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FEDERAL RECOGNITION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON FEDERAL RECOGNITION OF INDIAN TRIBES

MAY 11, 2005
WASHINGTON, DC

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FEDERAL RECOGNITION

WEDNESDAY, MAY 11, 2005

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Burr, Crapo, Dorgan, and Inouye.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning.

In 1978, after years of ad-hoc decisions, the Department of the Interior promulgated regulations intended to ensure a fair, timely and rigorous process for the administrative recognition of Indian tribes.

Since that time, this committee has held numerous oversight hearings on that process. What those hearings have shown us is that from the beginning this process, though well intentioned, has been criticized as too slow, too costly and too opaque. Congressional recognition, on the other hand, has been criticized for being too summary and too unfair.

Events in recent years have raised the specter of improper conduct by Federal officials, including well-reported accounts of paperwork being signed through car windows by departing officials, and officials resigning Federal employ to immediately work with tribes they recently recognized.

The role that gaming and its non-tribal backers have played in the recognition process has increased perceptions that it is unfair, if not corrupt. The solemnity of Federal recognition, which establishes a government-to-government relationship between the United States and an Indian tribe, demands not only a fair and transparent process, but a process that is above reproach.

While the relationship established is Federal, the impacts are felt locally as well, as has been reported to this committee by states attorneys general and local communities. Congress retains the ultimate authority and responsibility to recognize and deal with Indian tribes, including oversight of the Federal agencies also charged with those responsibilities.

Therefore, it is Congress' responsibility to ensure that administrative agency action is conducted in a transparent fashion, in keeping with good governance. The committee will hear from a va-

riety of witnesses today, including colleagues from the Senate and House. I anticipate that informed by this and past hearings, this committee will begin looking at ways to fix the process.

Vice Chairman Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Senator McCain, thank you very much, and thanks to those of you have who come to present testimony at this hearing.

As Senator McCain indicated, this is a complicated issue. The recognition process is most often lengthy and costly. It requires a huge amount of research and documentation. We have many witnesses today. Let me just say that I share your interest in this issue.

Number one, the recognition process is very important. We have a process at this point that was begun in 1978 through regulation in the Department of the Interior. There are critics of that process from virtually every direction. The stakes are fairly large in many areas of the country with respect to tribal recognition. I think that this hearing is a very important discussion on a timely basis of something that needs to be considered by this committee.

So thank you for the leadership on this hearing, Mr. Chairman.

The CHAIRMAN. Senator Crapo.

STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM IDAHO

Senator CRAPO. Thank you very much, Mr. Chairman.

I, too, appreciate your attention to this issue. As has already been indicated, the stakes are very high as we evaluate the Federal recognition process. I look forward to the testimony of the witnesses today.

Thank you very much.

The CHAIRMAN. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you, Mr. Chairman.

Clearly, we have before us today a very distinguished panel of our colleagues and others who are interested in the subject of this hearing. I will make my remarks brief because there will be sufficient time for all the witnesses.

Mr. Chairman, I have reviewed the statements that have been submitted to the committee before we closed up business last evening. It is clear that while this hearing is on the Federal recognition process, a number of witnesses are actually more concerned about tribal gaming. Accordingly, I think it is important that we note in the record a few facts.

The Director of the Office of Acknowledgment will present testimony this morning and I would guess that he can more thoroughly document the facts that we discussed at our last hearing on this matter. One of those facts that I recall is that the larger number of petitions for acknowledgment that are now pending in that office

were filed long before the advent of the Indian Gaming Regulatory Act or the Supreme Court's decision on *Cabazon*.

I think it is important because there are some who have suggested that tribal groups have petitioned for Federal recognition for the sole purpose of conducting gaming. However, if this were so, we would have to attribute to many of the petitioning tribal groups a clairvoyance that they knew that one day in the distant future there was going to be a Supreme Court decision and thereafter the Congress was going to enact a law authorizing and regulating the conduct of gaming, so they decided that they would file a letter of intent to begin the process of seeking Federal recognition.

Those that believe that the process is too slow, too expensive and too cumbersome, in that latter group I would suggest are many if not most of the tribal petitioning groups. Should the fact that a State has recognized a tribe for over 200 years be a factor for consideration in the acknowledgment process? I would say definitely yes. How could it be otherwise? Don't most, if not all, of our States want the Federal Government to recognize the official actions of a State Government, when most of our States want the Federal Government to defer to the sovereign decisions and actions of those States over the course of their history? I think the answer to that question would be decidedly in the affirmative.

So let's be clear about one thing. The Federal acknowledgment process is all about the recognition of the sovereignty of native nations that were here long before immigrants came to America's shores. It is not about gaming. The fact that pursuant to a law enacted hundreds of years later, in 1988 to be precise, affords the tribal governments the option of conducting gaming as one tool in developing their economies, and does not mean that every native government will in fact exercise that option.

In fact, most native governments have elected not to pursue gaming. Let us not lose sight of the realities in a rush to judgment on the viability of a process that is clearly distinct from the issues of gaming.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Inouye.

The State of Connecticut is well represented here this morning. I would like to thank all of my friends from the House, as well as my colleagues from the Senate, for being here. I would like to mention that the attorney general of the State of Connecticut had requested to appear here today as well. We did not receive his request until late. We received written testimony from him. We will have a series of hearings on this issue, and we will invite him in the future.

We usually begin not only by seniority, but by age. And so Senator Dodd, I think you qualify in both categories. We welcome you to the committee.

Senator LIEBERMAN. Thank you, Mr. Chairman, a very astute observation. [Laughter.]

STATEMENT OF HON. CHRISTOPHER DODD, U.S. SENATOR FROM CONNECTICUT

Senator DODD. You know, they say there are lies, then there are statistics. [Laughter.]

Anyway, thank you, Mr. Chairman, and let me express my gratitude to you and to the members of the committee for giving us an opportunity this morning to testify before you. Obviously, the work that you and Senator Dorgan are doing in holding this hearing is extremely important. No committee in my view has done more than in the Senate, in fact the whole Congress, to advance the cause of improving America's understanding of native peoples and native cultures than Chairman McCain and Vice Chairman Dorgan, along with their predecessors Senator Ben Nighthorse Campbell, who is retired from the Senate, and of course the distinguished Senator from Hawaii, Senator Inouye, have worked tirelessly to enable America to better understand her native peoples and to protect their sovereign States.

I would like to acknowledge, Mr. Chairman, if I could, the presence of our Governor from Connecticut, Governor Rell; my colleagues from Connecticut, Senator Lieberman you have mentioned already, and Congresswoman Johnson, Congressman Shays and Congressman Simmons all are here to be heard this morning.

We would also like to acknowledge the presence of two other witnesses, Chief Richard Velky of the Schaghticoke Tribe and Ken Cooper of the town of Kent Connecticut.

At this time, I would also ask unanimous consent if I could, Mr. Chairman, that the testimony of the attorney general that you mentioned has been submitted to the committee would be included in the record, if we could here, as well as the testimony of the First Selectman of Kent, Connecticut, which is one of the Connecticut communities most directly affected by one of the decisions; and also the statement of Dolores Schiesel be inserted in the record as well, if we could.

The CHAIRMAN. Without objection.

Senator DODD. Thank you, Mr. Chairman.

Mr. Chairman, as all of my colleagues know, Congress has the authority and the duty to respect, honor and to protect the rights of the sovereign Indian nations that reside within the borders of the United States. The Federal Government has a unique legal relationship with each tribal government that represents peoples whose ancestors were here even before people from the rest of the world joined them in calling America their home.

For several years now, the recognition process administered by the BIA has come under scrutiny. The General Accounting Office in its study released in November 2001 concluded, and I quote, "because of weaknesses in the recognition process, the basis for BIA's tribal recognition decisions is not always clear and the length and time involved can be substantial," end of quote.

These findings are reminiscent of the testimony offered by Kevin Gover who until January 2000 was the assistant secretary for Indian Affairs. In May 2000, Assistant Secretary Gover told this committee in fact, and I quote him here, "I am troubled" he said, "by the money backing certain petitions and I do think it is time that Congress should consider an alternative to the existing process. Otherwise, we are more likely to recognize someone that might not deserve it" end of quote.

Mr. Gover went on, Mr. Chairman, to say that "the more contentious and nasty things become, the less we feel we are able to do

it. I know it is unusual for an agency to give up responsibility like this, but this one has outgrown us" he went on to say. "It needs more expertise and resources than we have available."

Furthermore, Mr. Chairman, the chairwoman of the Duwamish Tribe of Washington State testified that she and her people, and I quote, "have known and felt the effects of 20 years of administrative inaccuracies, delays and a blase approach" I am quoting her now, "in handling and processing the Duwamish petitions" end of quote.

Taken together, Mr. Chairman, these statements speak to a startling admission. I would suggest that anytime an assistant secretary says in effect that his or her agency is incapable of grappling with one of its fundamental responsibilities, that person is issuing a cry for help and we should not ignore it.

I am not here to criticize the civil servants at the BIA. They are doing their very best under extremely difficult circumstances and with very little financial assistance. In fact, I recognize that the BIA has begun to address some of the concerns outlined by the GAO report. Most notably, Mr. Chairman, the Bureau has taken steps to improve its records management, a system on recognition, a decisions technical assistance materials, and the Interior Board of Indian Appeals decisions.

These steps will hopefully bring greater accountability and transparency to the work undertaken by the BIA.

Nevertheless, Mr. Chairman, much more work needs, in my view, to be done if we are going to achieve our goal of making the tribal recognition process as open, fair and transparent as possible. Administrative irregularities, accusations of influence-peddling, and a process that is generally perceived as exceedingly arcane and opaque have given rise to profound doubts about the viability of the decisions being rendered by the Bureau. This is no way for a Federal Government to determine the legal status of tribal groups and to set the conditions for how those groups will interact with State Governments, municipalities and other Federal agencies.

As Senator Inouye said 2½ years ago on the floor of the U.S. Senate during an amendment that Senator Lieberman and I offered at that time dealing with the recognition process, the process for conferring Federal recognition on our Indian tribes, and I quote our friend from Hawaii, "is a scandal that should be changed," end of quote.

Those tribes deserve better, and so do others who look to their Government to act fairly and expeditiously. I believe we have an obligation to restore public confidence in the recognition process.

Toward this end, Senator Lieberman and I have reintroduced two bills designed to ensure that the recognition process will yield decisions that are beyond reproach. The Tribal Recognition Indian Bureau Enforcement, or TRIBE Act, would improve the recognition process in several ways. First, it would require that a petitioner meets each of the seven mandatory criteria for Federal recognition spelled out in the current Code of Federal Regulations.

It is by now well known that several decisions by the BIA apply all seven criteria to some tribes, but not to others. This is patently unfair to these tribes subjected to a higher level of scrutiny by the

BIA than other tribes. It runs contrary to our Nation's sense of fair play, in my view.

Second, the TRIBE Act would provide for improved notice of a petition to keep parties who may have an interest in a petition, including the Governor and the attorney general of the State where the tribe seeks recognition, other tribes and elected leaders of the municipalities that are adjacent to the land of a tribe seeking recognition.

Third, it would require that a decision on a petition be published in the Federal Register, and include a detailed explanation of the findings of fact and of law with respect to each of the seven mandatory criteria for recognition.

And last, the TRIBE Act would authorize an additional $10 million per year to better enable the Bureau of Indian Affairs to consider petitions in a thorough, fair and timely manner.

Mr. Chairman, I would suggest obviously these things could be modified, but they are ideas we would like to put in place to try and get some predictability, some consistency to the process. I want to emphasize, Mr. Chairman, what this legislation would not do. It would not in any way alter the sovereign status of tribes whose petitions for Federal recognition have already been granted. It also would not restrict in any way the existing prerogatives and privileges of such tribes. Tribes would retain the right of self-determination, consistent with their sovereign status.

Finally, and perhaps most importantly, the TRIBE Act would not dictate outcomes, nor would it tie the hands of the BIA. It would simply create a uniform recognition process that is equal and fair to all.

The second bill, very briefly, Mr. Chairman, would provide grants to allow poorer tribes and municipalities an opportunity to participate fully in important decisionmaking processes pertaining to recognition. Consequently, these grants would enable these communities to provide the BIA more relevant information and the resources from which to make a fair, fully informed decision on tribal recognition. When the Federal Government through the BIA makes decisions that will have an enormous impact on a variety of communities, both tribal and non-tribal, it is only right that the Government should provide a meaningful opportunity to those communities to be heard.

I believe, Mr. Chairman, very strongly that every tribe that is entitled to Federal recognition ought to be recognized and ought to be recognized in an appropriately speedy process. At the same time, Mr. Chairman, we must make sure that the BIA's decisions are accurate and fair.

Every recognition decision carries with it legal significance that should endure forever. Each recognition decision made by the BIA is a foundation upon which the relationships between tribes and States, tribes and municipalities, Indians and non-Indians will be built for generations to come. We need to make sure that that foundation upon which these lasting decisions are built is sound and will withstand the test of time. We cannot afford to build relationships between sovereigns on the shifting sands of a broken bureaucratic procedure.

I thank you for listening.

The CHAIRMAN. Thank you very much, Senator Dodd.

Senator Lieberman.

STATEMENT OF HON. JOSEPH LIEBERMAN, U.S. SENATOR FROM CONNECTICUT

Senator LIEBERMAN. Thanks, Mr. Chairman, thanks to you and Senator Dorgan and members of the committee for holding this hearing. I welcome our Governor, members of the congressional delegation, the Chief from the Schaghticoke Nation, and Mr. Cooper from Kent.

Mr. Chairman, I believe this is the first time our Governor has testified for a congressional committee, and therefore I am encouraged that you will greet her with your normal charm and grace. She is ready.

Mr. Chairman, I am going to put my statement in the record based on Senator Dodd's statement which is quite comprehensive and with which I totally agree, and what I know my colleagues will say following. I just want to say a few words.

We are not here on an anti-Indian mission. The fact is, and I believe I speak for everybody, in saying that the tribal recognition process is the law's way of trying to in some small way create a path for justice and recognition for Native American tribes, and to acknowledge thereby the dark parts of our history in which the tribes were treated, Native Americans were treated so miserably.

The tribal recognition process was obviously altered, as Senator Inouye has indicated, by the advent of Indian gaming and the stakes involved are clearly much higher and questions about propriety are thick in the air, particularly in regard to the revolving door behavior that you cited, Mr. Chairman, in your opening statement.

So it becomes critically important to achieve the historic purpose for which the tribal recognition process was created, a purpose of justice, recognizing that now the more contemporary reason that tribal recognition often tends to become the way to gaming as well.

In our State, we have two major gaming operations operated by the Mashantucket Pequots and the Mohegans. I would say that these tribes have contributed enormously to the State's economy. They employ thousands of our people. They contribute hundreds of millions of dollars to our State Government every year.

They also bring with them the natural social dislocation of enormous enterprises, some things as basic as traffic congestion or suburban sprawl or a challenge to social values. It is that kind of effect of gaming that makes people in our State and in other States around the country worry about whether there are limits to the amount of gaming that can affect any one State.

But that is secondary. The point here, just a way of saying what is on the line here, the main point here is that the process of tribal recognition in my opinion has become dysfunctional; that we are asking an existing agency office to do, with the demands on it, what it does not have the resources to do, based on the increased demands and the increased significance of every decision they make.

This is a circumstance that cries out for the kind of leadership that this committee is uniquely capable under the leadership of the

two of you to perform. What do I mean? Nobody would ever say that this is a committee that was anti-Native American. It is very important to proceed from that basis.

But this is a situation that cries out for reform in everybody's interest, so decisions will be credible. They will be legitimate and they will be reached in a timely fashion.

Senator Inouye said it. There are some applicants for tribal recognition who have been waiting an enormous number of years. That is another kind of injustice that the current process does.

So Mr. Chairman, I thank you for holding the hearing, for being willing to give it the time that this large number of witnesses requires of yourself and Senator Dorgan and the committee, and for giving me, in this case, the opportunity to appeal to you to take the leadership in bringing about the reform that everybody desperately needs.

Thank you very much.

[Prepared statement of Senator Lieberman appears in appendix.]

The CHAIRMAN. Thank you very much, Senator Lieberman.

I am aware that you and Senator Dodd have other obligations this morning, and I thank you for coming this morning.

Congresswoman Johnson, welcome. It is very nice to see you again.

STATEMENT OF HON. NANCY JOHNSON, U.S. REPRESENTATIVE FROM CONNECTICUT

Ms. JOHNSON. Thank you very much, Mr. Chairman, and thank you to the committee members for inviting us to testify this morning, my colleagues and I, our Governor and others, on the need to reform the Bureau of Indian Affairs' Federal tribal recognition process, and the need to pass legislation reversing the recognition of the Schaghticoke Indians.

I urge you not only to look at reforming the recognition process, but re-thinking how it works in the densely populated eastern seaboard where the history of citizen-tribal relations have been so extremely different, and where the western expansion history does not exist. So it really needs to be re-thought in regard to the Northeast, as well as reformed.

Mr. Chairman, the BIA's tribal recognition process has failed the people of Connecticut because it resulted in a decision that is simply unlawful, a decision to acknowledge the Schaghticoke Tribal Nation of Kent, unlawful because it ignored evidence and overturned longstanding precedent. My bill lines this out in detail using material from the Bureau itself.

As the committee knows, the BIA is permitted to recognize a tribe only if it satisfies each of the seven mandatory criteria laid out in Federal regulations, including the key criteria that a tribe demonstrate it has exercised political authority over a community throughout its history.

The reason for these strict mandatory criteria are clear. The establishment of a federally recognized tribe has significant and irreversible affects on States and communities in which they are located. Federally recognized tribes are exempt from local taxation, local zoning and other areas of local and State law. They furthermore are allowed to pursue land claims over very broad areas and

these land claims paralyze communities because they prevent the transfer of property, undermine the value of local property, and in general provide leverage for a tribe to negotiate to get a plot of land appropriate for a casino and the right to establish a casino.

Casinos, then, impose on small towns, and particularly the surrounding towns, extraordinary burdens. These are towns with volunteer fire departments. These are towns that depend for public safety on State troopers. These are towns run primarily by volunteers on small budgets. They simply cannot survive the impact on infrastructure, the impact on tax base, the impact on the local laws of casino operations on surrounding and nearby Indian territories.

In densely populated New England, the impact of recognition falls heavily on all citizens and has a truly lasting and profound impact.

Mr. Chairman, the evidence convincingly shows that the Schaghticoke petition did not satisfy each of the seven mandatory criteria, yet in January 2004, the BIA reversed its own preliminary findings, ignored evidence, manipulated Federal regulations, and overturned existing agency precedent in order to grant Federal status.

We know this because the BIA has told us so. Its now infamous briefing paper prepared by BIA staff 2 weeks before it granted recognition, in that paper was outlined the strategy for BIA officials to overturn existing agency precedent and ignore Federal regulations in order to find in the Schaghticokes' favor. In the briefing paper, BIA staff informed their superiors that key evidence of political authority, evidence necessary to grant recognition, was, quote, "absent or insufficient for two substantial historical periods," close quote.

Furthermore, the briefing paper freely admits that declining to acknowledge the Schaghticoke, quote, "maintains the current interpretations of the regulations and established precedents on how continuous tribal existence is demonstrated."

Faced with the evidence and the law that demanded a negative result, the BIA ignored the evidence, cast aside precedent and reinterpreted the law. This is not how the people of America expect their government to operate.

Last December, the Interior Department's Office of the Solicitor advised the Interior Department that the BIA used an unprecedented methodology and made material mathematical errors in calculating tribal marriage rates. Without these mistakes and unprecedented methodologies, the Schaghticoke petition would not have satisfied key criteria and should not be recognized.

Even the Office of the Solicitor advises the Interior Board of Indian Appeals, where the case is now being appealed, that the BIA's decision, quote, "should not be affirmed on these grounds absent explanation or new evidence," unquote.

Given the grave consequences of the BIA's unlawful decisions, I recently introduced the Schaghticoke Acknowledgment Repeal Act of 2005 in the House of Representatives. This bill overturns the BIA's erroneous decision to grant Federal recognition. This legislation recognizes the fact that Congress cannot allow the result of an unlawful Federal recognition process to stand. I respectfully urge

this Committee to review it and consider it as you move forward with your work.

The committee is rightly examining the recognition process writ large. I wholeheartedly support this effort and I support legislation introduced by my colleagues to make the process fair, objective and accountable to the public. But I would remind the committee that prospective reforms to the recognition process will not fix the BIA's erroneous and unlawful decision in regard to the Schaghticoke Tribe. It may not prevent the financial interests backing this petition from moving forward to their goal, a Las Vegas-style casino in an area of Connecticut that does not want one and cannot support one.

Mr. Chairman, members of the committee, the BIA has failed the people of Connecticut and I believe the United States. I respectfully urge this committee not only to look toward reforming the BIA recognition process, but also correcting its past failures as in its decision regarding the Schaghticoke case. The reasons for moving forward with strong reform are plentiful. The reasons for accepting the status quo are nonexistent. I believe that the public's trust in good and responsible government requires action by this committee and this Congress.

I thank you for making this opportunity available for us this morning.

The CHAIRMAN. Thank you very much, Congresswoman Johnson. Thank you for taking the time to be with us today.

Congressman Shays.

STATEMENT OF HON. CHRISTOPHER SHAYS, U.S. REPRESENTATIVE FROM CONNECTICUT

Mr. SHAYS. Thank you, Senator McCain, Senator Dorgan, Senator Crapo, and Mr. Inouye for his statement. This is a privilege to be before you and a privilege to welcome our Governor as well.

The bottomline for me is the recognition process is corrupt and has been for years. Regretfully, Indian recognition is too often not about recognizing true Indian tribes, but it is about Indian gaming and the license to print money. In the State of Connecticut, we are talking literally about billions of dollars. Senator Inouye is right. Applications had been in the process for a long period of time, but they were dormant and not actively pursued by the tribes. But when Indian gaming came along, all of a sudden you saw huge financial backers.

I defy anyone to suggest that huge financial backers are going to back Indian tribes if it is not about Indian gaming. The problem is, we have a process that has been totally ignored. First, it was ignored by the Congress just passing legislation every month recognizing tribes, bypassing the BIA. I became very active in this process in the late 1980's when the Golden Hill Paugussett Tribe came to me after making land claims on a good chunk of the Fourth Congressional District and said, they go away; they go away simply, Congressman, by you doing what you need to do, and that is to put a bill in and give us recognition through Congress, like had been done for the Ledger Tribe.

I said I would not do it. They then said, well, it is happening every month. I watched this process. It was happening through

suspension, two-thirds vote, no amendments allowed, two members on the floor, no one asking for a roll-call vote. So I made it my mission, along with Frank Wolf, in the early 1990's to go and kill every bill that came before the Congress, thinking then that we had solved the problem. It would go before the BIA and the BIA, of course, would do it right. They would follow the process of the seven criteria; show economic, social and political continuity, precolonial times.

And we found it started to be ignored. I had staff of the BIA say, we write our reports and the political appointees are ignoring them. In fact, what they did in one case that was described to me, they took the worst part out of each of the three people who had written the report, and then compiled their own report, coming to a totally different conclusion than all three had said. All three had said this is not an Indian tribe, but in the end the political appointees said it was.

I particularly have focused on the Golden Hill Paugussetts because the Secretary who was appointed to the BIA, and this deals with the revolving door issue, said, "I will not rule on the Golden Hill Paugussetts. I will not rule on it." And then what he did, though, was he ignored the criteria on another tribe and said State recognition is important. If you are a State tribe, you must be a Federal tribe. But the State does not recognize continuity. What the State of Connecticut does is recognize reservations. There may be no one on the reservation. They may not have met for years. But I can tell you now, they are meeting now with the credible incentive to be able to print money and make billions of dollars.

You have a revolving door process because what did this gentleman do who recognized another tribe? He helped his own former client. His own former client is a State tribe. He said he would not get involved, but he set a precedent that a State tribe would be a Federal tribe, even though it was not of the criteria.

Let me just conclude by saying to you, the BIA is understaffed and it is underfunded. That is clear. You have a very real problem that you are continually getting more applications. I would suggest the following. One is codify the law to make sure that the seven criteria is the law and that you do not have people in the revolving door process who change it. Deal with the revolving door issue. And the third thing I would suggest is that you require all applicants to apply by a certain time. Let's understand how many tribes are out there. Let's not wonder if 10 years from now you are going to have another application. Say, if you are a Federal tribe now, by a certain date apply. And then we can know the universe and you can know how to fund.

I will end by saying I think you need to have the codification by law of the seven criteria. I think you need to deal with the revolving door issue. I think you need to require all potential tribes to file at a certain time so you know the universe. And I think you need to undo what was illegal action by the BIA under Ms. Johnson's request for law.

Thank you very much.

The CHAIRMAN. Thank you very much.

Congressman Simmons.

STATEMENT OF HON. ROBERT SIMMONS, U.S. REPRESENTATIVE FROM CONNECTICUT

Mr. SIMMONS. Thank you, Mr. Chairman, Vice Chairman Dorgan, for having this very important hearing.

You have heard many of the things that I would have said. I would ask that my full statement be inserted into the record.

The CHAIRMAN. Without objection.

Mr. SIMMONS. I appreciate that.

Let me focus on a comment by Senator Inouye. He made the comment that some tribes have petitioned for recognition prior to the passage of the National Indian Gaming Act. That is correct. But the fact of the National Indian Gaming Act has changed the conditions and circumstances of petitioning groups in Connecticut because very wealthy interests have now come into the process and as a consequence have changed the process through the incredible influence of money. That is why we are calling for transparency in the process and for reform of the process.

Mr. Donald Trump has been backing one of the petitioning tribes. He was previously. My guess is he is not backing them because he is interested in achieving sovereignty for that group. My guess is he is backing them because he wants to get on the gaming train. That is his career. That is his life.

My guess is that is the motivation of the other millionaires and billionaires who are involved in supporting petitioning groups from Connecticut, because they have seen that the Foxwoods Casino and the Mohegan Sun Casino can generate literally billions of dollars because of their location in a small densely populated State in New England between Boston and New York. It is a perfect market. And that is what is happening here. That is a fact and that is the reality. My colleagues, Mrs. Johnson, Mr. Shays, have provided the documentary evidence some of which is coming out of the BIA itself that proves these points.

We thank you, Mr. Chairman, for your consideration of these reforms. Point 1, the regulatory requirements should be in statute. It is just that simple. Senator Inouye suggests that State recognition should be a good reason for Federal recognition. That is not in the regulatory requirements. Those seven requirements should be made statutory, and that is what our legislation does.

Point 2, political appointees and other employees of the Bureau of Indian Affairs should not be subject to the revolving door exemption. We have clear-cut examples of where these individuals have made decisions on 1 day, have left office and have gone to work for gambling interests or tribes with gambling interests the next day. That is simply wrong, and yet it has happened. And given the large amounts of money involved in this process, it is reasonable that it will happen again.

Senator DORGAN. Congressman Simmons, would you submit examples of that? You indicated there is evidence of that. Would you submit them to the committee?

Mr. SIMMONS. Absolutely.

Again in closing, Mr. Chairman, Mr. Vice Chairman, we thank you for holding this hearing and we appreciate your listening to our concerns.

[Prepared statement of Representative Simmons appears in appendix.]

The CHAIRMAN. Thank you very much. I thank you all for coming today, and thank you for your valuable input. I can assure you we will certainly include them in our deliberations as we seek to address this very serious issue.

Ms. JOHNSON. Mr. Chairman, I assume my whole statement will be included in the record. I forgot to mention that.

The CHAIRMAN. No; thank you very much. [Laughter.]

Thank you all.

Now, we would like to welcome the distinguished Governor of the State of Connecticut, Jodi Rell. Governor, thank you for your patience this morning and thank you for coming down to visit us and give us the benefit of your experience on this issue and your recommendations. Thank you very much.

STATEMENT OF M. JODI RELL, GOVERNOR, STATE OF CONNECTICUT

Mr. RELL. Thank you, Senator. I actually should say thank you for your patience this morning. I know that sitting and listening to testimony sometimes you think you have heard it all before. In a way, I am sitting here thinking I have already heard my colleagues earlier.

I have a few new things to offer, but truly we appreciate your patience and thank you for actually having this public hearing, and Vice Chairman Dorgan for being here as well. It is a pleasure to be here.

As you have heard, my name is Jodi Rell, and I serve as Governor of the great State of Connecticut. I truly appreciate the fact that you have scheduled this hearing, and for inviting me to be here today.

I want to say right now, I thank the Connecticut delegation for their unrelenting efforts to address the weaknesses and the failings of the tribal recognition process. As you heard from one of our illustrious Senators earlier, I appear before you today giving my first congressional testimony as Governor. I do that because this is a critical issue to our State. Simply put, I believe that a number of profound problems exist within the recognition process and that reform is long overdue.

My concerns go to the issue of integrity and transparency, not to any particular tribe or to their right to seek and receive recognition. My State's history is inextricably intertwined with Native American history. We embrace our heritage and have solid relationships with the Mohegan and Mashantucket Pequot Nations, both of which are located in our State.

The process of recognition is lengthy and arduous, and for good reason. A successful petition will dramatically change the landscape of an entire community, an entire region, or a State. You have heard it this morning. Connecticut is a small State. It is as old as our Nation itself and densely populated. We have few expanses of open or undeveloped land. Historical reservation lands no longer exist. They are now cities and towns filled with family homes, churches and schools.

Our experience is that tribes file land claims within the State as they are seeking and pursuing Federal recognition. These claims place a cloud on the property titles of residents, resulting in many hardships and a lot of uncertainty. They de-stabilize the housing market and they compromise the ability of people to sell their property free and clear in terms of title.

This issue was very real to hundreds of thousands of Connecticut residents who lived under the threat of land claims by the Golden Hill Paugussetts. We fought this recognition based on its inadequacies in the law, and we prevailed. But the BIA has shown an increasing willingness to be flexible, to be permissive, and to set aside the dictates of law in favor of granting recognition at all costs.

If a tribe cannot meet the criteria of law, it should not be granted recognition, and yet it has on two occasions in Connecticut. I cannot help but conclude that the process by which recognition is made is broken. It is fatally flawed. It is inconsistent and often illogical. It is replete with conflicts of interest and disdain for the letter and the spirit of the law. It has resulted in immeasurable loss of public confidence and an immeasurable lack of administrative integrity.

The two recent decisions impacting Connecticut show the BIA's recognition system is in need of a wholesale restructuring. In the case of the Eastern Pequot and Pawcatuck Eastern Pequot petitions, the BIA miraculously achieved what neither petitioner could or wanted to do. The BIA found that both tribes were a single historical entity, even though the tribes themselves could not agree on this, and in fact did not seek joint designation. Recognition could not have been achieved individually, so the BIA said let's merge them together, and they merged the petitions and the tribes in order to grant recognition.

More recently, the decision to recognize the Schaghticoke demonstrates what many have long suspected. The BIA is awarding Federal recognition to tribes regardless of the evidence to the contrary. In 2002, the BIA issued a proposed finding that the tribe did not meet all of the seven criteria for recognition. And yet a little more than 1 year later, the BIA reversed itself and recognition was granted. An investigation of this astonishing reversal revealed a memo written by BIA staff just 2 weeks before the final determination, in which the staff admitted that the BIA had full knowledge that the tribe had not met that seven mandatory criteria for recognition.

These situations raise troubling questions and the very integrity of the administration.

The CHAIRMAN. Will you submit that memorandum for the record please?

Mr. RELL. I did.

[Referenced document appears in appendix.]

Mr. RELL. They demonstrate that there must be more control over the recognition process.

I recommend the following, and some you have already heard from our Congressmen and -woman this morning. Codify in statute the seven mandatory criteria. It is imperative that we do so. Impose an immediate moratorium on all BIA acknowledgment deci-

sions pending a comprehensive review of the process. You have heard about eliminating the Federal revolving door exemption. Examine how the process is usurping the powers of State and local governments. Prohibit the ability of tribes to place liens on property. And finally, invalidate the *Schaghticoke* decision.

In conclusion, the BIA is a bureaucracy run amok. Legitimate tribes should have legitimate opportunities to seek Federal recognition, but the criteria and the laws in granting recognition must be clearly and stringently adhered to. Rules should not be changed in order to achieve a desired result.

Mr. Chairman, thank you for your time this morning. Thank you on behalf of the people of Connecticut. I ask you to please consider the current unrestrained process and what effect it has on our State and on others.

Thank you, Mr. Chairman.

[Prepared statement of Governor Rell appears in appendix.]

The CHAIRMAN. Thank you very much, Governor. Are both those tribes that you referred to, are there plans to engage in gaming?

Mr. RELL. It is our belief that that is exactly what they plan to do.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Governor, let me thank you. As you indicated, there has been a rather consistent message from the Connecticut congressional delegation and from you, and I think you are raising important issues, and your contribution to the discussion we will have on the committee is very significant.

Thank you for being here.

Mr. RELL. Thank you very much.

The CHAIRMAN. Thank you very much, Governor Rell.

Our next panel is Mary Kendall, the deputy inspector general, Department of the Interior; and Lee Fleming, director, Federal Acknowledgment, Office of Indian Affairs.

Good morning and welcome. We will begin with you, Ms. Kendall.

STATEMENT OF MARY L. KENDALL, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR

Ms. KENDALL. Good morning, Mr. Chairman, Mr. Vice Chairman. I am pleased to be here representing the Office of Inspector General for the Department of the Interior and to testify about my office's oversight activities concerning the Federal acknowledgment process administered by the Department of the Interior.

As you know, the Office of Inspector General has oversight responsibility for all programs and operations at the Department. However, because the Inspector General Act specifically precludes my office from exercising any programmatic responsibility, we cannot and do not substitute our judgment for substantive decisions or actions taken by the Department of its Bureaus.

Given our vast oversight responsibilities, the OIG does not have subject-matter experts in all of the program areas in which we conduct our audits, investigations and evaluations. This is especially true in the area of Federal acknowledgment, which typically involves the review and evaluation of evidence by professional historians, genealogists and cultural anthropologists.

When my office undertakes to address concerns about the operation or management of a DOI program, we first look at the established process by which decisions or actions in that particular program take place and the controls over that process. Once 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 has occurred, we will go on to attempt to determine the impact of that deviation on the resulting decision or action, and whether any inappropriate behavior was involved by either Department employees and/or external participants.

This is how we have conducted investigations of matters related to Federal acknowledgment process since Inspector General Devaney assumed his position in 1999. As you know and have heard here today, the Federal acknowledgment process at the Department is governed by regulations. These regulations set forth the process by which petitions from groups seeking Federal acknowledgment as Indian tribes are considered.

While this process has been harshly criticized for its lack of transparency, based on my office's experience it is relatively speaking one of the more transparent processes at DOI. The process follows the requirements of the Administrative Procedures Act, which include notice and opportunity to comment, and an appeal or review mechanism. When we conduct any kind of inquiry, my office is always advantaged if a program has the backdrop of a well-established process with documented requirements and guidelines.

When conducting an investigation of a program such as Federal acknowledgment, we also attempt to identify all 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.

In Federal acknowledgment matters, this may include other parties identified by the Office of Federal Acknowledgment or parties who have expressly signaled an interest in the acknowledgment process. Accordingly, when we conduct interviews in a given Federal acknowledgment process, we typically begin with those Office of Federal Acknowledgment research team members who are charged with the petition review process. By beginning at this level, we have some historical success at discovering irregularities at the very heart of the process.

For example, in our 2001 investigation of six petitions for Federal acknowledgment, some of which have been mentioned here today, we discovered that pressure had been exerted by political decision-makers on the Office of Federal Acknowledgment team members who were responsible for making the Federal acknowledgment recommendations. The OFA research team members who reported this pressure to us were at the time courageous in their coming forward, since my office had not yet established its now well-known whistleblower protection program.

At that 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 assure their protection.

In other cases, we have had considerable success in obtaining candid information from DOI employees intent on telling my office about their concerns. Therefore, given OFA employees' track record in our 2001 investigation, and the protections of our now almost 2-year-old whistleblower protection program, we feel confident that if any inappropriate pressure is being applied, we will hear from the members of the OFA team.

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

In several instances, the OFA 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 it is contrary to OFA's recommendation, we found in those particular instances that significant pressure had been placed on the research team to issue predetermined recommendations; that the decisions were hastened to occur prior to the change in Administration; and that all decision documents had not been properly signed. As you noted, Mr. Chairman, we even found that one of those decision documents had been signed by the former Acting Assistant Secretary after leaving office.

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

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

In the end, we found that although the *Schaghticoke Tribal Nation acknowledgment* decision was highly controversial, OFA and the Principal Deputy Assistant Secretary for Indian Affairs conducted themselves in keeping with the requirements of the administrative process. Their decisionmaking process was made transparent by the administrative record, and those parties aggrieved by the decision sought relief in the appropriate administrative forum. Each, as it should be.

If I may, I would like to comment briefly on outside influences that impact Federal acknowledgment process in Indian gaming. As this committee recently demonstrated, greater care must be exercised by gaming tribes when they are approached by unsavory Indian gaming lobbyists promising imperceptible services for astonishing fees. We know of no statutory or regulatory safeguard pro-

tections against such lobbying efforts, or the often questionable financial backing of the Federal acknowledgment process.

That being said, however, given the spate of media attention of alleged improper influences relating to Indian programs, our office now includes in its scope of investigation an inquiry into any lobbying or other financial influences that might bear on the issue or program at hand, with a view toward targeting improper lobbying access and/or influence in the Department of the Interior.

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

We are hopeful that this conviction has sent a clear message to others who would attempt to corrupt the Federal acknowledgment process, particularly when motivated by gaming interests. This process is clearly fraught with the potential for abuse, including inappropriate lobbying activities and unsavory characters attempting to gain an illicit foothold in Indian gaming operations.

We will continue to aggressively investigate allegations of fraud or impropriety in the Federal acknowledgment process. We are presently conducting an exhaustive investigation into the genesis of questionable documents that were submitted into the record for a group known as the Webster/Dudley Nipmuc Band pending before the Interior Board of Indian Appeals.

In addition, as the Inspector General testified before this committee as recently as last month, our office has been reviewing our audit and investigative authorities in Indian country to determine whether we can establish an even more vigorous presence in the gaming arena.

Mr. Chairman, Mr. Vice Chairman, this concludes my formal remarks today and I would be happy to answer any questions you might have.

[Prepared statement of Ms. Kendall appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Fleming.

STATEMENT OF LEE FLEMING, DIRECTOR OF FEDERAL ACKNOWLEDGMENT, OFFICE OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. FLEMING. Good morning, Mr. Chairman, and members of the committee. My name is Lee Fleming, director of the Office of Federal Acknowledgment within the Office of the Assistant Secretary at the Department of the Interior.

I am also a member and a former tribal registrar of the Cherokee Nation, the second-largest Indian tribe in the United States, next to the Navajo. As tribal registrar, I directed a staff that processed applications of individuals seeking formal recognition as members

or citizens of the Cherokee Nation under Cherokee law. I am here today to provide the Administration's testimony regarding the process that groups follow when seeking Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the Code of Federal Regulations.

The Federal acknowledgment regulations 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 that have functioned as autonomous entities throughout history until the present. When the Department acknowledges an Indian tribe, it is acknowledging that an inherent sovereign continues to exist.

Under the Department's regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petition must, first, demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900; second, 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; third, demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times to the present; fourth, provide a copy of the group's present governing document, including its membership criteria; fifth, demonstrate that its membership consists of individuals who descend from the historical tribe and provide a current membership list; sixth, show that the membership of the petitioning group is composed principally of persons who are not members of any federally recognized Indian tribe; and last, seventh, 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. The Federal acknowledgment process is implemented by the Office of Federal Acknowledgment. This Office is authorized to be staffed with a director, a secretary, three anthropologists, three genealogists and three historians, who are all hardworking civil servants. The current workload consists of seven petitions on active consideration and 12 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. We have 220 groups who have only submitted letters of intent or partial documentation. These groups are not ready for evaluation. We have five final determinations representing four petitioners who are under review at the Interior Board of Indian Appeals.

In addition, there are pending lawsuits related to the Federal acknowledgment process. In November 2001, the General Accounting Office, now the General Accountability Office, issued a report entitled Indian Issues: Improvements needed in the Federal Recognition Process. The GAO made two primary findings in this report. First, the Federal acknowledgment decisionmaking process is not sufficiently transparent; and second, it is unequipped to respond in a timely manner.

In response to the GAO report, the Assistant Secretary for Indian Affairs implemented a strategic plan to provide strategies to communicate a clearer understanding of the basis of Federal acknowledgment decisions and to improve the timeliness of the acknowledgment process. I shall describe now many of the strategic plan elements that have been implemented and completed.

One, all proposed findings, final determinations and reconsidered determinations were electronically scanned and indexed and are now available on a CD–ROM. I might say this is the hottest item that groups are now asking for, as well as interested parties. Immediate and user-friendly access to all prior decisions enhances both transparency and consistency in the decisionmaking-process.

Two, OFA filled two professional staff vacancies, resulting 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 timely manner. I am pleased to announce that the Department is taking steps to add a fourth team with associated administrative support.

OFA also has hired two sets of independent contractors to assist with the administrative functions of processing FOIA, Freedom of Information Act requests, and two, the work with a computer database system known as FAIR. FAIR stands for the Federal Acknowledgment Information Resource system. It is a computer database that provides on-screen access to all the documents in the administrative record of a case and has made a significant positive impact on the efficiency of the office.

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 and responding to FOIA requests.

Another significant improvement made to the Federal acknowledgment process was the realignment of the office, now within the Office of the Assistant Secretary. This realignment eliminated two layers of review and now provides more direct and efficient policy guidance.

Due to the improvements just mentioned, the office was able to assist the Department in completing 17 major Federal acknowledgment decisions since January 2001. These 17 decisions include 9 proposed findings, 6 final determinations, and 2 reconsidered final determinations. On April 1, 2004, Secretary Norton requested that the 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, the Department has completed many of the action items identified in the strategic plan. We have nearly completed all the remaining tasks that are within the control of the Department. Some tasks will take longer to implement because they may require congressional action, regulatory amendments or access to the Internet.

