has serious adverse consequences for entire states, businesses, the general public, and even Indian tribes, especially those that do not have the benefit of being located in favorable locations for casinos that cannot attract wealthy financial backers or make huge amounts of money out of gambling operations.

Unfortunately, until this hearing, the federal government has not been prepared to ask the hard questions and confront this problem head on. For years, efforts to reform tribal acknowledgment and Indian gaming management have been stymied by the tribal lobbies and their supporters in Congress. The Administration has been unwilling to take the necessary actions. As a result, it is necessary to treat these problems as issues calling

for government reform and the oversight and the action of this Committee. I strongly encourage this Committee and the U.S. Congress to make this hearing just the starting point for a series of hard-hitting reform initiatives. Hopefully, there will be more hearings to come, investigations to follow, and reform legislation to be enacted.

I have testified before on the problems that Indian gaming and tribal acknowledgment have for small communities such as mine. Our towns serve as one of the host communities for the massive resort of the Mashantucket Pequot Tribe. We are located only a few miles from the equally massive Mohegan Sun Casino Resort, and we are confronted with the prospect of additional Indian lands, and if they have their way contrary to Connecticut state law, additional casinos from the Eastern Pequot/Paucatuck Eastern Pequot petitioner group.

Indian gaming operations are having a devastating impact on our community. Because they are tax exempt, they remove an important source of revenue. If Foxwoods were subject to the same taxes as other businesses in our area, it would generate huge payments every year to Ledyard alone. This annual tax payment could be in excess of $20 million dollars a year. In addition, our land use planning process is disrupted by inconsistent Indian gaming and economic development activities. Crime increases, traffic increases, and environmental quality declines. The social fabric of our small rural community is changed for the worse. Our businesses are disadvantaged by the competitive advantage enjoyed by tribal enterprises based on Indian land. Our education system is overburdened by the wage earners and their families who are coming to our town to work at the casinos. There is insufficient housing. Our regional demographics are changing without adequate infrastructure or revenue sources.

These problems can be traced to the result of two significant failures of federal policy and law. First, the tribal acknowledgment process administered by BIA is biased, flawed and unfair. It results in the acknowledgment of petitioner groups that do not deserve federal tribal status. In doing so, it gives rise to all of the adverse consequences and problems have I just noted.

Second, Indian gaming is not adequately controlled. No limits are imposed upon what tribes can seek to develop, and there are no requirements that the adverse impacts of casino resort establishment and growth must be addressed based upon the needs of affected local communities. There is insufficient planning, and there are no checks and balances. We are headed for a regional, if not statewide, planning and growth nightmare in Connecticut, and it is because federal Indian law and policy stands apart from the reality of the consequences it is causing.

While Indian gaming itself requires serious reform, my testimony today will focus only on the tribal acknowledgment issue.

**Tribal Acknowledgment Flaws**

The Town of North Stonington has first-hand experience with the tribal acknowledgment process. Beginning in 1996, our town, later joined by Ledyard and Preston, began participation in the review of the Eastern Pequot and Paucatuck Eastern Pequot petitions. We did so after several years of opposing the Mashantucket Pequot Tribe and BIA in their efforts to expand the Tribe's land off-reservation. Ultimately, we prevailed in that situation. Much like the current tribal acknowledgment process, we had to deal with initial BIA decisions that went against us. By staying the course, we were able to win court victories and eventually force the Tribe to withdraw its request. In the process, we uncovered serious evidence of improper action by BIA and bias in favor of the Tribe. Based upon this experience, we went into the tribal acknowledgment process hoping for the best, but expecting the worst. Unfortunately, our concerns and fears were borne out.

At the outset, we decided to make a serious investment in this procedure. We did so to be sure that the record would be complete, that an objective analysis would be rendered on these petitions, and that the towns would themselves be able to take a fully informed position after our own research. We also knew, from past experience, that we had to establish a basis to pursue appeals and litigation in the event that BIA did not follow the rules and produce proper results.

Through this procedure, over a period of eight years, we spent a total of $550,000. Obviously, this investment pales in comparison to the tens of millions of dollars invested by the two petitioner groups. Although the exact amount of money their financial backers have spent is unclear, it is probably safe to assume that we have been outspent on the order of anywhere from 30 to 50-1. Nonetheless, this amount of money is a significant investment for small communities such as ours. We do not regret making the investment, because we now have been able to establish an independent position, based on our own research, that neither petitioner group qualifies for tribal acknowledgment. We have protected the rights of our communities in the BIA review, and our towns are positioned to continue the fight. We also were fortunate to have strong support from the State of Connecticut through Attorney General Blumenthal, and, ultimately, the support of many other local governments in the State and our Governor, all of whom have backed our appeal of the positive and incorrect determination rendered by BIA on these petitions in 2002.

This disparity in funds and the extraordinarily uneven playing field in the tribal acknowledgment process demonstrate one of the foremost requirements for tribal acknowledgment reform. Congress must take the necessary actions to eliminate this imbalance. This can be done by imposing limits on the amount of investment by outside parties to support tribal petitioners and by providing federal funding to local governments such as ours seeking to ensure the objectivity and legitimacy of the review process.

Before describing the deficiencies in the tribal acknowledgment procedure that we discovered as a result of our participation in the two Pequot petitions, it is important to present the context of tribal acknowledgment in Connecticut. When the full picture is considered, it becomes clear what is happening here. Tribal petitioner groups can count on their wealthy financial backers, a pro-petitioner, and biased BIA staff, and political appointees seeking to curry favor from Indian gaming financial interests, to skew the process in favor of positive decisions. This is especially true in gaming markets as lucrative as Connecticut. The end result has been to make Connecticut open to Indian gaming in its most extreme and uncontrolled form and to lower the bar in tribal acknowledgment to a point where petitioner groups that are clearly unqualified for such status, such as the Schaghticoke Tribal Nation and the two Pequot groups, are able to achieve positive final results.

**Tribal Acknowledgment in Connecticut**

The starting point for considering the context of Indian gaming in Connecticut must be the 1983 congressional recognition of the Mashantucket Pequot Tribe. This legislation took place five years before the Indian Gaming Regulatory Act (IGRA). As a result, the potential consequences it would have for our communities, the State, and Indian gaming policy generally, could not be predicted. Certainly, no one in our area paid much attention to what appeared to be an effort to do nothing more than settle the Mashantucket Pequot land claim lawsuit.

In retrospect, considerable attention and scrutiny should have been given to the 1983 Settlement Act and the recognition of the Mashantucket Pequot Tribe by Congress. The general reaction today is that such legislation was a huge mistake. Congress should have taken a hard look at whether this group qualified for recognition. As discussed in important books such as Jeff Benedict's *Without Reservation* and Brett Fromson's *Hitting the Jackpot*, it is questionable whether the Mashantucket Pequot Tribe deserved recognition. Nonetheless, when the Congress took this action it lowered the bar for tribal acknowledgment in our State and took the first proverbial step to send the tribal acknowledgment "snowball rolling down the Connecticut mountainside."

Eleven years later, the Mohegan tribe received acknowledgment by action of BIA. This tribe went through the tribal acknowledgment procedure. They received a negative proposed finding from BIA. Defects were identified in that group's petition. Although I cannot take a firm position on the Mohegan Tribe's petition, it is clear that, to produce a positive result, BIA took new steps to formulate an approach to acknowledgment. For example, BIA utilized the conceptual approach that it termed a "contuity braid" to measure the intertwined relationships of group members over time. BIA also developed a new demographic measurement of social and political interaction based on the concept of geographic and social core areas. Significantly, however, in rendering the Mohegan decision, BIA firmly pronounced that state recognition was not relevant.

Another eight years elapsed before BIA issued its final determination on the Eastern Pequot and Paucatuck Eastern Pequot petitions. At this point, I must respond to the complaint frequently raised by tribal petitioners over how long it takes to achieve a final decision and how much it costs. The time and cost of government procedures are legitimate concerns. Our towns share this concern. However, I must note that the problem is less that of the federal government, and more that of the petitioners themselves. These petitioner groups take years and years to develop their arguments. For example, the Eastern Pequots spent 17 years developing their case for acknowledgment. The Schaghticoke group spent 19 years. To a large extent, this appears to have been the result of the millions of dollars spent on researchers, attorneys, lobbyists, media consultants, etc. who were searching high and low for every available means to take deficient tribal acknowledgment claims and establish a basis for positive results. With this massive infusion of money and research from the petitioner's side, records are produced that are almost impossible for other parties to deal with. Although I am no defender of BIA and its approach to tribal acknowledgment, we must all recognize that a significant part of the problem comes from the petitioners themselves.

In the Eastern Pequot and the Paucatuck Eastern Pequots petition, once again a negative proposed finding was in order. That was the result requested by the BIA staff based upon the initial review. This was before the state recognition theory took hold. However, the script they like to follow by issuing negative proposed findings and, in doing so, laying out the roadmap for a petitioner to achieve success was disrupted in this case because of politically-motivated interference from the former Assistant Secretary for BIA, Kevin Gover. In an action well-documented in the media, Gover ordered the negative proposed finding to be turned into positive. He did so by injecting the concept of state recognition, which had been ruled irrelevant in the Mohegan petition. In doing so, he laid the foundation for what ultimately became a positive determination by BIA for these two groups, and later for the Schaghticoke group.

After completing its review of all of the evidence, and taking numerous steps to give every benefit of the doubt to petitioner groups, BIA issued a positive final determination in June 2002 by taking two extraordinary and illegal actions. First, it equated state recognition with the federal concept of a government-to-government relationship with Indian tribes. It then said that the mere existence of this state recognition in Connecticut was sufficient to bolster otherwise weak evidence during certain periods of time for these petitioner groups. In this manner, the petitioners were able to overcome clear deficiencies in their direct evidence.

But even that incorrect step was not enough. BIA still had to find a way to cover over the serious split between the two factions of the former Eastern Pequot Tribe. It did so by taking the incredible step of forcibly joining the two petitioner groups together on its own initiative. In other words, BIA took two factions who were bitterly opposed to each other and forced them to become a single tribe. BIA did so over the strenuous legal

objections of the Paucatuck Eastern Pequot group. While these groups are now holding out the public image of tribal harmony and unity, one must question whether such a message is more the result of the realities of the need to maintain a single tribal entity in order to sustain the tribal acknowledgment affirmation and ensure the continued support of financial backers.

The next chapter in the history of Connecticut tribal acknowledgment is Schaghticoke Tribal Nation. For this chapter, the story gets even worse. Here, the petitioner's own experts agreed that the group should fail under the acknowledgment criteria. Huge gaps in tribal continuity existed, as recognized by BIA in its negative proposed finding. However, in the final determination released last January, BIA did another about face. Following its pattern for other Connecticut groups, BIA again devised a new approach so that a positive finding could be achieved.

To be able to say "yes" to the Shagticoke group, BIA did everything it could to give the benefit of the doubt to the petitioner. It looked at the evidence in a light most favorable to the Indians, even if doing so required ignoring or rejecting stronger evidence coming in from the State and other interested parties.

Even after taking this approach, BIA could not completely eliminate the serious deficiencies in the Shagticoke petition. It therefore had to find some way around its own precedent and the acknowledgment regulations. It did this by playing a game with tribal marriage rates. It sought to invoke a seldom-used provision in the regulations that allows intermarriage among tribal members at a 50% rate or greater to be equated with the existence of political autonomy. This assumption is, of course, highly questionable. BIA compounded this problem, however, by playing mathematical games in calculating the rate. To do so, it had to abandon its own regulatory language and its own precedent from the previous acknowledgment petitioner where this approach was used. Even when it did this, BIA could not completely eliminate the gaps in the Schaghticoke's evidence. Consequently, BIA once again had to invoke state recognition. In this case, however, it went even further than it did for the Eastern Pequot and Paucatuck Eastern Pequot petitioners. Now BIA ruled that the petitioner could achieve a positive final determination based on the mere fact that Connecticut created and maintained a reservation and provided assistance to the individuals who lived there. This fact could be used as a complete substitute for the lack of any evidence from the petitioner. As BIA staff admitted in a memo to Aurene Martin, the decision-maker, taking this step is not allowed for under the regulations or BIA precedent. They did it anyway.

In addition, as in the Pequot petitions, BIA displayed the height of federal government arrogance by defining the tribe the way the bureaucrats wanted it to be defined. BIA automatically included many individuals and families who opposed the Schaghticoke group. BIA took this step even though it had told the State and other parties that such an action would not be taken without the consent of such individuals.

BIA is not even limiting its actions to the membership lists submitted by the petitioners; it is making its own decisions on what a tribe should be.

Unfortunately, this story is not yet over, there are other petitions either under active review or pending involving Connecticut groups. Decisions in the Golden Hill Paugussett petition and the Nipmuc petitions from Massachusetts, where the groups have indicated a strong interest in land in Connecticut, are expected soon. Other petitions are waiting in the wings.

These substantive results are evidence enough of how bankrupt the acknowledgment process has become. There are even more serious problems, and the Pequot petition is strong evidence of this. BIA consistently took action to frustrate interested party participation. It routinely withheld documents. It took successful litigation on our part to force the release of this information. BIA staff also set deadlines for submitting evidence that they communicated to the petitioners, but never advised us about it. As a result, we invested money and work in extensive research, only to find out it was not considered at the appropriate time, if at all. Former Assistant Secretary Gover, in February 2000, unilaterally issued an edict that changed the acknowledgment process to the disadvantage of interested parties. BIA failed to follow rulemaking procedures and accept public comment. As a result, BIA diminished our rights under the acknowledgment regulations. Along with the State, we are now in court to challenge that action.

At the same time BIA was taking actions to frustrate our ability to participate, the petitioner groups were on the attack against us, making efforts to intimidate our towns. The Eastern Pequot Group, for example, showed up at a North Stonington's Selectmen's meeting to stage a protest and accuse us of "Nazism" and committing "genocide." Both petitioner groups took steps designed to attack and discourage our researchers. At the same time, the financial backers refused our invitations to come and appear before public meetings to discuss their plans. All of these actions, of course, only hardened our resolve and attempts to participate.

While all of this was going on, the spectre of behind-the-scenes political influence remained a strong concern. The Eastern Pequots, for example, paid a well-connected Republican lobbyist in one year almost as much as we spent for our entire effort over eight years. What did he do? Recent newspaper articles have tied in the possibility of the political connections for lobbyists for the Paucatuck Eastern Pequots and the Schaghticokes. Is all of this coincidence? That is unlikely, and this Committee needs to investigate these connections fully.

**Reform Recommendations**

This long history demonstrates that serious reform of the tribal acknowledgment process is needed. Those efforts must start with this Committee.

We recommend the following reforms to the acknowledgment process:

1. Moratorium – Until the system is fixed, put a halt to recognizing new tribes. This is too important an issue to go forward in the face of possible corruption and incorrect decisions.

2. Congressional Delegation – BIA lacks delegated authority from Congress to acknowledge tribes. There are no standards to govern BIA's decision, as required by the U.S. Constitution. Congress needs to address this defect.

3. New Process – Because there is no delegation and there are no standards, Congress needs to start anew. A revised administrative process is needed, one that is objective, qualified and not part of BIA. Congress should create a new independent review body to make findings of fact. Those findings should then be forwarded to Congress for action, where all of the ramifications of acknowledgment of a group can be addressed in legislation. In Connecticut, for example, any new tribes – of which there should be none – would be required to abide by the State's prohibition on casino gaming. Also, profits from the two existing casinos should be shared with other tribes.

4. Disclosure of Investors – Petitioners should be required to disclose all investors, how much they are spending, and the details of the contracts. A cap should be imposed on how much can be spent.

5. Prohibit Lobbying – Any contact, direct or indirect, between any party involved in acknowledgment and the agency involved in reviewing the petition must be prohibited. Full disclosure of every such contact, at any level, should be made. This includes the White House.

6. New Standards – The existing BIA acknowledgment standards are too lenient. They need to be tightened. Efforts underway now in the Senate Indian Affairs Committee to make those standards even less rigorous must be opposed.

7. Funds for Local Governments – It is too expensive for States and interested parties to participate in this process. Federal funds are need for this purpose.

**Conclusion**

All parties agree the tribal acknowledgment process is broken. The problems come from BIA's result-oriented approach, the role of big money, political influence, and the absence of clear guidance from Congress. We support efforts by this Committee to take aggressive action to solve these problems. Thank you for considering this testimony.

Chairman TOM DAVIS. Thank you very much. I know there is a lot more you can say; you have such a wealth of experience and knowledge. Thank you.

Mr. Benedict, you are the closer here. Then we will get to questions, and we will start with Mr. Ose when you are done.

Mr. BENEDICT. Mr. Chairman, thank you. I appreciate the opportunity to be here today, to be under oath, and to be part of this panel. I want to say at the outset that I also have submitted written testimony, and ask that it be added to the record. And, Mr. Chairman, I also request the opportunity to submit an addendum to that, which would be some source notes to go along with it.

Mr. SHAYS. We welcome those.

Mr. BENEDICT. I have asked for some easels. Is it possible to have those?

Mr. SHAYS. Sure.

Mr. BENEDICT. Thank you.

Let me just say at the outset that I am an author and a lawyer, and I am the head of the Connecticut Alliance Against Casino Expansion, which is a nonprofit that was created in Connecticut less than 2 years ago. To clarify for the record, we have not raised millions of dollars. I wish we had. We are nowhere near that. It is public record that we have raised about $250,000 in a little less than 2 years.

However, there are some people in this room that have raised millions of dollars, and that is going to be largely the subject of my testimony today.

I have a statement that I prepared last night to read today, which I am going to set aside, having made some observations in the room today that I think may be more pertinent than the remarks that I prepared.

Mr. SHAYS. Your statement will be part of the record. And it makes sense, you have been here, so why don't you comment on what you have seen and heard?

Mr. BENEDICT. I appreciate that.

Observation No. 1 is who is not here today, which I think is perhaps more profound than anything that has been said here today, which is that, No. 1, there are no investors in tribal recognition present. Some were invited; they declined. There are many more that could have been invited and weren't.

No. 2, there are no lobbyists working on behalf of those petitioning for tribal acknowledgment present. I was glad to hear, at the outset of the hearing today by Chairman Davis, that this is the beginning, and not the end, of this committee's work, because I think the groundwork has been laid here today, and really the answers that ultimately we need to get to are in the hearts, minds, and wallets of those who are not present today.

Observation No. 2 is that there has been little or no mention today of the Indian Gaming Regulatory Act [IGRA]. There has been a lot of discussion about tribal acknowledgment. IGRA and tribal acknowledgment are joined at the hip, they are inseparable at this point, and it is somewhat wasteful to discuss reforming the acknowledgment process without also discussing the need to reform the Indian Gaming Regulatory Act. And I would like to sort of move in that direction rather rapidly.

The Indian Gaming Regulatory Act was passed in 1988, as we all know. At that time there were two States in the country that had State-sanctioned casinos, they were Nevada and New Jersey. The premise of the Indian Gaming Act was twofold: No. 1, it was designed to clarify and set standards for gambling on Indian lands, simply put; and No. 2 was the premise that tribes that existed in States that permit gambling should be provided the same opportunity on their lands if they are in those States. You could assume from that if you were a tribe that lived in Nevada at that time, you would be able to have the full gauntlet of gambling offered on your reservation under IGRA. You could also presume from that, if you were a tribe in Utah at that time, you would be allowed to do no gambling, from bingo to lottery to casinos, because none is permitted under State law.

IGRA has become a runaway train. It is the law of unintended consequences. It arguably is the worst piece of legislation to come out of this Congress in 20 years because its drafting has been so vague and created such gaping holes that have been left to the courts to interpret that we have seen a country go from two States with legalized casinos in 1988 to a country with 31 States with over 300 casinos now in operation. California alone, as Mr. Ose probably well knows, has had over 50 casinos go up since IGRA was put into law. The State of Connecticut has two casinos that draw over $3 billion a year. There is no coincidence that California and Connecticut lead the way in tribal recognition petitions per capita. Those are the two most lucrative gambling markets in the United States today; Wall Street says it and the evidence is therein the outcome of those casinos. And now there are over 50 petitioners in California and a dozen in Connecticut seeking the right for recognition, which now carries with it the right to build a casino.

Let me just move to these charts very briefly. I see how much time is left, and I don't want to use it up.

These charts point to four names. They are well known, particularly in our State, but nationally. Donald Trump, who we know is a casino mogul. In court papers he has confirmed that he has invested $9 million in backing the Paucatuck Eastern Pequots. The Subway Sandwich founder, Fred DeLuca, has admitted publicly that he has invested $10 million in the Schaghticoke petition. Developer Thomas Wilmot has said he has spent $10 million backing the Golden Hill Paugussetts; and now a new person, Lyle Berman, who is the CEO of Lakes Gaming, Inc., a publicly traded company on Wall Street, has said just in the last couple years he has spent $4 million.

This is a grand sum of $33 million invested in the tribal recognition process, just four cases. We have heard evidence today that there are close to 300 petitions pending, two-thirds of which are backed or bankrolled by gambling interests. This is not designed to just say $33 million is a big deal. This is to give you a snapshot of just four cases in our State.

The chairman asked at the outset what can be done, and let me close with just a couple of suggestions on reform.

No. 1, and I don't mean to be glib when I say this, but it is time for Congress to tell Donald Trump you are fired from the Indian gaming process.

Mr. SHAYS. You are a writer, aren't you?

Mr. BENEDICT. I am a writer.

This guy has been busy in more than Connecticut influencing this process, and let us recall what he told the U.S. Senate in this town just a few years ago. He got up and testified and said something about the Mashantucket Pequots not being true Indians and operating a very profitable casino. There is one thing he and I agree on in this world, and that is that the Mashantuckets are not a legitimate tribe. But the rest of what he has done since then is adopt an "if we can't beat them, join them" approach. He pumps $9 million into the State of Connecticut hoping to get a casino license that he can't get any other way. His lawsuit filed in New London County makes very clear there is a deal struck between him and the Paucatucks that he would be the developer of this casino and he would advance, front the money in hopes of getting that opportunity.

Second, it is, I think, incumbent that we also look at IGRA and the need to tighten up this legislation. It is time that we look at what was the original intent of this law. Was it designed to create a vacuum for guys like Donald Trump and Fred DeLuca and Thomas Wilmot to jump into? No. It was designed to create an equal footing for the existing Indian tribes that were in America in 1988. What we have seen is a gold rush literally of applicants and of investors getting behind them.

Third, it is essential that we know more. There are a lot of bright lights here today, and I will tell you quite seriously I am glad we are in the light right now. And I mean that very candidly. We need lobbyists in the light. I would like to know what justifies paying someone like Ronald Kaufman $600,000-plus to lobby for the Pequots. I would like to know what Mr. Paul Manafort has been doing. He has not registered a lobbying report that I am aware of that shows what he has been doing for the Schaghticokes. It is time that this committee ask those questions. Why does it take $9 million? And don't tell me that it takes $9 million to do research. The State of Connecticut has been doing it on a dime for 10 years. It doesn't take $10 million to hire researchers. But it does take $10 million to hire real estate searchers and lawyers and lobbyists, and those who work influence. And I think we will not have real reform until those men are brought in here, raise their arm to the square and under oath ask and answer some very serious questions about what they have been doing with their money, where it has come from, and what it has been used for.

Thank you very much.

[The prepared statement of Mr. Benedict follows:]

**TESTIMONY OF JEFF BENEDICT**

**AUTHOR OF "WITHOUT RESERVATION" AND PRESIDENT OF THE CONNECTICUT ALLIANCE AGAINST CASINO EXPANSION, INC.**

**BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE**

**HEARING ON TRANSPARENCY IN BIA ACKNOWLEDGMENT PROCESS**

**MAY 5, 2004**

Mr. Chairman and members of the Committee: I appreciate your invitation to testify on the Indian Gaming Regulatory Act and the undue influence of undisclosed financial backers and their lobbyists supporting tribal acknowledgment. The aim of my testimony is first to offer a national perspective and context to the issues being explored by this hearing. Second, I will identify casino financiers and lobbyists, and attempt to connect the dots between them and recent decisions for acknowledgment churned out by the Bureau of Indian Affairs. But to set the stage, let me start out with some essential legal and political background.

## BACKGROUND

Over the past fifteen years, casino gambling has swept across America at a break neck pace. In 1988, there were only two states – Nevada and New Jersey – that offered state-sanctioned casino gambling. Today there are over 300 casinos operating in 31 states. Two-hundred and ninety of those casinos are Indian casinos, operating in 28 states.

How did we get from there to here? In 1988 Congress passed the Indian Gaming Regulatory Act, a law that was intended to clarify and set standards for gambling on Indian lands. Instead, it has become an instrument exploited by the casino industry to expand into states throughout the country that don't otherwise permit casinos.

Connecticut is such a state. Casinos have never been legal within its borders. Yet today the state finds itself hosting the two largest casinos on earth, both constructed on tiny slivers of Indian land, outside the reach of the state's regulatory laws, taxing authority and civil jurisdiction. In California casinos are also illegal; yet the state has seen more than fifty Indian casinos pop up since the passage of IGRA, including many in and around urban centers such as San Diego and Los Angeles.

As casino gambling has rapidly swept the country, it has transformed communities overnight. Connecticut's two casinos, for example, attract 80,000 motor vehicles per day. As burdensome as this is for the communities and roads around the casinos, traffic probably ranks amongst the smallest of its impacts. The sudden eruption of hundreds of casinos across America has brought stunning, far-reaching societal impacts on business, labor, financial markets, social services, affordable housing, infrastructure, government, and law. Consider:

> Seventy-five percent of Americans now live within driving distance to a casino. Americans now spend $600 billion a year on gambling, versus $400 billion on food. Eighty percent of teenagers today have gambled within the previous year. Compulsive gambling is up fifty percent since casinos were legalized on Indian reservations. In the same time period, U.S. bankruptcies rose from 770,000 to 1.3 million. States throughout the country are now involved in litigation with tribes, casino developers or the federal government over casino-related disputes ranging from land use regulations to taxes. And the corporations operating the most successful Indian casinos now surpass most Fortune 500 companies in the amounts spent on campaign contributions and lobbyists in Washington.

This is just the tip of a very large and ominous iceberg. Many states without Indian casinos have been persuaded to legalize casinos in order to capture the revenue being lost by their residents who are traveling over the border to gamble at Indian casinos in neighboring states. Here again, Connecticut offers an illustration. Since casinos don't exist in any other New England state, residents from those states that wish to visit casinos flock to Connecticut's tribal casinos. The casino industry has launched casino expansion campaigns in every New England state – except Vermont – using the argument that states

should legalize casinos in order to capture the revenue from its citizens that are presently going to Connecticut.

This tactic is not unique to New England. Currently nineteen states have legislation or ballot initiatives pending to expand gambling. They include: Arkansas, California, Delaware, Florida, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Pennsylvania, Ohio, Oklahoma, Rhode Island and Washington. After an Indian casino opened in Buffalo last year, proposals have surfaced to open non-Indian casinos in other parts of the state. California may get fifty more Indian casinos in the next decade. And places like Martha's Vineyard, the Hamptons and coastal Maine have been hit with litigation, land claim lawsuits or casino proposals by groups wanting to construct Indian casinos.

Needless to say, the Indian Gaming Regulatory Act's reach has gone far beyond its narrow intent with respect to gambling on Indian lands. Instead IGRA has established broad national policy favoring casino gambling expansion. It is arguably one of the most poorly drafted and reckless pieces of legislation to come out of Congress in the last twenty years. Moreover, this law that was supposed to aid Indian tribes has the shameful distinction of instead being a boon to non-Indian millionaires and casino moguls that have exploited the law's loopholes to enrich themselves, often at the expense of needy Indian tribes.

The Bureau of Indian Affairs – the agency with a trust responsibility to aid and look out for the welfare of tribes – has been the enabling partner to the non-Indian financiers and investors that have cashed in on Indian gambling. Initially, casino moguls like Donald Trump attacked the rise of Indian casinos as a fraud. He even testified before the United States Senate and suggested that the Mashantucket Pequots, which operate Foxwoods, the world's largest casino, may not be true Indians. But Trump and other casino entrepreneurs recognized the writing on the wall and adopted an 'If you can't beat them, join them' approach.