In addition, on March 31, 2005, we formalized an already-internal policy of the Assistant Secretary's office that prohibits Federal acknowledgment decision-makers from having contact and communications with a petitioner or interested party within 60 days of an

acknowledgment decision. The Department published notice in the Federal Register of this policy which will help ensure that all parties are made aware of the 60-day period and that the integrity of the process is protected.

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

The CHAIRMAN. Thank you very much, Mr. Fleming.

Ms. Kendall, you find nothing wrong with casino interests providing financial backing for tribes seeking recognition. Is that what you testified to?

Ms. KENDALL. Not exactly, Mr. Chairman. We are concerned about the financial backing issues and the lobbying access to the Department. What we did not find anything wrong with was the actual process by which the acknowledgment was rendered.

The CHAIRMAN. Well, let's look at a situation in the State of North Dakota. There is an entity seeking recognition and they are in a sparsely populated area, probably not a good place for a casino to be located. It would probably be pretty difficult for Mr. Trump to come in in his zeal and advocacy for Native Americans to probably go in there. Yet, you have an entity in the Northeast that is seeking recognition, as was testified by Congressman Shays, that gaming interests come in and provide the financial backing for them.

Isn't there something wrong with that picture?

Ms. KENDALL. I do not disagree with you, Mr. Chairman. I think there is something wrong with that picture. Our concern is that there is no statutory or regulatory mechanism presently in place that would regulate or control that access.

The CHAIRMAN. You know, at one time the Inspector General called the recognition process permissive and inherently flexible. Do you think that some of the changes that have been made since then probably would make for a different description?

Ms. KENDALL. I am not familiar with that description, Mr. Chairman.

The CHAIRMAN. Do you believe that that is the case today?

Ms. KENDALL. I am not sure that I could say that I believe it is the case. I believe, as both a lawyer and a career civil servant, that the administrative process that governs the tribal acknowledgment process should ferret out that kind of problem if it is not founded in law or regulation.

The CHAIRMAN. I think you obviously agree that we should have the same revolving door provisions for employees of the BIA as we have for other branches of government.

Ms. KENDALL. I believe Mr. Devaney testified last month when he appeared before this committee that he, and I agree with him, believes that the revolving door provision that allows people to leave the Department and immediately represent tribes is a provision that has outlived its purpose, yes.

The CHAIRMAN. You testified that an investigation in 2001 revealed that there were improprieties.

Ms. KENDALL. Yes, sir.

The CHAIRMAN. Who were the individuals who acted improperly?

Ms. KENDALL. Our finding in that investigation specifically was the acting assistant secretary at the time, who

The CHAIRMAN. Whose name is?

Ms. KENDALL. I believe it was Michael Anderson, Mr. Chairman.

The CHAIRMAN. Do you know what Mr. Anderson does today?

Ms. KENDALL. I believe he is with a law firm.

The CHAIRMAN. That represents Native Americans?

Ms. KENDALL. That is my understanding, yes, sir.

The CHAIRMAN. But there were never any charges brought against Mr. Anderson.

Ms. KENDALL. At the time, our investigation concluded, and actually at the time he signed the documents, he was no longer an employee of the Department.

The CHAIRMAN. So he is no longer an employee, so therefore he did not fall under any Federal regulations or law.

Ms. KENDALL. He did not fall under our jurisdiction, Mr. Chairman. And as a former employee, the Department had no authority to take any administrative action against him.

The CHAIRMAN. I understand.

Mr. Fleming, how many new letters of intent, approximately, have you received since 1988, the passage of the Indian Gaming Regulatory Act?

Mr. FLEMING. I would have to quantify that for you, but I can give you an idea of the number of petitioners that were received before and after 1988. As an example, in 1980, we received 10 petitioning group letters of intent; in 1981, seven; in 1982, five; in 1983, seven; in 1984, seven; in 1985, five; in 1986, zero; in 1987, two.

In 1988, we received five; in 1989; six; in 1990, seven; in 1991, five; in 1992, eight; in 1993, seven; in 1994, nine; and then in 1995, we received 17; in 1996, 12; in 1997, nine; in 1998, 21; in 1999, 17; in 2000, 15; in 2001, 13; in 2002, 19; in 2003, 12; and in 2004, nine.

The CHAIRMAN. Thank you very much.

How many final decisions do you anticipate making over the next several years, roughly?

Mr. FLEMING. Roughly, we have seven groups that are on active consideration that are awaiting final actions. They are in various stages, either during a public comment period, response period, or the development of final determinations.

The CHAIRMAN. In your written testimony, you said on the issue of other improvements to the Federal acknowledgment process, you say some tasks will take longer to implement because they may require congressional action, regulatory amendments or access to the Internet. What are these congressional actions that you think may need to be taken?

Mr. FLEMING. We have discussed the congressional assistance with dealing with our Freedom of Information Act requests. We have discussed and provided testimony in the past that the Department does support sunset rules so that we would know a finite number of petitioning groups yet to address, and those are some of the aspects that would need congressional action.

The CHAIRMAN. Thank you very much.

Senator Dorgan.

Senator DORGAN. Mr. Fleming, let me just try to run through what I think is your workload. You say 7 petitions on active status; 12 petitions on ready status, as I understand it. Is that correct?

Mr. FLEMING. That is correct.

Senator DORGAN. Let me just for my own interest, of the seven petitions on active status, what would be the length of time that those petitions have been moving around this process? How old would some of the older petitions be in those seven?

Mr. FLEMING. Some of the petitioning groups in this category have been on active consideration for some time, but there are circumstances that are involved. They ask for a request for reconsideration or extensions to public comment periods, et cetera.

I can provide the office with some statistics that the GAO did in its review, where it analyzed what time was expended by the petitioner in developing the petition; and then the times that were expended in the various phases of the regulatory time frames. I can provide that to the committee.

Senator DORGAN. That would be helpful. The numbers that you read of petitions, or rather letters of intent, for example, by year seem to suggest an increasing number of letters yearly, or at least the trend line would look like it is up in recent years. You have, as I see it on my sheet, 220 either incomplete petitions or letters of intent to petition, something in that neighborhood. Is that correct?

Mr. FLEMING. Right. A good number of those petitions not ready for evaluation have only submitted letters of intent.

Senator DORGAN. Yes; there have been 15 petitions that are through the acknowledgment process and have been acknowledged, and 19 denied. Since the advent of regulations, there have been roughly 34 disposed of, either positively or negatively, 15 approved, 19 disapproved. Is that correct?

Mr. FLEMING. That is correct.

Senator DORGAN. If you will send us, I would be interested in the process, how long it takes and so on. I think all of that would be helpful to us. I appreciate the testimony.

One just quick question, because you are dealing with a regulation here, or administrative determination in rule or regulation, rather than a law, is there any advantage to incorporating these requirements in law as opposed to having them in a regulatory framework?

Mr. FLEMING. I believe in past oversight hearings, the Department had testified that it would support statutory establishment of the process.

Senator DORGAN. I was asking whether there is any inherent advantage to that, that you can think of, you or Ms. Kendall.

Ms. KENDALL. Mr. Vice Chairman, my feeling is a personal feeling. I think if the process is working as it ought, and we believe it is, that there would be no inherent benefit to putting this into statute as opposed to regulation. I think both have the power and effect of law.

Senator DORGAN. Right. If there had been successful challenges of the regulation in certain areas, then obviously legislation would be preferable.

Thank you both for your testimony. I appreciate your being here.

Ms. KENDALL. Thank you.

The CHAIRMAN. Thank you very much.

Our next panel is Richard Velky, chief, Schaghticoke Tribal Nation; Stephen Adkins, chief, Chickahominy Indian Tribe; John Barnett, chairman, Cowlitz Indian Tribe; Kathleen Bragdon, professor, Department of Anthropology, College of William and Mary; and Ken Cooper, president, Town Action to Save Kent, South Kent, CT.

I would like to welcome the witnesses and we will begin with the Honorable Richard Velky. Welcome.

STATEMENT OF RICHARD L. VELKY, CHIEF, SCHAGHTICOKE TRIBAL NATION

Mr. VELKY. Thank you. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning. Could I just mention that the written testimony of all witnesses will be made a part of the record, and if we could, we would like to see 5-minute opening statements. Thank you.

Mr. VELKY. Thank you, Mr. Chairman.

My name is Richard Velky. I am the chief of the Schaghticoke Tribal Nation. If I could, I would like to recognize the vice chairman, Michael Pane, who made the trip also with me and a few tribal members here in the audience, if they would please stand.

The CHAIRMAN. Welcome.

Mr. VELKY. And also Chairman Brown from the Mohegans I see has also joined us in the audience here. I would like to recognize him, too.

Mr. Chairman, I appreciate this opportunity and the 5 minutes to explain who the Schaghticoke Tribal Nation is and what we went about. It is very brief, and I appreciate being able to submit the written testimony.

I will tell you what the Schaghticoke Tribal Nation has gone through in order to achieve the status of recognition. In 1981, the tribe made a decision to go for Federal recognition. What we did by that is submit a letter of intent to the Branch of Acknowledgment and Research. Upon receipt of that letter, we were told that we needed to achieve seven criteria in order to be recognized for the Federal recognition status. So we started out fulfilling those seven criteria.

It was not until 1994 until we submitted our petition to the branch of Acknowledgment and Research. When we did this, we took the time and the courtesy to knock on the doors of the Senators who testified in front of us today and some of the congressional leaders to let them know the intentions of the Schaghticoke Tribal Nation; that we looked to achieve our Federal recognition status and to stand among our brothers and sisters in the eastern part of the State.

They made it very clear to us, stay within the rules; do not try a legislative move to achieve your Federal recognition; we will do everything we can to stop you. We understood where they were coming from, although it was not too appreciated. We knew we had a long road ahead of us. From 1994 until the present time, we have submitted three volumes of documentation, probably some 2,500 pages of information on the Schaghticoke Nation. Believe it or not,

in 1994 we probably had our best chance then to achieve the recognition status because things were not the way they are today in Connecticut.

However, we needed full accountability of our tribe and we proceeded to fill out our documentation and today we have some 30,000 pages of information. We are a small tribe in the northwest corner of the State of Connecticut. At that time, in the 1700's we had some 2,000 acres. Today, we are left with only about 400 acres of a rocky hillside. That was our reason and our determination to save our sovereignty, our heritage and our culture for our generations to come.

We were successful. The preliminary findings that you spoke of that were negative and the reversed them into a positive decision is a process that we all go through. At first when we submit our information, we are given an obvious deficiency. We take this information; we conduct it into what is needed; and we submit it to see how we stand in the standing of the seven criteria. When the tribe feels they are completely eligible to reach the seven criteria, they let the BAR know. Today, it is OFA.

We felt that position after our preliminary finding. We submitted more documentation 9 months later and informed them that we were eligible to go on for our Federal recognition. That is what we did and we were successful.

To say today that the system does not work; it is corrupt; corruptive influences there; are just statements coming out of our legislation. We, the Schaghticokes, are not just going through the system. We are also in a Federal court order. If any of these allegations that were made today or any other time have any evidence of proof to it, I encourage them to take it in front of the Federal court, Judge Peter Dorsey, and submit it to their testimony and I am sure we will be called in to answer to that.

Our fight for Federal recognition has not been an easy road. It took us a quarter of a century to get here. We ask this committee here to take a look at the recognition process. If there are changes that need to be made and reforms that need to be made, it needs to be made in favor of the Native Americans seeking the Federal recognition and not the States fighting us.

Financial investors come into this area to play a part. We understand that. But it is unfortunate that there are no funds there for these tribes, and us included, to get the money needed to achieve the fact of a recognition status; 30,000 pages of information is not light to come by. To fight off the State of Connecticut, we need a team of attorneys ourselves. Never in my lifetime did I think I would spend so much time with attorneys, but today I see I might be becoming one of them.

It is a hard role that the tribes need to focus on. It is not easy to sustain. We only ask that when we finally get to this end of the road, that the committee take a serious attempt at the BIA and any other process that the States or our opposition would attempt to stop the tribes from achieving their recognition, to stand down and move aside because we already made it through the process.

I thank you for your time this morning.

[Prepared statement of Mr. Velky appears in appendix.]

The CHAIRMAN. Thank you for being here today.

Chief Adkins, welcome.

STATEMENT OF STEPHEN R. ADKINS, CHIEF, CHICKAHOMINY INDIAN TRIBE

Mr. ADKINS. Thank you, Chairman McCain and Vice Chairman Dorgan for inviting me here today to speak on S. 480. Senator George Allen introduced this bill.

A hearing on our prior Federal recognition bill, S. 2694, was held by this committee on October 9, 2002. On behalf of the six tribes named in S. 480, the Eastern Chickahominy, the Monacan, the Nansemond, the Upper Mattponi, the Rappahannock and my tribe, the Chickahominy, I am requesting that the evidence from that hearing be submitted into today's record. That evidence included a strong letter of support from our current Governor Mark Warner.

Beside me today is Professor Danielle Moretti-Langholtz from the College of William and Mary who worked on the petitions we filed with the BIA. She is prepared to assist with any questions you may have about our history. I also have here with me today Ken Adams, chief of the Upper Mattaponi, and members of the other Virginia tribes, I would ask them to please stand.

I would like to share with you that well-known story of Chief Powhatan and his daughter Pocahontas, her picture being in this very Capitol Building with her English husband John Rolfe. I often say this country is here today because of the kindness and hospitality of my forebears in helping the colonists at Jamestown gain a foothold in a new and strange environment. But what do you know, what does mainstream America know about what happened in those years between the 17th century and today?

The fact that we were so prominent in early history and then so callously denied our Indian heritage is a story that most do not want to remember or recognize. I and those chiefs here with me here today stand on the shoulders of Paspahegh, who were led by Chief Wowinchopunk, whose wife was captured and taken to Jamestown Fort and run through with a sword; whose children were tossed overboard and then their brains were shot out. With this horrific action in August 1610, a whole nation was annihilated, a nation that befriended strangers and ultimately died at the hands of those same strangers.

We are seeking recognition through an act of Congress rather than the BIA because of actions taken by the Commonwealth of Virginia during the 20th century that sought to erase the existence of my people through statutes and legislation that have the administrative process nearly impossible. The destruction of documents regarding our existence during the Civil War and other periods of early history pales in comparison to the State sanctioned indignities heaped upon my people under the hand of Walter Ashby Plecker, a rabid separatist who ruled over the Bureau of Vital Statistics for 34 years from 1912 to 1946.

Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Indians on vital records. A practice that was supported by the State's establishment when the eugenics movement was endorsed by leading State universities and when the State's legislature enacted the Racial Integrity Act of 1924. That was a law

that stayed in effect until 1967 and caused my parents to have to travel to Washington, DC on February 20, 1935 in order to be married as Indians. This vile law forced all segments of the population to be registered at birth in one of two categories, white or colored, thus legitimizing cultural genocide for Virginia's indigenous people.

Sadly, this tells only part of the story. The effect of this period on the racial policies of the State meant that Indian people were targeted. It was feared that they would care to try to claim their heritage and seek extra protection outside the State or with the Federal Government. The policies established by Plecker made it illegal to designate Indian on a birth certificate or to give an Indian child a traditional Indian name. Violations put doctors and midwives at risk of up to one year in jail.

Our anthropologist says there is no other State that attacked Indian identity as directly as that attack by those laws passed during that period of time in Virginia. No other ethnic community's heritage was denied in this way. Our State, by law, declared that there were no Indians in the State in 1924, and if you dared to say differently, you went to jail or worse. That law stayed in effect half of my life.

We are seeking recognition through Congress because this history prevented us from believing that we could fit into a petitioning process that would either understand or reconcile this State action with our heritage. We feared the process would not be able to see beyond the corrupted documentation that was legally mandated to deny our Indian heritage.

My father and his peers lived the Plecker years and they carried those scars to their graves.

Chairman McCain, the story I just recounted you is very painful and I do not like to tell that story. Many of my people will not discuss what I have shared with you, but I felt you needed to understand recent history opposite the romanticized, inaccurate accounts of 17th century history.

The six tribes that I am talking about gained State recognition in the Commonwealth of Virginia between 1983 and 1989. Subsequent to State recognition, then the Governor George Allen, who is now Senator George Allen, heard and learned our story. In 1997, he passed the statute that acknowledged the aforementioned discriminatory laws and allowed those with Indian heritage to correct their records with costs to be borne by the Commonwealth. At that juncture, we began to look ahead to Federal recognition. In 1999, we were advised by the BAR that many of us would not live long enough to see our petitions go through the administrative process. Sir, that is a prophecy that has come true. We have buried four Virginia Indian chiefs since then.

The six tribes referenced in S. 480 feel that our situation clearly distinguishes us as candidates for congressional Federal recognition. As Chief of the Chickahominy Tribe, I have persevered in this process for one reason. I do not want my family or my tribe to let the legacy of Walter Plecker stand. I want the assistance of Congress to give the Indian communities in Virginia their freedom from a history that denied their Indian identity. Without acknowledgment of our identity, the harm of racism is the dominant history. I want my children and the next generation to have their In-

dian heritage honored and to move past what I experienced and what my parents experienced. We the leaders of these six Virginia tribes are asking Congress to help us make history for the Indian people in Virginia, a history that honors our ancestors that were here at the beginning of this great country.

Sir, I want to end with a quote credit to Chief Powhatan. This quote from Chief Powhatan to John Smith maybe has been forgotten, but ironically the message still has relevance today, and I quote, "I wish that your love to us might not be less than outs to you. Why should you take by force that which you can have from us by love? Why should you destroy us who have provided you with food? What can you get by war? In such circumstances, my men must watch, and if a twig should break, all would cry, 'Here comes Captain Smith.' And so in this miserable manner to end my miserable life. And, Captain Smith, this might soon be your fate, too. I therefore exhort you to peaceable councils and above all I insist that the guns and swords, the cause of all our jealousy and uneasiness, be removed and sent away."

Chairman McCain, our bill would give us this peace that Chief Powhatan sought. It would honor the treaty our ancestors made with the early colonists and the Crown, and it would show respect for our heritage and our identity.

Chairman McCain, I thank you for allowing me the time to speak before this committee.

[Prepared statement of Mr. Adkins appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Barnett, Chairman Barnett.

STATEMENT OF JOHN BARNETT, CHAIRMAN, COWLITZ INDIAN TRIBE

Mr. BARNETT. Chairman McCain, Vice Chairman Dorgan and distinguished members of the Senate Committee on Indian Affairs. I thank you for the opportunity to testify this morning. To our friend, Senator Maria Cantwell, I bring you warm greetings from your Cowlitz constituents home in Washington State.

My name is John Barnett and I am the chairman of the 3,200-member Cowlitz Indian Tribe of Washington. I have served as chairman of our tribe for 24 years. I have made it my personal objective to right the historical wrongs that have committed against my people. By so doing, I hope to provide a brighter future for our next generations.

The Cowlitz Tribe is a recognition success story. We were able to make it through BIA's Federal acknowledgment process using only donations from hardworking tribal members to pay for the anthropological, genealogical and historical work necessary to show that we met the Bureau's seven criteria for recognition. It was the commitment, cohesiveness and self-sacrifice of my people that got us through the recognition process without the benefit of funds from outside developers.

It has been out of my own pocket that I have traveled to Washington, DC more than 50 times to advocate on my tribe's behalf during the recognition process. Indeed, Mr. Chairman, I sat before you in this committee at another recognition hearing in 1991, fully 11 years before we finally received Federal recognition in 2002.

I believe it is entirely appropriate that unrecognized tribes should meet tough, objective standards before achieving Federal acknowledgment. To take a contrary position would undermine the credibility of other federally recognized tribes and would fuel efforts of unscrupulous developers looking to create tribes for no other reason than to create a new Indian gaming deal.

But let me also underscore that the recognition process is expensive and time-consuming, and that it has been made more so by the efforts of gaming interests, Indian and non-Indian, which will spare no expense to block a legitimate tribe's efforts to achieve recognition in order to block a potential gaming competitor.

Gaming plays too great a role in the Federal recognition process. That role is being played out on both sides, both for and against applicant tribes. The only way to remove the unwanted influence of gaming on Federal recognition is to give BIA enough resources to provide the assistance tribes need so that they are not forced to find outside sources of funding.

The acknowledgment process itself must be streamlined. We had to wait more than three years between when we filed our notice of intent and when it was published in the Federal Register. We had to wait another 4½ years from publication of the NOI until BIA sent us our first technical assistance letter. We waited another 5 years after that until we got our second technical assistance letter. And then we waited another 9 years after that before BAR issued proposed findings of fact in 1997.

We did not receive a final determination until 2000, and then another tribe challenged the final determination, thereby delaying implementation of BIA's decision until they reconsidered. Final determination was issued in 2002. From start to finish, a quarter of a century.

Good Senators, I believe that you should be concerned that the glacial pace at which recognition petitions are reviewed is contributing to other unrecognized tribes' desperate need to find alternative funding sources. Because those of us who have survived the Federal acknowledgment process emerge as landless tribes, the controversial politics of Indian gaming continues to haunt us. Without access to Federal funding or economic development opportunities, and having spent whatever money we had on the recognition process, we are financially destitute. Acquiring land costs money.

The substantial work needed to construct a fee-to-trust application also costs money. And now BIA is requiring tribes to pay for the development an EIS as part of the trust application process. The Cowlitz EIS is will cost more than $1 million. Where is a newly recognized, landless tribe supposed to find that kind of money?

Mr. Chairman, there is a world of difference between the greedy marauding reservation shopping portrayed by the press and the sincere, sometimes desperate efforts of newly recognized tribes to find a piece of land on which to start rebuilding our futures. We are trying to get back on our feet after 150 years of no-so-benign neglect. We are trying to build homes, government buildings, schools and health clinics. We are looking for access to the same economic development opportunities already afforded to other tribes lucky enough to have a land base on October 17, 1988.

The Cowlitz Tribe has strong historical and modern connections to the land we would like to make our initial reservation. We have found a partner to help us get on our feet and we are blessed that we found that help within Indian country. We are proud to be working with and learning from the Mohegan Tribe of Connecticut. In 1994, the Mohegan Tribe also successfully emerged from the Federal acknowledgment process as a newly recognized landless tribe.

Chairman McCain, I believe you recently encouraged Mohegan Chairman Mark Brown, who is with us this day over in the corner, to reinvest in Indian country. The Mohegan Tribe has done that. They are helping their Cowlitz cousins from across the continent and for that we will forever be grateful.

I would also like to thank the State of Washington for its support of the Federal acknowledgment process. The State traditionally has declined to weigh in on the Federal question of whether a tribe should be recognized, choosing instead to defer to those with specialized expertise to make such decisions. Once a tribe is recognized, however, the State is very quick to extend its hand to establish a government-to-government relationship with the newly recognized tribe. We appreciate the integrity of the State's actions and the respect the State has shown us.

In closing, I am here to ask you as a good and genuine friend of Indian people for so many decades, to ensure that the public debate about Federal recognition not be driven by the convenient and controversial politics of Indian gaming. I am asking that you help frame Federal policy in a way that recognizes the real hardships suffered by unrecognized and landless tribes, that honorably addresses the historical wrongs suffered by our people and that does not deny deserving tribes Federal recognition or a reservation simply as a means of avoiding the hard politics of Indian gaming.

I thank you again for giving me an opportunity to speak to this committee on these issues so vital to some of the first Americans. One additional thought I would like to give to you people. Senator McCain, there are those of us that have been in the process, went through the process either acknowledged or denied. We have a world of talent and ability to give you suggestions as to some of the ways perhaps that can be used to streamline the process and get to the tribes. For instance, over 100 tribes at 2½ per year will never see anything, waiting 50 more years.

Something has to be done. I think you people fully realize that. And some of us, including myself and the Cowlitz people, are certainly willing to help.

[Prepared statement of Mr. Barnett appears in appendix.]

The CHAIRMAN. Thank you very much.

Dr. Bragdon.

STATEMENT OF KATHLEEN J. BRAGDON, PROFESSOR, DEPARTMENT OF ANTHROPOLOGY, COLLEGE OF WILLIAM AND MARY

Ms. BRAGDON. Good morning, Chairman McCain and Vice Chairman Dorgan, and members of the committee. Thank you very much for the opportunity to be here today.

My name is Kathleen Bragdon. I hold a doctorate in anthropology and I am currently a full professor at the College of William and Mary. I have been writing about native people of Southern New England and elsewhere and their languages for more than 25 years. During this time, I have been consistently impressed with the persistence and creative adaptability of the Indian communities of our region. I would like to thank the many native people with whom I have worked over the years for the honor of learning from them.

As you know, scholars, including historians, archaeologists, linguists and anthropologists have been involved in the Federal recognition process since its inception. In New England, the most influential practitioners have been those I affectionately call Dr. Jack Campisi and his band of merry men, and women, all very competent and prolific anthropologists and ethnohistorians.

When they began their important work, because their expertise was widely and rightly acknowledged, their evaluations were thoroughly documented, but much less extensive than would be required today. An adequate report 25 years ago was perhaps 100 pages long. Today, it would be several thousand.

It has also become necessary because of the increasing research burdens of the recognition process, for scholars to document a wider range of factors than was previously thought necessary. I quote Sheldon Davis: "As anthropologists, our primary contribution to the rights of indigenous peoples lies in independently and publicly documenting the social realities that these people face."

In New England, these social realities have included legislative dispossession, detribalization, racial discrimination, poverty and many kinds of social disruption. These conditions have made the task of documenting their histories and continuity as Indian entities very challenging. In many cases, the haphazard way in which Indian communities have been treated during the past 300 years has resulted in major gaps in the evidence, so that petitioners are faced with the impossible task of locating records that were never created or which no longer exist.

The gaps in the official records can be filled by using other types of historical documentation, but this material is scattered and requires a good deal of training to analyze, and the necessity for its use because of increasingly demanding standards of documentation required by the Bureau of Indian Affairs, has created a large cost burden for most petitioners.

Another concern is privacy. The existing official records that document the relations of State and local governments and Indian peoples often include very sensitive information about family history, information that Indian people are naturally very reluctant to have made public. As the demands of documentation required by the Office of Federal Acknowledgment have become greater, however, Indian people feel they have little choice but to make these sensitive records available. Added to this are their concerns about sacred sites and knowledge, which make many people reluctant to share information that might help their case.

Finally, Indian people see their histories differently than those of the authorities who controlled the written records, and their views have rarely been taken into account. My own experience has been

that it is in these alternative historical views, often expressed through oral histories, folks tale and kitchen table talk that can be found the most powerful pieces of evidence for community continuity and strength.

I wish to emphasize that I think the Federal recognition process is vital to native interests in New England and elsewhere, and has led to great benefits for many Indian communities. By benefits, I mean increased opportunities for education, better health care, and the support for cultural enrichment and language study programs that are central to Indian identity and an important part of maintaining and celebrating their heritage.

Some communities have now been publicly affirmed and have taken their rightful place as stakeholders in regional and national debates. The difficulties I discussed briefly above, however, have left other native communities out of the process, and this has been an additional source of division and discouragement to many native people. This is due in part to the difficulty of fitting all Indian communities presently and in the past into an agreed upon definition of "tribe."

Another difficulty is the persistent belief that there are no longer any real Indians left in the eastern parts of North America. A cursory survey of recent newspaper articles in prominent and local newspapers in New England demonstrates the strength of his misconception, even among educated people. Non-Indians also misunderstand the historic relationship between the Federal Government and Indian peoples, and see Federal recognition as a kind of undeserved entitlement.

Native people struggle against these attitudes and the added burden of defending themselves against so-called "interested parties" who refuse to accept them as who they say they are, and further complicates and extends the recognition process.

The CHAIRMAN. Dr. Bragdon, I have been informed that we have a vote starting in about 7 minutes, so if you would summarize as much as possible so we can hear from Mr. Cooper. I thank you and I apologize for our Senate procedures.

Ms. BRAGDON. Certainly.

In summary, the only defense against misinformation is a careful research process. I think there is room for a measure of cooperation with scholarly institutions such as what we have here at the College of William and Mary, and I fully support the present procedure.

Thank you for letting me have this opportunity to speak.

[Prepared statement of Ms. Bragdon appears in appendix.]

The CHAIRMAN. Thank you, Dr. Bragdon. Thank you for appearing today.

Mr. Cooper.

STATEMENT OF KEN COOPER, PRESIDENT, TOWN ACTION TO SAVE KENT

Mr. COOPER. Thank you, Mr. Chairman and Mr. Vice Chairman. It is an honor to appear before you to express my concern with the Federal process that could have tragic consequences for my small town.

I am from Kent, Connecticut. Kent traces its roots to the early 1700's. Our population is approximately 3,000. We are located in the scenic northwest corner of the State, and our industry is serving visitors, tourists, sightseers and weekenders. In many ways, we are typical of small towns across the United States. Our local boards and commissions, ambulance and fire departments, library and historical societies are all run by volunteers.

Municipals budgets and ordinances are voted on as they have been for over 300 years by open town meeting. We are rural America, but we are threatened. We have seen similar small towns in Eastern Connecticut massively disrupted and irrevocably changed from what they once were. The emergence of Las Vegas-style casinos has overwhelmed their infrastructure and destroyed their communal character that took 4 centuries to build. Their tax bases have shrunk, crime has soared. Their schools are jammed and sadly, the long-term residents have lost the ability to manage their futures.

TASK was formed because of what we saw happening to our sister towns. We realized it could happen to us because of mismanagement within the BIA. Mr. Chairman, let me make one thing clear. TASK does not oppose the recognition of authentic Indian tribes. Our concern is the Federal acknowledgment process that allows the recognition of persons whose claims are without merit; whose pursuit of sovereignty is opportunistically supported and driven by gambling interests; and whose rules can be changed without due process or notice to interested parties.

One such petition involves the Schaghticoke Tribal Nation, which was organized by a group that claims Indian heritage and rights to a State reservation in Kent. It is richly financed by non-Indian businessmen. They are required by contract with their investors to build a world-class casino, and from its revenues to compensate the investors up to $1 billion.

Is it any wonder with that kind of money on the table, the influences are heavy, embarrassing behavior encouraged, and the system made weak?

While there is nothing wrong with raising resources required to petition the government, given the risk such sums interject into the system, financial disclosures have become a pillar of good government practice. No such requirement exists for BIA petitioners or participants.

We are facing a crisis brought on, first, by gambling interests that have taken over the process; by groups who do not meet the criteria for recognition because of their economic location are able to present their history with great finesse; and by the Federal agency processes by which they are recognized.

The Inspector General, Mr. Devaney, in his letter noted that the regulations as written are permissive and inherently flexible.

Mr. Chairman, Federal acknowledgment grants the petitioner extraordinary rights and in the densely populated east coast caused disruption to thousands of innocent citizens and has the effect of destroying our equally important culture. It is precisely because of the impact of these decisions that the process not be permissive. It must be dispassionate and disciplined. It must have absolute integrity and protect every party.

The BIA is a broken bureau. Interior acknowledges it. The General Accounting Office has identified it. You are holding hearings on it and the press has reported upon it. Both petitioners and related parties have been victims of it. Legislation has been introduced about it in both Houses.

TASK's sole mission is to ask that the BIA process establish its integrity for the benefit of all of its stakeholders and to retain the confidence of the American public. This is not an anti-Indian request. It is about good government, plain and simple.

Mr. Chairman, Kent, Connecticut is a good citizen. We are willing to live with any BIA decision that is rendered equitably, openly and honestly. We intend to live in complete harmony with those who support any petition regardless of their ultimate success or failure.

TASK thanks you, Mr. Chairman, and members of the committee, as well as our Governor, our House and Senate delegation, and our attorney general for working in a true bipartisan manner on this issue, and for permitting me the privilege of addressing you.

[Prepared statement of Mr. Cooper appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Cooper.

Chief Velky, do you intend to build a casino in Kent?

Mr. VELKY. No, Mr. Chairman; we do not.

The CHAIRMAN. Do you intend to start a gaming enterprise on your tribal lands?

Mr. VELKY. As it stands today on our tribal lands, not in Kent, no, sir.

The CHAIRMAN. Anywhere on your tribal lands?

Mr. VELKY. It is our intention in the future to have a gaming facility, yes, sir.

The CHAIRMAN. And you refuse to, during this process, to disclose who your financial backers were?

Mr. VELKY. No; we did not, sir. That has been in the newspapers back home continuously.

The CHAIRMAN. Who are your financial backers?

Mr. VELKY. It is Subway, Mr. Fred DeLuca is the main backer. We are in dispute right now, however.

The CHAIRMAN. About what?

Mr. VELKY. Just about being able to get along. This process is not an easy process, as I had outlined, Senator. It is unfortunate, but when we have groups such as TASK that are willing to pay lobbyists some $2 million in order to fight the Schaghticoke Nation, when the Schaghticoke Nation has to come and defend itself against a whole delegation of the State of Connecticut, it is extremely costly for us to get through and it is unfortunate that the tribes need to go out and borrow this money. But if the tribe is not able to go out there and borrow the money, we will do some type of a damage from borrowing the money, but if we do not meet our recognition, sir, we will not be able to overcome that cost.

The CHAIRMAN. Thank you.

Chief Adkins, I take it from your testimony that you believe that so many tribal documents and other historical records were destroyed that would be hard for you to achieve recognition through the BIA process. Is that correct?

Mr. ADKINS. That is correct, but I would like to qualify it. We are up against a situation where, and I would say I do not have a problem with the seven criteria. I have some problem with the process because when I look at what happened in Virginia, the Racial Integrity Act of 1924, the Indian Reorganization Act of 1934, and then in 1966 the Virginia Supreme Court upheld the 1924 laws, which were overturned at the Federal level.

So coming out of Virginia, we have found success in the Federal recourse. In 1982, Virginia did form a subcommittee that reported on our State recognition efforts. The Virginia Commission on Indians was formed and State recognition was afforded. In 1997, then-Governor Allen supported a statute or signed into statute.

The CHAIRMAN. I understand that. It was part of your testimony.

Mr. ADKINS. Okay. Right. So the point that I am making is the process hurts us because of where we were in the State. It is the 20th century that caused us more concern than the historical portion.

The CHAIRMAN. Thank you.

Chief Barnett, if you would submit to us in writing the recommendations you have that could prevent, you went through a 23-year process. Is that correct?

Mr. BARNETT. A 25-year process.

The CHAIRMAN. A 25-year process. If you could submit in writing to us recommendations on how this process could be expedited and be made more fair. And by the way, how much of that delay was due to your efforts to collect documents and other evidence?

Mr. BARNETT. I would say that a considerable amount of time. We would have to go back because of the obvious deficiency letters, to gather the additional information.

The CHAIRMAN. So not all of it was just because of BIA inefficiency.

Mr. BARNETT. Yes; personally, I think the Cowlitz people, they realized that the BIA and the Federal acknowledgment process is a fair standard process that has to meet high bars. We were certainly willing to go to that level to do it. We do not at all feel compromised by the fact that it took as long as it did. However, I think that those tribes coming behind us deserve a little bit more fair situation than what we went through.

The CHAIRMAN. Mr. Cooper, have you had discussions with the tribe and tribal leaders about the issue of gaming in your city?

Mr. COOPER. No; we have not.

The CHAIRMAN. Have you attempted to?

Mr. COOPER. No; we have not, Mr. Chairman.

The CHAIRMAN. Why not?

Mr. COOPER. Because they are currently not a federally recognized tribe, and if we have discussions with them to make agreements. They are not bound by those discussions after the Federal recognition process. And the second point, Mr. Chairman, is we are a grassroots organization. The elected officials of the town of Kent and the attorney general are really the appropriate authorities to be conducting those discussions.

The CHAIRMAN. I thank you, Mr. Cooper, and I apologize to the witnesses. I had many more questions, but I think we have a vote on.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, there is a vote that has started about 5 minutes ago, so I will additionally submit questions.

Chairman Velky, when was your petition submitted originally?

Mr. VELKY. In 1994, sir.

Senator DORGAN. And prior to that time, how long was it being considered for submission? When did you make a decision that you wanted to petition?

Mr. VELKY. In 1981.

Senator DORGAN. In 1981?

Mr. VELKY. Yes, sir.

Senator DORGAN. Chairman Adkins, let me just say to you that I think you do a service again by reminding all of us of what has gone before. The story that you have described is replicated in many ways in many other parts of the country of a series of governmental actions to try to either deny or destroy the cultural roots of native people. So I appreciate very much your giving us again the context and the history of all of this.

This panel, Mr. Chairman, has submitted some excellent testimony. I have a series of questions that I would like to submit for the record because of the vote that is now occurring. I want to thank all of them for coming and participating today.

The CHAIRMAN. I thank the witnesses, and I think this has been very helpful to us. I appreciate it.

This hearing is adjourned.

[Whereupon, at 11:35 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Thank you Chairman McCain. I commend you for holding this hearing and considering the unique and extraordinary story of these six Virginia Indian tribes. As you are no doubt aware, my legislation to provide the six Virginia tribes Federal recognition was reported out of this committee during the 108th Congress.

I have again introduced the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act to begin the process of Federal recognition for the Chickahominy, The Eastern Chickahominy, the Upper Mattaponi, the Rappahannock the Monacan and the Nansemond Tribes.

This legislation would provide a long overdue recognized status on a group of Americans that have been a part of this country's history from its inception. The six tribes seeking Federal recognition have suffered humiliation and indignities that have gone largely unnoticed by most Americans. Because many of these injustices were not a result of any action they undertook, but rather due to government policies that sought to eliminate their culture and heritage, I believe the circumstances of their situation warrants Congressional recognition.

I can understand the concern my colleagues express over granting Federal recognition without the investigative process used by the Department of the Interior. However, if one closely examines the history of these Virginians, they will see why this legislation has been introduced, and why my colleagues Senator Warner has cosponsored here in the Senate and why Congressman Jim Moran continues to push for recognition on the House side.

The history of these six tribes begins well before the first Europeans landed on this continent. History has shown their continuous inhabitance in Virginia. Through the last 400 years they have undergone great hardship. However, they have maintained their traditions and heritage through those difficult centuries. To put the long history of Virginia Indians in context, while many federally recognized tribes have signed agreements with the U.S. Government, the Virginia Indian tribes hold treaties with Kings of England, including the Treaty of 1677 between the tribes and Charles the II.

Like the plight of many Indian tribes of America over the last four centuries, the Virginia tribes were continually moved off of their land and forced to assimilate to U.S. society. Even then, the Indians of Virginia were not extended the same rights offered a U.S. citizen. The years of racial discrimination and coercive policies took a tremendous toll on the population of Virginia Indians. Even while living under such difficult circumstances and constant upheaval, the Virginia Indians were able to maintain a consistent culture. During the turn of the 20th Century, members of these six tribes suffered more injustice. New state mandates forced Virginia Indians to renounce their Indian names and heritage. The passing of the Racial Integrity Act of 1924 began a dark time in the history of the Commonwealth of Virginia. This measure, enforced by a State official named Walter Plecker sought to destroy all records of the Virginia Indians and recognize them as "colored." People were threatened with imprisonment for noting "Indian" on a birth certificate; mothers were not

allowed to take their newborn children home if they were given an Indian name. This policy, along with overzealous enforcement by Plecker, has left many Virginia Indians searching for their true identity.

The Racial Integrity Act left the records of thousands of Virginia Indians inaccurate or deliberately misleading until 1997. As Governor, that year, I signed legislation that directed State agencies and officials to correct all State records related to Virginia Indians, reclassifying them at Native American and not "colored." My administration championed this initiative after learning of the pain the racist policy inflicted on many Virginia citizens. I also was briefed on the problems many Virginia Indians experienced when attempting to trace their ancestry or have records of children or deceased corrected. To combat these injustices, we ensured that any American Indian whose certified copy of a birth record contains an incorrect racial designation were able to obtain a corrected birth certificate without paying a fee. I could not imagine a greater insult than asking a citizen of Virginia to pay to have their racial designation corrected after it was the State's policy that caused the wrong designation.

Because of the arrogant, manipulating policies of the Virginia Racial Integrity Act, the Virginia Indian tribes have had a difficult time collecting and substantiating official documents necessary for Federal recognition. Through no fault of their own, the records they need to meet the stringent and difficult requirements for Federal recognition are not available. I fear that unless my colleagues and I take action legislatively, these six tribes will be faulted and denied Federal recognition for circumstances they truly had no control over.

The Virginia tribes have filed a petition with the Department of the Interior's Branch of Acknowledgement and Research. However I believe congressional action is the appropriate path for Federal recognition. The six Indian tribes represented today have faced discrimination and attacks on their culture that are unheard of in most regions and States of the United States. I do not feel it is right for the Federal Government to force them to prove who they are, when previous State government policies forced them to give up their heritage, history and race.

Federal recognition brings numerous benefits, including access to education grants housing assistance and healthcare services, which are available to most Americans. Discrimination and a lack of educational opportunities have left many Virginia Indians without healthcare and little prospects for continued employment. Education grants would provide an avenue for these folks to improve their prospects for employment and hopefully secure a job with substantial health benefits. The benefits Federal recognition offers would not be restitution for the years of institutional racism and hostility, but it would provide new opportunities for the six tribes some basic necessities for long-term success.

I can understand some of the concerns Members of Congress have with gambling and property claims they relate to federally recognizing Indian tribes.

Many Members of Congress place the issue of gambling and casinos front and center when discussing Federal recognition for Indian tribes. While I do not doubt that some States have experienced difficulties as a result of Indian tribes erecting casinos, I feel confident that gambling is not the goal for these six tribes. The tribes have stated that they have no intention of seeking casino gambling licenses and do not engage in bingo operations, even though they have permission to do so under Virginia law. To ally any other fears regarding gambling, I worked with Congressman Moran to craft language in our respective bills that provides proper safeguards under Virginia law and the Indian Gaming Regulatory Act. The concern that Federal recognition will result in gambling and casino problems in Virginia has been sufficiently addressed.