Instead of railing against Foxwoods and the Mashantucket Pequots who operate it, Trump went out and found another group calling itself Pequots. According to court documents, on March 11, 1997, Trump entered into a Memorandum of Understanding to finance the Paucatuck Eastern Pequot Tribal Nation's bid for federal recognition. The

contract between Trump and the Paucatucks states that the two parties would work jointly "to obtain federal recognition for the Paucatucks and to secure the legal rights of the Paucatucks and Trump to operate a tribal gaming facility in the State of Connecticut" that would be managed by Trump. In a five-year-span between 1997 and August 31, 2002, court papers indicate that Trump advanced the Paucatucks $9,192,807.

Put simply, instead of viewing Indian casinos as a threat, the casino industry began to recognize them as an opportunity. Casino operators and those who invest in them realized that IGRA offered them a vehicle to crack into markets across the country that had previously been off limits to casinos. The key was finding a tribal group to sponsor or finance. Suddenly, federal tribal acknowledgment became a bankable proposition for investors.

Here's where the scandalous nexus between IGRA and the BIA takes place. In addition to swamping the nation with Indian casinos, IGRA ended up swamping the BIA with petitions from groups seeking federal tribal status, a prerequisite to building a casino on tribal land. Presently, there are 291 groups seeking federal recognition from the BIA. Published reports estimate that two-thirds of these petitioners are bankrolled by casino investors.

It is no accident that a disproportionate number of these petitioning groups are based in California (53 petitions pending) and Connecticut (12 petitions pending) – the two states with the most lucrative Indian casino markets in the U.S. In addition to being the most populated state in the country, California currently has the fifth largest economy in the world. Although it has over fifty casinos, the market demand for more remains great. Connecticut is home to Foxwoods and Mohegan Sun, the top two casinos in the country, reputed to be grossing a combined $3 billion-plus per year. Neither casino pays taxes. Nor is their development and construction subject to state and local zoning and building codes, environmental regulations, or safety and licensing requirements. Labor laws don't apply to the employees and the casino is immune from lawsuits by patrons. It is a casino operator's paradise.

**THE ACKNOWLEDGMENT PROCES S**

Connecticut is serving as an unwilling witness to one of the most remarkable breakdowns in federalism – the relationship between the federal and state governments – in the history of the United States. The likely consequence is the complete transformation of the economic vitality, quality-of-life, and governmental structure of the State. All these changes would be for the worse, and they are being forced upon the State by the federal government.

The tool being used to expand casinos in states like Connecticut is the so-called "acknowledgment process," by which the BIA bestows the status of "federal Indian tribe" on groups of individuals who claim descent from tribes that existed during colonial times. The people and towns of Connecticut are rightfully outraged over what is happening, and dramatic and immediate action is needed to protect the State's interests.

How can tribal acknowledgment have such a significant effect? And isn't acknowledgment little more than the symbolic act of according federal status to Indian groups long ago recognized as tribes by the State? The answers to these questions demonstrate why the future of the State of Connecticut is at risk. They also show how the actions of a few federal bureaucrats, combined with the investment of tens of millions of dollars by gambling financiers, have manipulated federal law to strip away Connecticut's inherent right to determine its own future.

Once a group obtains status as an Indian tribe under federal law it becomes, in effect, a sovereign governmental entity. The new tribe, its members, and its businesses, are exempt from virtually all state and local laws, including taxation. Their lands are open to any kind of development. The tribe and its businesses do not need to comply with state and local environmental, land use, health and safety, labor and other laws. They cannot be sued. For many purposes, they act as foreign governments.

In Connecticut, there are two acknowledged tribes and twelve groups that are seeking tribal status. The two acknowledged tribes are the Mashantucket Pequot, who were acknowledged by Congress in 1983, and the Mohegans, who achieved tribal designation from the BIA in 1994. Of the twelve additional groups trying to become tribes under the BIA acknowledgement process, four are well advanced in the process:

the Eastern Pequot/Paucatuck Eastern Pequot, the Schaghticoke, the Golden Hill Paugussetts, and the Nipmuc, who are actually located in Massachusetts, but they assert land rights in Connecticut.

These groups claim that land belonging to their historical ancestors was unlawfully taken away 200 years ago and that they are entitled to get it back regardless of its current ownership. As much as one-third of the State is potentially subject to these land claims. The Schaghticokes and Golden Hill Paugussetts have already filed lawsuits against innocent landowners for this purpose.

But these tribal acknowledgement efforts have less to do with land and more to do with gambling. Each of the four groups that are furthest along in seeking recognition is bankrolled by casino moguls or developers. These groups hope to secure recognition in order to take advantage of the federal Indian Gaming Act that permits federal tribes to open massive new casinos and earn over one billion dollars a year, as the Mashantucket Pequots and Mohegan do at their existing casinos. The biggest winners in these casino ventures are not the tribes, but the wealthy non-Indian moneymen who provide the financial, legal, and political muscle to help get these groups get acknowledged.

Thanks to the BIA's artificially propagated and arbitrarily applied acknowledgement process, the State faces a serious risk of being transformed into a gambling hub with as many as six separate sovereign nations within its boundaries, each one of which will pursue large tracts of land to carve out from state and local control for purposes of opening new casinos.

Make no mistake about it; life in Connecticut will never be the same if this process is not stopped and corrected. Otherwise, the BIA will transform Connecticut from the "Constitution State" to the "Casino State." The two largest gambling halls in the world are already here. With potentially four more, already jammed highways will go into gridlock with the cars of casino patrons. The local tax base will be reduced. Land use control and planning will become a thing of the past. Environmental quality will decline due to air pollution from cars and other impacts. Crime will increase, and societal values will shift, as they always do in gambling centers. The labor base will change. Affordable housing will dissipate in towns around the casinos. Corporations and large businesses will flee the State to be replaced with low-paying, unskilled jobs,

bringing attendant demographic shifts in Connecticut's population. Within a decade or so, Connecticut as we know it today will no longer exist.

For about twelve years, the small towns in southeastern Connecticut have struggled with the consequences of reservation lands, tribal sovereign immunity and Indian casinos. They have lived with the many adverse impacts of the Mashantucket Pequot Foxwoods and Mohegan Sun resorts, and they are now confronted with a third possible mega-casino on lands of the Eastern Pequot Indian group, which BIA is proposing to acknowledge as a tribe.

The problems that resulted in southeastern Connecticut have not been fully understood in other more populous and politically powerful parts of the State. Then, on January 29, 2004, the BIA issued a decision that seeks to acknowledge the Schaghticoke Tribe. Now there is the prospect for land claims throughout southwestern and western Connecticut, and the specter of a new casino resort along the already over-burdened I-84 and I-95 corridors has risen.

The BIA's decision to drop yet another sovereign nation in Connecticut has finally turned a spotlight on the flawed acknowledgment process. Much of the illumination has been triggered by the BIA's own conduct. Right after the BIA announced its decision in the Schaghticoke matter; an internal BIA memorandum dated January 12, 2004, and titled "Schaghticoke Briefing Paper," surfaced. In it, the staffer from the Office of Federal Acknowledgment responsible for reviewing the Schaghticoke petition notified the Assistant Secretary that the petitioner's "evidence of political influence and authority (of the petitioning group) is absent or insufficient for two substantial historical periods." The memo also acknowledged that the petitioner's "membership list does not include a substantial portion of the actual social and political community."

Despite these gaping holes in evidence, ones which the BIA does not have authority to arbitrarily fill with substitutes for the mandatory criterion, the agency nonetheless granted acknowledgment. The BIA's brazen internal memo is a glaring illustration of how badly this process needs legal and political reform. This agency is absolutely unaccountable and by its own words acting outside its authority.

**FINANCIERS AND LOBBYISTS**

Up until now, little attention has been paid to the role that wealthy financial backers play in helping petitioner groups obtain tribal acknowledgment. Numerous high-powered lobbyists have been identified as the recipients of significant sums of money to lobby for the Eastern Pequots and the Schaghticokes. But there is far more that remains unknown, undisclosed and secretive about both the financiers and the lobbyists in these petition cases.

For example, the identity of all investors associated with Connecticut tribal petitioners remains a mystery, as is the sums they've invested; how the money has been spent; and what role the lobbyists have played in influencing the outcome of the acknowledgment decisions. Here's a breakdown of what has been reported about the investors and lobbyists involved in the acknowledgment petitions pending in Connecticut:

**PAUCATUCK EASTERN PEQUOTS**

Financial backers include Donald Trump and J.D. DeMatteo, the chairman of Amalgamated Industries. Published reports suggest they have spent a combined $14 million backing acknowledgment for the Paucatucks. Court documents filed by Trump confirm that he alone spent $9,192,807 between March 1997 and August 2002.

**EASTERN PEQUOTS**

Financial backers include Texas oil magnate and America's Cup racing tycoon William Koch and David Rosow, a ski resort developer and the president of International Golf Group. They have not disclosed the amount of their investment.

**SCHAGHTICOKE TRIBAL NATION**

Financial backers include Fred DeLuca, the founder of the Subway Sandwich restaurant franchise. He has invested $10 million.

**GOLDEN HILL PAUGUSSETTS**

Financial backer is mall developer Thomas Wilmot. He has invested $10 million.

**NIPMUC NATION**

Financial backer is Lyle Berman, the CEO of Lakes Gaming, Inc., a Minnesota based company that is listed on NASDAQ. Berman has spent $4 million since announcing a development and management agreement with the Nipmuc Nation in 2001. According to the company's corporate documents, Lakes is also involved with tribal gaming operations in three other states. One of the company's founding partners, David Anderson, was recently appointed by the Bush Administration to head the Bureau of Indian Affairs.

These figures suggest that investors have pumped $38 million into just four petitioning groups in Connecticut. It is important to note that this money is recent. Mr. Wilmot has spent in excess of $10 million since 1995. Trump spent nearly $10 million between 1997 and 2002. Mr. Berman has spent $4 million since 2001. All of this suggests the price to win federal acknowledgment is going up, and so are the stakes.

These investment figures reveal only the information that the investors want the public to know; it's what these individuals have disclosed to the press or in court documents. But it's clear that there are other investors and more money behind these petitioners. For example, the Schaghticoke group has also received backing from a venture capital firm called the Eastlander Group, as well as a corporation called the Native American Gaming Fund, which has been set up by non-Indian lawyers and businessmen in Connecticut. The group has recently been seeking private investors by offering $25,000 in private shares in a company that would aid the tribal group in building a casino. Contributors and the amounts contributed have not been disclosed.

This points to a glaring deficiency in the tribal recognition process. There is no law, regulation or procedure in place to require tribal petitioners to identify their financial backers and disclose the amounts of money received from investors.

Another deficiency in the process pertains to lobbyists working on behalf of tribal petitioners and investors. The Eastern Pequots have spent $645,000 since 2000 on lobbyist Ronald Kaufman and his firm the Dutko Group. Kaufman is the brother-in-law to Andrew Card, President Bush's chief of staff.

The Schaghticokes have spent more than $500,000 on lobbyists since 1998. But apparently, that does not include monies paid to Paul J. Manafort, who is not registered as a lobbyist for the tribe. He is helping the Schaghticokes and has been described by one of the group's lobbying firms as someone retained by the investors to provide "valuable strategic advice and counsel." After Manafort came on board, the BIA reversed its earlier recommendation to deny the Schaghticokes tribal recognition; instead determining that the group should be recognized despite failing to meet the mandatory criteria for recognition.

Manafort's role remains a mystery, along with any payments, benefits or incentives he may have received for his services. Manafort's former partner Roger Stone has lobbied for Donald Trump. After assisting the 2000 Bush recount operation in Florida, Stone was selected by President Bush's transition team to help staff the Interior Department's BIA. Since then he has issued a prospectus to tribes seeking approval from the BIA to build casinos. "We believe that based on our superior political contacts we could win all necessary approvals in a time between 8 and 16 months," it reads. Reportedly, Stone is projected to receive between $8 million and $13 million from agreements with tribal casino interests.

It is unclear whether Stone has done any work for Trump in Connecticut or in relation to Trump's backing of the Paucatuck Eastern Pequots. But he and lobbyist Scott Reed, who has represented Connecticut tribes, have worked together representing tribal gambling interests in California.

However, Diane Allbaugh, the wife of Joseph Allbaugh, head of Federal Emergency Management Agency and the 2000 National Campaign Chairman for George Bush has reportedly represented the Paucatucks on behalf of Donald Trump. At the time, Allbaugh was apparently working for the firm of Haley Barbour, chairman of the Republican National Committee. Neal McCaleb, the head of the BIA and the decision-maker on the Paucatuck and Eastern Pequots tribal acknowledgment petitions, has reportedly acknowledged that Allbaugh supported his candidacy to get appointed to the top spot at the BIA.

To me, the picture is clear – these investors and their lobbyists have hijacked the tribal acknowledgment process. IGRA has given these entrepreneurs an opening and they have seized it. It's an outrage that investors and their lobbyists have been able to penetrate this market virtually without any accountability or adequate disclosure.

It would be instructive to know, for example, what Eastern Pequot lobbyist Ronald Kaufman and his firm did in exchange for receiving $645,000 in lobbying fees. Who did Mr. Kaufman lobby? And what is the relationship between his lobbying efforts and the BIA's decision to recognize the Pequots?

The people with the answers to these questions – the tribal group leaders, their financial backers and their lobbyists – are no where to be found at this hearing. That must change. The impacts of IGRA and the flaws with tribal acknowledgment are all too clear at this point. It can no longer remain a mystery as to how much financiers and lobbyists have contributed to the breakdown. These individuals have managed to avoid scrutiny and accountability long enough. It is time that each of the tribal petitioners comes clean and fully disclose all of their investors and the full extent of the investments.

Also, it is time for the investors to document how much they've spent and what the expenses have been. Finally, the lobbyists and other consultants or experts like Mr. Manafort should be required to disclose who they have had contact with and what they have done to justify the fees they've received from these tribal groups and their financial backers.

**SUMMARY**

As the dots connect linking financial investors, lobbyists and the outcome of BIA acknowledgment decisions, an ugly picture of influence peddling and political scandal is coming into focus. This is particularly evident with three petitioning groups – the Paucatuck Eastern Pequots, the Eastern Pequots, and the Schaghticoke Tribal Nation. In all three petitions, the Office of Federal Acknowledgment had to conclude that none of these groups had enough direct evidence to receive federal tribal status. It took manipulating the rules, giving undue weight to the petitioners' evidence, ignoring other evidence and ignoring procedural standards to award these groups acknowledgment.