I have spoken with the many of the members of these six tribes, and believe they are not seeking Federal recognition for superficial gain; instead they seek recognition to reaffirm their place as American Indians, after that right had been stripped for many decades.

Mr. Chairman, I have worked with these six tribes for the last 5 years. There circumstance is special and that is why I have introduced this legislation. I am hopeful that the committee will objectively review their situation, and make the right decision to move this to the floor for full Senate consideration.

Thank you Mr. Chairman.

PREPARED STATEMENT OF MARK D. BOUGHTON, MAYOR, DANBURY, CT

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 [BIA]. 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, Golden Hill Paugussetts, 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 that 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.

As a result of these serious problems with the final determination, our city, along with the State, other municipalities, and private parties whose property is being threatened by the Scaghticoke land claim lawsuit, filed an appeal with the Interior Board of Indian Appeals. At this stage, things got even worse. Our brief raised many strong arguments, and a few months ago BIA admitted that we were right on one of the key issues. This extraordinary admission of error on one of the major findings that allowed BIA to issue a ruling in favor of Schaghticoke should have led BIA to issue a clear statement that the decision was wrong and should be reversed. Instead, BIA said nothing about its admitted error, and is proceeding as if nothing is wrong. Once again, we are left to guess at the reasons for BIA's actions.

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. A recent example is a "directive" regarding acknowledgment procedures issued by BIA in March. This directive changes the rules that are contained in a previous BIA directive issued in 2000. In neither case did BIA give advance notice, or ask for public comment, even though our rights in the acknowledgement process were affected. This leads to a process that is suspect at best and deeply flawed at its worst. Without strict guidelines, the decisionmaker in the recognition process is free to interpret the rules as he or she sees fit, or at worst, ignores 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 two tribes that are recognized, two have received positive final determinations now on appeal, 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 four or five sovereign nations with gambling as the exclusive industry. This scenario is a real possibility unless Congress takes action. 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 24 hours a day, 365 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 has 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 consideration of important changes needed in the tribal acknowledgement process.

PREPARED STATEMENT OF HON. TOM A. COBURN, M.D., U.S. SENATOR FROM OKLAHOMA

Chairman McCain, Vice Chairman Dorgan, I thank you for holding this important hearing this morning.

Given our most recent oversight hearing on Indian gaming, today's hearing comes at particularly welcome time. In my opinion, the undue influence that gambling interests have in Indian country is a direct threat to the long term success of American Indians, and frequently, to the communities where gambling facilities are built. With this hearing, and our efforts on land-into-trust oversight in the months ahead, it is my hope that we will begin to get a clearer glimpse of the powerful, and all too often negative, impact that gambling is having on tribes and our communities.

Nowhere is this more apparent than in the State of Connecticut. I look forward this morning to examining the testimony of my colleagues, Senator Lieberman and Senator Dodd, and the rest of the Connecticut delegation. Their experience and expertise on this issue is one that we all have to gain from, and hopefully, will allow this committee to build a consensus on the need for an immediate overhaul of the Federal recognition process.

In addition to my concerns about the undue influence of gambling interests, I have serious misgivings about the ability of the Office of Federal Acknowledgement [OFA] to carry out the important mission of Federal recognition. While resource concerns can and will be examined by this committee, more fundamentally, I firmly believe that the OFA and the Department of the Interior have proven themselves incapable of handling these duties in a timely or fair manner. This is partly the fault of the agency itself, but in my opinion, is reflective of a much larger failure on the part of Congress to enact guidelines that clearly outline the mission of the OFA, or to conduct serious oversight of this important process.

Based on the caliber of the witnesses before us this morning, and the commitment of Chairman McCain, I am confident that today we will begin to get a much better look at the problems facing OFA, tribal governments, and State and local officials.

The stakes are high—official Federal recognition brings with it important responsibilities on the part of the Federal Government and prospective tribal governments.

I applaud the Chairman and Vice Chairman for conducting this hearing. I am committed to working with you to enact serious, long term reforms for the OFA and the Department of the Interior. The process of tribal recognition, and the far reaching consequences of these important decisions, is far too important to allow further delay.

PREPARED STATEMENT OF STEPHEN R. ADKINS, CHIEF, CHICKAHOMINY INDIAN TRIBE

Thank you Chairman McCain, Vice Chairman Dorgan and members of this committee for inviting me here today to speak on S. 480. Senator George Allen introduced the bill. A hearing on our prior Federal Recognition bill was held by this committee on October 9, 2002 [S. 2694]. On behalf of the six tribes named in S. 480, Eastern, Chickahominy, the Monacan, the Nansemond, the Upper Mattapord, the Rappahannock, and my tribe the Chickahominy, I am requesting that the evidence, from that hearing be submitted into today's record. That evidence included a strong letter of support from our current Governor, Mark Warner. Beside me today is Professor Danielle Moretti-Langholtz from the College of William & Mary who worked on the petitions we filed with the BIA. She is prepared to assist with any questions you may have about our history.

Chairman McCain, I could tell you the much publicized story of the 17th Century Virginia Indians, but you, like most Americans, know our first contact history. Well known is the story of Chief Powhatan and his daughter Pocahontas, her picture being in this very capitol building with her English husband John Rolfe. I often say this country is here today because of the kindness and hospitality of my forebears who helped the English Colonists at Jamestown gain a foothold in a new and strange environment. But what do you know or what does mainstream America know about what happened in those years between the 17th century and May 11, 2005. The fact that we were so prominent in early history and then so callously denied our Indian heritage, is the story that most don't want to remember or recognize. I, and those chiefs here with me, stand on the shoulders of the Paspahegh led by Chief, Wowinchopunk whose wife was captured and taken to Jamestown Fort and "run through" with a sword, whose children were tossed overboard and then their brains were "shot out" as they floundered in the water, and whose few remaining tribal members sought refuge with a nearby tribe, possibly the Chickahominy. With this horrific action in August 1610, a whole nation was annihilated. A nation that befriended strangers, and, ultimately died at the hands of those same strangers.

We are seeking recognition through an act of Congress rather than the BIA because actions taken by the Commonwealth of Virginia during the 20th Century that sought to erase the existence of my people through statutes and legislation have made the administrative process nearly impossible. The destruction of documents, regarding our existence, during the Civil War and other periods of early history pales in comparison to the State sanctioned indignities heaped upon my people under the hand of Walter Ashby Plecker, a rabid separatist, who ruled over the Bureau of Vital Statistics for 34 years, from 1912 to 1946. Although socially unacceptable to kill Indians outright, Virginia Indians became fair game to Plecker as he led efforts to eradicate all references to Indian on Vital Records. A practice that was supported by the State's establishment when the eugenics movement was endorsed by leading State universities and when the State's legislature enacted the Racial Integrity Act in 1924. A law that stayed in effect until 1967 and caused my parents to have to travel to Washington DC on February 20, 1935 in order to be married as Indians. This vile law forced all segments of the population to be registered at birth in one of two categories, white or colored. Thus legitimizing cultural genocide for Virginia's Indigenous Peoples, Sadly this tells only a part of the story. The affect of this period and the racial policies of the State, meant that Indian people were targeted—it was feared that they would dare to try to claim their heritage and seek extra protection outside the State or with the Federal Government. The policies established by Plecker made it illegal to designate Indian on a birth certificate or to give an Indian child a traditional Indian name. Violations put doctors and midwives at risk of up to 1 year in jail. Our anthropologist says there is no other State that attacked Indian identity as directly as the laws passed during that period of time in Virginia. No other ethnic communitys heritage was denied in this way. Our State, by law, declared there were no Indians in the State in 1924, and if you dared to say differently, you went to jail or worse. That law stayed in affect half of my life.

I have been asked why I do not have a traditional Indian name. Quite simply my parents, as did many other native parents, weighed the risks and decided it was not worth the risk of going to jail.

We are seeking recognition through Congress because this history, prevented us from believing that we could fit into a petitioning process that would understand or reconcile this State action with our heritage, we feared the process would not be able to see beyond the corrupted documentation that was legally mandated to deny our Indian heritage. Many of the elders in our community also feared, and for good reason, the racial backlash if they tried.

My father and his peers lived the Plecker years and carried those scars to their graves.

Chairman McCain, the story I just recounted to you is very painful and I do not like to tell that story. Many of my people will not discuss what I have shared with you but I felt you needed to understand recent history opposite the romanticized, inaccurate accounts of 17th century history.

Let me tell you how we got here today. The six tribes on this bill gained State Recognition in the Commonwealth of Virginia between 1983–89. Subsequent to State recognition Senator George Allen, as Governor heard and learned our story. In 1997 he passed the statute that acknowledged the aforementioned discriminatory laws and allowed those with Indian heritage to correct their records with costs to be borne by the Commonwealth. At that juncture we began to look ahead to Federal recognition. In 1999, we were advised by the BAR or OFA today, that many of us would not live long enough to see our petition go through the administrative process. A prophecy that has come true. We have buried four Virginia Indian chiefs since then.

Given the realities of the OFA and the historical slights suffered by the Virginia Indian tribes for the last 400 years, the six tribes referenced in S. 480 feel that our situation clearly distinguishes us as candidates for Congressional Federal recognition.

As chief of my tribe, I have persevered in this process for one reason. I do not want my family or my community to let the legacy of Walter Plecker stand. I want the assistance of Congress to give the Indian tribes in Virginia their freedom from a history, that denied their Indian identity. Without acknowledgment of our identity, the harm of racism is the dominant history. I want my children and the next generation, to have their Indian Heritage honored and to move past what I experienced and my parents experienced. We the leaders of the these six Virginia tribes, are asking Congress to help us make history for the Indian people of Virginia, a history that honors our ancestors that were here at the beginning of this great country.

I want to end with a quote credited to Chief Powhatan. This quote, from Chief Powhatan to John Smith, maybe has been forgotten but ironically the message still has relevance today:

"I wish that your love to us might not be less than ours to you. Why should you take by force that which you can have from us by love? Why should you destroy us who have provided you with food? What can you get by war?

In such circumstances, my men must watch, and if a twig should but break, all would cry out, "Here comes Captain Smith." And so, in this miserable manner to end my miserable life. And, Captain Smith, this might soon be your fate too. I, therefore, exhort you to peaceable councils, and above all I insist that the guns and swords, the cause of all our jealousy and uneasiness, be removed and sent away.

Chairman McCain, our bill would give us this peace that Chief Powhatan sought, it would honor the treaty our ancestors made with the early Colonists and the Crown, and it would show respect for our heritage and Identity, that through jealously perhaps has never before been acknowledged.

Chairman McCain, I thank you for allowing me to testify before this committee.

PREPARED STATEMENT OF KENNETH ADAMS, CHIEF, UPPER MATTAPONI INDIAN TRIBE

Good morning, Mr. Chairman. I am Kenneth Adams, Chief of the Upper Mattaponi Indian Tribe. With me today are Chief Adkins, Chief Bradby, Chief Branham, Chief Bass, and Chief Richardson. We are the proud descendants of the Keepers of this Great Land when the English Colonists arrived in 1607. The Peace Treaty of 1677 established the Governing authority of the Pamunkey Queen and the Monacan Chief over our ancestors. We are the direct descendants of those colonial tribes. Today these nations have come together to ask the Congress of these United States to acknowledge our one on one relationship with the government of this nation.

Chief Justice John Marshall in 1832 stated, the Constitution, by declaring those treaties already made, as well as those to be made, the Supreme Law of the land, has adopted and sanctioned the previous treaties made with the Indian Nations.

Each of these great Chiefs carry in their hearts many burdens of our people. I cannot express for them the sorrows they have endured. But I can express to you a sample of what we have all endured. When I was a child growing up in King William County, Virginia, high school education for Indians in the state was almost nil. Even before I entered grade school, my older brothers and sisters were being sent off to Oklahoma and Michigan to complete high school. I was the first Indian to graduate from King William High School in 1965. Myself in 1967 and my brother in 1968 served in Vietnam. Shortly afterwards, I went to visit my brother. It was almost like walking in the house of a stranger. Not because of our experiences in Viet Nam. It was because of the policies of the State of Virginia. It was the policy that forced him from home in order to seek a high school education. And what was his response to that policy? His response was to put his life on the line for the United States of America. I can surely tell you today, in these individual tribes, there are many more stories like this one. I can say with 100 percent certainty, when it comes to defending this homeland, Virginia Indians have spilt their blood. You might ask us, why do you come now? We have an answer. For almost 400 years, Virginia attempted to diminish our presence. After 1700 we were pushed onto increasingly smaller pieces of land and by the mid 1900's Virginia was attempting to document us out of existence. The fight to maintain our identity was a struggle our Mothers and Fathers fought well, but they lacked education and resources. They had been told on several occasions no help from the Federal Government was available. In 1946 one of Chiefs attempted to obtain high school educational resources through the Office of Indian Affairs. The only help offered was in the form of education at a Federal boarding school. No help was available in Virginia.

If the State government was attempting to deny our existence and the Federal Government provided little assistance, where could these people possibly go? That is why it has taken us so long to get here.

Virginia has recognized its errors. Along with bill H.R. 2345 sponsored by Congresspersons Moran and Davis, Senator Allen, with the support of Senator Warner, has introduced S. 2964 granting Federal Acknowledgment to these six tribes. In 1999, the Virginia General Assembly passed a Resolution with over whelming support asking for Congressional Recognition of these tribes. King William County, Virginia, home of the Upper Mattaponi, also passed a resolution in favor of Federal Acknowledgment. We have the support of the majority of the Virginia Congressmen and Women. As you can see, we have overwhelming support from the Commonwealth of Virginia.

Now, the U.S. Congress has the opportunity to make a historical change. A positive change that would bring honor to you as well as honor to us.

We ask you to make the right decision and support this bill for Federal Acknowledgment of Virginia Indians.

PREPARED STATEMENT OF HON. JAMES P. MORAN, U.S. REPRESENTATIVE FROM VIRGINIA

Good morning and thank you, Mr. Chairman.

I appreciate your willingness to hold this hearing and providing us with an opportunity to help tell the story of six of Virginia's Native American tribes. The story of these tribes is compelling, but I ask for more than your sympathetic ear. I also ask for action on legislation [S. 2694] that Senators George Allen and John Warner introduced, which is a companion to the bill Representative Jo Ann Davis and I sponsored in the House, to grant these tribes Federal recognition.

I ask that the Federal Government, starting with this distinguished Committee on Indian Affairs, recognize the Chickahominy, the Eastern Chickahominy, the Monacan, the Nansemond, the Rappahannock and the Upper Mattaponi Tribes. These tribes exist, they have existed on a substantially continuous basis since before the first western European settlers stepped foot in America; and, they are here with us today.

I know there is great resistance from Congress to grant any Native American tribe Federal recognition. And, I can appreciate how the issue of gambling and its economic and moral dimensions have influenced many Members' perspectives on tribal recognition issues.

I think the circumstances and situation these tribes have endured and the legacy they still confront today, however, outweigh these concerns. Congress has the power

to recognize these tribes. It has exercised this power in the past, and it should exercise this power again with respect to these six tribes.

Like much of our early history as a nation, the Virginia tribes were subdued, pushed off their land, and, up through much of the 20th Century, denied full rights as U.S. citizens. Despite their devastating loss of land and population, the Virginia Indians successfully overcame years of racial discrimination that denied them equal opportunities to pursue their education and preserve their cultural identity. That story of survival doesn't encompass decades, it spans centuries of racial hostility and coercive State and State-sanctioned actions. Unlike most tribes that resisted encroachment and obtained Federal recognition when they signed peace treaties with the Federal Government, Virginia's six tribes signed their peace treaties with the Kings of England. Most notable among these was the Treaty of 1677 between these tribes and Charles II.

In more recent times, this racial hostility culminated with the enactment and brutal enforcement of Virginia's Racial Integrity Act of 1924. This act empowered zealots, like Walter Plecker, a State official, to destroy records and reclassify in Orwellian fashion all non-whites as "colored." To call yourself a "Native American" in Virginia was to risk a jail sentence of up to 1 year.

Imagine a married couple unable to obtain the release of their newborn child from the hospital until they change their child's ethnicity on the medical record to read "colored," not "Native American." Or, imagine being told that you have no right to reclaim and bury your ancestors once you learn they were being stored in a museum vault.

Or, imagine your frustration upon finding your legal efforts to appeal a local water issue in Federal court because you're told your suit has no standing since your tribe doesn't exist.

Or, imagine being told that the only reason you're seeking Federal recognition is to establish a gambling casino.

Or, imagine the Indian mission school that your grandparents and your parents attended receiving Federal recognition as a historic landmark, but yet you and your daughters and sons not recognized by the Federal Government as Native Americans.

Mr. Chairman, these are just a few of the examples of the indignities visited upon the members of the six tribes present here today.

I mention these indignities because they are part of a shameful legacy experienced in our lifetime. Some are indignities that are still visited upon members of the tribes today.

More to the point, this legacy has also complicated these tribes' quest for Federal recognition, making it difficult to furnish corroborating state and official documents. It wasn't until 1997 when then Governor George Allen signed legislation directing state agencies to correct state records that had deliberately been altered to list Virginia Indians on official state documents as "colored." In recent years, the Virginia tribes have filed their petitions with the Bureau of Indian Affairs. They have no deep pockets and lack the financial means to rigorously pursue the lengthy and resource intensive petition process. Even more discouraging, they have been told by bureau officials not to expect to see any action on their petitions within their lifetime. The GAO study this committee reviewed earlier this year confirms this backlog.

Asking them to wait another 10 years or more is not what these tribes deserve. Many of the members are elderly and in need of medical care and assistance. They lack health insurance and pensions because past discrimination denied them opportunities for an advanced education and a steady job. Federal recognition would entitle them to receive health and housing assistance.

It would be one of the greatest of ironies and a further injustice to these tribes if in our efforts to recognize the 400th anniversary of the first permanent European settlement in North America, we had failed to recognize the direct descendants of the Native Americans who met these settlers.

Before closing, let me touch upon one issue, the issue of gambling, that may be at the forefront of some Members' concerns. In response to such concerns, I have worked with Rep. Jo Ann Davis and others in the Virginia congressional delegation to close any potential legal loopholes in this legislation to ensure that the Commonwealth of Virginia could prevent casino-type gaming by the tribes. Having maintained a close relationship with many of the members of these tribes, I believe they are sincere in their claims that gambling is inconsistent with their values. Many of the tribes live in rural areas with conservative family and religious beliefs. All six tribes have established non-profit organizations and are permitted under Virginia law to operate bingo games. Despite compelling financial needs that bingo revenues could help address, none of the tribes are engaged in bingo gambling.

Mr. Chairman, the real issue for the tribes is one of acknowledgment and the long overdue need for the Federal Government to affirm their identity as Native Americans. I urge you to proceed with action on this proposal.

Thank you again for arranging this hearing.

The Rev. Jonathan M. Barton – General Minister
Virginia Council of Churches
Testimony before the House Committee on Resources
H.R. 2345
Thomasina Indian Tribes of Virginia Federal Recognition Act of 2001
September 25, 2002

1 Chairman Hansen, members of the House Committee on Resources, my name is
2 Jonathan Barton and I am the General Minister for the Virginia Council of
3 Churches. I would like to thank you for the opportunity to speak with you today. I
4 ask your permission to revise and extend my comments. I would also like to
5 express my appreciation to Congressman James Moran, Tim Aiken of his staff
6 and the other members of the Virginian Congressional delegation for all their
7 efforts. To the members of the six tribes gathered here today, you honor the
8 Virginia Council of Churches greatly by your invitation to stand with you as you
9 seek federal acknowledgment. We stand with you today in support of the
10 "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001"
11 (H.R. 2345). On behalf of the Council I would like to apologize for any acts of
12 injustice we may have been complicit or complacent in during the past and ask
13 your forgiveness.
14
15 The Virginia Council of Churches is the combined effort of 16 different
16 denominations in the Commonwealth of Virginia. A list of our member
17 denominations has been appended to my written comments. I have also
18 appended letters from various religious leaders in Virginia urging support for this
19 bill. Together we include one out of every five Virginians. During our fifty- eight-
20 year history we have always stood for fairness, justice and the dignity of all
21 peoples. We were one of the first integrated bodies in the Commonwealth and

The Rev. Jonathan M. Barton – General Minister
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22 have been for our entire history. We stand here today in faith, grounded in our
23 history and our values. The churches have had a relationship with these tribes
24 ever since our first European ancestors arrived and were welcomed by the
25 ancestors of these men and women here today. These tribes have developed
26 close ties to the Episcopal Church, the Baptist Church, the United Methodist
27 Church and the Assembly of God. Three of our leading religious executives are
28 Native American: The Rev. Dr. Wasena Wright, The Rt. Rev. Carol Joy
29 Gallagher, and The Rev. Dr. Cessar Scott.
30
31 Alexander Hamilton stated in 1775: "The sacred rights of mankind are not to be
32 rummaged for among old parchments, or musty records. They are written, as
33 with a sunbeam in the whole volume of human nature, by the hand of the divinity
34 itself; and can never be erased or obscured by mortal power." What we are
35 addressing today are the "sacred rights" of these six tribes. Our history has not
36 always been marked by peace and understanding. Treaties have been broken
37 and land has been taken. There is suspicion and mistrust on both sides. There is
38 perhaps, no deeper wound you can inflict on a person than to rob them of their
39 identity. To relegate them to a box marked other. To proclaim, as we have done
40 in Virginia during the time of Mr. Walter Plecker, State Registrar for the
41 Commonwealth, that you do not exist. Those who bear the legacy of their
42 forefathers, the first inhabitants of this great land, have suffered discrimination,

The Rev. Jonathan M. Barton – General Minister
Virginia Council of Churches
Testimony before the House Committee on Resources
H.R. 2345
Thomasina Indian Tribes of Virginia Federal Recognition Act of 2001
September 25, 2002

43 bigotry and injustice. In the past they have been prevented from employment and
44 attendance in public school. Churches sought to provide educational opportunity
45 during this period, which often meant having to go out of state to attend Indian
46 schools. Even as we prevented their attendance in our classrooms, we proudly
47 placed their names on our school buildings. We took their names and we placed
48 them on roads, towns and rivers. The discrimination they suffered not only
49 erased their identity it also robbed them of their voice. These tribes have proudly
50 served this nation even as this nation has turned it's back on them.
51
52 There has been much discussion regarding "gaming" during these proceedings. I
53 would like to state clearly that the Virginia Council of Churches is on record
54 opposing all forms of gaming and we are convinced that this is not relevant to our
55 testimony here today. The Indian Gaming Regulatory Act of 1988 covers this
56 legislation. These tribes here today humbly ask nothing more than to have their
57 identity restored, to be recognized for who they are. You can restore their identity
58 so that the healing of these deep wounds might finally be realized.
59
60 In 1983, the State of Virginia (Resolution No. 54) acknowledged the
61 Chickahominy, Eastern Division; the Upper Mattaponi; and the Rappahannock
62 and formally recognized them in a ceremony at the capital. The Nansemond tribe
63 was recognized in House Joint Resolution No. 205 in 1985 and the Monacan

tribe in 1989 (House Joint Resolution No. 390). In 1999 both chambers of Virginia's General Assembly agreed to House Joint Resolution 754 urging Congress to grant federal recognition to the Virginian tribes. Our legislature asked the state's delegation in Congress "to take all necessary steps forthwith to advance it." Senator George Allen in introducing the companion bill in the Senate stated: "It is important that we give Federal recognition to these proud Virginia tribes so that they cannot only be honored in the manner they deserve but also for the many benefits that federal recognition would provide. Members of federally recognized tribes, most importantly, can qualify for grants for higher education opportunities. There is absolutely no reason why American Indian Tribes in Virginia should not share in the same benefits that so many Indian tribes around the country enjoy."

God has called these people by name and has blessed them. God will recognize them as long as the sky is blue, even if it should turn gray. God will be there as long as the grass is green and when it turns brown. For as long as the water shall flow or on cold winter days freezes over, God will be there. It is long past time for the United States Congress to do the same.

Virginia Council of Churches

- African Methodist Episcopal Church
- African Methodist Episcopal Zion Church
- Armenian Church in America
- Baptist General Convention
- Catholic Church(Roman)
  - Diocese of Richmond
  - Diocese of Arlington
- Christian Church (Disciples of Christ)
  - Christian Churches in Virginia
- Christian Methodist Episcopal Church
- Church of the Brethren
  - Shenandoah District
  - Virlina District
- Episcopal Church
  - Diocese of Southern Virginia
  - Diocese of Southwestern Virginia
  - Diocese of Virginia
- Evangelical Lutheran Church in America
  - Metro Washington, DC Synod
  - Virginia Synod
- Greek Orthodox Church
  - Greek Orthodox Churches of Virginia
- Moravian Church in America
  - Southern Province
- Presbyterian Church (U.S.A.)
  - Abingdon Presbytery
  - Presbytery of Eastern Virginia
  - Presbytery of the James
  - National Capital Presbytery
  - Presbytery of the Peaks
  - Shenandoah Presbytery
- United Church of Christ
  - Potomac Association
  - Shenandoah Association
  - Eastern Virginia Association
- United Methodist Church
  - Holston Conference
  - Virginia Conference
- Baltimore Yearly Friends Meeting
- Observer Participants
  - Church of Jesus Christ of Latter Day Saints

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)
And Rules of the Committee on Resources

A. This part to be completed by all witnesses:

1. Name: **The Rev. Jonathan M. Barton**

2. Business Address: **1214 West Graham Road**
Richmond, VA 23220

3. Business Phone Number: **(804) 321-3300 ext. 102**

4. Organization you are representing: **Virginia Council of Churches**

5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:

6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:

7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing: **General Minister Virginia Council of Churches**

8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying; **General Minister Virginia Council of Churches**

B. To be completed by nongovernmental witnesses only:

1. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999, from the Department of the Interior, the source and the amount of each grant or contract: **None**

2. Any other information you wish to convey which might aid the members of the committee to better understand the context of your testimony:

Rev. Jonathan M. Barton
General Minister
Virginia Council of Churches
Professional Profile

Jonathan Barton-- was trained in psychology at Kean College in Union, NJ ('74), received a Master of Divinity degree from Drew Theological Seminary in Madison, NJ ('78), and was ordained by the Elizabeth Presbytery in 1981.

In 1979, Reverend Barton was part of an Education/Mission tour, with CWS, to Central America. He visited rural and urban areas in Guatemala, Costa Rica, and Honduras (an account of this experience was published in an article "Revelations to a Hunger Action Enabler"). In 1981, he traveled to Puerto Rico as part of an Education/Mission team from Drew Theological Seminary. Jon traveled to Haiti, Dominican Republic and Jamaica early in 1986. In November of 1991, Mr. Barton traveled to Thailand, Bangladesh, India and Pakistan. In October of 1996 traveled to Armenia, Croatia and Bosnia. Mr. Barton began work with Church World Service in 1983.

Previous to joining the Council, he served as Regional Director for Church World Service and Witness. Rev. Barton served in Washington, DC as the Assistant Coordinator for the National Committee for World Food Day, a United Nations program begun October 16, 1981. He has also served as a consultant to World Hunger Education Service. He has represented the New Jersey Council of Churches, testifying before a U.S. Senate Subcommittee in support of the U.S. National Academy of Peace. He served on the board of the Virginia Interfaith Center for Public Policy. He has served as the moderator for the Mission and Service Division of the Presbytery of the James 1987-1993. Currently Rev. Barton serves on the Board of Ten Thousand Villages (Richmond), the Board of Public Ministries for the Presbytery of the James, the executive committee of the VA Voluntary Organizations Active in Disaster (VOAD) and the VA Council of Churches Refugee Advisory Committee.

Jonathan is married to Elizabeth Wood Stark, he has one daughter, Katie age 17 and two step daughters Liza age 18, and Archer age 16.

Rev Barton is listed in the 13 Edition of "Who's Who in the World" (1996) and the 52 Edition of "Who's Who in America" (1998) and the 24 Edition of "Who's Who in the South and Southwest" (1995/96).

September 17, 2002

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mail: BGCVA@aol.com
Web: www.baptistgeneralconventionofva.org

BAPTIST GENERAL CONVENTION OF VIRGINIA

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Ms. Martha E. Hairston
Program Secretary

Mr. Bruce J. Martin
Maintenance & Operations Technician

Mr. Lloyd C. Johnson
Operations Assistant

August 29, 2002

Representative James V. Hansen, Chairman
Committee on Resources
United States House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Representative Hansen:

It is with deep concern that I write this letter voicing my support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2002" (H.R. 2345), that was introduced by congressman Moran of Virginia. As Executive Minister of the Baptist General Convention of Virginia and one who has some Indian heritage, I agree with the six tribes of Virginia as they seek federal recognition. Now is the time for the United States Congress to acknowledge the descendants of these Indian Tribes. I firmly recommend that the House Committee on Resources act affirmatively in this matter and that the House and Senate will pass legislation this fall.

Sincerely,

Cessar L. Scott

Ft/

cc: The Reverend Jonathan Barton
Virginia Council of Churches

THE UNITED METHODIST CHURCH
RICHMOND AREA
P.O. BOX 1719
10330 STAPLES MILL ROAD
GLEN ALLEN, VIRGINIA 23060

JOE E. PENNEL, JR.
RESIDENT BISHOP

OFFICE (804) 521-1100
FAX (804) 521-1171
RESIDENCE (804) 360-5535

September 13, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
US House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen:

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001" (HR 2345), introduced by Congressman Moran of Virginia. As a Bishop of the United Methodist Church, I stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

Joe E. Pennel Jr.

Joe E. Pennel, Jr., Bishop
Virginia Conference, United Methodist Church

SEP-14-2002 SAT 10:01 AM NATIONAL COUNCIL OF CHUR FAX NO. P. 01/01

National Council of the Churches of Christ in the USA

Office of the
General Secretary

September 12, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001"(H.R. 2345), introduced by Congressman Moran of Virginia. As General Secretary of the National Council of the Churches of Christ in the USA, I stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

Bob Edgar
General Secretary

475 Riverside Drive • Room 880 • New York, NY 10115-0050 • 212-870-2141 • Fax 212-870-2817

Potomac District Council
ASSEMBLIES OF GOD

September 12, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H.R. 2345), introduced by Congressman Moran of Virginia. As Assemblies of God we stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

H. Robert Rhoden

H. Robert Rhoden, D. Min.
Superintendent
Potomac District Council

14525 John Marshall Highway ■ P.O. Box 690 ■ Gainesville, VA 20156-0690 ■ 703/753-0300 ■ www.pdcag.org

JOHN SEIDEL
P. O. Box 32045
Hillsboro VA 20134-1545
☎ 540-668-6430
Fax 540-668-6890
E-Mail *Jjseideljr@aol.com*

September 10, 2002

The Honorable James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen:

I understand that the House Committee on Resources will be holding hearings later this month concerning the *Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001" (H.R. 2345)*, introduced by Congressman Moran of Virginia. As Lutherans here in Virginia we stand behind the six tribes of Virginia as they seek federal recognition.

This is the appropriate moment for the Congress to acknowledge the descendants of those who greeted our ancestors from Europe on their arrival in this land, which we all now share.

As a Virginia Lutheran I encourage the House Committee on Resources to act swiftly in this matter and pray that the House and Senate will pass the legislation this fall.

Respectfully,

John Seidel
Member of the Coordinating Cabinet of the
Virginia Council of Churches

Eastern Virginia Association
United Church of Christ
1622 Holland Road • Suffolk, Virginia 23434
Telephone: (757) 934-3146 • Fax: (757) 934-6112 • email: evaoffice@aol.com

Rev. Walter S. Snowa
Associate Conference Minister

Ms. Ruth Suggs-Varner
Program Associate

September 5, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U. S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H. R. 2345), introduced by Congressman Moran of Virginia. As the United Church of Christ we stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely yours,

Walter S. Snowa
Associate Conference Minister

The Episcopal Diocese
of Southwestern Virginia

The Right Reverend Frank Neff Powell, Bishop
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ig Stone Gap, Christ
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alloway, St. Peter's
hristiansburg, St. Thomas
lifford, St. Mark's
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ovington, Emmanuel
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olly Mills, Good Shepherd
orest, St. Stephen's
alax, Good Shepherd
lasgow, St. John's
ot Springs, St. Luke's
exington, R.E. Lee Memorial
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September 10, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H.R. 2345), introduced by Congressman Moran of Virginia. As Episcopalians we stand with the six tribes of Virginia as they seek federal recognition. As you may know, we have been closely associated with the Monocan Indians in Amherst County where there is an Episcopal Mission that is quite active.

It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

The Rt. Rev. Neff Powell, DD, Bishop
Episcopal Diocese of Southwestern Virginia

NPbw

The Rt. Rev. Carol Joy W. T. Gallagher
Bishop Suffragan

The Diocese of Southern Virginia
Petersburg Office
112 North Union Street
Petersburg, Virginia 23803
Phone: (804) 863-2095
Fax: (804) 863-2096

September 18, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U. S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen:

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001" (H.R. 2345), introduced by Congresssman Moran of Virginia. As Episcopalians we stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

+ Carol Joy W.T. Gallagher

Carol Joy Wellingstick Gallagher
Bishop Suffragan

CJWSG: ppw

Signed in the bishop's absence to avoid delay

Sep 20 78 08:20a Va Diocesan Center-Roslyn (804)-285-3430 p.1

The Rt. Rev. David Colin Jones
Bishop Suffragan

The Diocese of Virginia

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September 20, 2002

The Honorable James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H.R. 2345), introduced by Congressman Moran of Virginia. I support legislation that would give federal recognition to the six tribes of Virginia.

As an Episcopal Bishop, I have been privileged to visit reservations and to work side by side with Native American clergy and bishops. Their experience is unique. They need recognition.

It is time for the United States Congress to acknowledge the Native Americans in Virginia who were here to greet the first Episcopalians from Europe. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Faithfully,

David Colin Jones
Bishop Suffragan
Episcopal Diocese of Virginia

United Church of Christ
Central Atlantic Conference
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916 S. Rolling Road
Baltimore, MD 21228-5318
(410) 788-4190 • fax (410) 788-9485

September 19, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H.R. 2345), introduced by Congressman Moran of Virginia. The United Church of Christ has a long tradition of supporting Native American interests. I stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

Sincerely,

Richard M. Vaught
Associate Conference Minister of
the Central Atlantic Conference of
the United Church of Christ

Office of the Bishop *Diocese of Richmond*
811-B CATHEDRAL PLACE • RICHMOND, VIRGINIA 23220-4801 • (804) 359-5661

September 19, 2002

Rep. James V. Hansen, Chairman
Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515-6201

Dear Chairman Hansen,

I am writing in support of the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001 (H.R. 2345), introduced by Congressman Moran of Virginia. As Bishop of the Catholic Diocese of Richmond, I stand with the six tribes of Virginia as they seek federal recognition. It is time for the United States Congress to acknowledge the descendants of those who greeted our European Ascenders to this great land. I encourage the House Committee on Resources to act swiftly in this matter and pray the House and Senate will pass legislation this fall.

The Catholic Church is committed to recognizing the right of indigenous peoples. In "Ecclesia in America," a major statement issued by Pope John Paul II after the Synod on America, the Pope wrote: "If the Church in America, in fidelity to the Gospel of Christ, intends to walk the path of solidarity, she must devote special attention to those ethnic groups which even today experience discrimination. Every attempt to marginalize the indigenous peoples must be eliminated. This means, first of all, respecting their territories and the pacts made with them; likewise, efforts must be made to satisfy their legitimate social, health and cultural requirements. And how can we overlook the need for reconciliation between the indigenous peoples and the societies in which they are living?" (#64)

Thank you for your attention to the rights of indigenous tribes in Virginia.

Sincerely,

+ Walter F. Sullivan

Walter F. Sullivan
Bishop of Richmond

rf

Danielle Moretti-Langholtz, Ph.D.
American Indian Resource Center, Coordinator
Testimony for the U.S. Senate
Committee on Indian Affairs
October 9, 2002

Mr. Chairman, members of the committee and guests, I am Dr. Danielle Moretti-Langholtz, coordinator of the American Indian Resource Center at the College of William & Mary and Visiting Assistant Professor in the Department of Anthropology. I am pleased to have the opportunity to address you today on this important issue. For the record, more extensive treatments of Virginia Indian history have been submitted by me, Dr. Helen Rountree, professor emeritus of Old Dominion University and Dr. Jeffrey Hantman, of the University of Virginia and Mr. Edward Ragan of Syracuse University.

The history of Virginia's indigenous population is uniquely intertwined with the history and founding of the country we know today as the United States of America. Widely known is the story of the great Chief Powhatan and his daughter Pocahontas and their interactions with some of the earliest English-speaking settlers at Jamestown during the early 17th century. Less widely known is the story of what became of Virginia's indigenous population and their struggle for the survival of their culture, communities, and identity during the intervening four centuries. Today, representatives of six of these native tribes are before you seeking support for the passage of legislation to extend federal recognition to them.

At the time of colonization by the English in 1607, Virginia's coastal plain was occupied by a large paramount chiefdom of Algonquian-speaking tribes. According to early English documents the chiefdom was lead by Wahunsenacawh also known to us as Chief Powhatan, the father of Pocahontas. While the Virginia Piedmont was occupied by alliances of Siouan-speaking tribes. Anthropologists, archaeologists and historians still consult John Smith's early map of Virginia for its usefulness in identifying the names and locations of the native settlements during the early part of the colonial encounter. The six tribes seeking Congressional federal acknowledgment, descendant communities of some of the tribes encountered by the earliest settlers, have maintained their tribal governments and the center of their cultural events within the boundaries of their traditional homelands. Both archaeological evidence and early historical documents indicate these native peoples were sedentary horticulturalists, growing corn, beans and squash. Early English documents indicate the Powhatan tribes lived in ranked societies exhibiting differential dress, especially the wearing of copper by individuals of high status and differential burial practices for chiefs. Additionally, Virginia Indians society displayed highly organized political structures that included female chiefs. Today, the Rappahannock Tribe has a female chief, Chief G. Anne Richardson, and she is an example of that continuing tradition. Powhatan society was complex and included subchiefs that acted as intermediaries between the paramount or primary chief and the tributary tribes. The latter paid tribute or taxes to the central polity or paramount chief. Such taxes were paid in the form of food, skins, shells, miliary service or labor.

It is difficult to reconstruct the size of the indigenous population at the time of colonial settlement but serious estimates of at least fifteen thousand for the Powhatans and thus tens of

thousands for the Commonwealth of Virginia are acceptable. However, the rapid settlement of the colony of Virginia after 1607 resulted in a demographic shift, with settlers gaining control of the majority of the land originally controlled by Virginia Indians, as the economic life of the colony focused on the growth of tobacco. Moreover, the indigenous population was greatly reduced due to conflicts and disease and as time passed Virginia Indian identity was sometimes subsumed under other racial categories, as will be discussed in more detail below.

In the early colonial records Indians and tribes are mentioned by using distinct terms to represent the communities. An examination of the Acts of Assembly for October 1649 suggests some of the pressure that the community was under and indicates that Indian slavery was practiced in Virginia. The Assembly made the "kidnapping" of or "purchase" of Indian children illegal. The second act of 1649 made the killing of Indians while they were within the limits of colonial (English) settlements illegal. In order to identify specific Indians as friendly the English instituted the use of metal badges which granted permission to certain Indians to enter lands controlled by the English. Thus Indian access to their former lands and their freedom of movement was restricted by the colonial government. Given the pressures on Virginia Indians, particularly in the Tidewater area, the survival of the tribal entities from the time of colonial contact to the present is remarkable.

The Virginia tribes were signatories to colonial treaties. One in particular, the 1677 Treaty of Middle Plantation guaranteed Indians civil rights, and rights to gather food, and property rights. For some of the tribes reservations were established. The 1677 treaty indicated that "Indian Kings and Queens," the Colonial title for tribal leaders, could not be imprisoned without a warrant, thus implying the treaty was an attempt to reinforce tribal authority in the face of overwhelming pressures by settlers to weaken the paramount chiefdom. Despite the treaties, by 1700 all of Virginia's tribes were forced onto increasingly smaller pieces of their traditional homelands and nearly all tribes lost control over their reservation lands by the early 1800s. Details of Indian land loss have been enumerated by Helen Rountree in her book Pocahontas's People: The Powhatans of Virginia Through Four Centuries (1990).

From the beginning of the colonial encounter, Virginia Indians came under increasing pressure to conform outwardly to non-Indian society. This may be seen in the switch to speaking English in place of native languages and in the demise of traditional religious practices. In the eighteenth century many Virginia Indians converted to Christianity during the historical period during the mid-eighteenth century known as the "Great Awakening." One of the main thrusts of the "Great Awakening" was a move from the standard practice of having clergy ordained in England, as required by the Anglican Church, to having the leadership of individual congregations selected from among the membership of the church. This form of leadership or pastoral authority became the practice of the New Light Baptist Churches. Formal education was not a criteria for holding a position of leadership within the churches. My current research (The Rise of Christianity Among Virginia Indians, Paper Presented at the Annual Conference of the Middle Atlantic Archaeological Conference, 2001) suggests this conversion permitted the traditional leadership of the tribes to maintain positions of power within the community by transferring Indian hegemony into the church arena at a time when the practice of traditional religion became too dangerous for the leadership of the Virginia Indian community. Additionally, the New Light Movement was strongly committed to education and supported Sunday school

programs to teach children, male and female, to read scripture. For more than a century this was the only educational opportunity open to Virginia Indian communities. Churches have continued, to the present-day, to be a haven and source of support for the Virginia Indian community.

From 1705 onwards the General Assembly of Commonwealth of Virginia enacted increasingly strict codes pertaining to slavery and racial identity. These are known in the academic literature as "slave codes" or "black codes." Elsewhere, I have argued that between 1607 and 1983 extant Powhatan tribes and the Monacan Indian Nation maintained an internal and Indian identity even as the Commonwealth of Virginia implemented a bipolar model or two-category system of race that subsumed Indian identity into the category of "free persons of color." Virginia Indians developed strategies to survive in this racially hostile climate by withdrawing into close-knit communities separate enough to maintain their tribal identities. An examination of birth, death and property records from this time period highlights the difficult position in which Virginia Indians found themselves as the state regularly manipulated the definitions of "Negro," "mullato," "Indian," and "free persons of color," to maintain white control over non-white persons (Winthrop Jordan 1968, Jack Forbes 1993). Confusion and chaos over the application of categories such as "colored" and "Indian" are clear in the throughout the historical record up through the 1970s. This is due to the tension between the state's attempt to imposed a bipolar model of race onto a population of persons of Indian descent who resisted the state-sponsored racial designations by asserting their Indianness.

As trying as the seventeenth and eighteenth centuries were an even more difficult time for the maintenance of Virginia Indian identity occurred with the emergence of the Eugenics Movement in the twentieth century. This pseudo-scientific movement was linked in England to the standard bearers of Darwin's concept of natural selection and in fact the founders of the movement were blood relatives of the eighteenth-century thinker. These men argued that heredity was the primary force in individual character and in the history of civilization. The nascent ideas of the Eugenics Movement may been seen in Herbert Spencer's philosophy of Social Darwinism. Proponents of the movement opposed the "mixing of races" through intermarriage as this was viewed as weakening the superior races by introducing the negative characteristics of one group into the other. According to their views of science, drawn from observations with animal husbandry, the maintenance of racial purity would lead to the betterment of humankind. In more practical terms the adherents to the movement opposed free public education, and such things as public aid to the unfit of society.

The Eugenics Movement gained support into the early twentieth century and had its fullest expression under the Nazi regime of the Third Reich. Sadly, adherents to the so-called scientific aspects of the movement guided legislation through Virginia's General Assembly consistent with their beliefs that the maintenance of racial purity was essential for the betterment of mankind. In 1924 the Commonwealth of Virginia passed the Racial Integrity Law, thereby requiring all segments of the population to be registered at birth in one of two categories; "white" or "colored," the latter category was mandated for all non-white persons regardless of race or ethnicity. This legislation was supported by Dr. Walter Plecker, head of the Bureau of Vital Statistics in Richmond, and made it illegal for individuals to correctly identify themselves as Virginia "Indians." Walter Plecker personally changed the birth records of many native persons from "Indian" to the generic non-white category of "colored" as required under the law. Birth

certificates with "proper" racial designations were necessary in order to obtain marriage licenses. The legislation made it illegal for persons of different races to be married within the state of Virginia and mandated fines and prison terms for persons attempting to circumvent the law or file what the state deemed to be "false" papers with regard to race. It must be noted that the primary target of the Racial Integrity Law was the African American community and that all person's of mixed-blood heritage were impacted by the law in negative ways. However, the pressures and restrictions that this legislation placed upon Virginia's native population were significant. Proponents of the agenda heralded by the Eugenics Movement saw the Virginia Indian community as the threat; one that would make it possible for persons of mixed heritage of African American and Native American ancestry to move eventually out of the category of "colored" and into the category of "white." The law permitted persons of white and Virginia Indian ancestry, as long as it was not more than 1/16 of Indian blood quantum to be classified as "white." Thus the bipolar categorization of Virginia's racial categories made "Virginia Indian" a very problematic category. Officials from the state's Bureau of Vital Statistics actively sought to denigrate and deny person of Virginia Indian descent the right to identify themselves as "Indians" forcing them whenever possible to be declared by the state as "colored." The historical, political and cultural characteristics of the Virginia Indian communities were ignored by state officials during the years prior to the repeal of the 1924 legislation. The experience of subsuming the identity of "Indians" under a state-generated alternate category is unique to the Virginia Indian community and its effects were wide-reaching. It is the primary reason that our citizens are unfamiliar with Virginia's Indian tribes. Many Virginia Indians left the state to escape this oppressive legislation and for better jobs, and educational opportunities during these years. Those who remained withdrew into the communities and in general Virginia Indians sought to draw little or no attention to themselves. Scholars have documented that Virginia Indians refused to give up their Indian identity even during the difficult years of the legislation. In two instances Monacan tribal members challenged the restrictions on marriage laws based upon racial categories generated by the state. In each instance the Monacans prevailed in court. These court challenges are significant given the circumstances of the Monacans at the time, living in poor rural communities without benefit of quality education or financial means. Indian communities resisted the legislation in less public ways. They refused to put their children in segregated "colored" schools, relying instead on church-sponsored elementary schools, and by maintaining their tribal structures even as the state declared they were colored persons and not Indians. Obtaining a high school education for Virginia Indians was practically impossible during this time and those who managed to do so resorted to attending Indian boarding schools in other states. Nevertheless, during World Wars I and II Virginia Indians served their country despite the hardships which the Racial Integrity legislation placed upon the. Historical documents and tribal records indicate the tribes had functioning separate tribal governments during the time was making it nearly impossible to declare oneself a "Virginia Indian." It must also be noted that some anthropologists, using the rhetoric of the Eugenics Movement described Virginia Indians in very negative terms as "obscure" populations, "half-breeds", and "tri-racial isolates" (Calvin Beale 1957, Brewton Berry 1963). Such work was used against the Virginia Indian community by proponents of the Eugenics Movement. However, more prominent anthropologists such as James Mooney and Frank Speck did fieldwork among these tribes and detailing their history,

material culture, and genealogy. Frank Speck photographed many of the Powhatan tribal leaders and members and these photographs are housed in the Smithsonian's Archives. The body of work produced by Mooney and Speck constitutes the largest and most anthropologically accurate material on Virginia Indians collected during the early twentieth century. This work clearly establishes the distinct and enduring nature of Virginia's Indian tribes more than three hundred years after the settlement of Jamestown. The Racial Integrity Law remained in effect until its repeal by the U.S. Supreme Court in 1968 in the famous Loving v. Loving decision. The more recent work of cultural anthropologists such as Helen Rountree and Danielle Moretti-Langholtz (We're Still Here: Contemporary Virginia Indians Tell Their Stories, coauthored with Sandra Waugaman, 2000) has documented the continued presence of Virginia's Indian tribes into the present day. There has been culture change in these communities but there has also been a remarkable degree of cultural continuity as well.

With the repeal of the Racial Integrity legislation and the growing national Civil Rights Movement in the United States a period of more openness on matters of identity and history led to greater public visibility for Virginia Indians. Educational opportunities improved for Virginia Indians and a period of construction of tribal centers and museums began, and continues to the present time. In 1982 a subcommittee was established by the Virginia General Assembly to explore the granting of state recognition to some of Virginia's Indian tribes. The findings of the subcommittee were favorable to the extension of state-recognition to a number of tribes based upon the history, contributions and authenticity of the tribes. Between 1983 and 1989 the Commonwealth of Virginia granted state recognition to the six indigenous tribes present here today. In 1983 the Commonwealth of Virginia established the Virginia Council on Indians, a state-sanctioned advisory board to deal with educational issues and other matters pertaining to Virginia's state recognized tribes and issues for members of other tribes residing within the Commonwealth. As part of my fieldwork among Virginia Indians, my regular observations of the workings of the Virginia Council on Indians, since 1995, show the Council and an active and effective body dealing with issues of importance to the community on the state level. In 1997 former Virginia Governor George Allen signed legislation allowing Virginia Indians to correct their birth records. This important piece of legislation energized the Virginia Indian communities in positive ways. Tribal elders, many of whom lived during the 44 years the Racial Integrity legislation was in force, have become more comfortable speaking about their heritage to non-Indians and in public settings, thereby enriching the lives and cultural diversity of all our citizens. [I have just completed (2002), with the help of my students, a two-year project, the Virginia Indian Oral History Project, which resulted in the making of a video documentary, "In Our Own Words: Voices of Virginia Indians." This video will help the students and general public of Virginia to learn about the history of the state-recognized tribes and the work and responsibilities of tribal leadership. The years of racially restrictive legislation has made the Virginia Indian community understudied and too little known outside of a handful of anthropologists and historians.]

In February 1999 the Virginia Legislature agreed to House Joint Resolution No. 754. This bill, named for the late Thomasina E. Jordan, the first American Indian chairwoman of the Virginia Council on Indians, requested the Congress of the United States to grant historic Congressional federal recognition to these tribes based upon their demonstrated historical

documentation as the descendants of Virginia's original tribes, the contemporary location of the tribes within their traditional homelands as documented at the time of contact with European settlers and their contributions to the history of this country. The anthropological and scholarly community represented here today acknowledges the authenticity of these tribes and supports their request for federal recognition based upon the criteria for federal recognition. These six tribes; the Chickahominy, Chickahominy---Eastern Division, Monacan, Nansemond, Rappahannock, and Upper Mattaponi, have maintained a separate Indian identity within the Commonwealth of Virginia since the time of European colonization. The functioning of tribal governments, church-sponsored schools and tribal centers can be documented from the early 1900s. Broadly speaking, these tribes have a shared common experience of history which has forged in them a sense of solidarity and identity.

In 2007 the Commonwealth of Virginia and the country as a whole will mark the four-hundredth anniversary of the founding of Jamestown. Before marking such an occasion it would be fitting, honorable and historically accurate to extend federal recognition to these tribes thereby acknowledging their continued existence and their contributions to the founding of our nation. After four centuries Congress has the opportunity to enable these tribes to join the community of other federally recognized tribes thereby setting the historical record straight for all Americans. Mr. Chairman, four centuries is long enough to wait. Please support the extension of Congressional Federal Recognition to these six Virginia tribes.

Responses to Questions
Steve Adkins

Answers to the Indian Affairs Committee Questions, submitted by Chief Stephen R. Adkins, representing the Six Tribes in Virginia seeking Federal Recognition through Congress (S.B. 480).

1. **Is it fair for some tribes to be recognized legislatively while others wait for decades to go through the arduous administrative process?**

We have tremendous empathy for all tribal nations seeking Federal Recognition. We are aware of the difficulties involved in receiving a final decision through the Administrative process. Our decision to go through Congress is a question we have had to address and respond to in the legislative process and we believe it is a very fair question.

The reason the political process is the appropriate process for recognition of the Virginia Tribes, is because of the state or political action that was taken against us in modern times that prevented and certainly delayed our ability to enter into the Administrative Process when that means became available to other tribes. In our sworn testimony before the Committee we and our historians described the political climate in Virginia in the 1900's that embraced the eugenics movement from Europe, and adopted laws targeted at those classes of people who did not fit into the dominant white society, or who were of other than the white race. Best known is the State's Racial Integrity Act of 1924 that declared only one race in the state, white. That statute **targeted** those who would dare to claim Indian Heritage, creating criminal penalties including incarceration for anyone who asserted their Indian identity. This law remained in effect for over 30 years when it was finally struck down by the Federal Courts in 1967. By that time, the Native Americans in the state had suffered more than any other minority in the state in terms of denial of education and other related opportunities. Our historians say there is no other state statute in the United States that compares to that statute in terms of the denial of Indian Identity. As a result of that law, our Tribal people feared asserting their rights. There was a strong belief among the Indian Communities that we would not succeed in correcting the state action that had created a process with clear intent to change and alter documentation to deny our Indian identity or ability to claim Federal Status. Acknowledgement of the harm of state action did not come until 1997, when then Governor George Allen introduced legislation that recognized the state's racism against those of Indian Heritage.

It was after the passage of the 1997 state law that our Tribal leaders began to examine the federal recognition process. They consulted with members of their Congressional delegation and with those inside the Bureau of Indian Affairs, and it seemed clear that adding long administrative delay on top of the atrocities our people suffered under the Racial Integrity Act would not be the correct or right approach to our needs for

Federal Acknowledgement. At the same time the Tribes also began receiving strong support for their Federal Status from the state. The Governor and the state legislature by resolution, acknowledged that as first contact Tribes who suffered state sanctioned racism in modern times that our federal status should not be further delayed and endorsed Congressional action to provide Federal Status.

The Virginia Tribes now have national support for our federal recognition, including the National Indian organizations, with resolutions from both the National Congress of American Indians, and from the Alaskan Federation of Natives. We have no opposition to our Recognition through Congress from any Tribal Community or organization.

We believe that our story is compelling. Our history as descendents of the Tribes that made first contract with the first permanent English Settlement at Jamestown, Virginia, but then were so callously denied our heritage by the modern race based state statutes, presents compelling and unique circumstances for Congressional recognition especially as we approach the 400th anniversary of Jamestown, in 2007.

2. What criteria should Congress use for legislatively recognizing tribes?

We are aware, of the current debate and review of the "seven mandatory criteria" and "the process" applied to grant Federal Recognition status to Tribal communities. Although we have initiated petitions we have not had as much experience with the process and therefore defer to other tribal communities who can more fully comment on the Administrative process and its deficiencies. That said, we have worked hard to authenticate our existence to the committee and have had the assistance of renowned anthropologists who specialize in our Tribal heritage, review and document our petitions. These historians/anthropologists have submitted testimony and other evidence to the committee verifying that our Tribal Communities meet the criteria established, as authentic descendents of the historic tribes of Virginia, that have maintained our Tribal communities up to the modern day.

With regards to the legitimacy of the current criteria, we have assumed, there has been a logical development of the seven mandatory criteria.
On the other hand, we believe that the administrative process as applied to the mandatory criteria fails to take into account the regional factors that may require a standard peculiar to the region to prove the same historical truths. It is unrealistic to expect a small number of specialists at the Bureau of Indian Affairs to have the expertise or time to authenticate tribes whose history is older or more politically complex. Therefore we believe there is a fundamental unfairness built into the process as it is applied to the mandatory criteria. We strongly support reform of the process that takes into account regional differences and does not require the extraordinary costs of research to be born by unrecognized Tribal communities. Today the process is too costly and subjects petitioners to unreasonable delays which lead ultimately to litigation. It is a process that is viewed by Tribal Communities as

unfair and lacks dignity, and sadly is seen as creating opportunities for more mistreatment by the Federal government.

3. You are probably aware now, that many people will assume that you are seeking recognition so you can open a casino. How have you addressed this issue?

We have stated that the six Tribal Communities in Virginia seeking Federal Recognition through this legislation are not interested in gaming, and we have supported that contention by modifying our bill to give the state the right under the Gaming Act to deny Indian Gaming. The language in our current legislation states that our Tribes can not take advantage of any of the exceptions to the Indian Gaming Regulatory Act and therefore our Tribes will be subject to the provisions of the Act that make a Compact to game discretionary. Thus only if the State agrees to negotiate a compact will the tribes have any rights to do casino gaming. In the State of Virginia, the Governor's authority to enter into contracts with Sovereigns is governed by statutory law. In the code of Virginia the Governor has no specific right to enter into contracts with Indian Sovereigns. The State's legislature can by specific legislation ensure that the Governor has no right to enter into any compact to game with the Virginia Tribes and could require legislative concurrence. The six Virginia Tribes on this legislation do not have reservations. Any land they would take into trust in the future would be governed by the Gaming Act, and therefore, as stated above, under this legislation the State could deny them the right to game. The language we agreed to in the legislation supports our claim that we want Federal Status as an acknowledgement of our Indian Heritage, and not for the right to bring casino gaming to the state.

TESTIMONY OF THE HON. JOHN BARNETT, CHAIRMAN

THE COWLITZ INDIAN TRIBE OF WASHINGTON

SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON FEDERAL RECOGNITION

MAY 11, 2005

Chairman McCain, Vice-Chairman Dorgan, and distinguished members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify this morning. To our friend Senator Maria Cantwell, I bring you warm greetings from your Cowlitz constituents at home in Washington State.

My name is John Barnett, and I am the Chairman of the 3,200-member Cowlitz Indian Tribe. I have served as the Chairman of our Tribe for 24 years, and I have made it my personal objective to right the historical wrongs that have been committed against my people. By so doing, I hope to provide a brighter future for our next generations.

The Cowlitz Tribe was recognized through the Federal Acknowledgment Process on January 4, 2002, and as such we are a federal recognition success story. We made it through the Bureau of Indian Affairs' Federal Acknowledgment Process using only donations from hard working tribal members to pay for the anthropological, genealogical and historical work necessary to show that we met the Bureau's seven criteria for recognition. It was the commitment, cohesiveness and self-sacrifice of my people that got us through the recognition process without the benefit of funds from outside developers. It has been out of my own pocket that I have traveled to Washington, D.C. more than fifty times to advocate on my Tribe's behalf during the recognition process. Indeed, I sat before this Committee at another recognition hearing in 1991, fully eleven years before we finally received federal recognition in 2002.

Today I wish to comment briefly on the Federal Acknowledgment Process, on our experience with that Process, and on how the public debate on Indian gaming has negatively impacted unrecognized and newly recognized tribes.

Federal Recognition Process and the Cowlitz Tribe

I believe it is entirely appropriate that unrecognized tribes should meet tough, objective standards before achieving federal acknowledgment. To take a contrary position would undermine the credibility of other federally recognized tribes, and would fuel the efforts of unscrupulous

developers looking to "create" tribes for no other reason than to create a new Indian gaming deal. But let me also underscore that the recognition process is expensive and time consuming, and that it has been made more so by the efforts of gaming interests – Indian and non-Indian – which will spare no expense to block a legitimate tribe's efforts to achieve recognition in order to block a potential gaming competitor.

The Federal Acknowledgment Process must be streamlined. In our case we had to wait more than three years between when we filed our Notice of Intent and when it was published in the Federal Register; we had to wait another four and a half years from publication of the NOI until BIA sent us our first technical assistance letter; we waited another five years after that until we got our second technical assistance letter; we waited another five and a half years until we were placed on the "ready" list; and then we waited approximately three years after that before BAR issued Proposed Findings of Fact in 1997. We did not receive a Final Determination until 2000, and then another tribe challenged the Bureau's Final Determination before the Interior Board of Indian Appeals, thereby delaying implementation of BIA's decision another two years until a Reconsidered Final Determination was issued in 2002. From start to finish, a quarter of a century. (*See* table below.)

COWLITZ FAP TIMELINE

Sept. 19, 1975	Cowlitz Tribe of Indians submits Letter of Intent requesting Federal Acknowledgment to Interior.
	↓ 3 yrs. 4 mos.
Jan. 2, 1979	Notice of Letter of Intent published in Federal Register (44 Fed. Reg. 116 (Jan. 2, 1979)).
	↓ 4 yrs. 5 mos.
June 15, 1983	First Technical Assistance Letter sent from Interior to Tribe.
	↓ 5 yrs. 4 mos.
Oct. 21, 1988	Second Technical Assistance Letter sent from Interior to Tribe.
	↓ 8 yrs. 4 mos.
Feb. 12, 1997	Assistant Secretary for Indian Affairs signs Proposed Finding Documents.
	↓ 15 days
Feb. 27, 1997	Proposed Finding Published in Federal Register (62 Fed. Reg. 8983-8985 (Feb. 27, 1997)).
	↓ 3 yrs.
Feb. 14, 2000	Final Determination for Federal Acknowledgment signed by Assistant Secretary for Indian Affairs.
	↓ 4 days
Feb. 18, 2000	Final Determination Published in Federal Register (65 Fed. Reg. 8436-8438 (Feb. 18, 2000)).
	↓ 1 yr. 10 mos.
Dec. 31, 2001	Assistant Secretary for Indian Affairs signs Reconsidered Final Documents.
	↓ 4 days
Jan. 4, 2002	Reconsidered Final Determination published in Federal Register (67 Fed. Reg. 607-608 (Jan. 4, 2002)).

The glacial pace at which recognition petitions are reviewed and processed causes unwarranted hardships on tribes already suffering from years of neglect by the federal government. Unrecognized tribes have little or no access to federal programs or economic development opportunities, leaving them vulnerable to eventual extinction. This glacial pace is also troubling because it so clearly contributes to unrecognized tribes' desperate need to find alternative funding sources. More specifically, the inability of the Bureau of Indian Affairs to move applications through the Process in a more streamlined way effectively allows gaming to play too great a role in the Federal Acknowledgment Process. That role is being played out on both sides, both for and against applicant tribes. The only way to remove the unwanted influence of gaming on federal recognition is to give the Bureau of Indian Affairs the resources it needs to provide tribes with much more substantial assistance so that they are not forced to find outside sources of funding.

Newly Recognized Tribes and Landlessness

Because most of us who survive the Federal Acknowledgment Process emerge as landless tribes, the controversial politics of Indian gaming continue to haunt us. Without access to federal funding or economic development opportunities, and having spent whatever money we had on the recognition process, we are financially destitute. Acquiring land costs money. The substantial work needed to construct a fee-to-trust application also costs money. And recently the Bureau of Indian Affairs began to require that tribes pay for the development of an extensive Environmental Impact Statement as a prerequisite to a fee-to-trust application. The Cowlitz EIS is typical, and it will cost my tribe more than a million dollars. Where is a newly recognized, landless tribe supposed to find that kind of money?

Mr. Chairman, there is a world of difference between the greedy, marauding "reservation shopping" portrayed by the press, and the sincere, sometimes desperate efforts of newly recognized tribes to find a piece of land on which to start rebuilding our futures. We are trying to get back on our feet after a century or more of not-so-benign neglect. We are trying to build homes, government buildings, schools and health clinics. We are looking for access to the same economic development opportunities already afforded other tribes that were lucky enough to have a land base on October 17, 1988.

The Cowlitz Tribe has strong historical and modern connections to the land we would like to make our initial reservation. We have been fortunate in that we have found in Indian Country a partner to help us get on our feet. We are proud to be working with, and learning from, the Mohegan Tribe of Connecticut. In 1994, the Mohegan Tribe also successfully emerged from the Federal Acknowledgment Process as a newly-recognized, landless tribe. Today the Mohegan Tribe is reinvesting in Indian country, helping their Cowlitz cousins from across the continent, and for that we will be forever grateful.

History of the Cowlitz Indian Tribe

I believe that much of the public debate surrounding federal recognition, land acquisition and gaming fails to acknowledge the historical circumstances of how unrecognized and landless tribes came to be unrecognized and landless in the first place. Indeed, I believe that the very real connection between recognition and landlessness is not understood by the press or even sometimes by federal policy makers. The history of the Cowlitz Tribe is illustrative.

The United States acquired the Oregon Territory from Great Britain pursuant to the Oregon Treaty in 1846. *See* Oregon Treaty, July 17, 1846, 9 Stat. 869. The Washington Territory in turn was carved from the Oregon Territory soon thereafter in 1853. Within a year of the creation of the Washington Territory, the United States began to survey the Indian populations in western Washington in order to obtain land cessions from them. In 1854, Acting Commissioner of Indian Affairs (Charles E. Mix) instructed Washington territorial Governor Isaac Stevens to commence treaty negotiation with the Washington tribes. Soon thereafter, in February 1855, Governor Stevens convened treaty negotiations with the Cowlitz and other tribes at the Chehalis River Treaty Council. The purpose of these negotiations was to obtain large land cessions from these tribes and to consolidate multiple tribes onto a smaller number of reservations.

The Cowlitz agreed to cede lands to the United States, but treaty negotiations broke down because the Cowlitz refused to accept a reservation outside of its traditional territory. Hence the Cowlitz, unlike most other Washington State tribes, were left without a reserved land base. As a result, when in 1863 an Executive Order opened up all of southwestern Washington to non-Indian settlement, the Cowlitz lost possession to all of its traditional lands -- despite the fact the Tribe had not signed a treaty ceding those lands, despite the fact that Indian title had never been extinguished by Congress, and despite the fact that the Cowlitz were not compensated for those lands. Within a short period of time the Cowlitz Tribe became entirely landless and its members came to be scattered throughout Washington and Oregon.

There were a few efforts to establish a reservation for my ancestors in the late nineteenth century, but by the early twentieth century the Bureau of Indian Affairs came to view itself as having no fiduciary obligations to my tribe because we held no reservation lands. Within a short time, the United States began overtly to disavow any government-to-government relationship with the Cowlitz Tribe.

Nevertheless, in the early 1900s my tribe reorganized, elected a governing body, and initiated a series of efforts to seek compensation and lands to replace our lost aboriginal territory. Several congressional bills were introduced in the 1920s and 30s that would have given the Court of Claims jurisdiction to hear the Tribe's claims against the United States. One was passed by the House and Senate, but was vetoed by President Calvin Coolidge. It was not until 1946, when Congress set up the Indian Claims Commission (ICC) to hear tribal claims against the United States, that the Cowlitz Tribe had a forum in which to pursue our claims. In 1969, the ICC determined that we historically had *exclusive* use and occupation of a particular area of southwest Washington. It also acknowledged that we had strong historical connections to other lands, but because we shared those lands with other tribes we were not compensated for the loss of those lands. In 1973, pursuant to a settlement agreement between the Cowlitz and the United States, the ICC awarded the Tribe $1,500,000 to compensate us for the taking of these exclusively-used lands. (This amounted to approximately ninety cents per acre.)

My Tribe insisted that federal legislation authorizing the ICC award include a provision setting aside money for tribal land acquisition so that we could buy back land. But the Department of the Interior consistently and over many years opposed various versions of the settlement legislation, because it opposed the use of any settlement funds for land acquisition because the Cowlitz Tribe was not a federally recognized tribe. Rather, the Department would only support distribution of our ICC award on a per capita basis. It was not until 2004, two years after we achieved recognition in 2002, and some twenty-one years after the ICC awarded us compensation

for our lost lands, that Interior withdrew its objection to the settlement award legislation and allowed the bill to move forward. The Cowlitz Indian Tribe Distribution of Judgment Funds Act, Pub. L. 108-222, 118 Stat. 621, was signed by President Bush on April 30, 2004.

I recount this history because it highlights the irony and the pain unrecognized and newly-recognized landless tribes have suffered. In our case, the United States refused to establish a reservation because we refused to leave our aboriginal territory. The Department of the Interior States refused thereafter to view us as "recognized" because we had no reservation. When we finally got paid for our lost land, Interior took the position that we could not use that money to acquire land because we were unrecognized. Now that we have been recognized through the Federal Acknowledgment Process, we are subject to the onerous and expensive land acquisition requirements imposed by Interior.

I am a strong believer that strong processes are necessary and in the better interest of Indian people. But these processes must be fair, transparent, and conducted within reasonable time frames. These processes must also accommodate the fact that unrecognized and newly-recognized tribes simply do not have significant financial resources.

Closing Remarks

I would like to thank the State of Washington for its support of the Federal Acknowledgment Process. The State traditionally has declined to weigh in on the federal question of whether a tribe should be recognized, choosing instead to defer to those with specialized expertise to make such decisions. Once a tribe is recognized, however, the State is very quick to extend its hand to establish a government-to-government relationship with the newly recognized tribe. We appreciate the integrity of the State's actions and the respect the State has shown us.

In closing, I am here to ask you, the Senate Indian Affairs Committee and the United States Congress as the primary and perhaps most important protector of Indian people, to ensure that the public debate about federal recognition NOT be driven by the convenient and controversial politics of Indian gaming. I am asking that you help frame federal Indian policy in a way that recognizes the real hardships suffered by unrecognized and landless tribes, that honorably addresses the historical wrongs suffered by our people and that does not deny deserving tribes federal recognition or a reservation simply as a means of avoiding the hard politics of Indian gaming.

I thank you again for giving me an opportunity to speak to this Committee on these issues so vital to some of the first Americans.

Cowlitz Indian Tribe

THE COWLITZ INDIAN TRIBE

RESPONSES TO REQUEST FOR ADDITIONAL INFORMATION
SENATE INDIAN AFFAIRS COMMITTEE

These questions were submitted to the Cowlitz Indian Tribe by letter from Senator McCain dated June 1, 2005 relating to the Senate Indian Affairs Oversight Hearing on April 27, 2005.

QUESTION 1. CHAIRMAN BARNETT, YOU TESTIFIED THAT THE TRIBE WENT THROUGH THE RECOGNITION PROCESS FINANCIALLY SUPPORTED ONLY BY THE TRIBAL MEMBERS.

- **Did the tribe receive any grants from government agencies, like the Administration for Native Americans?**

  Yes, the Tribe received some modest grant money from the Administration for Native Americans that was used to fund some of the work on the Tribe's federal recognition petition. In my testimony before the Committee in May, I indicated that the Tribe never took any money from gaming or other commercial sources to assist us in our efforts to gain federal recognition, and I reiterate that statement here. Rather, we relied almost exclusively on member contributions and these small ANA grants. Indeed, we believe that the modest supplemental funds made available to unrecognized tribes pursuant to ANA grants are absolutely critical to unrecognized tribes' ability to navigate the Federal Acknowledgment Process without resorting to outside development money. Unfortunately, it is our understanding that ANA funding for federal recognition work may be cut or eliminated by the Department of Health and Human Services. We fear that the elimination of funds for this purpose will leave many unrecognized tribes with no choice but to pursue outside development money to fund their federal recognition efforts.

- **Was there any opposition from Washington State or other local governments?**

  As I noted in my testimony before the Committee on May 11, 2005, the State of Washington traditionally has declined to express an opinion or otherwise intervene in the Federal Acknowledgment Process, choosing instead to defer to those with specialized expertise to decide such matters. However, our experience was that once we gained recognition, the State was quick to extend its hand to establish a government-to-government relationship and work with us. I also note that there was no local government opposition during this process.

  Unfortunately, in our case a tribe, the Quinault Indian Nation, did oppose our recognition. Not only did the Quinault oppose our application during the review

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process, but it also challenged the Assistant Secretary's Final Determination for Federal Acknowledgement before the Interior Board of Indian Appeals. The Quinault challenge delayed finalization of our recognition by nearly two years. More details concerning the Quinault's efforts to oppose our petitions are in our response to Question 2 below.

QUESTION 2. I UNDERSTAND THAT IT TOOK OVER 25 YEARS FOR YOUR TRIBE TO MAKE IT THROUGH THE RECOGNITION PROCESS.

- **Was any of that time delay due to your efforts to collect documents and other evidence?**

Although some of the delay was the result of our efforts to collect additional documents and other evidence requested by the Bureau, the majority of the delay is attributable to the Bureau itself. The Tribe submitted its request for Federal Acknowledgement on September 17, 1975. The Bureau failed to act on the petition at that time because it was in the process of establishing regulations for consideration of acknowledgement requests. The regulations were finally published in the Federal Register nearly three years later in 1978. 43 Fed. Reg. 23743 (June 1, 1978). After the publication of the regulations, the Bureau began its review of the Tribe's petition; that review was not completed until some time in 1983. Thus, the Bureau's initial review of our application took about 7 years and 9 months from the date of submission.

On June 15, 1983, the Bureau sent a technical assistance letter to the Tribe seeking further documentation that it took the Tribe 3 years and 8 months to collect. The Tribe submitted that information in a revised application in February 1987. It took the Bureau another 20 months to review the revised application. In response to the revised application, the Bureau sent a second technical assistance letter to the Tribe on October 21, 1988, asking for more documentation. It took the Tribe a little over five years to respond to this second request. The Bureau finally issued a proposed finding of federal acknowledgement in February 1997, some 3 years after receiving the Tribe's response to the second technical assistance letter.

After publishing the proposed finding, it took the Bureau another 3 years to issue a Final Determination. Some of the delay during this 3-year period was due to the Bureau extending the comment period on its proposed finding from 6 months to 9 months at the request of the Quinault Indian Nation. The Quinault submitted comments in opposition to the proposed finding on November 11, 1997. The Cowlitz responded on January 12, 1998. A few months earlier, in October 1997, the Quinault also sued the Department of the Interior in connection with an extensive FOIA request that it had submitted in connection with the Cowlitz petition, and, as part of the litigation, filed a motion to stop the Cowlitz Final Determination from going forward. Although the court denied the motion, the Bureau and the Quinault stipulated in the litigation that the Quinault would be given additional time to submit further comments on the Bureau's proposed finding of acknowledgement for Cowlitz. As a result, the Quinault submitted a second set of comments on December 14, 1998, to which the Cowlitz Tribe responded on February 9, 1999.

About a month later, on March 19, 1999, the Bureau notified the Cowlitz that it was extending the due date for a Final Determination (the Bureau normally allows itself 60 days to make a Final Determination after the third-party comment period closes) by an additional 120 days. The Bureau then extended the period for a Final Determination for another 90 days beyond the 120-day extension because Bureau researchers were diverted from evaluating the Cowlitz petition so that they could work on litigation involving another applicant. The Final Determination deadline was then extended for a third time, for an additional 60 days, because the Bureau reported that certain offices required to review and approve the Final Determination did not have personnel available to do so. Finally, on February 18, 2000, the Assistant Secretary published the Final Determination in favor of the Cowlitz Indian Tribe. The Final Determination was challenged by the Quinault, thus delaying our federal recognition for nearly another two years while the Assistant Secretary's decision was reviewed by the IBIA.

In sum, of the 25 years that it took for the Cowlitz to finally gain federal recognition, a little less than 9 of those years can be attributed to the Tribe's information-gathering efforts. Therefore, even if one subtracts the delay attributable to the Tribe gathering information requested by the Bureau, it still took the Bureau nearly 16 years to review the application and make a Final Determination.

- **If the recognition process could be more timely, would you consider it a fair and transparent process for petitioning groups to go through?**

There are two main problems with the current process. The first is that the process is too inflexible with respect to the forms of evidence that are allowed. We believe that the Bureau should be less rigid about the evidence it will accept to prove the seven criteria. Particularly onerous is the requirement that a petitioning tribe must produce documentation to prove that it has existed as a distinct community and that the tribal government has maintained political authority over that community since first sustained white contact. Much of the documentation necessary to make this showing is either extremely difficult and expensive to obtain, or simply unavailable since the events relating to first sustained white contact occurred as much as four hundred years ago. As I understand it, there is no statutory basis for imposing such a burdensome requirement on tribal groups petitioning for recognition.

Second, unrecognized tribes simply do not have the significant financial resources needed to locate and organize the enormous amount of documentary evidence required to satisfy the Bureau's seven criteria. The expense aggravates the related problem of outside interests trying to influence the administrative process. In some cases, the outside interests are subsidized by gaming concerns – both Indian and non-Indian – that are trying to limit potential competition for their own existing establishments. Most unrecognized groups will be unable to afford to hire their own lobbyists to counteract the political pressures brought to bear by wealthy gaming interests.

Finally, I note that the current process takes place mostly behind closed doors with little interaction between the petitioning tribe and the Bureau staff – it is far from transparent.

This can further contribute to the potential for, or appearance of, unfair political influence, as well as the possibility for erroneous interpretation of tribally-submitted documentation. And because there is no opportunity to address the error until the process is nearly complete, it is far less likely to be corrected. We believe that greater transparency in the process would make it fairer, more objective, and less vulnerable to political influence.

QUESTION 3. IT IS REPORTED THAT YOU ARE LOOKING TO OBTAIN LAND IN SOUTHWEST WASHINGTON, NOT FAR FROM PORTLAND, OREGON.

- **Do you intend to use your Judgment Fund monies to purchase that land?**

  Yes, we intend to use some of our Judgment Fund monies to purchase the parcel that is located in Clark County, in southwest Washington. Section 4(f)(1) of the Cowlitz Indian Tribe Distribution of Judgment Funds Act, Pub. L. 108-222, 118 Stat. 621, authorizes the use of some of our settlement funds for land acquisition. The Act, which was signed by President Bush on April 30, 2004, implements a settlement agreement between the Cowlitz and the United States that was the basis of the 1973 judgment of the Indian Claims Commission, awarding my Tribe $1,500,000 (approximately ninety cents per acre) to compensate us for the wrongful taking of our exclusively-used lands. For years my Tribe insisted that any ICC settlement legislation include a provision setting aside money for tribal land acquisition so that we could buy land to replace the land we had lost, but the Department of the Interior consistently opposed the land acquisition provision because the Cowlitz Tribe at the time was not federally recognized. Finally, two years after we achieved recognition, and twenty-one years after the ICC award, Interior withdrew its objection and the settlement legislation was passed with the land acquisition provision intact. For us, use of ICC judgment monies to reacquire the Clark County parcel helps heal a very old wound. We are using monies we received to compensate us for lands wrongfully taken to acquire new lands that will serve as a land base for our people.

- **Is that land within the area found by the Indian Claims Commission to have been historically within the Tribe's exclusive use and occupation?**

  The Indian Claims Commission found significant Cowlitz historical connections to the area in which our Clark County parcel is located. These historical connections are documented in the ICC's own findings of fact and other documents, and include the presence of Cowlitz villages and trading activity. However, the ICC also found that the Cowlitz shared or cohabitated with other tribes (none of which survived into the modern era) in the area of the Clark County parcel. Because the Cowlitz shared this area, the ICC declined to compensate us for the loss of those lands because our use and occupancy of the area was not "exclusive." The Clark County parcel is located approximately 14 miles south of the line drawn by the ICC to delineate the exclusive use and occupancy area for which the Tribe was paid ninety cents an acre. We note that the Bureau of Indian Affairs, in connection with our recognition decision, also has documented the Tribe's historical connections to the area in which the Clark County

parcel is located. In addition, the Tribe has strong modern connections to the area, with a significant portion of the Tribe's relatively scattered population base living within a twenty-five mile radius of the Clark County parcel.

QUESTION 4. YOU MENTION EFFORTS BY GAMING INTERESTS, INDIAN AND NON-INDIAN, TO BLOCK RECOGNITION EFFORTS BY A PETITIONER.

- **Do you believe that another tribe attempted to hinder your efforts?**

  Yes, as described above, the Quinault Indian Nation opposed our application throughout the federal acknowledgment process and ultimately challenged the Assistant Secretary's Final Determination in favor of recognition before the Interior Board of Indian Appeals. That challenge resulted in further delay, but was ultimately rejected when the Assistant Secretary issued the Reconsidered Final Determination for Federal Acknowledgement in 2002.

- **Were you satisfied with the steps taken by BIA to handle the situation?**

  Answer: We were satisfied with the final result, which was the recognition of the Cowlitz Tribe, but we were not pleased that the Bureau allowed the Quinault so many extensions of time in which to file their opposing comments. From our perspective, the Bureau seemed more concerned about ensuring that the Quinault were given every conceivable opportunity to oppose the petition than with the fact that the Cowlitz Tribe's petition had been pending for over twenty years. While we understand that the Bureau has to consider comments from other parties, the repeated extensions given to the Quinault were excessive and unnecessarily delayed the final acknowledgment decision.

- **Was any of that time delay due to your efforts to collect documents and other evidence?**

  Answer: Although some of the delay was a result of our efforts to collect additional documents and other evidence requested by the Bureau, the majority of the delay is attributable to the Bureau itself. The Tribe submitted its request for Federal Acknowledgement on September 17, 1975. The Bureau failed to act on the petition at that time because it was in the process of establishing regulations for consideration of acknowledgement requests. The regulations were finally published in the Federal Register nearly three years later in 1978. 43 Fed. Reg. 23743 (June 1, 1978). After the publication of the regulations, the Bureau began its review of the Tribe's petition; that review was not completed until some time in 1983. Thus, the Bureau's initial review of our application took about 7 years and 9 months from the date of submission.

  On June 15, 1983, the Bureau sent a technical assistance letter to the Tribe seeking further documentation that took the Tribe 3 years and 8 months to collect. The Tribe withdrew their first petition and submitted a second documented petition in February 1987 in response to the first technical assistance letter. It took the Bureau another 20

months to review the revised application. In response to the revised application, the Bureau sent a second technical assistance letter to the Tribe on October 21, 1988, asking for more documentation. It took the Tribe approximately 4 years and 4 months to respond to this second request. The Bureau finally issued a proposed finding of federal acknowledgement in February 1997, some 3 years after the receiving the Tribe's response to the second technical assistance letter.

On April 2, 1996, approximately a year prior to the publication of the proposed finding in the Federal Register, the Quinault Indian Nation submitted an extensive FOIA request pertaining to both the Chinook and Cowlitz petitions. The Bureau answered the FOIA request on June 11, 1996, describing what types of documents would be released and made the documents available to the Quinault at the Department of Interior. The Bureau withheld personal information concerning membership files, the petitioner's rolls, membership lists and genealogies and other personal information. Subsequently, the Quinault filed an administrative appeal to the Bureau's June 11, 1996 FOIA response. The Department of Interior responded to Quinault's administrative appeal on November 11, 1996, upholding the Bureau's withholding of information containing personal information about Cowlitz members. On July 28, 1997, the Quinault requested that DOI reconsider its appeal. At the same time, Quinault also requested an extension of time to the comment period. In response to Quinault's request, the Bureau extended the comment period from 6 months to 9 months.

Subsequently, on October 7, 1997, Quinault sued the DOI in U.S. District Court for the Western District of Washington, the Tribe and the Chinook Indian Tribe, Inc., based on its FOIA request and the acknowledgment process. Then on October 21, 1997, Quinault filed a motion for preliminary injunction against the Bureau to stop the Final Determination, which the court denied.

The Quinault Indian Nation submitted its first set of comments on the proposed finding on November 11, 1997. The Cowlitz Indian Tribe responded to the Quinault's first set of comments on January 12, 1998, well within the 60-day regulatory time frame. The Bureau then reopened the comment period on September 28, 1998, for an additional 75 days as a result of a joint stipulation in the litigation to allow Quinault time to submit additional comments. That same day, the U.S. District Court upheld the Department's ruling that it did not have to turn over the documents containing personal information concerning membership files, the petitioner's rolls, membership lists and genealogies and other personal information. The Quinault then submitted a second set of comments on the proposed finding on December 14, 1998, to which the Cowlitz Tribe responded on February 9, 1999. (Prior to submitting its second set of comments, the Quinault requested a formal "on-the-record" technical assistance meeting on November 12, 1998. The meeting was held on November 23, 1998.)

About a month later, on March 19, 1999, the Bureau notified the Cowlitz that it was extending the due date for a Final Determination (the Bureau allows itself 60 days to make a Final Determination after the third-party comment period closes) by an additional 120 days. The Bureau then extended the period for a Final Determination for another 90 days because Bureau researchers were diverted from evaluating the Cowlitz petition so that they could work on litigation involving another applicant. The Final

Determination deadline was then extended for a third time, for an additional 60 days, because the Bureau reported that certain offices required to review and approve the Final Determination did not have personnel available to do so. Finally, on February 18, 2000, the Assistant Secretary published the Final Determination in favor of the Cowlitz Indian Tribe only to have that decision challenged by the Quinault, thus delaying our federal recognition for nearly another two years while it was reviewed by the IBIA.