Even more amazing, these decisions were made by an administration and a Secretary of Interior with a reputation for being staunch supporters of state's rights. Yet the BIA rejected Connecticut's view of its own laws and history and instead adopted a view put forward by some career bureaucrats. The BIA also took the unprecedented step of combining the two Pequot petitioners into one tribe, as well as redefining the membership of the Schaghticoke tribe to include individuals who did not want to be part of that tribal group.

All of this begs the question, why? In an attempt to fill in more blanks, it is necessary to look at Neal McCaleb, the decision-maker on the Eastern Pequot and Paucatuck Eastern Pequot decisions. McCaleb reportedly got this job with the help of people like Roger Stone, Scott Reed and Joe Allbaugh, all prominent players in the Bush 2000 election campaign.

Aurene Martin was the decision maker on the Schaghticoke petition. She was McCaleb's deputy and reportedly got her job with the help of some of the same people.

Diane Allbaugh (wife of Joe Allbaugh, who helped McCaleb obtain his position at BIA) reportedly represented the Paucatuck Eastern Pequots on behalf of Donald Trump. A published report indicates she did so while working for Haley Barbour's firm. Barbour, of course, was chairman of the Republican National Committee.

The Eastern Pequots had their own angle going. One of their primary backers is Bill Koch, considered a friend to President Bush. Koch's group brought in Ron Kaufman as their lead lobbyist. Kaufman is married to White Chief of Staff Andrew Card's sister. He and his firm reportedly received $645,000 to lobby for the Easterns.

The more the picture comes into focus, the clearer it becomes that the direction of investigation and reform must aim clearly and sharply on the political connections. Without a doubt, there is more information and evidence to collect. But preliminary indications are that the Historic Eastern Pequot decision and the Schaghticoke decision are shaping up to be a first-rate political scandal.

There is no reason to believe that the Bureau of Indian Affairs is capable of reforming itself at this point. Presently, the head of the agency is Dave Anderson, a founding partner in Lyle Berman's company Lakes Gaming, Inc. Besides financing the pending petition of the Nipmuc Nation, Lakes has been involved in developing four

Indian casinos in the country. The idea that the head of the agency charged with reviewing tribal recognition petitions financed by the casino industry is himself a previous investor in the industry sums up how conflicted and contaminated this entire business has become. At a minimum, Congress should pass an immediate moratorium on all tribal recognition matters until the gambling interests are fully exposed and rooted out of the process.

I thank the committee for affording me this opportunity to contribute to this hearing.

# TRIBAL ACKNOWLEDGMENT MONEYMEN

## PAUCATUCK EASTERN PEQUOTS

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| Donald Trump | **$ 9 million** |

## SCHAGHTICOKE TRIBAL NATION

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| Subway Sandwich Founder Fred DeLuca | **$10 million** |

## GOLDEN HILL PAUGUSSETTS

| | |
|---|---|
| Developer Thomas Wilmont | **$10 million** |

## NIPMUC NATION

| | |
|---|---|
| CEO of Lakes Gaming, Inc., Lyle Berman | **$ 4 million** |

| | |
|---|---|
| TOTAL: | **$33 million** |

Chairman TOM DAVIS. Thank you all very much.

And with that, I will recognize Mr. Ose for as much time as he would like to consume.

Mr. OSE. Thank you, Mr. Chairman.

Mr. Marconi, your testimony on page—I don't remember what page it is, but you have a couple comments in there. You say the system is not sound, it is impaired, it lacks integrity.

Mr. MARCONI. Yes.

Mr. OSE. What exactly do you mean?

Mr. MARCONI. The way in which the decision was arrived at, the fact that despite the fact that the seven criteria were not met, that, in fact, a rationale was used to substitute for these recognitions. That is what I mean.

Mr. OSE. And the examples you are citing related to the approvals granted at the end of the previous administration or have there been other examples you are referring to?

Mr. MARCONI. What I am referring to is the internal memo from the OFA that we received a copy of.

Mr. OSE. Dealing with the recognition process?

Mr. MARCONI. Dealing with the recognition process of the Schaghticoke Tribal Nation.

Mr. OSE. OK. So STN's application, is that one of those that was approved in the waning days of the previous administration?

Mr. MARCONI. Can you repeat that, please, it was approved when?

Mr. OSE. Is that one of the applications that was approved in the waning days of the previous administration?

Mr. MARCONI. No.

Mr. OSE. So this is a problem that is not——

Mr. MARCONI. Today.

Mr. OSE [continuing]. Administration-based from past history, this is something that did exist, it exists now, according to your testimony.

Mr. MARCONI. That is my testimony.

Mr. OSE. So something that is with us now.

Mr. MARCONI. Yes.

Mr. OSE. All right.

Mr. Benedict, someone whispered in my ear in your testimony you mentioned these four individuals and the legions of lobbyists, registered and otherwise, that they use to implement their plans. Are you a registered lobbyist?

Mr. BENEDICT. I sure am. I am registered under State law in Connecticut. In our State, that filing is done with the State Ethics Commission. I am the head of a 501(c)(4). We are authorized to lobby in our State. And as the only full-time paid employee of the organization, I am registered. I am also registered here as of just recently.

Mr. OSE. I would be asking these questions of legions of representatives of these people. The name of your 501(c)(4) is?

Mr. BENEDICT. The Connecticut Alliance Against Casino Expansion, Inc.

Mr. OSE. The contributors to the Connecticut Alliance Against——

Mr. BENEDICT. Casino Expansion.

Mr. OSE. Gaming Expansion?

Mr. BENEDICT. Casino Expansion.

Mr. OSE. Casino Expansion. The financial contributors to that are whom?

Mr. BENEDICT. Excuse me?

Mr. OSE. Who are the financial contributors to your 501(c)(4)?

Mr. BENEDICT. Sure. It is fairly easy to distinguish who they are. No. 1, we are funded by SAICA, the Southeast Area Industry and Commerce Association, in Stanford, CT. We have received funding from a large number of citizens of Connecticut, in the hundreds. Those donations range from $5 to the largest was $10,000. We have also received a limited number of contributions from chambers of commerce and some other civic organizations in the State of Connecticut, the largest being $10,000.

Mr. OSE. Your annual budget for the 501(c)(4) is what, how much?

Mr. BENEDICT. The annual budget? We have only been in existence for 18 months, and we have raised a total of $250,000, give or take a few, in that 18-month period. Our opening year budget, we didn't hit it, not even close, but we were hoping to raise and utilize roughly $250,000 in that first year. We didn't raise that much and we didn't spend that much because we didn't have it.

Mr. OSE. This organization you referred to as SOICIA.

Mr. BENEDICT. SAICIA, S-A-I-C-A.

Mr. OSE. S——

Mr. BENEDICT. A-I-C-I-A.

Mr. OSE. Southwest Area——

Mr. BENEDICT. Commerce and Industry Association.

Mr. OSE. Now, that is a Connecticut-based organization?

Mr. BENEDICT. It is.

Mr. OSE. OK. The $250,000 budget over the past 18 months, how much of that has come from SAICIA?

Mr. BENEDICT. We received an initial installment, a total of my memory is $60,000, and those were made in monthly increments, I think 10,000 a month. We have recently received an additional installment from SAICIA within the last 2 to 3 months, and I think that total, I would have to check, but I think it was $25,000.

Mr. OSE. I want to compliment you on your willingness to put that on the record in this environment. We have a serious problem in getting people to disclose who their financial backers are, and I can guarantee you, as we pursue this, I am going to be asking the same questions of the other parties, and it will be interesting to see, at that time, whether or not they are as forthcoming as you have just been.

Mr. BENEDICT. Well, thank you. And I will go one step further. I would be happy to supply this committee with our budget and the documents that you want about our organization. We would be happy to provide that.

Mr. OSE. I think, Mr. Chairman, that would be an interesting standard to lay down on the table for everybody else to comport with.

So with the chairman's concurrence, we will accept your offer.

Mr. BENEDICT. Thank you.

Mr. OSE. Now, you mentioned two names. You mentioned a Randall Kaufman and a Paul——

Mr. BENEDICT. Manafort.

Mr. OSE. How do you spell that?

Mr. BENEDICT. M-A-N-A-F-O-R-T.

Mr. OSE. Manafort. Is that Charles Manafort? Are Kaufman and Manafort lobbyists?

Mr. BENEDICT. That is a word you could use, but——

Mr. OSE. Well, what word would you use?

Mr. BENEDICT. Power brokers.

Mr. OSE. Based here in Washington?

Mr. BENEDICT. Based here in Washington.

Mr. OSE. OK. Now, they are power brokers in what sense?

Mr. BENEDICT. Well, I guess in the crudest sense. There are reasons that one individual can attract a fee of $600,000 to monitor legislation. That is a lot of money to look at what is in the pipeline. I do that for our organization, and I get paid $75,000 a year, and have many other things. And I think what is going on here, Representative Ose, and let us be clear, this is not new to this administration.

Mr. SHAYS. Could the gentleman just suspend a second?

But we are really talking about something more than just legislation. You are talking about lobbying the administration, in other words, what do they do for that money.

Mr. BENEDICT. That is right. You know, there has been the specter raised here today and prior to today that there is influence being brought to bear to influence the outcome of these decisions, and I don't dispute that; I am one of the ones who has been saying that the most. But I also think in this town there doesn't always have to be the overt arm-twisting and influence-peddling to get a message across, and there are times, and we saw this in the prior administration, in the Clinton administration.

I wrote an entire book about this, which largely looked at the Clinton administration and the massive sums of money that were contributed to the Clinton administration by the Mashantucket Pequot Tribe, the owners of Foxwoods. There was no evidence that that tribe or the money that they contributed led to a direct quid pro quo, yet it was very obvious that the Bureau of Indian Affairs was churning out decisions on your question: Can a tribe attempt to attach land to its reservation? And the administration did it without any reason to do it. And this tribe had given enormous sums of money to the Clinton administration. There was a tradeoff.

I think when you are giving that much money, when you have that name, you don't necessarily need to call somebody up and tell them what to do; they get the message because the money is big enough.

Mr. OSE. I want to continue my line of questioning, if I might.

So is it your testimony, without sharing or presenting empirical evidence, that decisions are being unduly influenced in this process by virtue of activities of the lobbying corps in this city?

Mr. BENEDICT. My testimony would be, Mr. Ose, that I don't see how lobbyists like that could not have an influence in the process. Do we have direct evidence that they have made improper contacts? No. But I think that is one of the biggest problems here, is

we need to ask what are you doing as a lobbyist. Or in Mr. Manafort's case, where he doesn't claim to be a lobbyist, well, why was he retained? What is it that he is doing specifically for the money he is being paid.

Mr. OSE. Refresh my memory. Who is it that retained Mr. Kaufman?

Mr. BENEDICT. Mr. Kaufman works for, well it is not called the Historic Pequot Tribe, but initially the Eastern Pequot Tribe, which is a faction that Mr. Coke and Mr. Rossau are the backers of.

Mr. OSE. Is that the——

Mr. SHAYS. Would the gentleman mind suspending one more time?

Mr. OSE. Certainly.

Mr. SHAYS. What I would like, Ms. Flowers, I am not going to have you come up here and have a debate. I think that is very unfair. But when this panel is done, I would like to just ask you, and so I thought I would give you time to think about it, what does Mr. Kaufman do for the $500,000 to $600,000 that you feel what is his deliverable. And that would be helpful to put on the record, I think. So if you would just think about that.

I thank the gentleman.

Mr. OSE. As usual, the chairman is way ahead of me; he jumps right to my own question.

Mr. SHAYS. I am sorry.

Mr. OSE. I am going to have to yield back to the chairman until I construct my next series of questions.

Mr. SHAYS. Well, I would be happy to take the floor, but your line of questioning is very important, and it was a question that we were going to ask Chairman Flowers, but I thought we should get to this panel. And so I would like that on the record, because it is an important thing.

You basically have Mr. Manafort and you have Mr. Kaufman, and they are both very powerful political operatives. I know Mr. Kaufman well, and I like him a lot, but he is doing his job; I am going to do my job. So we need to get that on the record.

I will say that I am a card-carrying member, I think, of your organization. I think you got $50 from me.

Mr. BENEDICT. You did.

Mr. SHAYS. It may have been more if I was trying to impress you.

Mr. BENEDICT. It was $50.

Mr. SHAYS. It was only $50.

Mr. BENEDICT. It was $50.

Mr. SHAYS. Well, I am a card-carrying member, and it is one of the best investments I have made.

Mr. BENEDICT. I photocopied your check, Chris.

Mr. SHAYS. At any rate, one of the things I have no problem accepting is if you are a petitioning State tribe, whatever, seeking to be a Federal tribe, you need to document some pretty significant stuff, so you are going to want financial help there. I have no challenge at all give me a good financial backer and help me document that we did have continuity and that we do meet all the seven tests. Help me fund the people that can do that. Where I have a big disconnect is why you spend hundreds of thousands of dollars

for someone who is not doing that, but just trying to influence the decision.

Would you all agree that you could understand a tribe would want to do that, or would you even take issue with that?

Mayor BOUGHTON. Well, you know, obviously, coming from the legislature and serving in all different types of government, that is fairly common, where you would have somebody to represent your interests, whether it was the oil interests, whether it was commercial interests.

Mr. SHAYS. I am not talking about representing your interests. I am asking about do you agree or disagree that tribes will want to have financial backers who will want to help them document, the historians that they have to hire, all of that. It seems to me that we would be pretty hypocritical to say prove that you are a tribe, but then not give them the resource or allow them to have the resource to prove they are a tribe. Isn't the dispute here not whether they should have a right to prove they are a tribe, but what they do to influence the decision? And there are good things they should do and there are bad things. I mean, comment and let us go right down the line.

Mayor BOUGHTON. Well, getting back to my original point, I don't have a problem with a financial backer helping a tribe access information to help prove their validity. I think that is fine. And I don't have a problem with a tribe engaging in a lobbyist to represent their interests, be it here or in the legislature. I think that is fine as well. Where it crosses the line is when you have somebody who doesn't report the kind of activities they engage in, who is not covered by any of the State ethic laws or by the Federal ethics laws, and just sort of out there in that twilight zone doing the little things that they do to manipulate the situation to get the outcome they want. That bothers me. And in this case, with Mr. Manafort, that is extremely troubling in the case of the Schaghticoke Tribe.