Cowlitz Indian Tribe

May 24, 2005

Senator John McCain
Chairman, Senate Indian Affairs Committee
241 Senate Russell Building
Washington, DC 20510

Dear Chairman McCain:

I am writing in follow up to the testimony I gave before the Senate Committee on Indian Affairs on May 11, 2005 concerning the Federal Acknowledgment Process. At that hearing, you requested that I provide the Committee with some thoughts and suggestions as to how the Federal Acknowledgement Process could be improved. This letter is in addition to one I sent you on May 18, 2005 thanking you for the opportunity to be involved in the public discussion surrounding this important component of federal Indian policy.

I am enclosing some of my thoughts and suggestions as to how the Federal Acknowledgment Process can be made more fair, less expensive, more transparent, and less time consuming. The Cowlitz Indian Tribe submits these suggestions as a starting point to help structure the discussion about how to reform the Process.

As I indicated in my testimony, I am committed to helping the Committee address the concerns it has regarding the Federal Acknowledgment Process. I reiterate the Cowlitz Indian Tribe's offer to co-host a round-table forum in which newly recognized and unrecognized tribes come together, perhaps in consultation with academics and the Bureau of Indian Affairs, to begin a real working discussion about recognition reform.

I look forward to hearing from you regarding these suggestions about the Federal Acknowledgment Process. I can be reached at (360) 577-8140. It is my sincere hope that we can work together to find a solution to ensure that the Process is objective, fair, and conducted within a reasonable period of time.

Sincerely,

John Barnett

John Barnett
Chairman

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THE COWLITZ INDIAN TRIBE

PROPOSED CHANGES TO THE FEDERAL ACKNOWLEDGEMENT PROCESS

ESTABLISH AN INDEPENDENT OFFICE/COMMISSION

- Establish an independent commission to process petitions for federal recognition. Alternatively, create a new office within Interior but outside the Bureau of Indian Affairs to process petitions for federal recognition. Creation of a commission will correct the institutional biases of the Bureau of Indian Affairs and make the decision-makers less susceptible to outside influences. Creation of a new independent decision-making body will also help make the process more transparent and give non-federally recognized tribes a sense that they are receiving a fair assessment of their petitions.

- Previously denied petitioners should be allowed to go forward through the new process to ensure that they have received a full and fair assessment of their petitions. The goal is to ensure that no legitimate tribe of Indians is left unrecognized (and unable ultimately to preserve the integrity of its culture and its future) simply because that tribe's submitted documentation does not quite fit within the somewhat arbitrary parameters of what types of evidence currently satisfies the criteria of the Federal Acknowledgment Process. In other words, the tail should not wag the dog.

- The new office or commission should be staffed with qualified professional individuals rather than with political appointees to quell the problems of institutional and political biases and outside influences, and it must be funded at an appropriate level to conduct its work.

RECOMMENDED PROCEDURAL CHANGES

- Require the reviewers to meet in person with the petitioning tribe within a short period of time after receiving the tribe's Notice of Intent for the purpose of providing the tribe with clear information about how the Process works, what evidence is required, and how to obtain technical assistance.

- Set firm deadlines throughout the process to assure petitioners that there will be a decision by a certain date.

- Use an open adjudicatory process which requires an open decision-making process rather than the current closed door process.

- Create a two-tier program which allows tribes with previously-established federal recognition to move through an expedited process.

- Establish a deadline by which all non-federally recognized tribes must give notice of their intent to petition for federal acknowledgement.

RECOMMENDED MODIFICATION OF CURRENT CRITERIA

- Modify the current criteria to reduce the unnecessarily detailed and burdensome inquiry in order to reduce the subjectivity of the criteria. For example, tribes should be allowed to submit different forms of evidence to prove the criteria of "continuity" such as long-standing state or local government recognition, or a continuous line of recognized group leader(s). In addition, other forms of "evidence of descent from a historical tribe" should be allowed, such as reports, research and statements based upon first hand experience of historians, anthropologists, and/or genealogists.

- The acceptance of other forms of evidence is also necessary for community and political influence or authority. The evidence used for community is highly intrusive (e.g. examination of personal telephone bills of tribal members), subject to different interpretation depending on the researcher, and often difficult to compile. In the case of political influence or authority, the required proof of "bilateral political relations" is highly subjective and difficult to prove. Evidence from outside observers that a group exists as a tribe should satisfy the evidence for proof of community and/or political evidence. In addition, the fact that a tribe appears on the list of non-federally recognized tribes identified by Congress (*see* Final Report, American Indian Policy Review Commission, Task Force X, Vol. 1, p. 467 (1977)) should also be of substantial and probative value as indicia of community and political influence or authority.

- Shorten the length of time for the "continuous existence" criterion to some manageable time frame that still assures the decision-maker that the petitioner descends from the petitioner's historic tribe. The concept of continuity "from first sustained white contact" is unworkable and particularly burdensome in situations in which first white contact was four hundred years ago. The "first sustained white contact" requirement is particularly troublesome in that there is no statutory basis for this requirement. For example, a beginning point could be the year 1900 or 1934 when tribes sought to reorganize under the Indian Reorganization Act.

- A reasonable presumption of "continuity" should be available. For example, where the evidence shows that a tribe exists at a point in time and evidence shows it exists 30 (maybe 40) years later, it is reasonable to assume that the group continued to exist during that period. This could be a rebuttable presumption, but in the absence of negative evidence, a presumption of continuity is reasonable.

FURTHER RECOMMENDATION

As you know we have offered to co-host a roundtable forum in which newly recognized and unrecognized tribes can come together, perhaps in consultation with academics and the Bureau of Indian Affairs, to begin a real working discussion about recognition reform. I believe that such a consortium of tribes would have unique insights into the Acknowledgement Process, and because of their recent experience with that Process, they would be uniquely qualified to develop suggestions for reform to the Process.

CONTACT

For further information, contact John Barnett, Chairman, the Cowlitz Indian Tribe
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TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 11, 2005

I appreciate the opportunity to submit testimony.

I urge Senators to seize this unique moment -- and match rhetoric with real reform totally overhauling a tribal recognition system that is lawless, leaderless, and out of control.

The present process is broken beyond fixing. It should be scrapped. Reform is long overdue. It must be systemic, not superficial. It must establish an independent system insulated against gambling money that now so perniciously drives the process.

Admiring the chairman as no-nonsense, straightforward and frank, I will try to be the same. My proposed reforms are as simple and specific as they are essential:

- Abolish the BIA tribal recognition authority;
- Establish an autonomous agency -- a Federal Tribal Recognition Commission (FTRC) -- with authority over recognition and trust land decisions;
- Enact recognition criteria into statute;
- Provide sufficient resources to fund the FTRC;
- Set strict, strong disclosure and ethics rules for the FTRC;
- Assist affected towns and cities in participating in the process;
- Impose a 6-month moratorium on all recognition decisions.

Whatever disagreements there may be about solutions, there seems to be a clear consensus on the central problem: the present tribal recognition process is irretrievably, irrefutably broken -- dysfunctional, a shambles. Scrapping and replacing it is an urgent necessity. Now is a historic moment -- indeed, the moment -- for action not just talk.

What makes this moment so uniquely promising is new leadership on this Committee, new-found awareness and alarm about the system's insidious flaws, and new evidence of the corrosive consequences. We can rid the recognition process of corrupt influences and regain public confidence and trust.

For twelve years, I have been fighting for fairness and accountability in the tribal recognition process. For many of those years, mine was seemingly a singular voice. Those times were lonesome -- made less so only by local officials and citizens from North Stonington,

Preston, Ledyard and other towns with the conviction and courage to stand up and speak out. I have fought to receive critical public documents from the Bureau of Indian Affairs (BIA) -- documents we were clearly entitled to receive under federal law. Protecting our state's interests, I have appealed arbitrary administrative decisions and challenged BIA findings lacking any basis in fact or law. I have also testified before congressional committees -- including this one -- urging oversight investigations and reform.

The current process demeans and discredits groups that legitimately deserve federal tribal recognition, delays expeditious review of petitions and hinders participation of affected parties in the process. Money, politics, and personal gain have transformed tribal recognition decisions into crude contests of influence instead of objective assessments of evidence. The BIA now is often arbitrary and capricious, ignoring or bending its own rules to reach illegal recognition decisions bought by powerful interests, and continuing this practice to enhance casino interests at the expense of local communities and citizens.

A recent example of this lawless conduct is the BIA's recent publication of a "checklist" for gaming related trust land acquisitions. The BIA has, once again, unilaterally imposed rules that have profound adverse impacts on local communities without permitting public scrutiny and input.

The effect of these rules is to make expansion of reservation land for gaming easier by eliminating the need for gubernatorial agreement and community input for annexation of land with gaming related purposes -- in violation of the Indian Gaming Regulatory Act (IGRA). I am attaching a copy of the checklist to this testimony.

The checklist purports to be an "internal agency guideline" on gaming related trust acquisitions -- one of the most controversial and intrusive aspects of federal Indian law. The BIA's decisions to take land into trust for Indians -- essentially turning private land into sovereign tribal land--- have significant impacts on States, local communities and the public, particularly when the land is used for gaming or gaming related purposes. Far from being simple internal guidelines, this co-called "checklist" in reality establishes new standards for making these critical trust decisions, standards that will result in less public scrutiny and severely limit the rights of local communities that will be directly affected.

These new rules will have a significant impact in Connecticut. Two Connecticut groups whose positive tribal recognition decisions are currently being appealed -- the Historic Eastern Pequots and the Schaghticokes -- have both already indicated that they will seek to locate casinos entirely on land outside their reservations. The new rules would severely restrict rights of towns and cities to resist tribal annexation of land -- impacting local economic and environmental interests. The rule change could also affect annexation of land by the two federally recognized tribes that operate two of the largest and most profitable casinos in the world. These tribes own property outside of their reservations, and one of the tribes has in the past sought to place such off-reservation land into trust to advance their gaming interests.

Good government and fundamental fairness require that the critical and controversial decisions and rule changes, like the BIA checklist, be subject to public scrutiny that takes account of all the competing interests.

As a first step toward reform, Congress must enact an immediate 6-month moratorium on all Bureau of Indian Affairs tribal acknowledgment decisions or appeals.

This proposal differs significantly from the one I advocated before this committee – years ago, and that Senators Dodd and Lieberman championed courageously, but unsuccessfully. This moratorium would be only temporary -- giving Congress sufficient time and strong impetus to act promptly. A moratorium of limited, defined duration would avoid harm to tribes truly deserving recognition, but it would protect against continued lawless, arbitrary BIA decisions and provide a powerful incentive for reform.

The need for a moratorium was 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. The BIA memorandum exposes a concealed world of rigged decisions -- that skirt and subvert the rule of law. This unconscionable pattern and practice cannot be permitted to continue.

The central principle of 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 be denied this sovereign status.

In addition to a moratorium, Congress should take the following immediate steps.

First, Congress should demand immediate, complete and accurate disclosure of all lobbyists, lawyers, and others that seek to influence the process and amounts paid to them by petitioning tribal groups or by related financial interests and investors. Sunshine is a particularly powerful disinfectant in this morass of money, politics and personal agendas.

The public must fully understand the extent of gaming influence on recognition. We know some information through the media but complete disclosure is not required by law. The Schaghticoke petitioner is backed by Fred DeLuca, the founder of Subway sandwich shops. DeLuca has reportedly spent $12 million to support the tribe's petition for recognition and related matters. The partnership agreement between DeLuca (Eastlander Group, LLC) and Schaghticoke reportedly provides that in return for his financial support, the Schaghticoke will compensate DeLuca 31.5% of revenues from a future casino, if one is ever built, up to a total of $1 billion over a 15 year period.

Other Connecticut groups seeking federal recognition have similar arrangements. The Historic Eastern Pequot tribe is backed by William Koch, among one of America's wealthiest people. Donald Trump backed the Paucatauck Eastern Pequot group but was ousted after the two factions merged as a result of the Final Determination. Ronald Kaufman, who has close ties to the Bush White House, has reportedly received $700,000 for his lobbying efforts on behalf of

the Eastern Pequots. Thomas Wilmot, a shopping mall developer from Rochester New York, is reportedly backing the Golden Hill Paugussetts, and a casino developer from Minnesota, who was formerly associated with Assistant Secretary - Indian Affairs Dave Anderson, Lyle Berman, supports the Nipmucs.

Present laws require full disclosure of lobbying efforts before Congress. We should require no less information about interests who bankroll groups seeking federal recognition and stand to profit handsomely.

Second, Congress should create a federal agency, the Federal Tribal Recognition Commission -- insulated from politics or lobbying -- to make tribal recognition and trust lands decisions. It must have nonpartisan, disinterested members with staggered terms, and ample resources. The Department of the Interior currently has an unavoidable conflict of interest -- a trustee responsible for advocating and protecting Native American interests but also a supposedly neutral judge determining the merits of recognition claims and resulting benefits.

There is compelling precedent for such an independent agency. The Securities and Exchange Commission, the Federal Communications Commission, and the Federal Trade Commission deal professionally and promptly with topics that require extraordinary expertise, impartiality, and fairness. The Commissioners have no personal stake in the outcome of decisions. Along with independence and authority, the agency must have sufficient resources in staff and other capabilities -- now lacking in the BIA. Without them, federal claims made by a tribal petitioner cannot be effectively and promptly evaluated.

Third, Congress should adopt the tribal recognition criteria in statute, reducing the likelihood that the BIA -- or a new, independent agency -- will stretch or disregard regulatory standards to recognize an undeserving petitioner. Formal enactment also provides a stronger standard on appeal to the courts, and makes a statement about congressional support. One of the most frustrating and startling consequences of the current BIA review process is the manipulation and disregard of the seven mandatory criteria for recognition -- abuses that the General Accounting Office (GAO) and Inspector General reports found have occurred in recent petitions.

Fourth, Congress should also enact measures to ensure meaningful participation by the entities and people directly impacted by a recognition decision -- including equal rights for the towns and cities to all information submitted by all parties.

Citizens and their public officials deserve a meaningful role and voice, beginning with access to relevant information.

Finally, Congress should provide additional, much-needed, well-deserved resources and authority for towns, cities and groups alike to reduce the increasing role of gaming money in the recognition process. Federal assistance is critical, in light of the increasing burdens of retaining experts in archeology, genealogy, history and other areas -- all necessary to participate meaningfully in the recognition process.

I submit the following examples of BIA lawlessness which qualify the agency for admission into the Governmental Hall of Shame:

1. **Deliberate decision to ignore mandatory tribal recognition criteria to grant recognition to the Schaghticokes despite clear lack of evidence supporting the petition.**

In a January, 2004 decision granting federal recognition to the Connecticut-based Schaghticokes, the BIA inexplicably reversed its preliminary denial and found that they met all seven mandatory criteria, despite the lack of any evidence establishing that the group met two of the seven mandatory criteria -- political autonomy and social community -- for long periods of history. The basis for this decision -- which directly conflicted with the preliminary negative decision and 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 criteria for federal recognition as an Indian Tribe have been carefully developed over 30 years, based primarily on Supreme Court precedent articulating the relationship of Indian tribes to the federal government. Present legal rules require any group seeking federal recognition to meet seven distinct criteria -- aimed at proving the petitioning group's continuous existence as a distinct community, ruled by a formal government, and descent from a sovereign, historical tribe. Distorting and defying these rules, as the BIA memorandum 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.

The briefing paper sets forth options to Acting Assistant Secretary Aurene 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 for two substantial periods of time totaling over a century; and (2) serious problems associated with internal fighting among two factions of the group.

With respect to the lack of evidence, the memo demonstrates its disregard for the legal standards and precedents 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 suggests a way to achieve a positive finding even though the petition lacks evidence of mandatory criteria for two historical periods: Option 1, which is 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."

Very simply, declining to acknowledge the group would flow from following the law and the agency's own precedent. Yet, the BIA chose Option 1, granting federal recognition 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 -- and could not satisfy -- federal recognition standards.

This BIA briefing paper confirms that recognition of the Schaghticoke petitioner resulted from the BIA purposefully disregarding its own regulations and long accepted precedents, ignoring substantial gaps in the evidence, and proceeding to "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 at least 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 lawful standards.

2. **Other examples of BIA's willingness to ignore the law and its own regulations and precedents.**

In the Eastern Pequot and Paucatuck Eastern petitions, the former head of the BIA unilaterally overturned civil service staff expert findings that the two Indian groups failed to meet several of the seven mandatory regulatory criteria.

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 substantial gaps in evidence in both tribal petitions. In their conflicting petitions, the Eastern Pequots and the Paucatuck Eastern Pequots claimed that the other was not entitled to recognition under the seven mandatory criteria for recognition. After a preliminary finding that neither group met the recognition criteria, the BIA -- in an unprecedented move -- created a third group which they named the "Historic Eastern Tribe" from both competing and conflicting petitions.

The BIA also distorted the state of Connecticut's relationship with these groups to paper over huge gaps in the necessary evidence required to meet the seven recognition criteria.

In December 2004, the BIA admitted that in granting the Schaghticoke recognition it had contravened its own well-established precedents -- using an improper method to calculate the rates of marriage within the group, a critical basis for the recognition decision. Before it acknowledged this error, we had raised it on appeal. This admission was significant because the Final Determination relied on the marriage rates, as incorrectly calculated, to meet certain of the acknowledgment criteria.

3. **The head of the BIA recused himself from virtually all major decisions.**

Shortly after the last Assistant Secretary – Indian Affairs (AS-IA), Dave Anderson, was appointed and confirmed by Congress, he recused himself from all recognition and gaming

decisions as a result of his former ties to Indian gaming (he was a partner in Lakes Gaming and was involved in establishing tribal casinos in the 1990s). Anderson delegated his responsibilities to his deputy, Aurene Martin, who was not confirmed by the Senate. Anderson later resigned and has yet to be replaced.

4. Delay, reversal and indecision.

The recognition process takes too long, leaving tribes, states, local communities and the public in limbo for decades. For example, the Golden Hill Paugussetts filed for tribal recognition almost 20 years ago. The BIA initially found that they did not merit recognition. The decision was reversed upon reconsideration. After more than 10 years, the BIA again found the group did not meet the mandatory criteria. Not until a couple of months ago, did the BIA issue its final decision denying federal recognition.

5. Unfair and unequal treatment of states and towns in the recognition process.

The BIA provides significant assistance to petitioning groups seeking federal tribal recognition -- even those financed by investors with far greater financial resources to devote to federal recognition than the state, towns and citizens affected by the application. However, the BIA fails to provide basic information to those who may be opposed to the application.

For example, the BIA refused to provide necessary petition documents to Connecticut and local interested parties in the Eastern Pequot/Paucatuck Eastern petitions, forcing the state and towns to sue the BIA in federal district court to compel the agency to produce the records in time for the state and local parties to have a meaningful opportunity to submit comments in the acknowledgment proceeding.

In addition, after the affected towns submitted comments to the BIA on the Eastern Pequots petition, the BIA unilaterally -- and without notice -- altered deadlines for the submission of comments by the towns so that the BIA could accept the petitioner's documents but exclude the towns' comments.

Connecticut's experience with the BIA 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 in providing critical petition documents to interested parties such as the states and surrounding towns.

The United States Department of the Interior's Office of the Inspector General (OIG) also found numerous irregularities in how the BIA handled federal recognition decisions. 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 later expressed concern that the huge amount of gaming money behind groups seeking recognition would lead to petitions being approved that did not meet the standards.

The impact of federal tribal recognition 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 such as 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 placing 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 as well as health and safety codes.

Clearly, enactment of the Indian Gaming Regulatory Act (IGRA) more than a decade ago, permitting federally recognized tribes to operate commercial gaming operations, has vastly increased the financial stakes involved in federal recognition, providing an incentive for wealthy non-Indian backers to bankroll the petitions of groups 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 with the expectation of receiving a substantial portion of future casino revenue. 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 interests and financial incentives at stake make even more essential public confidence in the integrity and efficacy of recognition decisions. Sadly, public respect and trust in the current process have been severely damaged. 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 lack effective access to information submitted by the applicant or to the historical evidence and research by BIA staff.

I ask Congress to act swiftly and strongly to reform the system, remove the incentives for abuse, and restore credibility and public confidence in federal tribal recognition.

Testimony before the Senate Committee on Indian Affairs
on Federal Recognition

May 11, 2005

Kathleen J. Bragdon Ph.D.
Professor,Department of Anthropology
The College of William and Mary

Introduction

Good morning, Chairman McCain and members of the Committee. Thank you for the opportunity to be present here today. My name is Kathleen Bragdon, I hold a doctorate in Anthropology and am currently a full professor at the College of William and Mary. I have been writing about the Native peoples of southern New England and their languages for more than 25 years. During this time, I have been consistently impressed with the persistence and creative adaptability of the Indian communities of the region. I would like to thank the many native people with whom I have worked over the years for the honor of learning from them.

The role of anthropology in the Federal Recognition Process

As you know, scholars, including historians, archaeologists, linguists ,and anthropologists, have been involved in the Federal Recognition process since its inception. In New England, the most influential practitioners have been those I affectionately call "Dr. Jack Campisi, and his "band of merry men (and women)" including William Starna, Laurence Hauptman, James Wherry, and Christine Grabowski., all remarkably competent and prolific anthropologists and ethnohistorians (e.g. Campisi et. Al. 1983). When they began their important work, because their expertise was widely, and rightly acknowledged, their evaluations were thoroughly documented, but much less extensive than would be required today. An adequate report twenty-five years ago was 100 pages long; today it would be several thousand. It has also become necessary, because of the increasing research burdens of the recognition process, for scholars to document a wider range of factors than was previously thought necessary. I quote Sheldon Davis:

"As anthropologists… our primary contribution to the rights of indigenous peoples lies in independently and publicly documenting the social realities that these people face" (Davis 1979:223).

In New England, these social realities have included legislative dispossession (e.g. Dubuque 1907; Earle 1861) and detribalization, racial discrimination, poverty, and many kinds of social disruption. These conditions have made the task of documenting their histories and continuity as "Indian Entities" very challenging. In many cases, the haphazard way in which Indian communities have been treated during the past three

hundred years has resulted in major gaps in the evidence, so that petitioners are faced with the impossible task of locating records that were never created, or which no longer exist (e.g. Child 1827; Early 1861; Dubuque 1907; Herndon and Seketau 2000). The gaps in the official records can be filled by using other types of historical documentation, but this material is scattered and requires a good deal of training to analyze, and the necessity for its use because of increasingly demanding standards of documentation required by the Bureau of Indian Affairs, has created a large cost burden for most petitioners.

Another concern is privacy. The existing official records that document the relations of state and local governments and Indian peoples, often include very sensitive information about family history, information that Indian people are naturally very reluctant to have made public. As the demands of documentation required by the Office of Federal Acknowledgement have become greater, however, Indian people feel they have little choice but to make these sensitive records available. Added to this are concerns about sacred sites and knowledge, that make many people reluctant to share information that might help their case.

Finally, Indian people see their histories differently than those of the authorities who controlled the written records, and their views have rarely been taken into account (e.g. Attaquin 1987; Baron et. al.; Lamb Richmond 1994). My own experience has been that it is in these alternative historical views, often expressed through oral histories, folk tales, and "kitchen table talk" that can be found the most powerful pieces of evidence for community continuity and strength.

I wish to emphasize that I think the Federal Recognition process is vital to native interests in New England and elsewhere, and has led to great benefits for many Indian communities. By benefits I mean increased opportunities for education, better health care and the support for cultural enrichment and language study programs that are central to Indian identity and an important part maintaining and celebrating their heritage. Some communities now have been publicly affirmed, and have taken their rightful place as stakeholders in regional and national debates. The difficulties I discussed briefly above, however, have left other native communities out of the process, and this has been an additional source of division and discouragement to many native people (e.g. Hicks and Kertzer 1972). This is due in part to the difficulty of fitting all Indian communities presently, and in the past, into an agreed upon definition of "tribe" (e.g. Grabowski 1994; Campisi 1996, McCulloch et.al. 1995; Starna 1996).

Another difficulty is the persistent belief that there are no longer any 'real' Indians left in the eastern parts of North America. A cursory survey of recent newspaper articles in prominent and local newspapers in New England demonstrates the strength of this misconception, even among educated people (see for example Doughton 1997; Weinstein1986; see also Harris 1993:7). Non-Indians also misunderstand the historic relationship between the Federal Government and Indian peoples, and see Federal Recognition as a kind of undeserved entitlement (e.g. Brodeur 1995). Native people struggle against these attitudes, and the added burden of defending themselves against so-

called "interested parties" who refuse to accept them as who they say they are further complicates and extends the recognition process.

The only defense against persistent misinformation is a careful process of research and evaluation, conducted by credentialed professionals, whose expertise guarantees the best possible analysis and interpretation. I see no need for an entirely separate Independent Review process, as that will inevitably slow down, and further politicize the outcome. However, I think there is room for some measure of cooperation with scholarly institutions, who can provide the resources that support a number of native initiatives, such as we have established at the College of William and Mary. With these provisos, I fully support the Federal Recognition Procedure, and believe that, with continued effort to address some of the difficulties mentioned above, it can be made even more sensitive, efficient and equitable.

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Testimony of Robert Congdon, Susan Mendenhall, and Nicholas H. Mullane, II on Federal Tribal Acknowledgment Procedures Before the Senate Indian Affairs Committee

May 11, 2005

On behalf of the Towns of Ledyard, North Stonington, and Preston, Connecticut, we are pleased to submit this testimony to the Senate Indian Affairs Committee on the need for reform of the federal tribal acknowledgment process. Our three towns have been involved, in the acknowledgment process for over eight years. As a result, we have acquired what is probably more experience than any other local government in this process. We commend the Committee for taking a hard look at the tribal acknowledgment process, and the recommendations and comments set forth in this testimony are offered in a spirit of cooperation and anticipation that we will be working carefully with your Committee in the much-needed reform effort.

For purposes of this testimony, we believe that the best method of presentation is to provide an historical account of our experiences with the acknowledgment process. Such a review illustrates many of the problems that give rise to the need for reform and sets the stage for our recommendations provided at the end of this testimony.

The Federal Acknowledgment Process - - The Eastern Pequot and Paucatuck Pequot Petitions

Our Reasons for Participating. Our involvement in the tribal acknowledgment process is the result of the Towns' status as interested parties in the review of the Eastern Pequot (EP) and Paucatuck Eastern Pequot (PEP) petitions. Our involvement in these petitions began in 1997, when we began to review acknowledgment requests. We also have been involved in the acknowledgment petitions for the Schaghticoke Tribal Nation (STN) petitioner group as amicus participants. Over the years, we have submitted numerous statements to Congress regarding the need for reform of the acknowledgment process.

Our involvement in the two Pequot petitions is the result of the direct impact that acknowledgment of either of those groups would have on our communities. The EP and PEP groups are located in North Stonington. Both petitioner groups have made it clear that they intend to establish massive casino resorts, along the scale of the Mashantucket Pequot Foxwoods and Mohegan Sun Casinos, which are now the largest in the world.

Our small towns, with a combined population of 30,000, are already overwhelmed by the effects of the two existing casinos, in particular Foxwoods. The establishment of

additional casinos in this area would have a devastating effect on our communities. In addition, we are concerned about the establishment of tribal reservations and trust property in our area which would take land off of the tax rolls and remove it from local regulation, including our carefully developed land use plans. Finally, we are concerned about the prospect of land claim litigation. We can only anticipate that if either of these groups receives acknowledgment, they would either initiate a land claim lawsuit in an effort to achieve title to land throughout our region or hold such litigation out as a threat to innocent, third-party landowners as leverage for obtaining a favorable casino location and reservation or trust lands. This is the tactic that has been used by other petitioner groups in Connecticut.

With respect to the process itself, we knew that the petitioner groups were extremely well-funded by outside gaming financiers. Tens of millions of dollars were being spent on their behalf. Although we knew we could never come close to matching that level of spending, we knew that unless we participated and offered our evidence there was little chance that the BIA record would contact all of the relevant facts and a fair portrayal of the history of these groups. Despite the odds against us, we entered the process with the goal of relying upon a judicious investment in research on the key factual and legal issues.

Beginning in 1996, our Towns initiated an independent and objective review of the facts associated with the recognition claims of the two groups. We retained experts in the relevant disciplines for the purpose of reaching our own conclusions as to whether the acknowledgment criteria had been satisfied by either group. The purpose of doing so was to allow the Towns to decide what position to take in the acknowledgment proceeding, either in favor, opposed, or neutral.

The results of our review were clear and compelling: neither petitioner group qualified under the acknowledgment criteria. As a result, we made the policy decision to become involved in the acknowledgment process as interested parties for purposes of opposing both petitions. It was clear to us that, under any honest and fair application of the criteria, negative results should have been issued for both of the petitioner groups. We made this choice not out of a desire to oppose the quest of these groups to achieve tribal status, but because of the severe consequences that would befall our communities if that result occurred; the need to establish our standing for subsequent legal proceedings; and our lack of faith in the BIA process to reach the right result without third party involvement.

Once our Towns became involved in the acknowledgment process, we were appalled to learn first-hand of the problems that it presented. These problems demonstrate the strong need for reform. Although progress has been made in the recent years in addressing some of the deficiencies in the acknowledgment process, the underlying

defects are still in place. The only solution is for a comprehensive reform that starts with Congress, and it is for that reason we are grateful for the Committee's interest.

The Towns achieved interested party status in 1998. We quickly learned how difficult it is to participate in the acknowledgment process as local governments. Almost immediately upon becoming interested parties, we were exposed to unfair attacks from the petitioner groups. It has been our unfortunate experience that the petitioners characterized our Towns' participation as insensitive, biased, and even racist. For example, we were confronted with charges from the EP group of racism, and even committing genocide, simply because we were promoting an independent review of the facts. The PEP group engaged in its own attacks, publicly criticizing the consultants we retained to work on our factual evaluation. We even had to endure a mean-spirited attack from the EP group as a result of their effort to publicly identify, and then criticize, our consultants, who we were attempting to protect from such attacks. As we quickly learned, well-funded petitioner groups will aggressively attack third parties who seek to exercise their rights to participate in the acknowledgment process.

These attacks from the petitioner groups were bad enough, but the situation became even worse when BIA employed its own tactics designed to limit our role and discount our evidence. For example, in February 2000, former BIA Assistant Secretary Gover issued a self-imposed edict that greatly limited the role of interested parties in the acknowledgment process. His directive also imposed severe limitations on the ability of BIA researchers to carry out their tasks in a way that would result in possible criticism of petitioners' evidence.

This is a significant problem in situations such as those we confronted, where the petitioner groups are backed by extremely wealthy, financial interests. It is reported that the financial backers of the two Pequot groups have thus far invested a staggering $30 million or more in the acknowledgment process alone. This has translated into a massive outpouring of factual evidence, legal argumentation, and political and media activity, all designed to promote tribal acknowledgment of these two groups and to pave the way for one or more new casinos in Connecticut.

Responding to such a well-financed effort in the interest of promoting an objective evaluation is an impossible task for an agency as underfunded as BIA, not to mention the fact that it has an inherent bias in favor of Indians. It also has been extremely difficult for us as interested parties to keep pace. Gover's directive was designed to further hamstring these efforts by prohibiting BIA from undertaking its own research in most cases and not allowing interested parties to submit any evidence once a petition came under active consideration. Gover prohibited such new evidence from being submitted until after the issuance of the critically important proposed finding.

Gover issued this directive without any opportunity for public comment. His failure to do so forced our Towns and the State of Connecticut to file a lawsuit challenging the directive, as well as other BIA actions, under the Administrative Procedure Act (APA). As discussed below, we also challenged BIA's proposed finding in favor of the EP/PEP groups. In the lawsuit, the Second Circuit Court of Appeals agreed that Gover's action had the strong earmarkings of rulemaking under the APA and that its application to the EP/PEP petitions raised serious legal questions. Although the Second Circuit determined that the challenge was premature due to the fact that these petitions were still under review, the clear reading of the decision was the BIA had violated public process laws and that a viable claim would exist, should further litigation ensue.

The problems we encountered were not limited to those of a politically-motivated Assistant Secretary, such as Mr. Gover. In addition, BIA staff followed a similar approach. For example, BIA set a secret deadline for the submission of evidence prior to the proposed finding. They then communicated that deadline to the petitioners, but never told other interested parties. As a result, our Towns continued to invest resources in gathering information and preparing reports to be submitted to BIA after this arbitrarily established and unilaterally imposed evidentiary deadline, but it was not considered before the critically important proposed findings.

The EP and PEP Proposed Findings. The problems with the review of these two petitions became even more serious with the issuance of the proposed finding in March, 2000. In making this decision, former Assistant Secretary Gover reversed the BIA staff recommendation for negative proposed findings and required positive findings. He did so over the staff's objection. In addition, he allowed for a positive proposed finding, even though evidence regarding one of the most significant periods in the two petitioner groups' history, the period since 1973, was not supported by sufficient evidence to allow BIA to make *any* finding. Clearly, in a situation where one party has the burden of proof, as is the case for tribal petitioners, the failure to produce evidence should result in an adverse decision. Instead, the Gover-directed positive proposed finding simply glossed over this problem.

Gover took another significant step to turn negative findings into positive ones. Because there clearly was insufficient factual evidence to support positive findings for either group, Gover relied upon the concept of "state recognition" to allow the EP and PEP to fill their evidentiary gaps. Under this theory, merely because the State established reservation lands for the once existing tribes in Connecticut, BIA *presumed* the existence of continuous tribal activity under the acknowledgment criteria in 25 C.F.R. §83.10. BIA applied this presumption even though the State of Connecticut objected vigorously to this interpretation of its own law and history.

By taking these steps, BIA, at the behest of its political appointee, put both petitioner groups in the driver's seat and forced other parties, such as our Towns and the State, to try and disprove the positive proposed findings. This is something that had never been done before during the history of the acknowledgment process. In addition, it is likely that, having received positive proposed findings, the petitioner groups were better positioned to attract additional funding from outside parties to support their drive to obtain acknowledged status.

The EP/PEP Final Determination. In the final determination in June 2002, BIA continued its practice of looking for ways to assist these two petitioner groups in achieving acknowledgment. This time, BIA took the unprecedented step of merging both petitioner groups into a single tribe. Had it not taken this step, it is clear that the evidence would not have been sufficient to sustain either petitioner independently. Even though the two groups had not themselves achieved any degree of reconciliation, and despite the fact that the PEP group vigorously opposed such action and had denied BIA's authority to do so, the final determination acknowledged a single so-called "historical Eastern Pequot Tribe." In addition, like in the proposed finding, BIA again invoked the "State recognition" concept to fill the evidentiary gaps that even the merged tribe's history could not account for. Finally, in reviewing the evidence submitted by petitioner groups, BIA attached clearly inappropriate significance to certain facts offered into evidence by the groups. These facts were clearly very weak and demonstrated little, if any, proof that these petitioner groups were functioning as tribal entities.

The result was a positive final determination for the new merged Indian group, which in turn forced our Towns to file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the acknowledgment regulations. The State of Connecticut, through Attorney General Blumenthal, and another tribal petitioner group, the Wiquepaug Eastern Pequots, also filed requests for reconsideration.

The clearly inappropriate nature of these final determinations resulted in strong protest from the State of Connecticut. In addition to the request for reconsideration filed by Attorney General Blumenthal, former Governor Rowland expressed his support for reversing the final determinations. Members of the Congressional delegation for Connecticut, including Congressman Simmons for our district, and Senators Dodd and Lieberman, sponsored reform legislation designed to improve the acknowledgement process and to relieve the burden on local governments who must participate in such proceedings.

In the case of our three Towns, the Town of North Stonington alone has invested a total of $577,000 over a nine-year period to respond to the petitions. While this amount is a paltry sum compared to the estimated more than $31 million that the two

Pequot groups have spent with the assistance of their gambling financial backers, it is a significant amount of money for our small local communities. As subsequent events have demonstrated, it was an investment that was well worthwhile to protect our local government interests, but when we are forced to make such expenditures to participate in a process that lacks objectivity and is biased in favor of petitioner groups who are, in turn, backed by extremely wealthy financial interests, it is questionable whether any amount of effort and expenditure will suffice.

The STN Decision. The situation in Connecticut became even more extreme when BIA announced its decision to acknowledge the STN petitioner group from Kent. While we were not involved as interested parties in that proceeding, we have followed it closely and participated in an amicus brief for purposes of IBIA reconsideration.

In this case, BIA invoked some of the same tools that it did in the two Pequot petitions to stretch the evidence in every conceivable way to make possible a final determination in favor of the petitioner. In this case, BIA relied upon two specific measures to turn a negative proposed finding into a positive one. BIA invoked a seldom used and highly questionable provision in the acknowledgment regulations that allows intermarriage within a tribal group to serve as proof of the existence of social community and political authority. In doing so, it was possible for the STN group to satisfy the criteria for acknowledgment several decades during the 1800s for which no other evidence of tribal activity existed.

Even this was not enough, however, as gaps in evidence still existed. For this purpose, BIA again invoked the state recognition presumption, but extended it to a situation where there was no evidence at all of tribal interactions. By using these two stratagems, BIA was able to acknowledge the STN petitioner, even though the gaps of actual evidence existed for such extended periods of time that expert witnesses retained even by the petitioner group itself had concluded that the acknowledgment criteria had not been satisfied.

In STN, like EP and PEP, interested parties were forced to seek reconsideration from IBIA. During that process, evidence came to light in the form of an internal BIA memo that the ultimate decision maker, Principal Deputy Assistant Secretary Aurene Martin, was advised that BIA's use of the state recognition tool was not within the scope of its acknowledgment regulations and had no precedent. Nonetheless, she overlooked this fact and granted acknowledgment.

In the IBIA appeal briefs filed by interested parties, one of the arguments against STN acknowledgment was the fact that BIA had either manipulated or misapplied its own regulations to inflate the so-called marriage rate that had been used to provide the basis for filling evidentiary gaps during significant periods in the 1800s. In a

remarkable admission of error, BIA agreed with this fact in December 2004, when it was forced to respond to the appeal briefs from the interested parties. Even though it admitted error on this key factor, BIA refused to offer any explanation as to the significance or effect of its error.

The history described above fully illustrates the problems inherent in the tribal acknowledgment process as currently administered by BIA. Although certain reforms have been made to improve the handling of documents, the accessibility of past decisions, and coordination among parties, the fact remains that it is impossible to trust the analyses or decisions that come out of BIA.

Its track record on these Connecticut petitions alone serves as testimony of how unreliable the BIA-administered acknowledgment process is. There other examples of this problem in recent years, involving petitioner groups in other states.

The IBIA Decisions. These problems in the BIA review and Assistant Secretary approval processes stand in stark contrast to the objectivity and fairness that is evident in the IBIA's review. On May 12, 2005, IBIA issued two decisions vacating and reversing the EP/PEP and STN final determinations. These decisions reflect precisely the kind of careful analysis and independent review that would be expected of an appeals process and that is unfortunately absent from the BIA review leading up to the final determinations.

In reaching this result, IBIA properly went straight to the heart of BIA's manipulation of the acknowledgment criteria to achieve positive determinations. The Board overturned BIA's use of the "state recognition" principle and remanded the determinations for further consideration. In doing so, it also noted the questionable practice of merging the EP and PEP groups, BIA's questionable evaluation of certain evidence, and its misapplication in STN of its own marriage rate regulation. The Board directed the Assistant Secretary to reconsider these and other aspects of the final determinations, upon remand.

It is unfortunate that a procedure spanning so many years, and involving so much money, is forced to rely upon appeals to administrative law judges at the very end of a multi-year process to extract legitimacy and objectivity. As even pro-petitioner tribal advocates have acknowledged, the IBIA decisions deserve credit for their careful and scholarly review of the questions presented. The ultimate result of these petitions is yet to be determined due to the remand to BIA, but we believe that the IBIA opinions stand as shining examples of how such acknowledgment petitions should be evaluated and determined. As discussed in our recommendations which follow, we believe the IBIA model serves as the basis for a key aspect of the reform effort.

The Forthcoming Test of the Objectivity of the Process. As a result of the IBIA order vacating the final determinations and remanding them to BIA, the stage is now set for the ultimate test of the ability of the acknowledgment process to work objectively. By letter of May 23, 2005, BIA properly advised the petitioners that the acknowledgment regulations do not allow for additional evidence or briefing. Final decisions must be made on the basis of the record. If BIA properly applies the rules and evaluates the evidence without invoking tactics such as the forced merger of petitioner groups, improper weight to weak evidence, or invalid assumptions such as state recognition, then it is clear that all of the petitions must be denied.

Recommendations for Reform

Based upon our extensive experiences described above, we believe the record for Connecticut acknowledgment petitions clearly shows the need for sweeping reform and Congressional action. Our specific recommendations are as follows:

Congressional Delegation and Clearly Defined Standards. The core problem with the acknowledgment process is that Congress has never delegated this authority to the Secretary of the Interior. As a matter of constitutional law, the Executive Branch therefore lacks the power to acknowledge tribes.

Even if such delegation has occurred, it has not taken place by means of a constitutionally permissible statement of guiding principles. These courts are clear that Congress cannot just grant general powers to the Executive Branch, but instead requires that enforceable and clear standards must exist. There are no Congressional principles to guide BIA's acknowledgment decision, and this necessarily means that there is no power for the Secretary to recognize tribes. It is this lack of Congressional guidance that is at the heart of the current problems where BIA feels free to develop the grounds for tribal acknowledgment as it goes along.

Absent a New Direction, Remove Acknowledgment From BIA. Thus far, the record is clear that BIA is not the appropriate agency to review acknowledgment petitions. BIA is charged with promoting the interests of Indians and has an inherent bias in favor of petitioners. In addition, the fact that ultimate approval rests with an appointed official in the position of the Assistant Secretary leaves open considerable room for improper lobbying and political interference. It will be very difficult to restore faith in BIA's administration of this process or ensure its objectivity and fairness. Correct results in the pending Connecticut petitions could restore some of this lost credibility, but it still will be necessary to undertake reforms to ensure the problems of recent years are not repeated.

Place Full or Greater Responsibility Under Independent Review Board. Acknowledgment determinations either should be made by an independent review board that consists of the individuals with the necessary expertise and who are required to have objective backgrounds, or such an entity should be given a broader role. BIA, petitioners, and interested parties all can participate in the proceedings of such a Board. The validity of this approach is demonstrated by the validity and impartiality of IBIA's decisions in the Pequot and STN requests for reconsideration.

Require Congressional Ratification. The recognition of an Indian tribes an inherently political act. The significance of such actions are readily apparent through the consequences they bring, both for petitioners and the surrounding communities. As a result, acknowledgment decisions should be subject to an appropriate level of Congressional review and action.

Codify Standards. The BIA acknowledgment criteria are, for the most part, reasonable and effective. Some elements of the criteria, such as the marriage rate test for social community and its carryover provisions for political authority, are too permissive and should be repealed. With such modifications, however, the current criteria should be legislatively ratified.

Disclosure of Financial Backers. Petitioners should be required to reveal who their financial backers are, how much funding they are receiving, and what that money is being spent for. Only by disclosing this information will it be possible to have full accountability and ability to take steps to limit improper political influence.

Funding for State/Local Governments. In Connecticut, we are fortunate to have had support from our Congressional delegation for legislation that would make funding available to local communities to participate in the acknowledgment process. Our Towns have borne a heavy burden to participate and fight for valid and fair decisions. Although we have thus far been vindicated, it should not have been necessary for us to invest such resources in a true David vs. Goliath match-up with the petitioners and their wealthy backers. In fact, we had to spend a significant portion of the funds to fight BIA simply for our right to participate. This is not fair, and we believe federal funds should be available to local governments for this purpose, including reimbursement in situations such as ours.

Conclusion

Our experience in Connecticut shows how seriously flawed the acknowledgment process is. Recent developments show signs that the process is improving, but reform is still needed. We urge the Committee to consider seriously the recommendations contained in this testimony, and to call upon us to assist in any way that would be beneficial. Thank you.

TESTIMONY OF KENNETH F. COOPER

PRESIDENT, TOWN ACTION TO SAVE KENT (TASK)

BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

MAY 11, 2005

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, IT IS AN HONOR TO APPEAR BEFORE YOU AND EXPRESS TO YOU A SMALL TOWN'S CONCERN AT A FEDERAL PROCESS THAT IS IN DESPARATE NEED OF IMMEDIATE AND EXTENSIVE REFORM AND WHICH HAS PLACED OUR TOWN IN JEOPARDY.

I REPRESENT A GRASS ROOTS ORGANIZATION IN KENT, CONNECTICUT WE CALL TASK WHICH STANDS FOR TOWN ACTION TO SAVE KENT. HISTORIANS GENERALLY AGREE THAT KENT WAS SETTLED BY EUROPEANS ABOUT THE SAME TIME AS THE ARRIVAL OF INDIANS IN THE EARLY 18TH CENTURY. IT WAS INCORPORATED IN 1739, AND HAS HAD A RICH HISTORY AS A FAMILY COMMUNITY AND THRIVING IRON ORE PRODUCER. IT IS NOW A RURAL COMMUNITY OF ABOUT 3,000 RESIDENTS LOCATED IN LITCHFIELD COUNTY IN THE SCENIC NORTHWEST CORNER OF THE STATE. KENT HAS A LIVELY MIX OF RURAL LIFE, EDUCATION, AND THE ARTS.

WITHIN OUR BOUNDARIES WE HAVE THREE STATE PARKS, TWO STATE FORESTS, TWO PRIVATE WILDLIFE SANCTUARIES OPEN TO THE PUBLIC, THE PERMANENT CORRIDOR OF THE APPALACHIAN TRAIL AND HUNDREDS OF ACRES OF WILD AND SCENIC LANDS OWNED OR PROTECTED BY LOCAL AND REGIONAL LAND TRUSTS WHICH WERE ACQUIRED BY PRIVATE DONATION AND LOCAL FUNDRAISING. THE FEDERAL GOVERNMENT HAS INVESTED IN PROTECTING OUR HOUSATONIC RIVER. IT IS PROTECTED BY THE HIGHLANDS CONSERVATION ACT AND IS CLASSIFIED AS A NATIONAL SCENIC RIVER. CONGRESS IS CURRENTLY CONSIDERING ITS DESIGNATION AS A NATIONAL HERITAGE AREA. OUR EARLIEST BUILDINGS HAVE BEEN PRESERVED AND ARE PROTECTED BY A HISTORIC DISTRICT CREATED AND SUPPORTED BY RESIDENTS.

WE ARE TYPICAL OF MANY SMALL TOWNS ACROSS THE UNITED STATES. OUR LOCAL BOARDS AND COMMISSIONS ARE RUN BY VOLUNTEERS. AMBULANCE AND FIRE PROTECTION SERVICES ARE PROVIDED BY VOLUNTEERS. OUR LIBRARY AND HISTORICAL SOCIETY ARE SUPPORTED BY DONATIONS AND TOWN FUNDS. THE LIBRARY, HISTORICAL SOCIETY, GARDEN CLUB, ART ASSOCIATON AND LAND TRUST ARE ALL RUN BY VOLUNTEERS. MUNICIPAL BUDGETS AND ORDINANCES ARE VOTED ON AS THEY HAVE BEEN FOR ALMOST 300 YEARS, BY OPEN TOWN MEETING. WE ARE RURAL AMERICA.

THESE ARE OUR TRADITIONS AND WE HOPE TO PRESERVE THEM FOR THE GENERATIONS TO COME. IN RECENT YEARS WE HAVE WATCHED THE DISRUPTIVE TRANSFORMATION OF SMALL TOWNS IN THE EASTERN PART OF THE STATE FOLLOWING THE FEDERAL RECOGNITION OF PETITIONING GROUPS AS SOVEREIGN DEPENDANT NATIONS, WHO ALTHOUGH IMPORTANT NEIGHBORS, ARE UNFORTUNATELY PREVENTED BY LAW FROM ENGAGING IN THE PROCESS OF PLANNING AND CREATING THE FUTURE OF A GREATER COMMUNITY.

BECAUSE OF THEIR LOCATION IN THE DENSELY POPULATED BOSTON-NEW YORK CORRIDOR, THE IMPACT OF LAS VEGAS-STYLE CASINOS ON THESE COMMUNITIES HAS OVERWHELMED THEIR INFRASTRUCTURE AND DESTROYED THE CHARACTER THAT TOOK SETTLERS MORE THAN FOUR CENTURIES TO BUILD. THEIR TAX BASE HAS SHRUNK, CRIME HAS SOARED, THEIR SCHOOLS ARE JAMMED, AND SADLY, THE LONG TERM RESIDENTS OF THESE TOWNS HAVE LOST THE ABILITY TO PLAN THEIR OWN FUTURES.

TASK WAS FORMED BECAUSE OF WHAT WE SAW HAPPENING TO OUR SISTER TOWNS BROUGHT ABOUT SOLELY BY THE RECOGNITION PROCESS. NEVER IN MY WILDEST DREAMS WOULD I EVER HAVE THOUGHT I WOULD BE TESTIFYING BEFORE A SENATE COMMITTEE, BUT I DO SO BECAUSE I FEEL SO STRONGLY ABOUT THE NEED FOR OUR SMALL TOWN VOICE TO BE HEARD BY OUR GOVERNMENT.

MR. CHAIRMAN, LET ME BE CLEAR, TASK DOES NOT OPPOSE THE RECOGNITION OF AUTHENTIC INDIAN TRIBES. OUR CONCERN IS THE RECOGNITION OF PERSONS OR GROUPS WHOSE CLAIMS ARE WITHOUT MERIT, WHOSE PURSUIT OF SOVEREIGNTY IS OPPORTUNISTICALLY SUPPORTED AND DRIVEN BY GAMBLING INTERESTS AND MADE POSSIBLE BY THE CURRENT FLAWED FEDERAL RECOGNITION PROCESS.

THE RECOGNITION PETITION OF WHICH I AM MOST FAMILIAR INVOLVES THE SCHAGHTICOKE FILING. THE SCHAGHTICOKE TRIBAL NATION ("STN") WAS ORGANIZED BY A GROUP THAT CLAIMS INDIAN HERITAGE AND RIGHTS TO A 400 ACRE STATE RESERVATION IN KENT. THE GROUP IS BASED IN DERBY, CONNECTICUT, AND IS RICHLY FINANCED BY NON-INDIAN INVESTORS WHO SEEK A BILLION DOLLAR RETURN FROM THE WORLD CLASS CASINO, THE SCHAGHTICOKES ARE REQUIRED BY CONTRACT TO BUILD SHOULD THEIR PETITION BE FINALLY APPROVED. IN ADDITION, THE STN CLAIMS TITLE TO 2,150 ACRES OF LAND ADJACENT TO THE HOUSATONIC RIVER AND THE APPALACHIAN TRAIL THAT LIES IN THE HEART OF OUR COMMUNITY.

IT IS A REAL TRAGEDY, MR. CHAIRMAN THAT PETITIONERS LIKE STN AND INTERESTED PARTIES LIKE THE TOWN OF KENT HAVE TO RELY ON VAST SUMS OF MONEY TO GET THROUGH THE RECOGNITION PROCESS. IF THE PETITIONERS WERE NOT ASHAMED OR EMBARRASSED BY THEIR BACKERS' MONEY, THEY WOULD SURELY THEN DISCLOSE IT. STN HAS NOT. THERE IS CLEARLY NOTHING WRONG WITH RAISING THE SIGNIFICANT FINANCIAL RESOURCES REQUIRED TO PETITION THE FEDERAL GOVERNMENT. HOWEVER, GIVEN THE RISK MONEY, REGARDLESS OF SOURCE, INTERJECTS INTO THE SYSTEM, DISCLOSURE OF SOURCES, USES AND TERMS HAS BECOME A PILLAR OF ACCEPTED GOOD GOVERNMENT PRACTICE IN FEDERAL AGENCIES. NO SUCH REQUIREMENT EXISTS FOR BIA PETITIONERS OR PARTICIPANTS.

IN 1981 THE STN FILED ITS LETTER OF INTENT TO APPLY FOR FEDERAL RECOGNITON. 13 YEARS LATER IN 1994 THEY SUBMITTED THEIR PETITION. 8 YEARS THEREAFTER IN 2002 BIA DENIED THE STN'S PETITION CITING THEIR INABILITY TO MEET THE CRITERIA SET FORTH BY THE BIA. THEREAFTER THE STN IN 2003 FILED A REQUEST TO RECONSIDER THEIR PETITION AND IN 2004 THE BIA GRANTED THEM RECOGNITION.

MR CHAIRMAN, THE STN WAS GRANTED RECOGNITION DESPITE THE FACT THAT IT FAILED TO MEET TWO OF THE SEVEN CRITERIA REQUIRED FOR FEDERAL RECOGNITION. THE STATE OF CONNECTICUT AND THE TOWN OF KENT, SUPPORTED BY 39 TOWNS IN CONNECTICUT, HAVE APPEALED THE BIA DECISION. THE EVIDENCE IN THE APPEAL IS SUPPORTED BY INDEPENDENT RESEARCH, TESTIMONY OF STN LEADERS, INTERNAL BIA STAFF DOCUMENTS AND REPORTS OF THE BIA'S OWN SOLICITOR GENERAL. BUT MOST OF THE RELEVANT FACTS ARE CONTAINED IN THE SCHAGHTICOKE'S OWN RESEARCH AND INSPITE OF THE OVERWHELMING EVIDENCE WHICH SHOWS THAT THEY CANNOT MEET THE CRITERIA FOR RECOGNITION, THE BIA CONTINUED TO CHANGE AND REDEFINE RULES AND PROCEDURES TO ACHIEVE A PREDETERMINED CONCLUSION.

THE BIA HAS A DIFFERENT VIEW OF RULES AND PROCESS THAN OTHER FEDERAL AGENCIES. IN THE COURSE OF HIS INVESTIGATION OF THE BIA PROCESS THE INSPECTOR GENERAL OF THE DEPARTMENT OF INTERIOR STATED, "THE REGULATIONS, AS WRITTEN ARE PERMISSIVE AND INHERENTLY FLEXIBLE, AND THEREFORE AFFORD LATITUDE IN THE EVIDENCE USED AND CONSIDERED TO SUPPORT FEDERAL ACKNOWLEDGMENT." [1] MR. CHAIRMAN, FEDERAL ACKNOWLEDGMENT GRANTS THE PETITIONER EXTRAORDINARY RIGHTS FAR BEYOND THOSE OF THEIR NEIGHBORS AND ESPECIALLY IN THE DENSELY POPULATED EAST COAST CAUSE DISRUPTION TO THOUSANDS OF INNOCENT CITIZENS AND OFTEN HAS THE EFFECT OF DESTROYING THEIR EQUALLY IMPORTANT CULTURE. IT IS PRECISELY

[1] LETTER TO HONORABLE CHRISTOPHER DODD, AUGUST 27, 2005, EARL E. DEVANEY, INSPECTOR GENERAL

BECAUSE OF THE IMPACT OF THESE DECISIONS, THE IMPRESSION OF INTERPRETING HISTORY THAT OCCURRED 300 YEARS AGO TOGETHER WITH CURRENT GOVERNING LAWS AND LEGAL PRECEDENTS, THAT THE PROCESS TO MAKE THESE DECISIONS NOT BE "PERMISSIVE" IN ORDER TO DEMONSTRATE THAT SUCH DECISIONS ARE BASED UPON A FAIR AND OPEN PROCESS. BOTH PETITIONERS AND INTERESTED PARTIES WILL NECESSARILY BE HIGHLY EMOTIONAL BECAUSE THEY FEEL STRONGLY ABOUT THEIR POSITIONS. BUT THE PROCESS MUST BE DISPASSIONATE AND DISCIPLINED. THE PROCESS MUST HAVE ABSOLUTE INTEGRITY, PROTECT EVERY PARTY AND ERR ON THE SIDE OF CONSERVATISM TO PROTECT IT FROM EITHER THE APPEARANCE OR ACTUALITY OF LACK OF INTEGRITY OR UNDUE INFLUENCE.

NOT ONLY DID THIS SCHAGHTICOKE OFA DECISION PROVIDE A CASE STUDY OF SELECTIVE USE OF THE FACTS, BUT THERE WAS EVIDENCE OF MANAGEMENT OVERRIDE, AND REFUSAL TO DEAL WITH ERRORS IN THE DOCUMENTATION UPON WHICH THE PETITION WAS BASED. THE ONLY RULE THE BIA APPEARS TO FOLLOW IS THE RULE THAT ALLOWS IT TO CHANGE THE RULES, WHICH IT DOES FREQUENTLY, CONVENIENTLY AND WITHOUT NOTICE.

AS AN EXAMPLE, IN DECEMBER OF 2004 AFTER STN WAS GRANTED RECOGNITION THE OFFICE OF THE SOLICITOR ADMITTED THAT THE AGENCY HAD ERRED IN THEIR DELIBERATIONS. NOT ONLY HAD THEY INTERPRETED THE RULES IN A MANNER "...NOT CONSISTENT WITH PRIOR PRECEDENT....AND PROVIDES NO EXPLANATION FOR THE INCONSISTENCY." [2]BUT THERE WAS A MATHEMATICAL ERROR WHICH WHEN CORRECTED COMPLETELY CHANGED THE RESULTING CONCLUSIONS THAT THE STN MET THE COMMUNITY CRITERIA. THIS UNPRECEDENTED ADMISSION ON THE PART OF THE AGENCY IS A FATAL FLAW IN THEIR DECISION.

A RECOGNITION PROCESS THAT WAS DESIGNED TO BE COMPLETED IN 2 YEARS HAS IN THIS CASE TAKEN OVER 23 YEARS AND IS STILL NOT CONCLUDED.

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[2] UNITED STATES DEPARTMENT OF INTERIOR, OFFICE OF HEARINGS AND APPEALS, DECEMBER 2, 2004, BARBARA N. COEN, ESQ.

THE CURRENT TRIBAL RECOGNITION PROCESS APPEARS ARBITRARY AND CAPRICIOUS. IT DOES NOT APPEAR TO RESPECT THE PRECEDENT OF PAST DECISIONS WHICH HAS UNDERMIND ITS INTEGRITY BY ISSUING TOTALLY SUBJECTIVE DECISIONS DEVOID OF ANY REASONABLE NEXUS TO THE STRICT STANDARDS OF DUE PROCESS AND GOOD GOVERNMENT POLICY RECOGNIZED BY ITS SISTER FEDERAL AGENCIES.

VERY RECENTLY THE AGENCY HAS TAKEN LIMITED STEPS TO IMPROVE THE TRANSPARENCY OF THE TRIBAL RECOGNITION PROCESS. I APPLAUD THIS AND THE AGENCY'S RECENT DECISIONS TO REVERSE THE "GOVER PROCEDURES OF 2000."[3] BUT, THERE ARE MILES TO GO IN ORDER TO RESTORE CONFIDENCE IN AND MEANINGFUL OVERSIGHT OF THEIR PROCESS.

THE BASIS FOR THE BIA TRIBAL RECOGNITION DECISIONS IS STILL UNCLEAR. THERE EXISTS NO GUIDANCE THAT CLEARLY EXPLAINS HOW TO INTERPRET KEY ASPECTS OF THE CRITERIA. FOR EXAMPLE, IT IS NOT CLEAR WHAT LEVEL OF EVIDENCE IS SUFFICIENT TO DEMONSTRATE A TRIBE'S CONTINUED EXISTENCE, A KEY FACT NECESSARY FOR RECOGNITION. ANOTHER EXAMPLE IS APPROPRIATENESS OF THE USE OF STATE RECOGNITION AS A SUBSTITUTE TO BOOTSTRAP FEDERAL RECOGNITION WHEN A PETITIONER CLEARLY CANNOT MEET FEDERAL CRITERIA. SUCH A LACK OF EVIDENTIARY STANDARDS HAS CREATED CONTROVERSY AND UNCERTAINTY FOR ALL PARTIES. LACK OF CLARITY, DISCIPLINE AND OVERSIGHT ENCOURGAGES THE TYPE OF EMBARASSING BEHAVIOR THAT THIS COMMITTEE IS CURRENTLY INVESTIGATING IN OTHER HEARINGS.

THERE IS NO QUESTION THE RECOGNITION PROCESS IS HAMPERED BY LIMITED RESOURCES, A LACK OF CLEAR TIME FRAMES TO ACCOMPLISH ITS WORK, AND INEFFECTIVE PROCEEDURES.

MR. CHAIRMAN, THERE IS NO DOUBT THAT THE BIA IS A BROKEN AGENCY; INTERIOR ACKNOWLEDGES IT, THE GENERAL ACCOUNTING OFFICE HAS IDENTIFIED IT,

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[3] DEPARTMENT OF INTERIOR OFFICE OF FEDERAL ACKNOWLEDGEMENT, FEDERAL REGISTER, MARCH 31, 2005, 70 FED REG. 61 AT 16513-16

YOU ARE HOLDING HEARINGS ON IT, THE PRESS HAS REPORTED ON IT, AND BOTH THE PETITIONERS AND RELATED PARTIES HAVE BEEN THE VICTIMS OF IT.

TASK'S SOLE MISSION IS TO ASK THAT THE BIA PROCESS ESTABLISHES ITS INTEGRITY FOR THE BENEFIT OF ALL OF ITS STAKE HOLDERS AND TO RETAIN THE CONFIDENCE OF THE AMERICAN PUBLIC. WE ARE NOT ANTI-INDIAN. TASK IS ABOUT GOOD GOVERNMENT PLAIN AND SIMPLE. MR. CHAIRMAN, KENT CONNECTICUT IS A GOOD CITIZEN. WE ARE WILLING TO LIVE WITH ANY DECISION THAT IS RENDERED FAIRLY, OPENLY AND HONESTLY BY THE BIA. WE INTEND TO LIVE IN COMPLETE HARMONY WITH THOSE WHO SUPPORT THE STN PETITION REGARDLESS OF ITS ULTIMATE SUCCESS OR FAILURE.

IN THE MEANTIME, I RESPECTFULLY SUBMIT THAT SEVERAL AREAS MUST BE ADDRESSED IN SOLVING THE PROBLEMS AT BIA:

1. THE ADMINISTRATION NEEDS TO APPOINT A NEW UNDERSECRETARY OF INTERIOR WHO HAS PROVEN EXPERIENCE MANAGING A LARGE ORGANIZATION AND IS CHARGED WITH SEEKING SOLUTIONS TO BIA'S MANY DEFICIENCIES;
2. THE ADMINISTRATION NEEDS TO APPOINT A TRUE REFORMER AS ASSISTANT SECRETARY OF INTERIOR FOR INDIAN AFFAIRS;
3. CONGRESS NEEDS TO TAKE A HARD LOOK AT BIA FUNDING TO INSURE THE AGENCY IS PROPERLY FUNDED IN LIGHT OF THE SERIOUS BACK-LOG THAT EXISTS IN PROCESSING PETITIONS SEEKING RECOGNITION;
4. THIS COMMITTEE MUST SEE THAT OVERSIGHT PROCEDURES WITHIN THE INTERIOR DEPARTMENT AND BY CONGRESS ARE REAL AND MEANINGFUL; AND
5. THE PROCESS MUST REQUIRE BETTER COORDINATION WITH LOCAL, STATE AND FEDERAL AUTHORITIES MOST AFFECTED BY THE IMPACT OF RESULTING DECISIONS.

I WOULD LIKE TO ALSO TAKE THIS OPPORTUNITY TO THANK OUR GOVERNOR, OUR HOUSE AND SENATE DELEGATION, AS WELL AS OUR ATTORNEY GENERAL FOR WORKING IN A TRUE BIPARTISAN MANNER TO ENSURE CONNECTICUT'S VOICE IS HEARD AND HEEDED HERE IN WASHINGTON. THEY ALL HAVE DONE A GREAT SERVICE TO OUR STATE ON THIS ISSUE

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR TAKING THE TIME TO LEARN MORE ABOUT THE BIA RECOGNITON PROCESS. IT IS MY HOPE THAT ONCE YOU HAVE HAD TIME TO REFLECT ON THIS HEARING THAT YOU WILL TAKE AFFIRMATIVE AND POSITIVE STEPS TO FIX AN AGENCY THAT IS IN DIRE NEED OF REFORM.

Kenneth F. Cooper
32 Mountain Road
South Kent, CT. 06785

June 14, 2005

Senator John McCain By email: testimony@indian.senate.gov
Chairman
United States Senate Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator McCain,

Thank you for the opportunity to testify before your committee on May 11, 2005 on Federal Recognition of Indian Tribes. I am pleased to submit answers to follow up questions raised by the committee.

1. *Q. Are you saying that you have no objection to a petitioner, like the Tribe, from obtaining those amounts of resources, so long as it is disclosed to some watchdog agency?*

   A. It is one thing to read about alleged financial backers and it is quite another for a petitioner to have an affirmative duty to disclose financial support as a matter of law under oath. I have no objection to any amounts of financial support as long as petitioners are required by law to disclose such amounts, their source, the use of the funds and any direct or indirect contractual relationships with the parties.

2. *Q. What predetermined conclusion do you believe the BIA is reaching? Is it for specific petitioners?*

   A. With respect to the BIA's treatment of the reconsideration of the Schaghticoke Tribal Nation petition it appears that the BIA personnel worked toward the goal of making the facts meet the conclusions of recognition vs. letting the facts determine the conclusion. There is no other way to explain attempts to bootstrap the decision using theories and methods considered invalid in previous decisions when the petitioner could not meet the established criteria by a wide margin. The recent findings of the IBIA to overturn the decision and remand it back to the Assistant Secretary seem to support this.

   Q. When the Inspector General has never found evidence of undue outside influence, why would BIA prefer some petitioners over others?

   A. The fact that the Inspector General never found evidence of "undue outside influence" does not speak to the lack of internal controls over such influence

which exist inside the agency. For example, the agency has no system to log contacts with outsiders as found in other federal agencies, such as the FTC and SEC. This is an accepted practice within Federal agencies to protect employees and discourage improper behavior. One does not have to look much further than the lack of a revolving door policy within the agency to see why it would prefer some petitioners over others. There are documented cases where personnel directly involved in the decision process left the agency to become members of a tribe whose cases they participated in. As currently constructed there are significant financial incentives for agency employees to bias themselves in favor petitioners whose future financial prospects are directly related to federal recognition. The appearance of impropriety is enough to suggest bias or improper behavior even if none exists.

Q. If the BIA has a tribal bias, how do you believe the BIA assesses opposition to petitions by tribes that are already recognized?

A. I respectfully state that I never alleged BIA has a tribal bias. I do allege that with respect to the STN petition there was no rational basis upon which recognition should have been granted.

3. *Q.The Inspector General has found the BIA recognition process to [be] one of the most transparent processes within the Department of Interior. ... Is your community group prepared to live with the Schaghticoke decisions, if it makes it all the way through all of those layers of review? Would the group be willing to ask the Connecticut Congressional delegation to not seek to legislatively overturn that decision?*

A. First, I respectfully disagree with the Inspector General. A process that does not require full disclosure of information to all interested and informed parties (25 CFR 83.1) and is able to establish unrealistic timeframes for parties to provide or respond to information cannot be considered transparent. Should the BIA adopt necessary reforms consistent with best practice in other Federal Agencies that to date have only been talked about to put integrity, transparency and fairness in the Recognition Process then legislation would be unnecessary.

Thank you for your time and consideration.

Sincerely,

//Kenneth F. Cooper

Kenneth F. Cooper
President
Town Action to Save Kent

Lance Gumbs
Former Chairman
Shinnecock Indian Nation

Testimony
Before the Committee on Indian Affairs
Unites States Senate

Oversight Hearing on Federal Recognition of Indian Tribes
May 11, 2005

Chairman McCain, Ranking Member Dorgan and Members of the Senate Indian Affairs Committee, my name is Lance Gumbs, and I am the former Chairman of the Tribal Trustees of the Shinnecock Indian Nation. Thank you for the opportunity to again address the committee on this important issue.

When I stood before the House Resources Committee less than one year ago, it was the first time a member of the Shinnecock Indian Nation had testified before Congress since 1900. Nothing would make me happier than to be able to report back to you that the Department of Interior had made progress on our application which we first filed in 1978, some 27 years ago.

So if my frustration over the current federal recognition process is evident in my testimony, it is because it was forged by the blood, sweat and tears of too

many members of our tribe. As I look back in time, it's hard to believe that it was 1978 when our tribe created the *Shinnecock Federal Recognition Committee* to file our petition. Now, nearly three decades later it merely gathers dust in a file. And regrettably, thirteen of those original members will never see our tribe attain recognition – they have all passed on.

Our Nation is one of the oldest, continuously self-governing tribes in the country. Experts in the recognition process tell us that we have the most compelling and complete case of any tribe. And, we are the most documented Indian Nation on record. That's because in 1792 the State of New York enacted a law taking away our traditional governance replacing it with a trustee form of government. Each April, for the past two centuries, the Clerk of the Town of Southampton has meticulously recorded our election.

We have been in our present location on Eastern Long Island – land which once stretched from Montauk Point to Manhattan – for thousands of years. This land has dwindled over the past 365 years, beginning with the early settlers who illegally seized these lands in the 17th century. Remarkably, we are still fighting every day to protect our land, despite the fact that the

Shinnecock Indian Nation pre-dates the birth of America and, that the Shinnecock have had a formal relationship with the State of New York since its inception in 1788 – some 317 years ago.

In 1974 the New York State Legislature called on Congress to grant our tribe federal recognition. In fact, in a number of documents prepared by the Department of Interior, the Shinnecock Indian Nation was listed as a tribe in 1941, 1960 and 1966.

Mr. Chairman, there is no reason that the Department cannot acknowledge us immediately.

The status of our petition sits in what I call the "Black Hole"-- the "Ready for Active Consideration list." I call it a black hole because in September 2003 the Shinnecock were told we were number 12 on the current list and according to BIA,

[And I quote]

"it may take the OFA up to 15 years to decide all completed applications"

[End quote].

Mr. Chairman, it's been nearly a year and a half since receiving the information from BIA. We have not heard from them since and we are still number 12 in the never-ending "queue." It's simply a fact that OFA is getting further behind in the process of reviewing and acting on pending applications. At this rate, without major changes to the process, the Shinnecock Nation will languish in an unrecognized status indefinitely.

We provided evidence - and more evidence - to the BIA above and beyond what is required, because BIA staff interprets the results as they see fit. This is not what Congress intended.

To comply with the BIA's process, a variety of professional services are required: genealogists, anthropologists, legal counsel, computer analysts – the list goes on and on. It has cost nearly one million dollars so far, money that could have been spent to provide housing or improve education and health care for our people.

Last year, I witnessed testimony before the House Committee on Resources calling for a moratorium on the federal recognition of Indian tribes. For a tribe like mine, who provided BIA with a tremendous amount of

documentation, and redirected limited resources toward this process, a moratorium would only amount to punishing all the tribes that have played by the rules.

What is needed, Mr. Chairman, is to fix a system that is clearly broken. And it should start with immediate recognition for tribes like the Shinnecock – those that have languished for too long and have done everything asked by the BIA. And in our case, we've been recognized by New York for 317 years. Isn't it ironic that the two tribes who helped the first settlers survive- the Shinnecock and the Mashpee- have yet to be formally recognized by our federal government?

For thousands of years we have lived on our native lands. Most tribes in this country were moved to so-called "reservations", but quite simply we've never moved – and over 500 members of the Nation live on our territory today. Through the strength of Mother Earth and the perseverance of our people, we are still here.

My mission is to realize the dream of my ancestors and see that the "seventh generation" has a better life than the generations before it. Now is the time for the United States government to recognize the Shinnecock Indian Nation.

Mr. Chairman, thank you for your efforts on Indian issues, and thank you for the opportunity to speak to the committee.

TESTIMONY OF MARY L. KENDALL
DEPUTY INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
MAY 11, 2005

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Testimony of The Honorable Nancy L. Johnson

before the

U.S. Senate Committee on Indian Affairs

May 11, 2005

Mr. Chairman and members of the Committee, thank you for inviting me to testify today on the important subject of the Bureau of Indian Affairs' federal recognition process. This issue is of significant concern to my constituents in Connecticut's Fifth District.

Problems within the BIA process are well-known and have been documented by well-respected, independent agencies. In 2001, the U.S. General Accounting Office reported that the recognition process is characterized by inconsistency, unfairness, and delay. A subsequent report by the Interior Department Inspector General about the recognition process cites troubling irregularities, the use of political influence in what should be an objective process, and the questionable practice of recently-departed BIA officials lobbying for petitioning tribal groups.

Mr. Chairman, the BIA's tribal recognition process has failed the people of Connecticut, particularly its erroneous and unlawful decision to acknowledge the Schaghticoke Tribal Nation of Kent. Simply put, it was made by ignoring evidence, manipulating federal regulations and overturning precedent.

As the Committee knows, the Bureau of Indian Affairs is permitted to recognize a tribe only if it satisfies each of the "seven mandatory criteria" laid out in federal regulations, including the key criteria that the tribe demonstrates it has exercised political authority over a community throughout its history.

The reasons for these strict, mandatory criteria are manifest. The establishment of a federally recognized tribe has significant and irreversible effects. Federally recognized tribes are:

- Exempted from a broad range of state laws and regulations, including state and local taxation.
- Allowed to build Las Vegas-style casinos, placing unbearable burdens on municipalities, on local tax bases and taxpayers, and on an aging infrastructure that could not tolerate the volume of traffic such a facility would create.
- Allowed to pursue land claims in court, which can threaten local property rights, cloud title in widespread areas, and prevent property sales.

Mr. Chairman, the evidence convincingly shows that the Schaghticoke petition did not satisfy each of the seven mandatory criteria, and the BIA manipulated both the evidence and established acknowledgment standards to get the petition over the goal line. More particularly:

- The BIA ignored agency admissions that "insufficient direct evidence" or "little or no direct evidence" exists to satisfy the key political authority criterion for over a century.
- The BIA overturned longstanding agency precedent when it erroneously interpreted the relationship between the State of Connecticut and the Schaghticoke people;
- The BIA used unprecedented and inaccurate accounting methods to calculate tribal marriage rates, without which the STN would not have satisfied the criteria for political authority for a 74 year period.

We know this because the BIA told us so. In a now-infamous "briefing paper" prepared

by BIA staff two weeks before it granted recognition, a strategy was outlined for BIA officials to overturn existing agency precedent and ignore federal regulations in order to find in the Schaghticoke's favor. In the briefing paper, BIA staff informed their superiors that key evidence of political authority – evidence necessary to grant recognition – was "absent or insufficient for two substantial historical periods." Furthermore, the briefing paper freely admits that declining to acknowledge the Schaghticoke "maintains the current interpretations of the regulations and established precedents how continuous tribal existence is demonstrated." Faced with the evidence and the law that demanded a negative result, the BIA ignored the evidence and reinterpreted the law. This is not how the American people expect their government to operate.

Last December, the Interior Department's Office of the Solicitor advised the Interior Department that the BIA used an unprecedented methodology and made material mathematical errors is calculating tribal marriage rates. Without these mistakes, the Schaghticoke petition would not have satisfied key criteria and would not have been recognized. Even the Office of the Solicitor advises the Interior Board of Indian Appeals, where the case is now being heard, that the BIA's decision "should not be affirmed on these grounds absent explanation or new evidence."

The BIA's decision in the Schaghticoke case is currently being appealed to the Interior Board of Indian Appeals. Our experience to date gives me little confidence that the IBIA will set correct the BIA's decision. Last year I wrote to the IBIA on behalf of my constituents seeking information on what the IBIA has done and when it expects to render a decision. The Board refused to reply with this information.

Given the grave consequences of the BIA's unlawful actions, I recently introduced *The*

Schaghticoke Acknowledgment Repeal Act of 2005 in the U.S. House of Representatives. This bill overturns the BIA's erroneous and unlawful decision to grant federal recognition to the Schaghticoke. This legislation recognizes the fact Congress cannot allow the result of an unlawful federal recognition process to stand. I respectfully urge the Committee to review it and consider it as you move forward with your work.

This Committee is rightly examining the recognition process writ large. I wholeheartedly support this effort, and I support legislation introduced by my colleagues to make the process fair, objective and accountable to the public.

I also believe the recognition process must take into account the very different histories of descendants of Native Americans in the eastern United States and those from out west. Connecticut State Archaeologist Nicholas Bellantoni argued before a public forum in March that the "historical context" varies between tribal groups around the country. While contact between European settlers and Native Americans in the eastern states has been continuous since the landing at Plymouth rock, Professor Bellantoni noted that in the western states contact may have only come in the mid-19th century. For Connecticut, continuous contact between settlers and Native Americans began 175 years before there was even a United States. I believe the recognition process does not recognize the divergent history between east and west, instead imposing a one-size-fits-all standard on tribal groups.

But I would remind the Committee that prospective reforms to the recognition process will not fix the BIA's erroneous and unlawful decision in the Schaghticoke case, and it may not prevent the financial interests backing this petition from moving closer to their goal: a Las Vegas-style casino in an area of Connecticut that does not want one nor can support one.

Mr. Chairman, Members of the Committee, the BIA has failed the people of Connecticut and the United States. It respectfully urge this Committee not only to look toward reforming the BIA recognition process, but also correcting its past failures, as in the Schaghticoke case. The reasons for moving forward with strong reform are plentiful, the reasons for accepting the status quo are non-existent. I believe that the public's trust in good and responsible government requires action by this Committee and this Congress.

Thank you.

STATEMENT BY SENATOR LIEBERMAN ON TRIBAL RECOGNITION

Committee on Indian Affairs

Oversight Hearing on the Tribal Recognition Process

May 11, 2005

Mr. Chairman, thank you for holding this hearing today on the process of tribal recognition. My home state of Connecticut is not alone in finding this a critical issue, where the stakes are high for local communities, for people seeking recognition and for those tribes that have gained recognition. All have a vital stake in ensuring the legitimacy and credibility of the process.

To most others, tribal recognition means casino gaming, and, as such, is among the top issues of concern cited by the public. In fact, many see acutely the linkages between this issue and other priority concerns, such as suburban sprawl and traffic congestion and the overall quality of life in their local communities.

That is why it is urgent for the federal government to undertake a complete overhaul of the badly broken federal tribal recognition process. If we are going to treat groups seeking recognition fairly, while making decisions that so clearly affect the economics and quality of life in so many local communities across the country, we must ensure the Bureau of Indian Affairs renders every single one of its decisions according to clearly defined recognition criteria that everybody sees and understands.

Now, let me state clearly at the outset of this hearing as I have done in the past, that I do not oppose the recognition of historic Native American tribes. That is one of the reasons that I find so troubling recent decisions by the Bureau of Indian Affairs, decisions that so clearly demonstrate that the tribal recognition process is dysfunctional. Recent

Native American tribal recognition decisions in Connecticut, for example, on when and how to satisfy recognition criteria have been murky at best. Lacking clear transparency needed to foster and sustain strong public confidence, BIA decision making has lost an enormous amount of public credibility. Neither Native American groups and tribes, nor the general public can afford or accept a process that smacks of outright manipulation and abuse of government authority.

The public's widespread belief in the nexus between tribal recognition and casino-openings is well-founded. There are, at present, 411 Native American casinos in the United States, operated by 223 tribes in Connecticut and 27 other states. More than half of the 341 federally recognized Native American tribes operate casinos in the United States.

Connecticut has two casinos operated by the Mashantucket Pequot Tribal Nation and Mohegan Tribe. To be sure, both tribes have created approximately 20,000 jobs, and contribute more than $400 million to Connecticut's budget, based upon each tribe's 25 percent share of slot revenues under tribal-state compacts. Still, these benefits come with community impacts and costs that continue to alarm Connecticut's citizens, costs that give them a real stake in the process.

In November 2001, the General Accounting Office evaluated the Bureau of Indian Affairs tribal recognition process, and its findings delineate a process that is subject to manipulation and abuse. In its report, the GAO found that "the basis for BIA's tribal recognition decisions is not always clear". Furthermore, the report went on to state:

> "[...] while there are set criteria that petitioners must meet to be granted recognition, there is no clear guidance that explains how to interpret key aspects of the criteria. For example, it is not always clear what level of

> evidence is sufficient to demonstrate a tribe's continuous existence over a period of time - one of the key aspects of the criteria. As a result, there is less regulatory certainty about the basis for recognition decisions."

The GAO's critique was echoed, in part, by the Interior Department's Inspector General and even the past Assistant Secretary for Indian Affairs.

Where standards are unclear and interpretive rules are uncertain, arbitrariness and abuse are nearly inevitable.

Two recent BIA decisions, one recognizing the Eastern Pequot and the other the Schaghticoke, make the problem perfectly clear. The Eastern Pequot decision actually involved recognition petitions from two different groups, each of which insisted that they comprised two totally separate tribes. Completely on its own motion, the BIA nonetheless created a new tribe by merging the two petitioners into one tribe. The BIA affirmatively reached out and created a new tribe when no one was requesting it, using legal analysis for this unprecedented decision that defies logic. In particular, the BIA relied on Connecticut's historic recognition of the tribe to fill gaps for "specific periods [of time] where the other evidence in the record concerning community or political influence would be insufficient by itself." This decision remains on appeal.

The Schaghticoke decision concerns the BIA's reversal of a preliminary decision to deny federal tribal recognition by again using the State of Connecticut's recognition to "bridge the gap" of obviously lacking evidence regarding continuous political activity. In the aftermath of this decision, my colleague, Senator Dodd, led a request for the Interior Department's Inspector General to investigate the Schaghticoke decision. Although the IG's August 2004 report found no actual malfeasance or wrongdoing, the BIA subsequently

revealed that it made a critical error in calculating the marriage rate between Schaghticoke tribal members during the 19th century. New marriage figures calculated by the BIA dropped the Schaghticoke intra-tribal marriage rate below the threshold that automatically satisfies one of the seven federal recognition criteria. The BIA refused all Connecticut lawmaker requests for immediate reversal of its decision, and this case also remains on appeal.

If the Eastern Pequot and Schaghticoke recognition decisions are upheld, local residents will have to bear the economic and social costs associated with the prospect of two new casinos that will forever change their quality of life. Because of the enormous implications, it's not too much to ask that the BIA process be free of any perceived decision-making bias before issuing tribal recognition decisions.

Senator Dodd and I tried to fix the federal tribal recognition process problems cited in the GAO's report by introducing legislation that would have created a more fair and open tribal recognition process. We remain unwavering in our commitment to reform the process so that these critical decisions are based on fair, consistent, and accurate procedures, and have reintroduced The Tribal Recognition and Indian Bureau Enhancement (TRIBE) Act to enact these reforms:

- Codify existing criteria used to make recognition decisions, and require that all Native American tribes met all outlined criteria before being granted federal recognition as a sovereign nation;
- Require BIA to provide notice of pending petitions to a wide range of interested groups, including the general public, other tribes, counties, towns, and states where the petitioning group is located;

- Allow BIA to hold formal hearings where interested parties can present evidence, examine witnesses, and rebut evidence in the record; and
- Increase BIA budget from $900,000 to $10 million annually to drastically reduce the pending petition backlog. A related bill would provide financial assistance to towns and tribal groups who cannot afford to participate in BIA proceedings.

Our legislation is a balanced effort to fix the acknowledged problems in the BIA's tribal recognition process. BIA must provide adequate procedures to ensure its legitimacy, and have the increased resources and staff needed to follow these procedures fully. The TRIBE Act will benefit both Native American tribes and the communities most directly affected by the growth of casino gambling. All stakeholders must be provided the financial tools to participate meaningfully in the recognition process.

I want to again stress that the TRIBE Act does nothing to affect already recognized federal tribes nor hinder their economic development plans. We want these procedural reforms to fix the shortcomings identified in the GAO report, which are undermining the legitimacy of the entire process.