And so if you want to hire somebody to do the research, if you want to get a financial backer to do the research, perfectly acceptable. You want to hire a lobbyist to represent your interests here? Perfectly acceptable. Do you want to take that next leap to be able to engage somebody who knows somebody to get the outcome that you want? Then it is completely unacceptable. And I think that is really the distinction you are trying to draw.

Mr. SHAYS. I think you need to take a look at the chart again, and I concur entirely with Mr. Benedict's testimony. When you look at the amount of money, $9 million, $10 million, $10 million, $4, $33 million in total, it doesn't cost that much to do the research, as he stated. We have been doing it, the State of Connecticut, Attorney General Blumenthal has been working on that with a much, much smaller budget. The fact is the money is going somewhere, and as Mr. Ose has said, maybe we should set a standard with this committee and ask everyone who comes before you to divulge where have these millions of dollars gone.

Mr. MULLANE. Let us go back——

Mr. SHAYS. Let me just say to you, in triggering that, we will write a letter to all of these parties and ask for a complete breakdown, whether or not they testify before the committee or not. We

are not just going to do the one that had the willingness to come forward, we will ask all of them. It is a very important point.

Mr. MULLANE. Let us go back to the basics. If the tribe has maintained community, political continuity, and have their genealogical records, I am at a loss as to why it would be that difficult. OK? So I do not also deny that somebody needs help. The problem has been that BIA is a lobbyist for the group. Their scenario or routine is to deny them on the preliminary determination, lay out a road map for what they have to achieve, and then help them get there and, if they have to, fabricate it along the way. But we also have to understand that we do need professional people to package, to put it in some sequence, in some order. That is one of the problems. BIA has seven criteria but doesn't tell you how you have to respond. They could very easily set standards that say provide your genealogical in this format, provide your tribal community in this manner, provide this political continuity and who has been your leader.

So, yes, professional help is needed; yes, you have to package it; but let us take a look at the problems that have happened with the change of rules and how people have revised, altered, or BIA has facilitated and broke their own rules. So they need help, but there should be standards, and the standards should be easily understandable and the data should be readily available for everybody.

Mr. SHAYS. I was thinking, as you were talking, how much you know about this issue. When you grew up as a kid, little did you know that you would know so much about tribal recognition.

Mr. BENEDICT. Mr. Chairman, I think to simplify what could be done on a reform basis, I think there is no place in this process for lobbyists, period. Very simply, this is a situation where you have an agency with a fiduciary responsibility to Indian tribes that has also been entrusted with the massive responsibility of determining tribal status for groups that have applied to the Bureau. They are not making legislation. They are not deciding policy. They are deciding whether these applicants have the merits to deserve sovereign status. There is no role in that process for a lobbyist, none. It just simply shouldn't be there.

And then you say, well, then what do you do, you tell someone like the Eastern Pequots, who are here today, who say their lobbyist is just employed to review pending legislation that might impact us. Are you telling us they can't have a lobbyist at all? I think that is what takes us back to IGRA, and that is why IGRA becomes so important. If we merely try to fix the acknowledgment process without addressing IGRA, we are not going to get there. IGRA is the twin to acknowledgment, and it is IGRA that has opened this door for us. It is Pandora's box that makes acknowledgment. Whether any of us want to admit it or not, acknowledgment has become contaminated by gambling, and that is why I think, under IGRA, there is room to get the lobbyists out of this process and the financiers, and the way to do that is to reclarify what IGRA originally was intended to be: a law that applied to tribes that existed when it was passed in 1988. It has now become a law of exploitation by guys like Donald Trump and the lobbyists who work for them.

Mr. SHAYS. Thank you.

Let me just say that Mr. Ose is going to be chairing a committee hearing in this room starting sometime around 2 p.m.

Do you want the floor back with this panel before?

Mr. OSE. Mr. Chairman, given your courtesy so far, I think I will submit my questions for the record.

Mr. SHAYS. OK.

I would conclude with this panel by saying it is pretty clear, based on panel one and panel two and panel three, that we have some very clear recommendations from all of you: transparency, the whole issue of conflict of interest. The one area that I am not as clear about, I don't want to spend a lot of time, but I gather you accept the fact that if you are able to prove that you are an Indian tribe and you meet all the standards, then you get what Indian tribes get, sovereignty and everything else that comes with it. It then strikes me that you are also saying if that happened, you want the communities to have some say in what happens then. Is that correct? I am seeing some nodding of heads.

Mayor BOUGHTON. Absolutely. I think that is really the fundamental problem that we are wrestling with here. You know, we don't deny the rights of Native Americans to seek recognition if they so deserve. I will add an addendum to that, that in Connecticut, as Jeff has mentioned, we have reservations about these organizations that are calling themselves tribes to begin with, in the sense of where exactly, how they are cobbling their heritage together to make a tribe, or that the BIA is doing it for them. And that is really the challenge that we have locally.

Mr. SHAYS. Is there anything that any of you want to put on the record before we just ask Chairman Flowers to just talk about?

Yes, Mr. Mullane.

Mr. MULLANE. I would like to answer that question also. And I a little older than I look. Graduated from high school, went in the Navy, worked for Defense Department for 37 years, been a selectman for 19 years. And there are two things that have always been bread into me: one nation under God and all men are created equal. Yes, there is an issue with the Native Americans, and I am not going to answer that question. But I want you to look at where we are today, what has happened in the last 12 years since the Gaming Act was passed, and where we are going and how you can envision resolving the problems that are being spread across the United States; not just Connecticut, throughout the United States, and how business is starting to have conflict. The latest one I saw was an Indian group filed to be classified as an offshore bank. They are already in telecommunications, they are in banking. So we have to look at where we are going, and I beg you to have followup on this and that we have some results. If you must have a process, there must be reforms, it must be given to an independent agency, and you cannot streamline it and fix it.

Mr. SHAYS. OK.

Mr. MULLANE. Thank you.

Mr. SHAYS. I am getting a little nervous staff here who are trying to get us to move here. What I am going to do is ask Ms. Flowers to submit in writing sometime by next week what your lobbyist does for the money he gets, how much he gets and what your lobbyist does. We are going to be sending a letter to the other organi-

zations as well to do that. And we will make that available to the press.

Would you be able to get that to us by Wednesday of next week? Do you want to do it now? If you want to do it now, we will do it now, or you can do it in writing. OK, come on up, love.

Thank you all. Excuse me. Have you all put on the record everything you want to put on the record?

Mr. BENEDICT. I just wanted to say thank you to this committee for starting this. I appreciate the opportunity to be here.

Mr. SHAYS. Good. Thank you both very much, all of you.

Mr. MULLANE. I also want to thank you.

Mr. SHAYS. You have been a wonderful panel and you have added a lot to the work of this committee.

Thank you. We are going to be pretty quick on this, but I appreciate your wanting to do it now. That is great.

First on Ronald Kaufman.

Ms. FLOWERS. On Ron Kaufman, I had stated the tribe pays $120,000 per year, but anything beyond what you need, what he does for the tribe, we could submit that.

Mr. SHAYS. Well, he submitted information, I thought that he made over——

Ms. FLOWERS. I believe he is registered lobbyist. But we will send, to satisfy the committee, we will send that in.

Mr. SHAYS. Unfortunately, you have come in front of us now, so I can't be as casual as we are being here. I want to know specifically how much the tribe has paid him.

Ms. FLOWERS. We pay him $120,000 a year since 5 years.

Mr. SHAYS. OK, so it is over 5 years.

Ms. FLOWERS. Yes, 5 years.

Mr. SHAYS. So he has received about $600,000 plus over a 5-year period.

Ms. FLOWERS. Yes.

Mr. SHAYS. OK. And what does he do for that?

Ms. FLOWERS. Monitors legislation down here in Washington; monitors to make sure there are no riders on any appropriation bills that could hurt the tribe; he advises the tribe on any kind of political activity that we may not understand or not see; he arranges, usually once a year, for us to come down and hopefully get to visit the Connecticut delegation.

Mr. SHAYS. Does he also provide entre into the administration?

Ms. FLOWERS. Never.

Mr. SHAYS. I want to be real clear, because you are under oath.

Ms. FLOWERS. Never.

Mr. SHAYS. Listen to the question first.

Ms. FLOWERS. OK.

Mr. SHAYS. I want to make sure that you are comfortable with your answer. You are saying that Ron Kaufman—and I know him pretty well, and he knows how to make entre. You are saying that he has never provided an entre, not just for you, but for your tribe. So you are saying that he has never contacted the White House, never contacted the Bureau of Indian Affairs, never done those things?

Ms. FLOWERS. Not to my knowledge. He has never been directed to do that under our tribe.

Mr. SHAYS. That is not what my question is. That is not what I am asking, though. We are going to be a little—I don't want to blind-side you here because I just know him too well. To suggest that he has never contacted the administration would be almost an impossibility for me to accept, and I want to protect you from that question.

Ms. FLOWERS. I have never directed anyone, never.

Mr. SHAYS. We will leave it at that.

Mr. OSE. Mr. Chairman, if I might.

Mr. SHAYS. Yes.

Mr. OSE. Have any of Mr. Kaufman's colleagues contacted the BIA on your behalf?

Ms. FLOWERS. Not to my knowledge. Never been directed by our tribe.

Mr. OSE. Thank you.

Chairman TOM DAVIS. How many tribal members are there?

Ms. FLOWERS. We have, not including those that have died within the last 2 years, 1,131. Almost half of those are children.

Chairman TOM DAVIS. Are they scattered? They are not all in Connecticut, they are scattered all over?

Ms. FLOWERS. For the most part in Connecticut. And we had to document that in the petition by 10-year increments, location of where members are.

Chairman TOM DAVIS. Let me just say I appreciate your appearing here today voluntarily, and being able to sit here and answer questions. The committee appreciates that very much.

Mr. SHAYS. Thank you, Mr. Chairman. Mr. Chairman, are we all set?

We are all set. Is there anything else you want to put on the record?

Ms. FLOWERS. My vice chair pointed out Ron Kaufman also helps us write position papers and those kind of things that we are not used to doing.

Mr. SEBASTIAN. And also review press releases and positions also. Mr. Chairman, may I just add one more comment?

Mr. SHAYS. Yes. And I would say that what I had always assumed was that he had made $500,000 or $600,000 in a 1-year period, and you are saying it has been over a 5-year period.

Ms. FLOWERS. It has been over 5 years.

Mr. SHAYS. Yes, sir.

Mr. SEBASTIAN. We just want to make a brief comment in regard to the rotating door, and it is twofold. It is a double-edged sword because, as you know, it is alleged that the town of North Stonington and their attorneys had hired Kay Davis, who directly reviewed our petition, and Mr. Larson, the anthropologist, who directly worked for the Paucatuck, former Paucatuck Eastern Pequot Tribe. So that rotating door is a double-edged sword, not just for tribes, but for towns.

Mr. SHAYS. Would you agree that a rotating door, whichever direction it goes, is wrong? I am sorry, nodding of a head doesn't do it. Would you agree, Mr. Sebastian?

Mr. SEBASTIAN. Yes, absolutely.

Mr. SHAYS. Folks, I am sorry.

Madam Chairwoman, thank you very much. Thank you, Vice Chair. I appreciate your taking the dais.

With that, we are going to adjourn this hearing.

[Whereupon, at 1:50 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional information submitted for the hearing record follows:]

House Committee on Government Reform Hearing – 5 May 2004
Betting on Transparency:
Toward Fairness and Integrity in the Interior Department's Tribal Recognition Process
Statement for the Record
Congressman Mark E. Souder

Thank you for your appearance before the House Committee on Government Reform. The issue of tribal recognition is an important one that needs a thorough examination. The House Committee on Resources, on which I also serve, held a hearing in March about tribal recognition. I appreciate the attention this issue has received from both Committees, and as a Member of both Committees, I welcome the opportunity to discuss an issue of personal concern.

Although this hearing is focusing specifically on the recognition of tribes in the State of Connecticut, I have questions regarding a tribe in the State of Indiana that has been wrestling with the Bureau of Indian Affairs (BIA) over recognition for many years. In short, the Miami of Indiana were once recognized by the federal government, and indeed still receive treaty payments drawn from the United States Treasury. In the late Nineteenth century, they were administratively derecognized. Recent efforts to become federally recognized again have been unsuccessful. Although there is still hope that the BIA will eventually recognize the Miami of Indian through administrative channels, I have introduced legislation in the past few Congresses that would federally recognize the Miami of Indiana.

At the March Resources Committee hearing on tribal recognition, I submitted a series of questions regarding the Miami of Indiana. I have not received answers to those questions. In conjunction with today's hearing, I have sent the same questions to the Bureau of Indian Affairs. I hope that by asking them again in another committee, in another hearing, the BIA will realize that I am serious about these questions and will reply in a prompt and thorough manner.

House Committee on Government Reform Hearing – 5 May 2004
Betting on Transparency:
Toward Fairness and Integrity in the Interior Department's Tribal Recognition Process
Statement for the Record
Congressman Mark E. Souder

The Bureau of Indian Affairs requires a petitioner be identified as an American Indian entity on a substantially continuous basis since 1900.

1) What types of identification are acceptable?
2) How was that year determined?
3) Under current recognition guidelines, when a petitioner is required to be a distinct community and have authority over its members since historical times, are historical times defined as "since 1900?"

In 1846, after two hundred years of documented tribal history, the Federal government split the Miami tribe into two tribes – the Indiana Miami (Eastern Miami) and the Oklahoma Miami (Western Miami).

4) Given that the Federal government split the tribe into two entities, does the requirement that a petitioning group not be part of any recognized North American Indian tribe, apply to the Indiana Miami Indians? If so, why?

In 1897, Assistant Attorney General Willis Van Devanter administratively terminated federal recognition of the Indiana Miami tribe.

5) How many other tribes have been de-recognized through similar bureaucratic decisions?
6) How many Indian tribes have been recognized administratively by the Bureau of Indian Affairs?
7) Were any of these recognitions a restoration of previously withdrawn recognitions?

The Miami Indians were exposed to western society as early as the Seventeenth century. Moreover, during the Nineteenth century, Federal government encouraged the acculturation and assimilation of native populations.

8) What standards does the BIA use when evaluating an historically distinct tribal community?
9) Is some latitude given to tribes who maintain some tribal customs and traditions but who, because of time and government policy, are largely assimilated and acculturated into the American populace?