Senator Dodd and my legislation dictates no outcomes. It simply makes necessary reforms to ensure a fair process that is more accessible and more transparent to all affected parties.

In closing, I urge my colleagues on both sides of the aisle to support this legislation. The tribal recognition process is a critical matter not only for Connecticut, but for many other states. Mr. Chairman, your committee has the opportunity to fix a broken process and I thank you for this opportunity to urge you to do so.

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

M. JODI RELL
GOVERNOR

Testimony of M. Jodi Rell

Governor, State of Connecticut

U.S. Senate Committee on Indian Affairs

Oversight Hearing on Tribal Recognition

May 11, 2005

Chairman McCain, Vice Chairman Dorgan and distinguished members of the Committee.

My name is Jodi Rell. I serve as Governor of the state of Connecticut. I thank you for scheduling this oversight hearing on tribal recognition and for inviting me here today. I also thank the members of Connecticut's Congressional delegation for their determined and unrelenting efforts, here in the halls of Congress and back home in Connecticut, to address the weaknesses and failings of the tribal recognition process. Their united leadership on this issue has been inspiring and is greatly appreciated by their constituents.

I appear before you today, giving my first congressional testimony as Governor of Connecticut, because this is such a critical issue to our state. Simply put, I strongly believe that a number of troubling, profound problems exist within the entire federal tribal recognition process and that legislative reform of this process is long overdue.

Let me unequivocally state that my concerns go directly to the issue of integrity and transparency of the recognition process itself, not to any particular tribe or their right to seek and receive recognition. To be sure, my state's history is inextricably intertwined with Native American history. In fact, the very word "Connecticut" is an Indian term which means "beside the long tidal river." We recognize and embrace our historical heritage and we have courteous,

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mutually respectful relationships with the Mohegan and Mashantucket Pequot Nations, both of which are located within the borders of our state.

Due to their own hard work and entrepreneurial spirit, these two tribal nations have thrived since receiving federal recognition several years ago. Their economic success has been nothing short of dynamic and has served as a catalyst for others, inside and outside of Connecticut, to seek recognition.

The process of federal recognition is admittedly lengthy and arduous - but for good reason. A successful petition for recognition, while serving as an official verification and validation of an historical group of people, will also dramatically and unalterably change the present day landscape of an entire community, region or state.

Connecticut is a relatively small state in geographical terms. Our state is as old as our nation itself and is densely populated. We have few vast expanses of open or undeveloped land, particularly in comparison to some of our Midwest and Western neighbors. Historical reservation lands no longer exist as such, and haven't for well more than two hundred years. They are now cities and towns, filled with family homes, churches, schools, shopping areas and the like.

It has been our experience in Connecticut that tribes simultaneously file land claims within the state as they pursue recognition with the federal government. Land claims place a cloud on the property titles of municipalities and their residents, resulting in many hardships and uncertainties. The land claims destabilize the housing market and compromise the ability of every homeowner or landowner within the claimed area to sell their properties free and clear in terms of title. In other words, someone living in a family home or on a family farm, which has been owned and passed down for several generations, may suddenly and startlingly be subject to an unforeseen land claim. Further, such a claim may not be based in fact, but rather on what a tribe contends its ancestral land to be.

This issue was very real to hundreds of thousands of Connecticut residents who lived under the constant threat of land claims by a group known as the Golden Hill Paugussetts, which claimed to be an Indian tribe. Approximately one quarter of the land area of our entire state was affected by this singular land claim, which languished for years as the Paugussetts sought multiple, and in the end unsuccessful, reviews of their recognition petition. For years, the land

records of hundreds of thousands of homes, businesses, churches, town halls and schools in Connecticut were in danger of being clouded because of a specious recognition bid. I say specious because the state knew from the beginning - and the BIA finally figured out in the end - that the Golden Hills Paugusetts did not in any way satisfy the necessary recognition criteria. We fought this recognition based on its shortcomings and inadequacies in the law, and we rightly prevailed. But the BIA has shown an increasing willingness to be "flexible" and "permissive" and to set aside the dictates of law and regulation in favor of granting recognition at all costs.

Let me say again, if a tribe can meet the requirements established by federal law to win federal recognition, it should be given all of the rights and privileges to which it is entitled. If a tribe cannot meet such criteria it should not be granted recognition – and yet it has, on two occasions, in Connecticut.

Given this, I cannot help but conclude that the process by which federal law is applied and recognition determination is made is broken. It is fatally flawed. It is inconsistent and often illogical. It is replete with conflicts of interest and disdain for adherence to the letter and spirit of law and regulation. It has resulted in a measurable loss of public confidence and an immeasurable lack of administrative integrity.

The two recent decisions impacting Connecticut, involving the Historic Eastern Pequot Tribe and the Schaghticoke Tribe, show the BIA's disregard for the law and a recognition system in need of wholesale restructuring.

In the case of the Eastern Pequot and Pawcatuck Eastern Pequot Petitions, the BIA miraculously achieved what neither petitioner could do or wanted to do on its own. That is, the BIA found that both tribes were a single "historical" tribal entity even though the tribes themselves could not agree on this point and did not seek such joint designation. Recognition evidently could not have been achieved individually by these tribes, so the BIA simply merged the petitions and the tribes themselves in order to grant recognition.

More recently, the decision by the BIA to recognize the Schaghticoke Tribe demonstrates what state officials and many citizens have long known. The BIA is awarding federal recognition to Indian tribes, regardless of evidence to the contrary. In December of 2002, the BIA issued a proposed finding that the Schaghticoke Tribe did not meet all seven criteria for recognition and the group's tenuous relationship with state of Connecticut did not add evidentiary weight to its

claim. On January 29, 2004, little more than a year later, however, the BIA reversed itself and issued a final determination finding that the tribe's relationship with Connecticut did strengthen their petition. An investigation of this astonishing reversal revealed a memo written by BIA staff just two weeks before the final determination. In the memo BIA staff admits that the Schaghticoke group did not meet the criterion for continuous political influence for two periods encompassing 64 years of its history. The memo also exposed that the BIA had full knowledge that the tribe had not met the seven mandatory criteria for recognition as established in regulations and precedent. The BIA, therefore, by its own written words, acknowledged that the Schaghticoke Tribe would not have been granted federal recognition if the BIA had followed federal law and existing precedent on recognition.

More recently, the BIA acknowledged that it used a flawed calculation method that mistakenly overstated the percentage of Schaghticoke-to-Schaghticoke marriages during the 19th Century. The error resulted in the recorded Schaghticoke intra-marriage rate falling to less than 20 percent, far lower than the required minimum of a 50 percent intra-marriage rate. Even with its own acknowledgement of this latest error, the BIA has not taken any visible action to reevaluate its flawed recognition of the tribe.

On another note further highlighting the failings of the BIA, a letter dated October 30, 2003, was uncovered that was sent from the Department of the Interior to the Hassanamisco Nipmuc petitioning group, a Massachusetts tribe with land claims in Connecticut. The letter was printed on DOI letterhead and identified as emanating from the "Office of the Secretary." It is addressed to a former BIA employee, who is, at present, the lead researcher for the Hassanamisco Nipmuc Band. The letter clearly outlines numerous ways in which the former BIA employee could manipulate the recognition criteria to ensure the success of his group's petition. The letter was unsigned and I am presently awaiting the results of an investigation by the Secretary of the Interior on the authenticity of the letter.

All three of the recognition petitions raise troubling concerns about the very integrity and administration of the BIA. Why has the BIA taken such an aggressive approach to federal recognition? Some say that its dual mission as Indian advocate and impartial decision-maker on recognition petitions are inconsistent and incompatible. Others believe that it has little oversight

from Congress and that it would greatly benefit from an extension of ethics laws to its operations.

Regardless, as the recent unbalanced decisions by the BIA demonstrate, there must be more control over the recognition process. There needs to be a more transparent and open process. I recommend the following:

- Codify the Recognition Criteria. It is time for the Congress to step in and reform the system by statute. The seven mandatory criteria for recognition of Indian tribes must be codified in statute. Congress should make it clear that the seven mandatory criteria set forth in the regulations are, in fact, mandatory – not mere guidelines.
- Impose a Moratorium. Impose an immediate moratorium on all BIA acknowledgement decisions pending a comprehensive review of the BIA recognition process to ensure that the process is fair to *all* interested parties.
- Eliminate the "Revolving Door" Exemption. The exemption from the federal "revolving door" policy for the employees of BIA must be eliminated. This exemption allows former BIA officials to represent and lobby the BIA on behalf of groups seeking recognition immediately after they leave the agency.
- Examine Impact of the Current Process. Examine how the federal process is usurping the powers of state and local governments to control local economic development, plan for the long term, and provide public safety services.
- Prohibit the Liening of Property by Tribes. Prohibit the ability of tribes to place liens on property to which they lay claim. This power presently allows for tribes to hold communities and states hostage and undermines property values paralyzing home sales throughout the affected region.
- Invalidate the Schaghticoke Decision. I am aware Congresswoman Nancy Johnson has proposed legislation to repeal the recognition of the BIA's final determination recognizing the Schaghticoke tribe, in light of new evidence and grounds for appeal. I further support efforts by the Connecticut congressional delegation and Connecticut's Attorney General in seeking a ruling by the BIA to invalidate the Schaghticoke final decision and, if appropriate, remand the

Schaghticoke application to the BIA for further consideration or forward the Schaghticoke application to the Secretary of the Department of the Interior for further review.

In conclusion, the BIA is a bureaucracy run amok. Connecticut, I am sure, is not alone in expressing frustration and anger about the current failed process. Legitimate tribes should have a legitimate opportunity to seek federal recognition. But the criteria and laws in granting recognition must be clearly and stringently adhered to by the BIA. Transparency must rule the process. The highest ethical standards for BIA employees must be put into place and met. All parties involved in a recognition petition deserve to be treated fairly in accordance with BIA regulations and federal law. Rules should not simply be changed in order to achieve a desired result.

I thank you for your time, and on behalf of the people of Connecticut, I ask that you consider the impact the current unrestrained recognition process is having on our state and others and that you adopt legislative and policy changes suggested to you today. Thank you.

Answers to Chairman McCain's questions on Tribal Recognition from Governor M. Jodi Rell

Question 1a. Governor, you strongly criticize the Federal Recognition process, but also want to "codify" the criteria part of the process. How would that improve the process?

A. It would send a very important message as Congressional ratification would give the seven criteria for federal tribal recognition the full force of their support. Codification would clearly and unequivocally define the criteria so that the BIA could not disregard them, as it does now in many instances. It would also prevent unwise rulemaking changes in the regulations and assure that legal action brought based on them would have greater force than it does now.

Question 1b. What do you see as the single largest problem with the federal recognition process, and can you tell us, specifically, what you would recommend to address that problem?

A. There is no one thing that is the largest problem with the present recognition process. The crisis at the BIA is created by several problems that together make for a process that is neither fair nor credible. The issues raised by recent recognitions cover the fact that the BIA perceives its precedent and regulations as "permissive and inherently flexible"; the agencies revolving door exemption allows for former employees to lobby the agency the day after they leave; political appointees can overrule the agencies full time experts; and the agency itself struggles in its mission as an Indian advocate and impartial decision-maker on recognition petitions.

Question 2: The State of Connecticut engaged in a formal relationship with the Eastern Pequot Tribe and the Schaghticoke Tribe for nearly 2 centuries, beginning before the United States was formed. It appears from well documented sources that the State often performed a role that the BIA now provides to Indian tribes. Why do you disagree that this provides evidence of the existence of these Indian communities as tribes?

A. The state of Connecticut has not argued that the Schaghticoke tribe did not exist prior to 1800. It has maintained; however; that the petitioning members of the Schaghticoke Tribe have not met the seven mandatory criteria for recognition established by federal regulation. For example, the Schaghticoke Tribe, as it exists today, is not a distinct community that has existed as a community from historical times to the present, and over a major portion of the 19th Century, and a substantial portion of the 20th Century, the Schaghticoke Tribe did not maintain political influence or authority over its members as an autonomous entity from historical times to the present, as required by the recognition criteria.

The state of Connecticut has never performed a role similar to the BIA when it "recognized" Indian tribes. As the state mentioned in its comments to the BIA on the Schaghticoke petition, "[t]he evidence of relations with state government does not support recognition of the petitioner as an Indian tribe under federal standards. For

most, if not all, of the historical period from colonial times to the present, the state never treated the Indian groups under its jurisdiction as distinct social communities having political authority or sovereignty. Indeed the evidence reflects a profound lack of state standards or evaluation similar to that required by the federal acknowledgement regulations.

Moreover, the manner in which the state recognized the existence of several Indian tribes is not a basis for supporting federal recognition. At best, the state of Connecticut dealt with members of the Schaghticoke tribe on an individual basis, not as members of tribal entity. In fact, the Schaghticoke's own description of the relationship between the state and their tribe depicts not a recognition of a political community, but an individualized relationship with persons requiring state assistance.

In conclusion, as the state argued in its comments to the BIA, the state's "recognition of Indian groups was not based on an evaluation of the sort of considerations that would support federal acknowledgment. In fact, [Conn. Gen. Stat. sec. 47-59a] states that its recognition was not intended to be used as evidence in support of federal recognition, underscoring that the purpose of and basis for state recognition was quite different from that for federal recognition and concomitant establishment of government-to-government relations."

Question 3. The Attorney General of Connecticut has submitted written testimony in which he calls for creating an autonomous agency with authority over recognition and trust land decisions. Should this be done? If so, why?

A. The Governor's Office and the Attorney General have jointly argued that the recognition process is presently broken and that there is an inherent conflict present at the agency between its mission as an Indian advocate and impartial decision-maker on recognition petitions. While the recommendation may or may not have merit, the Governor's Office has no position on his proposal.

Question 4a: I understand the state has been involved in litigation with the Tribe in Federal Court. Did the state agree to a settlement of litigation with the Schaghticoke Tribe that included allowing the Tribe to go through the Federal Recognition process?

A. No. The state did not agree to a settlement of any litigation with the Schaghticoke Tribe. On March 31, 1999, the U.S. District Court for the District of Connecticut stayed litigation filed by the Tribe pending a determination by the BIA on the issue of Tribal acknowledgement. Upon the Tribe's motion, that stay was lifted on September 11, 2000. The parties then negotiated deadlines for a Proposed Scheduling Order, which the Court entered on May 8, 2001 ("Order"). A copy of the Order, and an amendment to it, are attached to this document.

As you will see, the Order merely established the timeline for various submittals by the parties to the BIA and provides that each filing be copied and provided to each of the parties. The State made no other representations.

Question 4b. Did the State agree to abide by the decision rendered by the process?

A. No. While the State acknowledges the authority of the BIA, it made no representations that it would not appeal or challenge the final determination of the BIA. In fact, section (k) of the Order, and the amendment to the Order, provide for specific timelines for filing an appeal of a final determination.

Question 4c. Would the federal legislation, introduced by Congresswoman Johnson that would bar the Schaghticoke's recognition be inconsistent with that federal litigation?

A. No.

Question 5. The Inspector General's Office just reported that it investigated the process by which the Schaghticoke tribal acknowledgement decision was made and found that the federal officials involved conducted themselves in keeping with the requirements of the administrative process; that their decision making process was made transparent by the administrative record; and that the aggrieved parties sought an appeal "each as it should be." Do you disagree with these findings? Why?

A. Presumably, you are referring to the letter ("Letter) sent from the Office of the Inspector General ("OIG") to Senator Christopher Dodd, dated August 27, 2004. The state does not agree with the findings of the OIG in the Letter and would stress that it spoke only to investigations of specific allegations relative to the Schaghticoke, not flaws with the process itself.

The State stands by each of the allegations made relative to this recognition. We applaud the recent decision of the IBIA to rescind the recognition of the Schaghticoke Tribe. The conclusion reached by the OIG in the Letter is hardly a vindication of the process.

We disagree with the OIG's findings regarding the tribal recognition regulations. Specifically, the OIG states that the recognition"[r]egulations as written, are permissive and inherently flexible, and therefore afford latitude in the in the evidence used and considered to support federal acknowledgement." Such a statement reinforces the state's point that codification of the recognition criteria is required when this is the agencies mindset. It also demonstrates that the OIG, in this instance, simply accepted the illogical and unsupportable position of the BIA that it can deviate from the proscribed criteria without accountability.

We also maintain the process is not transparent. One example would be that many federal agencies log every call and contact made with parties and lobbyists relative to its business, the BIA does not. Further, there is little of substance on the record that explains the BIA's miraculous change of opinion from the preliminary finding in 2002 (that the Tribe failed to meet 2 of the 7 criteria for full recognition) to the BIA's recognition of the Tribe in 2004. Finally, we believe that the flaws in this process

were substantial enough to have merited the rescinding of the Tribe's recognition on May 13, 2005.

Should you require a more detailed, substantive report on the flaws in the federal acknowledgment process, I suggest you consider the findings of two additional reports. The first is a February 2002 report of the OIG, *Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming,* which highlighted numerous examples of seriously questionable, if not borderline illegal, behavior at the BIA in relation to six tribal recognitions. The Second is a November 2001 report by the GAO. This report rightfully states that the current acknowledgment process lacks clear guidance on how the BIA should interpret the seven mandatory criteria for federal recognition. For example, the report states that "it is not always clear what level of evidence is sufficient to demonstrate a tribe's continuous existence over a period of time." This is an area of particular concern to the state of Connecticut as we have spent millions of dollars and several years arguing this exact point as it relates to multiple petitioners. Clearer standards on this criterion alone would mean a substantial improvement in the acknowledgment process.

The GAO report also points out other flaws in the recognition process; for example: the length of the process, inadequate staffing and funding and unpredictable decisions.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RECEIVED COPY

UNITED STATES OF AMERICA,	:	
PLAINTIFF,	:	
V.	:	
43.47 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COUNTY OF LITCHFIELD, TOWN OF KENT, ET AL.,	:	CIVIL NO. H-85-1078(PCD)
DEFENDANTS.	:	

****

SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
KENT SCHOOL,	:	CIVIL NO. 3:98CV01113(PCD)
DEFENDANTS.	:	

****

SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
CONNECTICUT LIGHT & POWER,	:	CIVIL NO. 3:00CV00820(PCD)
DEFENDANTS.	:	

ORDER

The following order is entered to permit, and establish a framework for, the determination by the Department of the Interior ("DOI") on the petition for tribal acknowledgment submitted by the Schaghticoke Tribal Nation. This Order is meant to serve the rights and interests of all parties to the captioned litigation, and allow the DOI to determine the merits of the petition on a schedule other than that set forth in the applicable regulations, 25 C.F.R. Part 83, except as otherwise provided herein. For purposes of the Order, the terms "party" or "parties" include the United States, the petitioner Schaghticoke Tribal Nation ("peitioner"), the defendants in these cases and any *amicus curiae* parties ("*amici*").

Based upon negotiations conducted among all the parties and *amici* in the above-captioned cases the Court orders the following:

a) The Documented Petition and the administrative correspondence file as of January 19, 2001, have been provided by the Bureau of Indian Affairs ("BIA"), on CD-ROM, to each party and *amici*. The genealogical information from the petition in the Family Tree Maker format, has also been provided to each party and *amici* on computer disks.

b) The design of a database in progress. The design of the database will be finalized and a copy provided to the parties

and *amici* by September 1, 2001. All parties and *amici* may, and shall to the extent they have information which permits their doing so, comment on a proposed design by May 1, 2001. Assistant U.S. Attorney John B. Hughes will schedule, in New Haven on June 1 or 4, 2001 a conference to include members of the BIA staff and/or consultants, to permit a detailed discussion with parties, *amici* and counsel of the status of the design and providing details sufficient to permit the parties and *amici* to comment meaningfully on the design. The parties and *amici* shall comment within 14 days. Further comment will only be accepted by BIA on a showing that despite due diligence, the basis for the comment was not reasonably known or available within the time limits set forth herein, and modifications will be made only to the extent feasible and appropriate. The BIA will report, to the court, the parties and *amici*, the status of the design development on June 20, 2001.

c) On or before December 17, 2001, the parties and *amici* shall provide an initial submission of any information or documents deemed appropriate to the determination of the petition for inclusion in the administrative record and database. By February 15, 2002, the parties and *amici* shall submit comments, information, documents, analysis or argument, for

inclusion in the administrative record and database. The actual creation of the initial database, after finalization of its design, including any modifications, shall be completed by March 15, 2002. The time period for completion of the database may be extended by the court depending on the nature and extent of the comments received.

d) The BIA will serve notice of its entry of the data in paragraph (c) into the initial database and serve copies of it on CD-ROM to the parties and *amici*, within five business days. Upon service of such notice, the BIA shall commence development of a proposed finding to be completed within 6 months. All parties and *amici* may provide comments on the initial database for 30 days following service of the database. No new factual documentation will be accepted. Notwithstanding the prior creation of the initial database, it is contemplated that the BIA may alter or add to the database during the decisional process.

e) Upon issuance of the proposed finding, including the summary of the evidence under the criteria, the BIA shall serve it, including, if any, charts and technical reports, on all parties and *amici* within 10 days. The databases as supplemented by BIA staff and any supplemental documents

considered by the Assistant Secretary - Indian Affairs in the formulation of the proposed finding, not previously provided to the parties and *amici*, shall be served on all parties and *amici* within 30 days, subject to the assertion of any privileges by DOI. A log identifying the documents and the asserted privileges will be provided.

f) The parties and *amici* shall submit all comments, information, documents, analysis or argument on the proposed finding, including the summary of the evidence under the criteria, within 6 months of its service. Parties and *amici* may request the court for an extension of the comment period on a showing of good cause which shall mean any cause which could not in the exercise of due diligence be reasonably avoided. Any reply by petitioner shall be filed with the BIA within 30 days of the close of the comment period.

g) Any party or *amici* to these cases wishing technical assistance, as provided in 25 C.F.R. 83.10(j)(2), shall request the same from the Assistant Secretary - Indian Affairs not later than 30 days after service of the proposed finding. Any such request shall be in writing and contain a detailed statement of the questions for which technical assistance is requested. A formal technical assistance meeting compliant

with such request(s) and 25 C.F.R. 83.10(j)(2) shall be held in Washington, D.C., within 60 days of the first such request. The BIA will develop an agenda for the formal technical assistance meeting which would permit the BIA staff to cover all of the subject matter areas raised. The parties shall use their best efforts to complete the agenda in two days or less, but in no event shall the meeting last more than three days.

h) The final determination, including the summary of the evidence under the criteria, of the petition shall be issued by the Assistant Secretary - Indian Affairs within 4 months of the end of petitioner's reply period. Notice of the final determination shall be published in the Federal Register, and the BIA shall serve copies of the final determination, including the summary of the evidence under the criteria, on the parties and *amici* within 5 business days of issuance of the final determination. The database as supplemented by BIA staff and any supplemental documents considered by the Assistant Secretary - Indian Affairs in the formulation of the final determination, not previously provided to the parties and *amici*, shall be served within 30 days of service of the final determination on all parties and *amici* subject to the assertion of any privileges which shall be set forth in a log identifying the documents and the asserted privileges.

i) The final determination shall be effective 90 days from the date notice is published in the Federal Register unless independent review and reconsideration is requested under 25 C.F.R. § 83.11 or unless any party or *amici* files a petition for district court review as set forth in paragraph (j)below. The final determination shall have no probative effect or value for purposes of the land claim issues remaining for the court's consideration in these cases until such time as a final judgment is entered on any review of the final determination under the Administrative Procedure Act ("APA") and all further rights of appeal have been exhausted. Nothing herein shall prevent any party or *amici* from seeking a court order staying or enjoining the effectiveness of the final determination for any other purposes.

j) The parties and *amici* agree to defer further negotiation of the question of whether, for purposes of this case, an appeal of the final determination to the Interior Board of Indian Appeals (IBIA) may be filed. The negotiation period shall commence three months after the end of the petitioner's reply period as set forth in paragraph (f) above and conclude no later than thirty days after the final determination is issued by the Assistant Secretary - Indian Affairs. The parties shall report to the court, through Assistant United States

Attorney John B. Hughes, within five days of the conclusion of the negotiation period. Participation in such negotiations shall not be construed as a waiver of any right to seek independent review and reconsideration under 25 C.F.R. §83.11 nor shall any party, *amici*, or interested party be compelled to forego such right. The negotiations among the parties shall be limited to the question of whether, for purposes of this case, the appeal of the final determination for independent review and reconsideration under 25 C.F.R. § 83.11 is to be made to the IBIA or shall be a part of a petition for review filed in the District Court under the Administrative Procedure Act. If a party requests independent review and reconsideration under 25 C.F.R. § 83.11(a)(1) and the Interior Board of Indian Appeals (IBIA) determines to take the appeal under § 83.11(c)(2), any party may request the Interior Board of Indian Appeals (IBIA) to expedite its consideration of and decision in such proceedings and represent in such request that the other parties who are subject to this Order give their consent thereto, except the Department of the Interior which agrees not oppose the request. If as a result of the negotiations, however, the parties agree that the issues for review set forth in 25 C.F.R. § 83.11 may be included in any petition for review filed with the District Court under the Administrative Procedure Act, such issues shall be decided by

the Court as part of such review under the standards identified in 25 C.F.R. § 83.11. Upon any such combined petition for review the Court shall determine the effective date of the final determination from which the petition for review has been taken.

k) Any petition for review of the final determination under the Administrative Procedure Act by any party to these cases shall be filed within 90 days of the date that notice of the final determination was served and shall be filed in this court as a case related to the above-captioned cases.

l) Nothing in this order shall prohibit any party or *amici* from requesting informal technical assistance from BIA staff nor prohibit the BIA Branch of Acknowledgment and Research ("BAR") staff from providing technical assistance in response to such requests pursuant to 25 C.F.R. §83.10(j)(1). No non-federal party or *amici* shall communicate or meet with any officials in the immediate offices of the Secretary of the Interior, the Assistant Secretary - Indian Affairs or the Deputy Commissioner of Indian Affairs with respect to this petition, without notification to the other parties.

m) The parties shall be permitted to conduct discovery as

provided for in the Federal and Local Rules of Civil Procedure, and in accordance with the previously entered Confidentiality Order, except that no discovery shall be directed against the United States Department of the Interior. Such discovery shall be relevant to the issue of tribal acknowledgment of the petitioner, unless the petitioner and a requesting party otherwise agree. Written discovery directed against a party to these proceedings shall be propounded not later than December 1, 2001. Discovery directed to or against persons or entities who are not parties to these proceedings may be made at any time. Discovery requests and responses shall be provided to all parties to this agreement. Copies of deposition transcripts shall be made available to all parties and *amici* as provided in the Federal Rules of Civil Procedure. Such responses and transcripts will not be included in the database or administrative record unless specifically submitted for inclusion.

n) Extensions of time may be allowed by the court for good cause which shall mean any cause which could not in the exercise of due diligence be reasonably avoided.

o) Except as otherwise provided in this Order the regulations set forth in 25 C.F.R. Part 83 are applicable to the BIA's

consideration of the Schaghticoke Tribal Nation's petition.

p) Any pleadings, documents, correspondence or other materials filed with this Court or with DOI, BIA, or BAR by any party or *amici* shall be served on all parties and amici in accordance with Rule 5, Federal Rules of Civil Procedure.

q) All proceedings in this court on these cases shall be stayed except as otherwise provided herein or unless leave of court is granted or all the parties agree.

SO ORDERED.

Dated at New Haven, Connecticut, May , 2001.

Peter C. Dorsey
Senior United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

FEB 27 3 18 PM '04

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA,	:	
PLAINTIFF,	:	
V.	:	
43.47 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COUNTY OF LITCHFIELD, TOWN OF KENT, ET AL.,	:	CIVIL NO. H-85-1078(PCD)
DEFENDANTS.	:	

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SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
KENT SCHOOL,	:	CIVIL NO. 3:98CV01113(PCD)
DEFENDANTS.	:	

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SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
CONNECTICUT LIGHT & POWER,	:	CIVIL NO. 3:00CV00820(PCD)
DEFENDANTS.	:	

[~~PROPOSED~~] AMENDED ORDER

The Stipulated Scheduling Order entered by the Court on May 9, 2001 is hereby amended to modify paragraph (k) to read as follows:

(k) Any request for judicial review of the final decision under the Administrative Procedure Act by any party or *amici* to these cases shall be filed within 90 days of its effective date and shall be filed in this court as a case related to the above-captioned cases.

The balance of the Order, as previously amended, shall remain in effect.

SO ORDERED.

Dated at New Haven, Connecticut, February 27, 2004.

Peter C. Dorsey
Senior United States District Judge

STATE OF CONNECTICUT
WASHINGTON, D.C. OFFICE

M. JODI RELL
GOVERNOR

MEMORANDUM

TO: Senate Committee on Indian Affairs, 836 Hart

FROM: Julie Williams, Director, Washington Office of Connecticut Governor M. Jodi Rell

DATE: May 11, 2005

RE: Today's Oversight Hearing on Federal Recognition of Indian Tribes

---

Attached is a copy of the Bureau of Indian Affairs memo referenced in Governor Rell's testimony today. Chairman McCain specifically asked that it be submitted for the record. Please let me know if you have any questions.

444 NORTH CAPITOL STREET, SUITE 317
WASHINGTON, D.C. 20001
202-347-4535 (T)
202-347-7151 (F)

M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT
06106

FAX MEMORANDUM

DATE: May 11, 2005

TO: Julie Williams

FAX NUMBER: **202-347-7151**

NO. OF PAGES: 8 including this cover sheet

FROM: Phil Dukes
Counsel for Policy
State Capitol, Room 212
Hartford, CT 06106

Telephone Number: (860)-524-7340
Fax Number: (860) 524-7366

SUBJECT: **Schaghticoke Memo Cited by Governor and Requested by McCain**

Julie,

Attached please find a copy of the memo by the BIA indicating their understanding that the Schaghticoke do not meet the required criteria for tribal recognition. Governor Rell specifically referenced this in her testimony. Senator McCain interrupted the Governor to ask that this memo be submitted for the record.

We need you to get this over to the committee immediately so that it is properly responsive to the Senators request that it be submitted to the record. I would also recommend we send another copy under cover letter to the Senator, so that he has an opportunity to see it first hand. Thanks.

Phil Dukes
If you have any problems receiving this transmission, please call Phil at (860) 524-7340

Special Message:
NOTICE: This telecopy transmission and any accompanying documents may contain confidential or privileged information. They are intended only for use by the individual or entity named on this transmission sheet. If you are not the intended recipient, you are not authorized to disclose, copy, distribute or use in any manner the contents of this information. If you received this transmission in error, please notify us by telephone IMMEDIATELY so that we can arrange retrieval of the faxed documents.

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03/16/2004 13:32 FAX 007
Mar 10 04 04:42p Sienkiewicz & McKenna 18603554439 p.2

Lee Fleming
01/06/2004
05:33 PM

To: Aurene Martin/DC/BIA/DOI@BIA, Theresa Rosier/DC/BIA/DOI@BIA
cc: George Roth/DC/BIA/DOI@BIA, Virginia DeMarce/DC/BIA/DOI@BIA, Rita Souther/DC/BIA/DOI@BIA, BARBARA COEN/HQ/SOL/DOI@DOI
Subject: Briefing for Schaghticoke, Petitioner #79

☐ Return receipt

Aurene & Theresa,

We were able to schedule a briefing for both of you on issues pertaining to the Schaghticoke petition for Federal Acknowledgment as an Indian tribe. The purpose of this briefing is to present you with two specific issues regarding this case and to obtain your direction on these issues. These two issues will set precedence and OFA needs your direction to complete the Final Determination recommendation.

We are preparing a briefing paper addressing these issues, complete with options, and will provide you this briefing paper on Monday, January 12, 2004. Then, on Tuesday, January 13, 2004, in the Assistant Secretary's conference room at 10:00 a.m., the OFA research team, our solicitors, and I will provide you the briefing on these issues.

Either at the end of the briefing or shortly there after, we would like to receive your directions regarding these issues. Your prompt attention will allow us to complete our work on the Final Determination recommendation.

We anticipate that the packet for the Final Determination recommendation will enter into the surname process during the week of the January 19th. Under the court-approved negotiated agreement, the decision regarding the Schaghticoke petition is due on January 29, 2004.

Theresa, if your schedule permits, I also would like to meet with you tomorrow to talk about the roll out of this decision as it pertains to the court-approved negotiated agreement, such as 1) what time will we call the petitioner and interested parties, followed by Congressionals and the media on the 29th, 2) when to fax some of the decision documents, either the evening of the 29th or the morning of the 30th, and 3) when to allow for pick-up of the decision documents after 3:00 p.m. on the 30th or Fedex to those who do not pick-up by 5:00 p.m. that same day.

June 17, 2005

Senator John McCain
Chairman, Committee on Indian Affairs
Washington, DC 20051-6450

Dear Senator McCain:

Thank you for allowing me the opportunity to provide additional information regarding the tribal recognition process to you and members of the Committee on Indian Affairs. As cleared with the Committee staff, these documents have been sent to the Committee via Microsoft Word, in lieu of Wordperfect.

If I can be of further assistance to you and members of the committee, please do not hesitate to contact me. The federal recognition of Indian tribes is of the utmost importance to me and the citizens of the state of Connecticut. I welcome any opportunity to discuss these issues with you further.

Very truly yours,

M. Jodi Rell
Governor

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 included in the record reviewed.

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 explicit 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, who 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 these 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 FF 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 Acknowledgment, 1/12/2004

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Oversight Hearing Before the Senate Committee on Indian Affairs On Federal Recognition of Indian Tribes

Wednesday, May 11, 2005
9:30 a.m.
Room 106 Dirksen Senate Office Building

"I can not dismiss the subject of Indian affairs without again recommending to your consideration the expediency of more adequate provision for giving energy to the laws throughout our interior frontier and for restraining the commission of outrages upon the Indians, without which all pacific plans must prove nugatory. If in addition to these expedients an eligible plan could be devised for promoting civilization among the friendly tribes and for carrying on trade with them upon a scale equal to their wants, and under regulations calculated to protect them from imposition and extortion, its influence in cementing their interest with ours could not but be considerable."
Excerpt from Fourth Annual Message of the Honorable George Washington, President of the United States, November 6, 1792

Testimony of:
Calvin R. Rose
Strawberry Valley Rancheria / California
Tribal chairman

Good morning Chairman McCain, Senator Dorgan, and members of the Committee. My name is Calvin Rose and I represent and speak for our northern California tribe of Strawberry Valley Rancheria. Let me first say thank you for having this hearing today on federal recognition of Indian tribes. *Because Strawberry Valley Rancheria was already federally recognized by the U.S. government in the past, the Federal Acknowledgment Process does not apply to our circumstances.* However, as a tribe operating under the principles of leadership, of governmental cooperation, and of ethical decision-making, we wish to provide the Committee with our thoughts on this important matter. We respectfully suggest that our thoughts will add potential value to the national dialogue.

Current draft legislation in the House Committee on Resources, H.R. 512, requires the prompt review by the Secretary of the Interior of the longstanding petitions for federal recognition of certain Indian tribes, and for other purposes. The *Federal Acknowledgment Process (FAP)* per 25 C.F.R. Part 83, and as administered by the *Office of Federal Acknowledgment (OFA)* within the Department of Interior (DOI) and Bureau of Indian Affairs (BIA), determines which groups are "Indian tribes" within the meaning of federal law. H.R. 512 specifically addresses the "process of administering the Process (FAP)". To be clear we believe H.R. 512 is an admirable starting point for a much-needed national dialogue, and we commend the House Committee on Resources for starting this dialogue. We also assume the Senate Committee on Indian Affairs may be simultaneously considering additional legislation.

There is no dispute as to the integrity of the criteria applied during the FAP. In fact these seven criteria, as codified in section 83.7 of title 25, Code of Federal Regulations, are properly left unchanged in current draft legislation. At issue are the key factors *impacting the process of administering* the FAP. The key factors in our opinion are: *tribal input, analysis of input, and time considerations.*

A brief review of the *current state* of the process of administering the FAP highlights how the key factors, articulated above, intersect with circumstances out of the control of the FAP:

- *Tribal input* – As stated in official guidelines to the FAP, "the burden of proof is on the petitioner". Yet data required for tribal input is often located with the U.S. government in the historic, custodial environment provided by law in our country. Thus the quality of custodial maintenance of key documentation by the U.S. government, over the decades and centuries, can and does impact the required "burden of proof" for petitioners on many occasions. As discussed by U.S. Department of Interior officials in prior hearings, over 200 recognition petitions have been received that have incomplete or no documentation. Additionally law changes, mandatory geographical movement of tribes and other factors has contributed to incomplete tribal input in some cases.
- *Analysis of input* – Analysis of input requires specific competencies including but not limited to cultural anthropologists, historians, and genealogists. Additionally the analysis of input during the FAP, as with any independent analysis and research in the new millennium, is enhanced by access to the Internet. The BIA continues to be disconnected from the Internet because of ongoing security concerns involving Indian trust funds. Also current federal statutes necessitate interpretation of tribal continuity, distinct tribal community, and tribal political authority from historical times to the present, without well-defined allowances for historic government policies to remove, relocate and assimilate various tribes.
- *Time considerations* – Time considerations apply to the FAP, in terms of matching human resources to the appropriate tasks. Time considerations also apply however to attempts to expedite the overall appeal process via current draft legislation. The General Accounting Office indeed has addressed time considerations in their recent study (GAO-05-347T) of the federal recognition process.

Recent hearings and draft legislation, in this Committee and in the House Committee on Resources, have begun to focus on key Indian country priorities including tribal recognition legislation, fair settlement of Cobell litigation, Indian health care reauthorization, and legislation pertaining to off-reservation gaming abuses. Strawberry Valley Rancheria applauds and echoes these priorities with the caveat that the Committees should be mindful of the impact of these other priorities on tribal recognition issues.

As articulated above, the BIA and OFA as administrator of the FAP cannot control factors such as historical, custodial maintenance of key documentation and access to the Internet. Certainly the BIA only has limited control over the appropriations required to maintain minimum, target competencies and resources for its OFA office. Just as importantly the BIA does not control the political climate and perceptions of urgency in some cases of desired tribal recognition, as pertains to gaming issues.

The solutions in our opinion however lie somewhere between the current state and the proposed processes per current draft legislation. Specifically we respectfully suggest the Committee endorse legislation that:

- Improves the communication process with tribes when feasible in order to expedite process. Tribes simply and often do not have the resources or permanent offices in order to complete the FAP. Additionally, and as discussed in the context of historical, custodial maintenance of key documentation, the BIA and OFA spend up to forty percent of their time on administrative duties such as Freedom of Information Act requests related to recognition petitions. In other words the BIA provides data to the tribes, data that is often assembled for submission right back to the BIA. Streamlining this circular information flow, from government to tribe and back to government, represents *potentially substantial process improvement, time savings, and cost savings*.
- Finds ways to immediately provide Internet access for BIA and OFA research and data, recognizing that this research is separate from trust fund maintenance, recognizing that the Internet is necessarily a key academic research tool for all of us today, and recognizing it will speed up the process. Internet access also comprises a key, required element of the BIA September 2002 Strategic Plan, in response to GAO's report mentioned above.

- Avoids the review and appeal path through United States district courts, as proposed by current draft legislation. In our opinion tribal recognition evaluation is primarily a cultural issue. Secondarily tribal recognition evaluation is an appropriations allocation issue. Cultural experts should make tribal recognition determinations. Public participation and parochial state and community review is also important. It is neither fair to the judiciary nor fair to the tribes to require that Federal judges wear the mantle of Indian tribe recognition expert.
- Avoids the burden of new administrative process deadlines being imposed, by new legislation, in lieu of tighter time deadlines within the existing FAP enacted through FAP *process improvements*. In the interest of fairness to all parties involved, including the U.S. government, new expedited deadline requirements should accompany appropriate new resources, albeit temporary, within the BIA to accomplish the expedited tasks required. In addition to suggestions above regarding process improvements, the BIA and OFA should be provided with the human capital to adequately assess recognition petitions. Given that this additional requirement for human capital will be finite in duration, adequate near-term appropriations should be readily approved.
- Considers prior draft legislation entitled the *California Tribal Status Act* (CTSA) as drafted by the Advisory Council on California Indian Policy (ACCIP). The ACCIP was created by Public Law 102-416, passed by the U.S. Congress in 1992. The CTSA provides for recognition criteria *interpretation* that takes into account the effects of historic government policies to remove, relocate, assimilate and terminate various tribes. The CTSA also offers recognition petition review alternatives tailored to geographically specific circumstances. The CTSA further has *national* tribal applicability and value.
- Recognizes the overall cultural value to the entire United States of quality anthropologists, historians and genealogists "roadmapping" our country's past in order to learn from history and benefit future generations. Simultaneously we help the tribes and speed up the recognition process, a win-win situation. In short we should appreciate the overall benefit to our society of understanding culture and of enabling recognition when appropriate, *thus creating a tide that raises all boats.*

The crux issue with federal recognition of Indian tribes today appears to be expediency and timeliness. Summarizing the comments of the Honorable George Washington, as quoted at the top of this testimony, *we must balance the expediency given to providing more legislation with the expediency given to maintaining a fair approach, both for tribes and for the U.S Government. It is within that balance that we will cement the interest of all parties into ever-stronger bonds.*

A pragmatic issue at the heart of this balance is the effective allocation of appropriations funding for the enactment of legislation discussed in this hearing. Current draft legislation in our opinion will potentially result in less effective, rushed review of existing and future recognition petitions. More appeals of results will occur with an increasing burden on the judiciary under current draft legislation. The aggregate opportunity cost to the federal system likely increases under this scenario. Alternatively a well designed investment in the above suggested resources and process improvement, generating more effective determination results nationally with less appeals, will prove to be a more cost effective investment of federal appropriations. Strawberry Valley Rancheria stands prepared to assist in any way we can help.