A delineated parcel of land (i.e. reservation or tribal land) seems to be an important component in acquiring federal recognition. In 1873, the Federal government forced the privatization of the Indiana Miami tribal lands, and by 1887 the lands of other tribes, thus effectively eliminating the reservation and tribal governments as coherent entities.

10) Are there any provisions or consideration given to tribes that lack tribal lands, due to government action, when those tribes apply for federal recognition?

The Miami of Indiana, although no longer federally recognized, continue to receive payments from the Federal government under various treaties and agreements, including the 1795 Treaty of Greenville.

11) How many similarly unrecognized tribes receive money from the US Government through such treaties?

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THE SECRETARY OF THE INTERIOR
WASHINGTON

APR 12 2004

Memorandum

To: David Anderson
Assistant Secretary for Indian Affairs

From: Gale A. Norton
Secretary

Subject: Delegation of Authority

As you requested, I have completed the attached order delegating authority for gaming related matters to Principal Deputy Assistant Secretary Aurene Martin. Thank you for initiating this action to avoid any appearance of conflict of interest.

Earlier this month, I asked you for a status report on implementation of the strategic plan for improving the tribal recognition process. Because tribal recognition has now been delegated to Aurene, I will now redirect my request to her.

Attachment

cc: Aurene Martin

05/04/2004 16:34 FAX
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003

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3252

Subject: Authorities Delegated to the Principal Deputy Assistant Secretary - Indian Affairs

Sec. 1 **Purpose.** The authority described in this Order expands the authority of the Principal Deputy Assistant Secretary - Indian Affairs to include the exercise of certain program and administrative authorities of the Assistant Secretary - Indian Affairs.

Sec. 2 **Authority.** This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3 **Delegation of Authority.** The authority of the Secretary is hereby delegated through the Assistant Secretary - Indian Affairs to the Principal Deputy Assistant Secretary - Indian Affairs to execute all documents, including regulations and other Federal Register notices, and perform all other duties relating to federal recognition of Native American tribes, taking land into trust for gaming purposes, and other gaming matters. This delegation is in addition to the authorities delegated to the Principal Deputy Assistant Secretary - Indian Affairs in 209 DM 8.

Sec. 4 **Re-delegation.** Subject to the limitations in Section 204 (a) of Public Law 94-579 and the limitations in 200 DM 1, these authorities may be further delegated.

Sec. 5 **Expiration Date.** This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or [illegible] this Order will expire and be considered obsolete on June 1, 2005.

Gale A. Norton
Secretary of the Interior

Date: 4/9/04

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## Schaghticoke Tribal Nation: Final Determination Issues

*Introduction*
The Office of Federal Acknowledgment (OFA) requests guidance from the ASIA concerning two issues that must be resolved in order to complete the final determination on the Schaghticoke Tribal Nation (STN) (Petitioner #79).

One issue concerns a lack of evidence for political authority for one substantial historical time period and insufficient evidence for a second, longer period. The other issue concerns the refusal of one faction to re-enroll because of opposition to the current STN leadership.

*Background: Proposed Finding versus Final Determination*

- Criterion 83.7(b) (community)
  The STN PF found that community had not been demonstrated between 1940 and 1967. With the additional data for the final determination, the STN now meets community for all periods up until 1996 (see *Issue 2* concerning 1996-2001).
- Criterion 83.7(c) (political influence)
  The STN PF found that the group had not demonstrated political influence between 1800 and 1875 and between 1885 and 1967. With the additional data for the final determination, there remains a lack of evidence for criterion 83.7(c) between 1820 and 1840 and insufficient evidence between 1892 and 1936. (see *Issue 2* concerning 1996-2001)
- Criteria 83.7(b) and (c) between 1996 and 2001
  These criteria were not met for the PF because the current STN membership list did not include a substantial portion of the actual social and political community. This faction continues to refuse to re-enroll.

*Issue 1*
*Should the petitioner be acknowledged even though evidence of political influence and authority is absent or insufficient for two substantial historical periods, and, if so, on what grounds?*

*Discussion*
The petitioner has little or no direct evidence to demonstrate that criterion 83.7(c) has been met between 1820 and 1840 and between approximately 1892 and 1936. The evidence for community during the 1820 to 1840 period, based on a high rate of intermarriage within the group, falls just short of the 50 percent necessary, under the regulations, to demonstrate political influence without further, direct evidence (83.7(b)(2)(ii)).

If applied as it was in the Schaghticoke PF, the weight of continuous state recognition with a reservation would not provide additional evidence to demonstrate that criterion 83.7(c) (political influence) has been met for this time period.

*State Relationship:*
The Schaghticoke have been a continuously state-recognized tribe with a state reservation throughout their history. They have had a special status in Connecticut as a distinct political

community, although there was not evidence of a government-to-government relationship with Connecticut throughout the entire historical span. The state relationship with them has been an active one, and was active during both of the time periods with little direct evidence of political influence. That activity (overseers, reservation maintenance, legislation and appropriations) did not extend to direct dealings with Schaghticoke leaders or consultation with the group on group matters during the time periods in question.

*Unique Circumstances for Evaluation.*

- There is no previous case where there is little or no direct evidence of political influence within the group for extended periods even though the existence of community is well established throughout the petitioner's entire history, including the two periods when evidence of political processes is very limited.

- There is no previous case where a petitioner meets all of the criteria from earliest sustained contact for over 100 years, does not meet one of the criteria during two separate, substantial historical periods and then meets all of the criteria for a substantial period up to the present (subject to *Issue 2*).

*General Requirements of the Regulations*
The regulations require demonstration of a "substantially continuous tribal existence" (83.3(a)). Under 83.1, "Continuously or continuous means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption."

The regulations provide that a petitioner shall be denied if there is insufficient evidence that it meets one or more of the criteria (83.6(d)).

*Additional Background Information*
Acknowledgment of the Schaghticoke would give them standing in the current litigation to procede with their Non-Intercourse Act land claim.

The deficiencies found in the petitioner's case are similar to, though less extensive, than found by researchers for the petitioner in earlier stages of preparation of the petition. Their reports are incl[illegible]

*Options*

1. Acknowledge the Schaghticoke under the regulations despite the two historical periods with little or no direct political evidence, based on the continual state relationship with a reservation and the continuity of a well defined community throughout its history.

2. Decline to acknowledge the Schaghticoke, based on the regulations and existing precedent.

3. Acknowledge the STN outside of the regulations.

4. Decline to acknowledge the STN, but support or not object to legislative recognition.

*Discussion of Options*

- Option 1 would require a change in how continuous state recognition with a reservation was treated as evidence in the STN PF and in the Historical Eastern Pequot (HEP) decisions. The STN PF stated that state recognition in the Schaghticoke case did not provide additional evidence for political influence in the periods in question in part because there were no known State dealings with Schaghticoke leaders. In addition, the position in the HEP decisions and the STN PF was that the state relationship was not a substitute for direct evidence of political processes, and can add evidence only where there is some, though insufficient, direct evidence of political processes.

The revised view, under Option 1, would be that the overall historically continuous existence of a community recognized as a political community by the State (a conclusion denied by the State) and occupying a distinct territory set aside by the state (the reservation), together with strong evidence of continuous community, provides sufficient evidence for political influence even though direct evidence of political influence is absent for some periods.

Recognition of STN under Option 1 would not affect past negative decisions because the clear continuity as a community together with the continuous historical state relationship and reservation are not duplicated in petitioners that have been rejected in the past. There are no more than six other historically state recognized tribes with a continuously existing state reservation which have not yet been considered for acknowledgment.

Option 1 may be interpreted by petitioners as establishing a lesser standard which would be cited in some future cases, if the STN decision is interpreted as allowing substantial periods during which evidence is insufficient on one criterion. Its impact on future cases would be limited by the weight given the state relationship and the continuity in community.

- Option 2 maintains the current interpretations of the regulations and established precedents concerning how continuous tribal existence is demonstrated.

- Option 3, acknowledgment outside the regulations, would require an express waiver of at least part of the regulations, based on a finding that this was in the best interests of the Indians. A waiver could be narrowly defined to distinguish this case from other potentially similar future cases.

- Option 4 would probably be strongly opposed by the Connecticut delegation.

*Recommendation*

The OFA recommends Option 1 on the grounds that it is the most consonant with the overall intent of the regulations.

*Issue 2*
*Should the STN be acknowledged (subject to decision on Issue 1) even though a substantial and important part of its present-day social and political community are not on the current membership list because of political conflicts within the group?*

*If STN is acknowledged, who should be defined by the Department as included within the tribe acknowledged?*

*Discussion*
The STN membership list does not include a substantial portion of the actual social and political community. The activities of these individuals were an essential part of the evidence for the PF's conclusion that the STN met criterion 83.7(b) and 83.7(c) between 1967 and 1996 and their absence was one of the reasons the PF concluded these criteria were not met from 1996 to the present. After 1996, these individuals either declined to reenroll as the leadership required of all members, or subsequently relinquished membership, because of strong political differences with the current STN administration.

STN negotiations with these individuals during the comment period did not resolve this issue. They have refused offers of the STN to consider them for membership. The STN has created a list of 43 individuals, not currently enrolled, who it considers to be part of their community. The OFA concludes there are 54, based on different estimates of family size but comprising the same group as identified by the STN. The current STN membership is 273.

The OFA's concern is that the current status of a long-term pattern of factional conflict may either have the undesirable consequence of negatively determining Schaghticoke's tribal status, or of disenfranchising part of its actual membership if acknowledged.

*Authority to Acknowledge*
The PF stated that "The Secretary does not have the authority to recognize part of a group" (citing HEP final determination which acknowledged two petitioners as together forming the historical tribe).

*Options:*

1. Acknowledge the STN as defined by its current membership list (assumes *Issue 1* is decided in favor of acknowledgment).

2. Acknowledge the STN but define the base roll membership of the tribe acknowledged as those on the current membership list and the specific body of 54 additional individuals. This body is defined in the determination based on past enrollment and past and continuing social and political involvement (assumes *Issue 1* is decided in favor of acknowledgment).

3. Decline to acknowledge the STN as not the complete group.

*Discussion of Options*

- Option 1: If the current STN membership is acknowledged, the additional 54 individuals, wh meet the petitioner's own membership criteria, would qualify to be added to the base roll under 83.12(b). This section defines the membership list of a tribe as acknowledged as becoming the base roll and states that additional individuals maintaining tribal relations may be added to that base roll. This option leaves some authority with the existing leadership to accept or reject thes individuals.

- Option 2: Past decisions, before the HEP FD, treated a petitioner's membership list as the definition of the community to be acknowledged or denied acknowledgment. The HEP FD combined two membership lists into one. This option would go farther, including in the group's membership individuals who have not specifically assented to or been accepted as members, albeit appearing on past membership lists. The PF stated "The purpose of the regulations is to provide for the acknowledgment of tribes, not of petitioners per se."

- Option 3: Depending on the resolution of *Issue 1*, this would disqualify an otherwise eligible petitioner because of its factional conflicts. Potentially, the STN and the faction could remedy this deficiency by combining and appealing to IBIA on the grounds of new evidence which would change the decision (83.11(d)(1)).

*Recommendation*

The OFA recommends Option 2, as consistent with the intent of the acknowledgment regulations.

Prepared by Office of Federal [illegible]

K:\BAR\Schagticoke-FD\SchagFDBrief

05/12/04 WED 18:51 FAX 1 203 579 0771 CONGRESSMAN SHAYS →→→ HR SUBCOMMITTEE 002
05/11/2004 17:20 FAX

State of Connecticut
GENERAL ASSEMBLY
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

## U.S. HOUSE COMMITTEE ON GOVERNMENT REFORM

**"BETTING ON TRANSPARENCY: TOWARD FAIRNESS AND INTEGRITY IN THE INTERIOR DEPARTMENT'S TRIBAL RECOGNITION PROCESS"**

We appreciate the opportunity to submit this testimony on federal tribal recognition. Increasing evidence of the improper effect of money and politics on the Bureau of Indian Affairs (BIA) tribal recognition process cannot be ignored and demands reform. We support the committee's investigation into this matter and hope that the end result will be an improved process with increased accountability and fairness to all concerned.

As state legislators from Connecticut, we are particularly concerned with the BIA's shocking decision to grant recognition to the Schaghitoke Tribal Nation. This decision was contrary to the findings and recommendations of the BIA's own staff, contrary to established BIA precedent, and contrary to the clear facts of the case.

An investigation by the Attorney General of the State of Connecticut has found evidence that, despite staff's recommendation that recognition be denied, the BIA was determined to recognize the Schaghitoke Tribe and solicited support for this conclusion in order to shroud its decision in false legitimacy. Staff found that the Schaghitokes could not satisfy two of the seven established criteria for recognition, (1) a history of living as a distinct community and (2) the exercise of political autonomy. In order to compensate for this gaping hole in the evidence, the BIA relied on state recognition as support for federal recognition.

State recognition is not related to federal recognition and has never been a criteria for federal recognition. In fact, the BIA acknowledged that by substituting state recognition for its own established criteria, it was lessening the standards for federal recognition.

In essence, the BIA made up new law in order to fit the facts of this one case and arrive at the result it wanted, i.e. federal recognition for the Schaghitokes. An agency that makes up the law as it goes along and ignores facts as well as its own staff's recommendations has lost all legitimacy and any claim to the public trust. The BIA acted capriciously and deprived other interested parties of equal protection under the law.

There is increasing evidence that the root cause of the irregularities at the BIA is money and conflicts of interest. Too many senior staff at the BIA have ties to Indian tribes or organizations that work for or with Indian tribes. Too much money is being poured into lobbying on behalf of tribes by third parties who are only interested in manipulating the recognition process in order to benefit from the economic windfall of casino gaming. This situation cries out for Congressional action.

The impact of federal recognition on local communities can be overwhelming. Federal recognition creates a quasi-sovereign nation within a state and town. A federally recognized tribe is exempt from most of the laws that protect land and natural resources as well as the public health and welfare, including land use and environmental regulation and labor laws. Given the profound implication of federal recognition, the public is entitled to an oversight agency that is fair and impartial and upholds the law, not one that bends the law to reach a predetermined outcome.

Although federal recognition has a significant and direct impact on local communities, state and local officials have little involvement in the recognition process. The federal government has exclusive jurisdiction over tribal recognition. States may do no more than comment on a recognition petition and yet, when recognition is granted, it is the local community that must deal with the social and economic repercussions.

On behalf of our constituents, we ask that Congress impose a moratorium on all pending BIA applications and appeals affecting Connecticut and conduct a full investigation into the BIA's actions. Long-term reform requires the establishment of a truly independent nonpartisan agency to make recognition decisions. This will remove the inherent conflict that currently exists between the BIA's role as advocate for Native Americans and its role as neutral decision maker in recognition cases. Such an agency should be given the authority to rule on all pending petitions and appeals. States and local communities should be given an active role in the recognition process with an equal right to all information submitted. Only an independent recognition process that includes all interested parties in the decision making and that is open and fair to all will restore the public's trust.

We thank you for the opportunity to submit this testimony and look forward to working with your committee to reform the tribal recognition process in a way that will make it fair and impartial and free from the undue influence of outside interests.

Sen. Judith G. Freedman
Judith G. Freedman 26th Dist

Andrew J. McDonald
Andrew J. McDonald
27th District - Sen.

Andrew W. Roraback
Andrew W. Roraback
30th District - Sen.

Gary D. LeBeau
Gary D. LeBeau
3rd District, Sen.

Donald J. DeFronzo
Donald J. DeFronzo
6th Senate Dist.

Richard O. Belden
Richard O. Belden
113th District

05/12/04 WED 18:52 FAX 1 203 579 0771 CONGRESSMAN SHAYS →→→ HR SUBCOMMITTEE 005
05/11/2004 17:21 FAX

John McKinney
State Senator, 28th District

William Nickerson ← William Nickerson
STATE SENATOR - 36TH DIST.

Tony Guglielmo ← Tony Guglielmo
STATE SENATOR 35TH DISTRICT

← William Smith
State Senator
14th District

G.L. Gunther, M.D.

Catherine W. Cook
CATHERINE W. COOK, 18TH DISTRICT

David Cappiello ← David Cappiello
Sen. 24th

STATE SENATE 25TH DISTRICT
Robert L. Genuario

05/12/04 WED 18:53 FAX 1 203 579 0771 CONGRESSMAN SHAYS →→→ HR SUBCOMMITTEE 006
05/11/2004 17:21 FAX

Toni Boucher
District 143

Toni Boucher

JOHN W. HETHERINGTON
125th

John W. Hetherington

CARL J. DICKMAN
132

Carl J. Dickman

Lile R. Gibbons ← Lile Gibbons
150th District

Lawrence J. Cafero, Jr. ← Lawrence Cafero, Jr.
142nd

Mary Ann Carson
MARY ANN CARSON
108th

HANK BIELAWA
2nd DISTRICT

Debralee Hovey
DEBRALEE HOVEY
112th District

JOHN E. STRIPP
135TH DIST.

John E. Stripp

John E. Ryan
148th District

G. Kenneth Bernhard, 136th

111th District
John H. Frey

David A. Scribner 107th Distr

Colley C. Tymniak
138rd

Claudia M. Powers
CLAUDIA M. POWERS
151ST DIST.

Livvy R. Floren
149th

Janice Giegler
132th

123rd
T.R. Rowe

110th
Bob Stone

Lew Wallace 109TH
Lew Wallace

05/12/04 WED 18:53 FAX 1 203 579 0771 CONGRESSMAN SHAYS →→→ HR SUBCOMMITTEE 00
05/11/2004 17:22 FAX

John Shays
134th

Christel Truglia -
145th

**WIQUAPAUG EASTERN PEQUOT TRIBE**
**P.O. BOX 1148 HOPE VALLEY, RI 02832**
**1-401-377-4332 or 1-401-539-4020**
**Fax # 1-401-377-4332**

CERTIFIED MAIL # 7001 2510 0002 6001 0430

April 27, 2004

Honorable Tom Davis
Chair, Committee on Government Reform
U.S. House of Representatives
Rayburn House Office Building, Room 2348
Washington, D.C. 20001

Re: Statement for the Record by the **Wiquapaug Eastern Pequot Tribe** before the Committee on Government Reform hearing scheduled for May 5, 2004

Dear Congressman Davis:

The Tribal Council of the Wiquapaug Eastern Pequot Tribe is pleased to have this opportunity to present its concerns, and to offer its suggestions for addressing and abating the serious abuse of the federal tribal recognition process which has been caused by the undue influence of excessive funding, often solely from gambling interests.

Belief in the objectivity and fairness of the systematic Bureau of Indian Affairs (BIA) review process for many tribes seeking federal recognition has been eroded in light of the revelations of attempts by certain, well funded petitioners and their lobbyists, to effect immediate recognition by way of direct acts of Congress, following the precedent setting recognition of the Mashantucket Pequot Tribe, or by attempts to accelerate or inappropriately influence the decision processes at the BIA. The Wiquapaug Eastern Pequot Tribe, a petitioner for federal recognition, for reasons not entirely well understood, believes that it has had review of its petition delayed, or otherwise adversely impacted, by the interference such influence generates within the BIA.

Alternatively, a well funded BIA, in applying similar amounts might well staff to the levels necessary to achieve meaningful results sought by all petitioners.

As an example of the immediate effects of over-zealous funding and over-reaching influence, even non-Indians may now be deemed to be Indians. For the purposes of achieving the recognition as Indians, of certain members of the Eastern Pequot Tribe, even $500,000.00 has not been to much to spend on lobbyists (as certain non-Indian members of that tribe have previously represented in the news media).

To fairly characterize the review of the BIA, before extraordinary pressure was brought to bear on the recognition review process, the BIA staff had recommended

against the approval of the recognition petitions of the Eastern Pequot Tribe and of the Paucatuck Eastern Pequot Tribe. As no tribe had been previously recognized in the face of a negative recommendation, only a well financed effort to influence the final outcome could have yielded the BIA decision to jointly recognize these petitioners as the Historic Eastern Pequot Tribe. This was an unprecedented decision by the BIA, unsupported by any existing regulation. This accelerated recognition conducted in the executive suites of the BIA initiated a costly appeal process now fast approaching the two year mark, as the Wiquapaug Eastern Pequot Tribe and others attempt to redress the flawed due process review associated with those petitions.

Under pressures created by the onslaught of direct communications by lobbyists, and with the influence as to the outcomes to be supported coming from the top-down, at the least, the objectivity of BIA staff technical reviews is destroyed and the progress and status of all tribes without the funding to similarly advance their petitions is prejudiced.

The Wiquapaug Eastern Pequot Tribe therefore, respectfully recommends to the members of the House Government Reform Committee that the committee undertake to study the benefits of specific legislation, appropriating funds to provide adequate support to petitioners, through the BIA, thereby placing all petitioners on an equal footing, by permitting direct support to assist all petitioners in the development of the content of their petitions. This may well serve to remove the present, perceived necessity by petitioning tribes to unreasonably rely on monied interests, which are all too often often gambling promoters seeking access to future IGRA[1]-based casino opportunities.

The advancement of the BIA mission by such a program of direct support would augment the capabilities of the BIA staff to review all petitions in a timely manner and assure all tribes a fair and just review.

We respectfully request that this letter be accepted and made a part of the record of the this hearing before the House Government Reform Committee, and further request that the Clerk read this letter into the record for the benefit of the public and members of the committee in attendance at the hearing.

Sincerely,

Bruce N. Goodsell
Counsel, Wiquapaug Eastern Pequot Tribe

cc: Chief "Sun Rise" Byron O. Brown
Members, Tribal Council

1. Reference is to the Indian Gaming Regulatory Act (IGRA)

HISTORICAL BACKGROUND & FACT SHEET

# EASTERN PEQUOT TRIBAL NATION

## I. Brief Summary of the Federal Recognition Process

- The Eastern Pequot Indians (Eastern) of Connecticut and Paucatuck Eastern Pequots (Paucatuck) were the 35th and 113th groups nationwide to submit a formal letter of intent to seek federal acknowledgement FROM the Bureau of Indian Affairs (BIA). The Eastern's letter of intent was the first filed on behalf of any tribe in Connecticut. Over the next 24 years, the two groups waited along with many other tribes across the country for the day when their petitions would be decided by the BIA.

- The BIA began formal review of the two petitions on January 12, 1998, when the BIA's Branch of Acknowledgement and Research (BAR) staff of historians, anthropologists, researchers, genealogists and lawyers began to evaluate the petitions to determine if they met the seven criteria specified in the Federal Regulations.

- The Easterns and Paucatucks provided the BIA with thousands of pages of records and documents, including updated tribal rolls, genealogies, colonial, state and federal papers, anthropological findings, and narrative petitions which eloquently stated the case for their federal acknowledgement. Representatives of the BAR visited each group's office in North Stonington, Connecticut on several occasions to interview tribal members and review additional tribal records, historical records, birth certificates, and other official materials collected in support of the petition.

- On March 24, 2000, the BIA issued a positive preliminary finding on the petitions for federal recognition. The BIA found that the groups had satisfied the seven criteria for federal acknowledgement under the BIA's regulations but recommended submission of additional information to strengthen a final positive determination.

- After an extended comment period, many requests for extensions, and as a result of a lawsuit against the BIA by Connecticut's Attorney General and the three towns surrounding the reservation, a federal judge entered a scheduling order directing the BIA to issue a final determination by December 24, 2001. In its status report filed with the court in October, 2001, the BIA argued that for various reasons it would not be able to complete the decision making process until June 4, 2002. With the Eastern's and Paucatuck's agreement, the judge granted the BIA's request and ordered that a final decision be issued by that date; the deadline was extended again to June 25, 2002.

- On June 24, 2002, the BIA issued a positive final determination that the two petitioners comprise a single tribe that met the seven mandatory criteria and is entitled to federal acknowledgement as the historical Eastern Pequot tribe (Tribe). This acknowledgement reaffirmed the Tribe's government-to-government relationship with the United States.

- The State of Connecticut and three towns surrounding the reservation filed a request for reconsideration of this final determination in September, 2002, and the Tribe responded in March, 2003. The decision rests now with the Interior Board of Indian Appeals with a decision expected in 2004.

- Three of the other principal tribes which existed as functioning communities during the colonial period in southeastern New England have been federally recognized: the Mashantucket Pequot Tribe, the Mohegan Indian Tribe, and the Narragansett Indian Tribe. The Tribe is the final tribe of this group to receive federal recognition.

- BIA has received a total of 294 letters of intent and petitions in its history. There were 40 petitions pending on the effective date of the acknowledgment regulations and 254 have been filed since 1978. Of those, 57 have been resolved by BIA, Congress or by other means such as dissolution, withdrawal or merger. BIA has denied acknowledgment to 19 tribes and acknowledged through the process only 16. The status of 3 tribes was clarified through the department. Congress has restored 2 tribes and recognized 7. There are 9 petitions on active status, 13 in ready status, 2 in post-final decision appeal, 1 in litigation, and 213 not ready for evaluation.

## II. Land Base and Government Structure

- The Colony of Connecticut established a land base for the Eastern Pequot Indians in 1683, granting them approximately 228 acres near Long Pond and Lantern Hill in North Stonington. The Tribe's present reservation is located on a large portion of this land. Since 1683 to the present, members of the Tribe have occupied it continuously, giving it the distinction of being one of the oldest continuously occupied reservations in America. For over 300 years, the Tribe has maintained a formal relationship first with the Colony and then with the State of Connecticut.

- In the 18th through the 20th centuries the Tribe's lands, money and other assets were managed by colony- then state- appointed overseers. The official overseers' reports document the names of tribal members as well as other information about their lives. These overseer reports continued through 1935, when the Connecticut State Park and Forest Commission took over management of the Tribe's assets until 1939. The Office of the Commissioner of Welfare took charge of the reservation from 1941 through 1973 when the Connecticut Indian Affairs Commission was established with responsibility for the tribes' assets.

- There are over 1,100 persons officially enrolled on the Tribe's membership roster. Some of these individuals reside on the reservation and a majority of the Tribe's members live or have immediate family living in the towns surrounding the reservation. All of the current members of the Eastern Pequot Tribal Nation have ancestors who were identified as members of the Tribe on the state overseers' reports or the 1870, 1900, or 1910 federal censuses.

- Since the final recognition decision, the Eastern Pequot Tribal Nation (EPTN) has healed the family divisions which began in the 1970s and all its members are working together as one tribal community with one tribal government. They adopted a new constitution a little over a year ago, and it is this tribal constitution which established their current system of government. The Tribe is governed by a Tribal Council consisting of 14 members who are elected for three year staggered terms. Six members of the council serve as officers as well. The present officers and councilors of the Tribe are:

  - Marcia Jones Flowers, Chairwoman
  - Mark Sebastian, Vice Chairman
  - James A. Cunha, Jr., Comptroller
  - Ron Wolf Jackson, Treasurer
  - Lynn D. Powers, Corresponding Secretary
  - Gina Hogan, Recording Secretary
  - Joseph A. Perry, Jr.
  - Katherine H. Sebastian
  - William O. Sebastian, Jr.
  - Mary Sebastian
  - Agnes E. Cunha
  - Frances M. Young
  - Eugene R. Young
  - Lewis E. Randall, Sr.

- The Tribal Council conducts all business affecting the general membership including the development and enforcement of tribal laws, the management and control of tribal assets, and the management and oversight of all on-reservation activities, including on-reservation housing. The Council also organizes the Tribe's annual Pow Wow, and supervises construction and maintenance of roads on the reservation. The Tribal Council also manages intergovernmental relations with federal, state and local governments, evaluates potential economic development opportunities and oversees programs and activities designed to strengthen and preserve the Tribe's cultural and social community.

## III. Relationship between the Eastern Pequot Tribe and the Paucatuck Eastern Pequots

- The BIA's final decision of June, 2002, recognized that there is and always has been one historic Eastern Pequot tribe that includes families and individuals who share a common history, a common land base, a common culture and a common genealogy. The BIA also concluded that this tribal community evolved from the historic Pequot Tribe which existed at the time of first sustained contact with Europeans.

- In contrast to claims by the surrounding towns and the Attorney General, the decision specifically states that the BIA did not merge two tribes but determined, as the state government, the state courts, the Connecticut Indian Affairs Council and other Connecticut Tribes had determined long before, that a single tribe had existed since the Colonial period,

and that the tribe had suffered political conflicts which actually evidenced their political viability in the 20th century.

- Since the decision, the two groups have acknowledged that their division was based on family quarrels and feuds; they have completely reconciled their differences and are now working together under a unified tribal government.

## IV. Cultural and Economic Development

- One of the primary reasons the Tribe sought federal acknowledgement was to gain access to federal programs to assist it in providing for its members' health, education, social service and housing needs. Many members currently reside in substandard housing on and off the reservation and many suffer the results of inadequate health care. They desperately need the social services, job training and educational assistance which the federal government provides to federally recognized tribes.

- The reservation has been the Tribe's historic and cultural center for hundreds of years. Scattered throughout the 228 acres are ancient burial grounds, remains of historic villages, artifacts and archaeological finds that tell the story of the Tribe's history throughout the generations, some dating back thousands of years. Without outside assistance, these historical assets may be lost forever. Acknowledgement as a federal tribe will give the Tribe access to programs to assist it in recovering and preserving its religious and cultural heritage for future generations.

- The Tribe has explored many economic development opportunities with each premised on benefits for the Tribe and the surrounding community.

- David A. Rosow, CEO of International Golf Group, Inc. of Southport, Connecticut, is the Tribe's financial backer. An experienced resort developer, Rosow is assisting the Tribe in evaluating its various economic development options with an overall goal of improving the lives of all tribal members and assuring the long term self-sufficiency of the tribal community.

**POSITION PAPER**

# EASTERN PEQUOT TRIBAL NATION

I. Proven descendants of those natives among the first to meet European colonists, today's Eastern Pequot Tribal Nation (EPTN) has achieved federal recognition by following step by step the procedure established in Title 25 of the Code of Federal Regulations

- Unlike many Western treaty tribes, EPTN's initial contacts were with Europeans who settled on U.S. soil and entered into trade and other relationships with the Tribe before the formation of the United States. Because it was the colony which established the 228 acre reservation in North Stonington, EPTNs never had an opportunity to negotiate a treaty with the United States.

- The Eastern Pequot Indians of Connecticut (EPIC)filed their original letter of intent to seek federal acknowledgement in 1978; the Paucatuck Eastern Pequot Indians filed in1989.|

- The EPIC filed their petition long before National Indian Gaming Regulatory Act and before the first Indian casino in Connecticut.|

- The petitions contained over 40,000 thousand pages of documents; each petitioning group submitted to hours of personal interviews in Connecticut by BAR staff and participated in days of Formal Technical Assistance hearings with towns and state opponents.

- Their petition has been pending through 5 presidential administrations, 7 secretaries of the interior, 9 assistant secretaries of the interior for Indian affairs, 4 state governors and 4 state attorneys general.

- The EPTN petition and all documents and comments filed by the state and surrounding towns have been reviewed by four independent BAR researchers, numerous peer reviewers, the Department of Interior's Office of the Solicitor, and Office of Tribal Services, 2 Secretaries of the Interior, and 2 Assistant Secretaries for Indian Affairs.

- The EPTN petition has been subject to unprecedented attacks and attempts to derail the process yet the evidence has been strong enough to survive these politically motivated challenges in a climate encouraging negative findings.

II. The EPTN goals remain the same as when the petition was originally filed in 1978: to become self-sufficient and exercise self-determination while strengthening its political, social and cultural communities

- To become entitled to assistance from most federal Indian programs, tribes must achieve federal recognition. The recognition process has become prohibitively expensive necessitating alliances with financial backers. The EPTN have a successful partnership with a Connecticut based financial advisor who is a businessman, golf course developer and financial manager, not a casino speculator.

- With recognition, the EPTN can apply for numerous federal Indian programs and services which they are denied as an unrecognized tribe. These programs will assist them in preserving their lands, and give them access to health care for their members, as well as housing, job training, cultural preservation, and educational loans and grants for their children.
- Federal recognition also will give access to programs to improve and strengthen the tribal government and the community.
- Economic development leading to economic self-sufficiency includes development of a world-class resort destination casino with input from and a partnership with a welcoming host community.

III. The June, 2002 recognition was of one historic Eastern Pequot tribe, not a merger of separate tribes.

- The final decision of June, 2002, recognized that there is and always has been one historic Eastern Pequot tribe consisting of the two petitioning groups which have existed together from the time of first sustained contact with Europeans until the present.

- In contrast to claims by the towns and the Attorney General, the decision specifically states that the BIA did not merge two tribes but determined instead that a single tribe had existed since first sustained contact, and that the tribe had suffered political conflicts in recent years. These recognized and documented conflicts actually were evidence of their political viability in the 20th century.

- Since the decision, the two groups have acknowledged that their division was based on family quarrels and feuds; they have completely reconciled their differences and returned to their original unified group.

- The EPTN functions under a constitution approved over a year ago. A Tribal Council of 14 members from both former groups conducts all tribal business.

- Prior differences, at times bitter and acrimonious, have been healed completely.

IV. The EPTN is committed to pursuit of their economic development to benefit not just the tribe but the host community and the state as well.

- With private funding, the EPTN have proposed development of a destination resort casino costing more then $500 million.

- Recent studies prove the viability of one more casino in this region.

- The EPTN project will create 10,000 construction jobs and 4,500 permanent new jobs with indirect creation of 5,000 spin off jobs.

- The EPTN casino will generate annual compact payments to the state of more than $100 million.

- The EPTN is prepared to pay significant impact fees to its host community/partner.

V. A decision on the state's appeal at IBIA is due shortly. With a denial of the appeal, the EPTN petition will have undergone the most intense scrutiny and will have survived the most powerful opposition of any tribe seeking recognition in modern history. After a quarter century of proving their legitimacy, the EPTN proposes that Connecticut's political leaders finally embrace the tribe as legitimate and celebrate the honor of having descendants of the first Americans living among them. The EPTN wants to move forward with economic development that will benefit the state and local communities. As they have for the past quarter century, they will work within the federal regulations and in partnership with the State and local communities to achieve mutually beneficial objectives.

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# WESTPORT, CONNECTICUT

DIANE GOSS FARRELL
*First Selectwoman*

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|---|---|
| To - | From Diane Farrell |
| Co./Dept. | Co. |
| Phone # | Phone # |
| Fax # | Fax # |

May 5, 2004

Honorable Thomas Davis, Chairman
U.S. House Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Honorable Christopher Shays, Vice Chairman
U.S. House Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

RE: CONGRESSIONAL HEARING ON TRIBAL RECOGNITION

Dear Congressmen Davis and Shays:

On behalf of the Town of Westport, Connecticut, we are writing to support reforms to the Bureau of Indian Affairs (BIA) process. The Town of Westport has been involved with a number of tribal claim proceedings over the years, and we have first hand experience with BIA matters and tribal recognition procedures.

Reforms should be considered to insure that the BIA proceedings are conducted impartially and in accordance with the seven criteria enumerated in the law for tribal recognition. The criteria must always be applied in an even manner regardless of the parties involved and based upon reliable evidence in the record. Any changes in the law should guarantee consistency among the various parties and a uniformity of standards at all times.

Thank you for allowing the Town of Westport to add its comments to the hearing being conducted by the U.S. House Committee on Government Reform.

Sincerely,

Diane Goss Farrell
First Selectwoman

DGF:ps

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E-mail: selectman@ci.westport.ct.us • Website: www.ci.westport.ct.us

May 5 2004 3:20PM OIG 2022193856

United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

MAY 5 2004

The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Attention: John Hunter, Counsel

Dear Chairman Davis:

In follow up to my testimony before the Committee this morning, I would like to clarify a statement I made about the actions of a former Acting Assistant Secretary related to tribal acknowledgment decision documents.

In my testimony, I stated: "In fact, we even found that one of these decisions was signed and back-dated by the former Acting Assistant Secretary after he had left office."

While the former Acting Assistant Secretary, Michael Anderson, readily admitted to signing an acknowledgement decision document on January 22, 2001 – three days after he had left office – he maintained then, and reiterated to me today following my testimony, that he did not back-date it to January 19, 2001.

In our Investigative Report, *Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming,* issued February 2002, we reported that Mr. Anderson's former administrative assistant contacted Anderson on January 22, 2001 and told him that certain acknowledgment documents had not been signed. Anderson agreed to drive to the Main Interior Building, where his former administrative assistant left the building with the documents and presented them to Anderson. Anderson signed the documents while sitting in his car outside the building. His former administrative assistant then returned to the office and date-stamped the documents January 19, 2001.

Therefore, I would respectfully request that you enter this clarification into the record to correct my statement that the former Acting Assistant Secretary signed and back-dated decision documents. Rather, Mr. Anderson only signed the decision documents after leaving office. He did not back-date them.

Thank you for the opportunity to testify before the Committee today, and for this opportunity to clarify my testimony.

Sincerely,

Earl E. Devaney
Inspector General

WRITTEN TESTIMONY OF
DOLORES R. SCHIESEL, FIRST SELECTMAN
TOWN OF KENT, CONNECTICUT
TO
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS
May 5, 2004

INTRODUCTION

As First Selectman of the Town of Kent, Connecticut, I am pleased to submit this written testimony regarding the American Indian tribal recognition process as administered by the Department of Interior, Office of Acknowledgment. I commend the Committee on Government Reform for taking a serious look at an agency that is impacting the lives of people all over this country by its finding of tribal status.

The seriousness of determining a particular group of tribal people so socially, culturally and politically distinct throughout history that it should be on a government-to-government relationship with the United States of America can not be taken too seriously. That the process be conducted in accordance with the standards set forth by Congress and in a procedurally fair manner is essential to its success. Unfortunately, the experience of the town of Kent has not been one of procedural fairness and openness.

Kent is a rural town, with a population of about 2900, in the northwestern corner of Connecticut. Kent was incorporated as a Connecticut municipality on October 1739. In 1752, the State of Connecticut legislature reserved for Indian use land at Schaghticoke in Kent. The remains of that original set aside are about 400 acres of primarily wooded mountainside. In recent decades, the population on the reservation has varied from about 6 to 15 people.

By the time I took office in 1995, a Schaghticoke petition for acknowledgment had been dormant for many years. At the time STN was scheduled for consideration in eight to ten years after it achieved active status. I also knew that the Indian Regulatory Gaming Act (IGRA) had changed the stakes for Indian groups around the country, and particularly in Connecticut.

In 1998, a group calling themselves the Schaghticoke Tribal Nation (STN) sued the Town and other parties in Federal Court under the Non-Intercourse Act of 1790. The land claims involved a town dirt road and about 2000 acres owned by Kent School, Connecticut Light & Power Company and Preston Mountain Club. The members of STN are not residents of Kent and have little to do with the residents of the reservation. They have stated publicly the financing for the recent acknowledgment research and lawsuit is being financed by outside investors in Indian gaming.

The goal of the land claims was clearly to put on enough pressure that it would accelerate the petition of the STN ahead of other groups. The initiation of land claims was a successful legal maneuver and accelerated the petition review for the STN. When casino investors became the high stakes players, the local governments could not match the ante. Kent has relied upon the law and the facts to be its truth. We are sadly finding that when money talks, the truth and the rule of law often take a back seat.

In December 2002, the Bureau issued a Proposed Finding (PF) that the group did not meet the federal criteria for acknowledgment. In January 2004, the finding was reversed in a Final Determination (FD) that in fact the group did meet the criteria.

The town of Kent disputes that finding and does not believe that in the interim period new evidence served to fill the obvious gaps in historical, community and political structure pointed out in the PF. My personal observation is that while many OFA staff members took a very serious look at the facts of the case, in the end the resolve to find a tribe overcame logic and law. Such defective thinking undermines the integrity of the process for deserving Native American groups.

On January 12, 2004 less than two weeks before the issuance of the final determination, a staff memorandum posed the question: "*Should the petitioner be acknowledged even though evidence of political influence and authority is absent or insufficient for two substantial historical periods, and if so, on what grounds?*" The FD takes this option to acknowledge even though there are gaps and it would require a change in the significance of a state reservation. In clarifying the various options, including finding no tribe, the memorandum points out that its change in how a state reservation is treated as evidence could be interpreted to be a "lesser standard which would be cited in some future cases." Yet, in the end the FD goes beyond the law and does use the state reservation incorrectly. As disturbing as anything in all of this is the willingness of some staff to create law without Congress to approve it.

Furthermore, the memorandum states: "Acknowledgement of the Schaghticoke would give them standing in the current litigation to procede (sic) with their Non-Intercourse Act land claim". It is blatantly predetermined decision making when pending land claims, that can only proceed with federal tribal status, are used as the very reason to find such a status. At this point, it is clear that law and facts that do not support acknowledgment will not stand in the way of the finding by OFA.

This process is flawed. The integrity of government comes under suspicion when agencies make law without procedure and when agencies conduct themselves without regard to the law, The transparency of the process flies in the face of reason with such result-oriented decisions. It is a process that is impacted by investors seeking to make personal gain under IGRA. It is impacted by the bureau itself which leans toward finding tribes by overlooking the law or setting new precedents never intended by Congress. Kent is just one of many municipalities through out this country who may see its entire rural lifestyle changed because of corruption by outside investors using the system and an agency operating as a rogue group.

I appreciate that your committee is objectively analyzing the acknowledgment process. It is a step in the right direction that you have undertaken such a difficult mission.

Dolores R. Schiesel
First Selectman

# SCHAGHTICOKE TRIBAL NATION
# CONNECTICUT

The Honorable Tom Davis, Chairman
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

May 4, 2004

Dear Chairman Davis:

Thank you very much for the invitation to testify before your Committee on May 5, 2004. While I appreciate Congress' interest in the process by which the Federal government acknowledges the existence of Indian tribal governments, I regret that I cannot participate at this time. As you are certainly aware, the Schaghticoke Tribal Nation, after a 25 year effort, has recently received a positive Final Determination in favor of recognition from the Assistant Secretary for Indian Affairs. Only yesterday, I received a copy of the nearly 200 page appeal filed contesting that determination. My legal counsel has advised me that my focus now must be on analyzing and responding to that appeal which is now in active litigation. While I am certain that the appeal totally lacks merit, I have been advised by my counsel that my responsibility, at this time, is to undertake a full and complete examination of the appeal before undertaking any public comment on its substance or other matters relating to it.

I request that this letter be read into the Committee's record so that all members are aware of my reasons for not testifying.

Thank you again,

In Brotherhood,

Richard L. Velky, Chief
Schaghticoke Tribal Nation

Cc: Larry Holloran

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