Strawberry Valley Rancheria also comes before the Committee today because we have been treated unfairly in the past. As a federally recognized Indian tribe since the early 20th century, Strawberry Valley Rancheria was among over forty California tribes whose federally recognized tribal status was *unfairly terminated* by the U.S. Congress under the 1958 Rancheria Act. Meanwhile our tribal members still maintain contact, culture and internal governance, despite the inability of the Bureau of Indian Affairs to provide much assistance during our prior recognition and no assistance at the present time. Our tribal government meets at least monthly while awaiting our proper restoration.

Since the legislative terminations, the U.S. government has been involved in some judicial decisions that have set aside the termination of tribes per the Rancheria Act of 1958, and subsequently restored their prior recognition. In a key California case, *Tillie Hardwick et al. v. United States*, Civil No. C-79-1910-SW (N.D. Cal. 1983), the courts ruled that the United States government had unfairly terminated seventeen tribes, *thus setting a restoration precedent for all terminated tribes*. The stipulated judgment provided that *"individual members of the Rancherias would be restored to their status as Indians and the U.S. would recognize the Indian Tribes with the same status as they possessed prior to distribution of these Rancherias"*. The inability of many other California tribes, including Strawberry Valley Rancheria, to participate in the benefits of the *Tillie Hardwick* decision was directly related to financial hardship from discontinued federal assistance.

In November 1994, Public Law 103-454 codified a single U.S. Congressional remedy for unfair tribal termination. P.L. 103-454, Title 1 specifically states that *"Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated"*. Every restoration of a terminated tribe since 1994 has been subsequently accomplished through U.S. Congressional legislation. P.L. 103-454 additionally enacted the Federally Recognized Indian Tribes List Act of 1994, the official list now used by the federal government to recognize all Indian tribes.

The FAP *has never applied to terminated tribes*, because terminated tribes have already been *previously recognized*, as specifically stated in 25 C.F.R. Part 83.7(g). In fact the Official Guidelines to the Federal Acknowledgment Regulations, specifically recommends contacting members of Congress and *"seeking legislation to restore your tribe"*. By law there is but one avenue available to resolve our unfair termination and that avenue begins with this Committee. Strawberry Valley Rancheria should be restored as a demonstration of a meritorious tribe, playing within the rules on the restoration process and playing within the rules on proper use of reservation land per federal law. We believe that the Committee will concur and we respectfully request the Committee's full support in helping our meritorious voice be heard over the din of other current issues.

Many individuals present in this hearing and familiar with Indian history in our country, likely recognize a recurring theme of historic injustice towards tribes in our circumstances. Yet Strawberry Valley Rancheria chooses to look to the future with no anger about the past. History cannot be rewritten. However history can be examined and understood in order to build a better future for all of us. It is in this proactive vein that Strawberry Valley Rancheria continues to develop the tribal infrastructure to work with all other governments and to obtain our fair and meritorious tribal restoration. This task has not been an easy one. Many of the current issues facing the Committee have clouded the waters, particularly those issues surrounding Indian gaming. Our constant efforts to request that fair attention is paid to our meritorious request for restoration has gone largely unnoticed, our voice drowned out by many of the tribal economic development issues prevalent today.

Strawberry Valley Rancheria has accomplished all of the tribal infrastructure development that I have discussed today without the benefit yet of being meritoriously and rightfully restored as a tribe. We have accomplished this through tribal continuity, through leadership, through governmental cooperation, and through ethical decision-making. We respectfully offer our key leadership skills to the Committee, and offer our business and problems-solving expertise to the Committee in any way we can help you on the federal recognition issues. In closing we simply and respectfully ask for a fair trade off with the distinguished Senate Committee on Indian Affairs. We request your immediate support for our just and fair restoration as a tribe, through the only avenue available to us, and beginning with you. In return we wish to offer you our immediate support and assistance on your potential future legislation regarding federal recognition of Indian tribes. I would like to genuinely thank all in attendance today for their valuable time.

TESTIMONY
SENATE INDIAN AFFAIRS COMMITTEE
HON. ROB SIMMONS (CT-2)
May 11, 2005

Mr. Chairman and members of the Committee,

Thank you for holding this hearing, and for allowing Connecticut officials to testify on behalf of our home state. I'm glad to join my Connecticut colleagues from both houses of Congress and from both sides of the aisle. As with all issues that so deeply affect our home state, this is an issue where we, as a delegation, try to speak with one voice without regard to party affiliation.

I also want to thank our wonderful governor, Jodi Rell, for taking the time from her busy schedule to come to Washington to testify at this hearing. She has shown great interest and commitment to this issue since taking office. I know I speak with the entire delegation when I say thank you, Governor, for your leadership on this and so many other important issues facing our great state.

Mr. Chairman, there are few other matters as important to our state and my congressional district as that of a deeply flawed tribal recognition process.

Indeed, no other state in America has felt the impact of the Bureau of Indian Affairs' (BIA) broken 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 more groups seeking recognition over the past three years, we face the potential of at least two more casinos in the immediate future.

To be fair, 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, provide 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 has meant the right to operate a casino 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, has testified in great depth numerous times before Congress about the unique burden towns such as his must bear.

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 not objective and not based in the criteria set forth. 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 exercise our jurisdiction over these issues and act promptly before a serious problem grows worse.

Over the last three 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.

In this same time period, the BIA denied recognition to the Golden Hill Paugussett group, located in Colchester and Bridgeport, and the to the two Nipmuc groups, located in Massachusetts but targeting land in northeastern Connecticut – in my congressional district. Both the Golden Hills and the Nipmucs are now pursuing appeals to overturn the BIA's decision.

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 viewed as mere suggestions or guidelines, easily ignored or bypassed when necessary to reach a desired result. Even the Inspector General of the Department of Interior, Earl Devaney, admitted as much when in issuing a report on the Schaghticoke decision he described the process as being "permissive and inherently flexible."

Indeed, there is no better example of this disregard for the regulations in place than in the case of the Schaghticoke decision. In an internal memorandum prepared by staff in the BIA's Office of Federal Acknowledgement for one of the top officials in charge of recognition, there was a road map or blueprint laid out as to how BIA could justifiably find in favor of the

Schaghticokes despite their own admittal that "based on the regulations and existing precedent" they did not meet the standard for recognition. The disclosure of this memo laid bare what we in Connecticut have known to be the case for some time, Mr. Chairman – officials at the BIA are more advocates and consultants to groups seeking recognition than they are impartial arbiters of tribal history and continuity.

We all agree that legitimate groups 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 each of the seven criteria. To make certain these standards are met, I have 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 or simply work around the criteria to find in favor of a petitioner, as they did in the case of the Schaghticokes.

And the problem is no longer limited to just our state. Indian recognition and the possibility it brings to open a casino has become a tremendously lucrative proposition to gambling interests and some developers. 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. Last year it was $18.5 billion from tribes across 28 states – more than half the union. Predictably, wealthy individuals and corporations have begun to lobby on behalf of groups seeking federal recognition. More 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. These officials need a "cooling-off period" during which they can put distance between their public service and private gain. The legislation I introduced on behalf of the Connecticut House delegation to put the seven criteria in statute would also end this troubling 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 ability of petitioners that are backed by powerful gambling interests to get to the front of the line. In March of last year, 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 reference to the business relationship between the most recent head of the BIA, David Anderson, and the primary backer of the aforementioned 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.

Faced with questions from me and other members of our delegation, Mr. Anderson took the step of recusing himself from all federal recognition decisions and eventually resigned just one year into his tenure at the agency. Three months after his resignation, the president has yet to offer a nominee to take the helm at this troubled agency. Mr. Chairman, when the top official at the body tasked with making Indian recognition decisions must remove himself

from these decisions because of *his own* ties to gambling interests I think the problem becomes self-evident.

Before I close my remarks let me share one more story that I think illustrates the problem that brings us here today. As I mentioned earlier, there are two groups -- both known as the Nipmucs -- based in Massachusetts but seeking to build a casino in Connecticut. Although both of the competing groups saw their petitions turned down by the BIA last spring, each has appealed. It was revealed last fall that there was a letter on Department of Interior letterhead offering strategic advice to one band of the two groups as to how best to pursue federal recognition. The letter was unsigned and crafted in a very unprofessional manner and officials at the Interior Department were quick to deem it a forgery. I have no reason to believe it was not, but this episode along with that of the Schaghticoke decision memo I discussed earlier raises a larger point. When we see such flagrant acts of one-sided advocacy in favor of tribes, as we did in the Schaghticoke case, why wouldn't we believe that officials at this agency would pen such a letter? And more troubling, how are we to know what other documents or evidence in the system is fraudulent?

And therein lies the problem. When you combine tribes who are, in many cases, genuinely seeking to improve the lives of their members, gaming interests eager to exploit a growing market, and pliant BIA officials more interested in recognizing as many groups as possible than in objectively applying the rules provided, you are left with a corrupt system that tragically casts doubt on all recognition decisions.

In conclusion, Mr. Chairman, 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 to ensure that recognition decisions are obtained by who can meet a defined and consistently applied 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. By giving the recognition standards the power of law and closing the revolving door, we can begin to do so. 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.

THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

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Kenneth Erickson

To: The Honorable Senator John McCain

The Little Shell Tribe of Chippewa Indians of Montana ("Tribe") respectfully requests the Committee to consider and accept this statement as part of the record of the Committee's Oversight Hearing on Federal Recognition of Indian Tribes held on May 11, 2005. As a tribe that is still waiting for a final determination despite being one of the first tribes to petition the Department, we believe that our insights could be particularly helpful to the Committee as it considers this issue.

The Tribe originally filed a letter petitioning for federal acknowledgment on April 28, 1978, *almost six months before* Interior's administrative process for acknowledgment was created. Like many other non-federally recognized tribes, our petition has nothing to do with gaming. Rather, like most Tribes that are currently in the process, our petition for recognition has always been about preserving our sovereignty, traditions and culture and ensuring self-governance for our future generations. As Senator Inouye aptly observed at the May 11, 2005 hearing, we would have had to have been clairvoyant to have submitted our recognition petition for gaming purposes.

Summary of our History.

Like other tribes, our history was largely shaped by the shifting federal policies of the times. In the early 1800s, we were buffalo hunters who lived and hunted around the Red River and the Turtle Mountains in North Dakota. We are successors in interest to the Pembina Band of Chippewa Indians in North Dakota who were recognized by the United States in an 1863 Treaty. After that treaty, some members of the Pembina Band settled on reservations in Minnesota while the others who were of the Turtle Mountain Band followed the buffalo herds into western North Dakota and Montana, eventually settling in Montana and in the Turtle Mountains of North Dakota.

In 1892, the United States sought yet another cession of our land. Chief Little Shell and his followers walked out on the negotiations and refused to accept the terms of the eventual agreement. In the years that followed, more members of the Turtle Mountain Band moved to Montana and joined with other members of the Pembina/Turtle Mountain Band that had settled in Montana. After our traditional livelihood came to an end with the disappearance of the buffalo, Little Shell people were left to barely eke out an existence in a number of shantytowns across Montana, competing with both local reservation Indians and white settlers for resources. The Little Shell became known as the "trash-can Indians," or "landless Indians."

Beginning in 1914, and every year thereafter until 1925, Congress appropriated funds for the "support and civilization of Rocky Boy's Band of Chippewas, and other indigent and homeless Indians in the State of Montana[.]." 38 Stat. L. 582. However, this assistance fell short of the Little Shell Band's desperate needs. In 1931, Little Shell leader Joseph Dussome pleaded for help from the Commissioner of Indian Affairs explaining that tribal members lived on the "dump piles of our Towns . . . going to the back allies, digging down the swill barrels for their daily bread." Less than two weeks after receiving our plea for assistance, Interior callously responded:

> The Indians referred to are Chippewas of the Turtle Mountain Band. They were under the leadership of Little Shell who became dissatisfied with the treaties of the United States and the Turtle Mountain Band of Chippewas. He accordingly refused to accede thereto . . .. The disaffected band, by its failure to accede to the terms of the treaty and remove to the reservation is now unable to obtain any rights thereon for the reason that the lands of this band are all disposed of, and the rolls became final[.] . . . There is now no law which will authorize the enrollment of any of those people with the Turtle Mountain band for the purposes of permitting them to obtain either land or money.

According to Interior, because we were severed from the Turtle Mountain Tribe, we could not receive assistance as Turtle Mountain Chippewas. Thus, like many other tribes in the late 1920s, Interior at worst effectively terminated our federal relationship and at best left us in limbo -- closed off from the rolls of our Turtle Mountain brothers.

With the passage of the Indian Reorganization Act, the Little Shell people held out great hope that the United States would reaffirm our federal status and secure a land base for our people. During this period, the Chief of Interior's Land Division reassured us that a land base would soon be established.

> This Office in general and the commissioner in particular are thoroughly cognizant of the unfortunate situation in which these landless Indians find themselves. To no other groups of Indians is so much constructive thought and persistent effort being directed, for it is fully realized that theirs is the greatest need.
>
> All government enterprises move slowly in spite of the best of intentions, but it is hoped and believed that in the not too distant future a satisfactory plan will be consummated for landless Indians in general, including, of course, the group to which you belong.

Shortly thereafter, the Bureau of Indian Affairs acquired a 42-acre tract of land in Great Falls, Montana. The land was acquired for the benefit of landless Indians located in the vicinity of Great Falls. Although we were ready to move to the parcel, Interior explained that "[l]ocal public opinion forced the abandonment of the project. Local residents of the vicinity did not wish the Indians as their neighbors." In 1950, during the Termination Era, Congress enacted legislation providing for the sale of the lands acquired "for the benefit of certain landless Indians in the vicinity of Great Falls." P.L. 714, 81st Congress, 2d Session, August 18, 1950.

In the 1950s, the Indian Claims Commission accepted us as an identifiable group of Indians that could bring a claim against the United States. After prevailing in that litigation, Congress enacted the Pembina Judgment Fund Act of 1982 and identified us as a group eligible for receipt of the judgment funds awarded by the Indian Claims Commission. The Act required the Secretary of the Interior to report to Congress on the status of our petition for acknowledgment if we were not

recognized by September 30, 1985. We again were hopeful that Interior would make a timely decision. Instead, Interior informed Congress that it would require us to do additional work before the petition could be placed under active consideration.

Interior's report to Congress triggered a series of consultations in which Interior continually required more and more documentary information. Five years later, BIA determined that the petition was ready for active consideration. However, after all of this lost time, the Tribe was forced to identify new researchers and asked that the petition would be removed from active consideration. The Tribe, with the financial assistance of the Native American Rights Fund ("NARF"), hired new researchers and, beginning in 1993, a series of meetings were held with BAR staff. Two years later, Interior determined that the petition was ready for active consideration. Over the course of the next five years, Branch of Acknowledgment and Research ("BAR") staff conducted field research for additional documentary materials and interviews. During this time period, BAR requested more materials from the Tribe and provided itself with numerous extensions in which to make a determination.

In July 2000, Interior finally issued a proposed favorable finding to acknowledge the Tribe. Interior's proposed finding documents included a 234 page technical report accompanied by a 67 page bibliography. Yet even in its proposed *favorable* finding, Interior yet again identified areas of additional research that would strengthen the petition. The Tribe took these suggestions to heart. However, the burdens imposed by this proposed *favorable* finding required our researchers to spend an additional five years, including travel to Canada and England to locate materials, to respond to Interior's requests.

Compared to other petitions that are under the national spotlight, our petition is non-controversial. Neither the State of Montana nor local governments have filed any opposition to the Tribe's petition or Interior's proposed favorable finding. Indeed, the Turtle Mountain Band of Chippewa of North Dakota, every Tribe in Montana, and many local Montana governments have actively supported our federal recognition through resolutions and official letters of support. Yet we are still waiting for the Department to affirm its proposed favorable finding issued five years ago. We are told by Interior that because of the present backlog it will likely be several more years before they make a final determination on our petition. Because of Congress' long history of providing appropriations and subsequent attempts to establish a land base for us, we believe that Congress should reaffirm our government-to-government relationship through federal legislation.

The Costs of the Acknowledgment Process.

With every passing year it becomes increasingly difficult to obtain the resources necessary to satisfy the ever-increasing paper burden imposed by Interior. Essentially, Interior applies the criteria in a fashion that results in a never-ending paper chase. Interior's application of the criteria results in needless documentation and is divorced from the realities of modern tribal life for both recognized and non-recognized tribes. Indeed, during this nearly three decade paper chase we have had to use three different research teams to complete our petition in response to Interior's requests.

Over the past 27 years, we have been fortunate to receive the services of the Native American Rights Fund. Without their assistance, it's unfathomable that we could have found the funds necessary to retain legal counsel and consultants for this extended period of time. Over the past 15 years, NARF has spent over 3,400 attorney hours on our administrative petition.

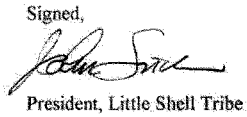
Consultants and graduate students put in thousands and thousands of additional hours. Tribal consultants, such as historians, genealogists and graduate students, donated substantial amounts of time pro bono or worked at substantially reduced rates in compiling large portions of the petition. Even with this generosity, however, the total cost for consultants and associated expenses over the last fifteen years exceeds $1 million dollars.

Application of the criteria in this fashion inflicts an immeasurable human cost, wherein the acknowledgement torch is passed from one generation to another. Adding salt to the wound, the uninformed speculate that federal acknowledgment is all about Indian gaming. It is heartbreaking to consider the idea that, in the politically charged atmosphere of Washington, D.C., the Department could reverse its proposed favorable finding and decide not confer federal acknowledgment.

Conclusion

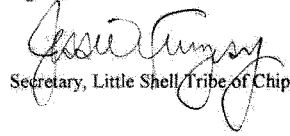
Our history demonstrates that our quest for federal acknowledgement has nothing to do with Indian gaming. We strongly believe that the process must be reformed to ensure that decades do not pass wherein Tribes are forced to satisfy Interior's arbitrary demands. This can only be done through leadership from the Congress to correct the inequities of the present process. As this Committee considers reforms to the acknowledgment process, we respectfully offer our assistance in any manner that the Committee deems appropriate.

Signed,



President, Little Shell Tribe of Chippewa Indians of Montana

Signed,



Secretary, Little Shell Tribe of Chippewa Indians of Montana

CHEROKEE NATION
WRITTEN TESTIMONY OF CHAD SMITH
PRINCIPAL CHIEF, CHEROKEE NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON FEDERAL RECOGNTION OF INDIAN TRIBES
May 11th, 2005

INTRODUCTION

I am Chadwick Smith, Principal Chief of the Cherokee Nation. Today, I believe it is important that I communicate to the Senate Committee on Indian Affairs (SCIA) Cherokee Nation's comments regarding the Federal Recognition of Indian Tribes. I respectfully request that my written statement be included in the hearing record.

CHEROKEE NATION HISTORY

I would like to share with you some history and background about Cherokee Nation. Even before the infamous Trail of Tears, the Cherokee Nation was one of the largest tribes and occupied 126 million acres of land, an area that today includes parts of 8 states: Tennessee, Kentucky, Georgia, Alabama, South Carolina, North Carolina, Virginia and West Virginia.

Through 10 treaties, the first of which was in 1721, the Cherokee Nation ceded half its land base to the British, and 12 additional treaties with the new U.S. Government followed. Consequently, the Nation's land base was diminished to 12,000 square miles by 1819. In 1838, 7,000 federal troops were sent to remove the 16,000 Cherokees who lived in the southeastern United States, and 4,000 died on the Trial of Tears on the journey to Indian Territory (present day Oklahoma). Cherokee Nation lost a quarter of its population due to the forced removal.

Following the forced removal to Indian Territory, the Cherokee Nation rebuilt its infrastructure with the establishment of 150-day schools, two seminaries for higher education, lower and upper systems of courts, and a penal system, along with other vital functions. Then the most tragic days fell upon Cherokee Nation with the Dawes Act of 1887, which stripped lands and all government buildings and property from the Nation and paved the way for Oklahoma Statehood. Even the Cherokee National press was taken and sold under the Dawes Act.

Presently, Cherokee Nation has a Tribal Jurisdictional Service Area (TJSA) of 7,000 square miles (4.4 million acres or only 3.5% of our original lands), comprising all or part of 14 counties in northeastern Oklahoma. Cherokee Nation represents over 230,000 tribal citizens, nearly half of whom live within our TJSA and is the second largest Native American tribe. Cherokee Nation has approximately 1,900 tribal employees (making us one of the largest employers in Northeast Oklahoma).

CHEROKEE NATION RESPONSE TO PRESENTED TESTIMONY

There are three Federally Recognized Cherokee Entities in the United States: Cherokee Nation, the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians. Cherokee Nation opposes the recognition of any more groups claiming to be Cherokee groups, bands, clans, nations, or tribes.

CONGRESSIONAL SUPPORT TO OFA

Cherokee Nation agrees with Chairman McCain that there should be an open and fair process in recognizing tribal governments. Cherokee Nation supports the current Bureau Acknowledgement Process, and supports any reforms aimed at assisting the OFA with discharging its duties.

Additionally, Cherokee Nation supports reform of the Bureau Acknowledgement Process. Several pieces of legislation have been introduced, and each have a common thread aimed at imposing greater restriction on the process. Cherokee Nation supports reforming the process by, at the least, placing in statute the seven criteria for acknowledgement set forth in Title 25. Legislating the seven criteria will eliminate any abuse or unfair opportunity, and will require each petitioning entity to meet the guidelines for recognition. The criteria are not unreasonably stringent, nor are the OFA staff at fault for a petitioner's lack of research or documentation. Placing the seven criteria in statute will add transparency to the process, and will allow the OFA staff to base decisions on fair, measurable, objective standards without accusations of unfair treatment or political influence.

Cherokee Nation applauds the OFA for working to automate the information through FAIR. The OFA CD-ROM is a valuable piece of information that will save the Federal Government a substantial amount of money and time. These types of advances are welcomed changes, and hopefully are only the beginning of the OFA's revamping of internal efficiencies. Cherokee Nation supports Congressional Action aimed at maximizing efficiency within the existing process.

The Director of the Office of Federal Acknowledgement, Lee Fleming testified that certain Congressional Action may be necessary to assist the OFA in addressing the existing issues, and anticipating future issues. One of the mechanisms proposed by which to address upcoming issues is sunset legislation. Sunset legislation would impose a date specific deadline by which any petitioning group must file with the OFA its letter of intent to seek recognition. After such deadline, no more applications would be considered.

Cherokee Nation is supports the sunset mechanism. Not only would this give the OFA a better estimate of its workload, but would also make budgeting for the activities needed much more accurate and definite. The United States ceased making treaties with Indian Tribes in 1871. Cherokee Nation's last treaty with the Federal Government was signed in 1866. No epiphanies of Indian-ness should arise now or in the future. Sunset legislation is the appropriate means for putting an end to this seemingly never-ending parade of new petitioning entities.

CONGRESSIONAL RECOGNTION OF TRIBES

Cherokee Nation opposes the recognition of tribes through legislation. Although the process at the OFA is not prefect, it is a process- with guidelines and objective measurement standards. Cherokee Nation supports the BAR process as the sole process for petitioning groups seeking recognition. Congress' involvement in this process should only be oversight and regulatory in nature. Cherokee Nation supports Congress reforming the BAR process for the maximization of efficiency, and supports the authorization and appropriation of additional funds to enable the OFA to discharge its duties under the process.

Under no circumstances would Cherokee Nation support recognition of a tribe through Congressional Legislation. The BAR process is in place for a reason, and although somewhat flawed, the checks and balances in place safeguard against irrational decision making.

Federal legislative acknowledgement of a group gives unfair preferential treatment to that group over all other groups who are in the OFA process and waiting for a determination. Moreover, providing federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of determining federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgement without serious technical review. Thus, Congress should take the politics out of federal acknowledgement and allow the expert agency to do its job.

The OFA, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it is an Indian tribe that has existed since historical times as a distinct political entity.

One legislative effort for recognition of particular concern to Cherokee Nation and the Eastern Band of Cherokee Indians is the effort surrounding the Lumbee of North Carolina. Both Cherokee Nation and the Eastern Band of Cherokee Indians oppose recognizing the Lumbee through legislation.

In seeking federal acknowledgement over the years, the Lumbee have self-identified themselves as "the Cherokee Indians of North Carolina," and as "Siouan," "Croatan," and now "Cheraw" Indians. Moreover, Interior officials have testified as to other deficiencies about Lumbee identity claims.

This is a current example of an entity using the Congress to undermine the intention of the recognition process. The Lumbee either cannot or refuse to try to meet the seven criteria required in Title 25. The Lumbee are attempting to circumvent the appropriate process by influencing the Congress to act in favor of recognition.

STATE AND SELF RECOGNIZED TRIBES

Another issue of great concern to Cherokee Nation is that of State Recognized and/or Self Recognized "tribes". State recognition was intended to provide a mechanism for an individual state to acknowledge a long term relationship with a known Indian community. Now, however, the practice is often the result of political pressure. State recognition can come about through as little as a resolution sponsored by one state legislator too afraid of being politically incorrect to question the legitimacy of an entity claiming Indian heritage.

The Treaty of Holston, 1791, establishes our relationship as one of permanent peace and friendship between the United States and the Cherokee Nation. This acknowledgement of the United States is contained in Article II and reads:

"The undersigned Chiefs and Warriors, for themselves and all parts of the Cherokee nation, do acknowledge themselves and the said Cherokee nation, to be under the protection of the said United States of America, and no other sovereign whosoever; and they also stipulate that the said Cherokee nation will not hold any treaty with any foreign power, individual state, or with individuals of any state."

Cherokee Nation's government-to-government relationship is with the United States, not any individual state. The United States was and should be unwilling to defer to States in Indian Governmental Relations. State recognition has obvious problems, and in no way should influence an entity's Federal Recognition Governmental status.

This is a problem that has been around for some time. Quoted below is an excerpt of formal Principal Chief Wilma Mankiller's written testimony regarding S. 479 in the 104th Congress, (May, 1995) which sums up very well Cherokee Nation's continued concerns with the Federal Recognition Process.

"Over 215 suspect entities, spanning over 33 states from Vermont to Florida, from Alaska to California, are proclaiming themselves to be a Cherokee Nation or using the Cherokee name. This causes great confusion among the general American public.

Local, state, and national governments, their agencies, and the general public are ignorant about differences between these suspect entities and the Cherokee federally recognized Native American tribes. Examples of ignorance are becoming more evident and appalling on all levels.

One the local level, people who purport to have a full blood great grandmother "Cherokee Princess" are joining these self-proclaimed entities in droves without really knowing what they are joining. They turn to these new-age, cultist entities because they thirst for belonging. Generally they cannot meet the requirements for being formally recognized by the Bureau of Indian Affairs, the Cherokee Nation (in Oklahoma), the United Keetoowah Band of Cherokee Indians in Oklahoma, and/or the Eastern Band of Cherokees in North Carolina.

Ignorance on the state level is found in those states where tribes once existed. These tribes were assimilated, exterminated or forcedly removed to other regions of the country. Out of guilt and sheer ignorance of the government-to-government relationship between Congress and Indian tribes (as defined in the Constitution), some states are wishing to recognized these suspect groups.

Many States (who demanded that tribes be removed in the 1830's) are now wishing to establish Indian Commissions to recognize these suspect groups and are recognizing them without any criteria. Even states like Virginia, which already have historic "state-recognized" tribes, are considering yet more groups which continue to surface.

On the national level, some federal departments are providing federal funds or services to some state recognized tribes and groups who purport to be Indian Tribes. Through heavy long term lobbying efforts of state recognized tribes, some federal legislation has been designed with loop

hole provisions for state recognized tribes. Even S. 479 may be riddled with provisions to allow state recognized tribes to become federally recognized.

Some areas where one can see abuse through the commingling between state recognized tribes and these self-proclaimed groups are found in services or programs, such as, but certainly not limited to: Indian Health Service, Indian Preference, Federal Minority Contracting, Federal Highway Disadvantaged Business Enterprise program, Donated Foods programs, Bald Eagle and Endangered Feathers permits, Housing programs, and Indian Education programs. These groups are found to participate in federal processes meant for federally recognized tribes such as the federal Indian Child Welfare and the Native American Graves Protection Repatriation Acts. "

State recognition opens the back door to federal funds and identity as an American Indian. The Administration for Native Americans (ANA) provides funding for research, language preservation and other grants to groups that otherwise would not be eligible. State recognition provides artisans and crafts persons not otherwise acknowledged as Indian people to sell their wares as "Indian made."

These problems still face legitimate tribes, and diminish the funding available to legitimate governments. So, the question must be addressed… What is a state-recognized tribe? For the Cherokee Nation, it is an abrogation of our treaty rights and our promise not to "hold any treaty" with any sovereign government but the United States.

CONCLUSION

Cherokee Nation states its position as follows:

- Cherokee Nation opposes the recognition of any more Cherokee entities.
- Cherokee Nation supports Congressional Support to the OFA, including reform for efficiency, enactment of statues setting forth the seven criteria, increased funding for the discharge of their duties and sunset legislation.
- Cherokee Nation opposes recognition of any petitioning entity through legislation.
- Cherokee Nation requests Congressional Acknowledgement that State Recognition is to have no bearing on an entity's Federal Recognition Governmental Status.
- Cherokee Nation seeks the Committee's review of Federal and State funding that is being diverted to non-federally-recognized tribal groups.

Thank you for the opportunity to submit this written statement for the record.

PREPARED TESTIMONY OF

RICHARD L. VELKY, CHIEF

SCHAGHTICOKE TRIBAL NATION

TO THE

SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON THE FEDERAL RECOGNITION PROCESS

MAY 11, 2005

Chairman McCain, Vice Chairman Dorgan and Members of the Senate Committee on Indian Affairs, I am pleased to appear before you today on behalf of the Schaghticoke Tribal Nation. With me today in the hearing room are several members of the Schaghticoke Tribal Nation. I would like to introduce them at this time and ask them to stand to be recognized by the Committee.

The Schaghticoke Tribal Nation is the most recent Tribe to be recognized through the Federal acknowledgement process at the Bureau of Indian Affairs, having received our recognition on January 29, 2004. This was a glorious day for the Schaghticoke people because it was 23 years after we first filed our letter of intent in 1981 and continued the long, arduous and expensive process of documenting our Tribe's history. This documentation was necessary in order to satisfy the seven criteria that the BIA uses to determine whether an Indian group should be recognized by the United States.

The Tribe was successful in its effort in part because the Schaghticoke Tribal Nation has been recognized by the State of Connecticut since the State was formed. It is uncontested that we were there long before the State joined the Union. Our Reservation – a rocky hillside of 400 acres – was set aside for us by the Colony of Connecticut in 1736 and was the last of our traditional lands that had not been made available to white settlers. We have lived ever since on or near that Reservation and have used the site for our ceremonies and other tribal activities.

Tribal History: The Schaghticoke Tribal Nation was documented as a distinct Indian entity in Connecticut's Housatonic Watershed beginning in the early 17th Century. Our first recorded leader, or Sachem, Gideon Mauwee, was born about 1687 and died in 1760. Well into the 19th Century the Tribe followed the tradition of seasonal rounds of group movement with a winter-spring village, a summer village, and small camps for hunting, fishing, gathering, tin crafting, and collection of basket materials.

Tribal members sustained themselves by hunting, farming, fishing and barter of baskets, brooms, tin and other cottage industry products. In the 1740s, the Moravian Brethren began

visiting the Schaghticoke with the objective of converting the Indians to Christianity. There was a mission church and a school built on the Tribe's Reservation. In the 1770s, the Moravians were forced from the area by the English. Records kept by the Moravians supplied the initial basis of the Tribe's genealogy. The State of Connecticut separately maintained genealogy information on the Tribe's members throughout the first half of the 20th Century and used this information to determine members' rights to residency on the Reservation.

Prior to and during the mission period, the Tribe felt increasing pressure from non-Indian settlers, and members were forced to live on a much smaller land base. A long line of Colony and State overseers for the Tribe were appointed by the courts and that process continued unbroken from 1771 to 1921. After 1921, the State began appointing officials from the Parks and Forests Commission, the Welfare Department and, beginning in 1973, the Department of Environmental Protection, as the Tribe's overseers. The overseers were supposed to help the Tribe with management of its lands and resources but they often used their positions to help themselves to land and other resources. Under these overseers, the Tribe lost almost all usable acres of its original 1736 Reservation. Tribal lands were sold and those funds were applied to tribal health and welfare needs and to overseer salaries. The Ancestors of today's tribal members are those who appear on the overseers' account books and ledgers.

Today, the Schaghticoke have just over 300 members. The Reservation of 400 acres in Kent, Connecticut, is the historical and spiritual center for the Tribe. The Reservation is mountainous and rocky with only a small strip of flat land located on a flood plain. Today most tribal members live within 60 miles of the Reservation, primarily in Fairfield, New Haven and Litchfield counties in Connecticut and in nearby towns in New York State.

It became clear to the Tribe in the 1970s that in order to protect our land from further encroachment and to insure that our culture and tribal identity are preserved for our children, our grandchildren and indeed, for all future generations of Schaghticoke Indian people, we needed to have a government-to-government relationship with the Federal government. Tribal members began a serious volunteer effort in the 1970s that continues today to collect and organize material related to the Tribe's history. We thought that if we were recognized we would be safe against the threat of termination that took over Federal Indian policy in the 1950s. That policy was first rejected by President Nixon in 1970 and soundly repudiated by the Congress throughout the 1970s beginning with the restoration of the Menominee Tribe, the first of the terminated Tribes to be restored. Congress has now restored all of the Tribes that were terminated in the 1950s.

It is ironic to us that we are the first Tribe since the 1950s to have a bill introduced to terminate our recognition. Rep. Nancy Johnson, our Representative in the US Congress, recently introduced a bill to terminate the recognition that took nearly 25 years to finally achieve. This bill was introduced despite the fact that the State already brought suit against the United States to overturn our Tribe's recognition; that suit is currently pending in the Interior Board of Indian Appeals. The State of Connecticut should have supported the Schaghticoke Tribal Nation in the courts and in the Congress instead of attempting a reversal. The Schaghticoke Tribal Nation has successfully fulfilled the seven required criteria which allows us to have a government-to-government relationship with the United States, just as we have had one with the State for hundreds of years.

Recognition and Gaming: The Tribe is mystified by the animosity on the part of many in our State where we have been recognized since before its founding. Our guess, however, is that gaming is the culprit. As the Committee knows, two of the most successful Indian gaming casinos in the United States are located in eastern Connecticut, the Mohegan Sun and Foxwoods. Both casinos contribute significant revenues to Connecticut in return for their exclusive right to operate casino-style gaming in the State. We suspect that certain public officials simply do not want gaming in the western part of the State where the Schaghticoke live. But as we all know, gaming is not the same as recognition. Recognition will last far beyond the life of any gaming operation.

When we filed our letter of intent to petition for recognition in 1981, the idea of gaming was not even on our minds. Congress enacted the Indian Gaming Regulatory Act in 1988, seven years after our letter was filed with the BIA. Like the Eastern Pequot and the Mohegan Tribe before it, we were forced to consider seeking financial assistance when it became clear that the Tribe's limited financial and human resources were not sufficient to undertake the work necessary to prove that the Tribe meets the BIA's seven mandatory criteria. This was a very critical point in our journey to Federal recognition. It took years for our members to accept the Tribe's need to seek outside help. We sought out our backers; they did not come to us.

Our evidence is exhaustive. Our petition includes over 30,000 pages of historical documents (the Tribe had to prove its existence beginning with its first contact with Europeans in the late 1600s). There are genealogical documents, birth, marriage, death records, state overseer records, state welfare records, colonial and state legislature documents, Connecticut court records, newspaper clippings, books, articles, police records, church records, diaries, meeting notes, anthropological studies and school records. Our petition was exhaustively and soundly researched and it demonstrates beyond doubt our right to Federal recognition.

To those who contend that the Tribe's affiliation with a developer is "unsavory" or somehow negates the content and substance of our petition, I say "ridiculous." Unless and until the United States changes the recognition criteria to require a more reasonable survey of tribal history, or until it provides the funds needed for the exhaustive research and analysis that the BIA currently requires, our guess is that very few groups of Indians will be able to prove their tribal existence. The loss of their histories and cultures will be one more wound all of America will suffer at the expense of Indian people.

Unfortunately, we believe those who speak for the State of Connecticut are in full denial about our recognition. They initially claimed that because the Schaghticoke Tribal Nation received a negative Proposed Finding, then the Final Determination would also have to be negative. This two-step process was constructed to allow petitioners to provide information if needed after a Proposed Finding to remedy perceived gaps or shortcomings. We are not the first nor will we be the last Tribe to remedy an initial negative Proposed Finding.

The Tribe was disappointed to receive the negative Proposed Finding but we were not surprised nor were we daunted in our determination to move forward. We produced hundreds of additional documents and exhibits, and substantial analytical reports to fill the gaps noted by the

BIA in the negative Proposed Finding. When we received our positive Final Determination the Tribe's initial euphoria over the BIA decision was quickly flattened by the continuing barrage of negative comments and actions by Connecticut's elected officials at all levels of government – local, state and Federal.

State Actions: Immediately after the BIA granted our petition for recognition, the State began a round of accusations about "improper influence" – presumably by the Tribe and its backers – that has only been matched by the *actual* attempts of the accusers themselves to improperly influence the process. State officials advanced the argument that corruption and undue influence must have been present in order for the BIA to issue a positive Final Determination. **[Attachment A]** In response to the allegations, the Inspector General of the U.S. Department of the Interior launched an investigation. The results are contained in an IG Report that gave the process a clean bill of health. **[Attachment B]** State officials immediately labeled the Report a whitewash. **[Attachment C]** Neither the Governor, nor the Attorney General, nor any Member of Congress has provided one shred of evidence to corroborate their assertions of corruption.

Ninety days after our recognition, in early May 2004, Connecticut sued the United States to overturn the decision. The litigation is still pending before the Interior Board of Indian Appeals. We have been amazed at the efforts by these officials over the past year to attempt to directly influence the administrative law judge in the case, **[Attachment D]** as well as their direct appeals to President George W. Bush and Secretary of the Interior Gale A. Norton to intercede. **[Attachment E]**

It is interesting to note that Connecticut is the first and only State to ever challenge the recognition by the United States of any Indian Tribe. Schaghticoke is actually the second Tribe to achieve this dubious honor. The State earlier brought suit to overturn the decision to recognize the Eastern Pequot Tribe. That suit is also pending at the IBIA.

State and local officials have asked Members of the State's Congressional delegation to intercede to overturn our recognition. In response, three Members of the United States House of Representatives from Connecticut recently introduced a bill to terminate the recognition of our Tribe. To our knowledge, this is the first bill since the 1950s intended to terminate a Federally-recognized Indian Tribe.

The townspeople of Kent, where the Schaghticoke Tribal Nation is located, have formed a task force Town Action to Save Kent (TASK), which in turn has hired a well-known national DC lobby group, Barbour, Griffith and Rogers, for the sole purpose of influencing the Congress and the BIA to overturn our recognition status. There are several more such groups throughout Connecticut that are actively working against the United States' decision in our case.

The State's antipathy to the Schaghticoke Tribal Nation is bi-partisan and permeates all levels of government -- Federal, state and local. In fact, however, officials at all levels of government entered into an eight-month negotiation under the direction of a Federal court judge that caused them to enter into a stipulated agreement about how the Tribe's expedited

recognition process would be handled. A full summary of the legal history relating to the recognition of the Tribe is attached. **[Attachment F]**

Tribal Response to State Actions: This barrage of influence-mongering has all taken place during the pending litigation against the Department of the Interior by the State of Connecticut in challenging the BIA's decision to grant Federal recognition to the Schaghticoke Tribal Nation. The Tribe has remained, for the most part, silent in the face of the constant harangue that has been made known through numerous and continuous press releases by the Governor, the Attorney General and Members of Congress.

Recently, I participated in a forum hosted by the Connecticut State Historical Society to air the issues about the recognition process and the Schaghticoke Tribal Nation. I think the audience found it very enlightening. We are attaching a DVD of that meeting **[Attachment G]**. With me on the panel were Attorney General Richard Blumenthal, Nell Jessup Newton, Dean of the University of Connecticut Law School, and Dr. Nicholas Bellantoni, the State's Archeologist As you know, a transcript would be very costly to produce. However, I have attached some newspaper articles that provided coverage of the event. **[Attachments H]**

Need for Legislative Reform of the Recognition Process: In closing, I would like to thank the Chairman and the entire Committee on Indian Affairs for holding this hearing to explore the BIA's process for recognition of American Indian Tribes. If this Nation is going to live up to its full commitment to Indian people and to help correct some of the historic wrongs done to the Nation's first citizens, this badly-broken process needs to be reformed. While it is possible for a group to "make it through" the process, it is very, very expensive and much, much too long.

From its inception, the BIA's acknowledgment process has been marked by delay. Since 1978, the BIA has resolved 37 petitions (*See*: Summary of Acknowledgment Cases, February 4, 2005, published by the BIA). Another 20 have been resolved "by other means" – Congressional legislation, withdrawal, merger, etc. This average of 37 resolutions is slightly less than 1.3 petitions per year. When the regulations were published in 1978 there were 40 petitioners. Since then, another 262 groups have either filed a letter of intent to petition or have actually submitted a documented petition. According to the BIA, 245 petitioners are still awaiting BIA action. Unless the process is improved, it is evident to all that it will take many many decades to process these remaining petitions.

The GAO investigated the process and stressed that more resources are critically needed. In response to the GAO finding, the BIA's Assistant Secretary Neil McCaleb made a commitment to allocate additional resources from the BIA to the process to make it viable. Until last year, the BIA was receiving about $900,000 per year for this process. We understand that may have increased somewhat but not nearly enough to make a difference.

Congress needs to provide much more funding if this process is going to continue to be used for recognition purposes. Similarly, if Congress wants to avoid the need for petitioning groups to seek out gaming developers, it will need to fill the void with adequate resources to get the work done. I testified at length at a hearing before this Committee on May 24, 2000 and said

much the same thing. I am attaching that testimony to this statement and refer readers to pages 3-5. I stand by those comments today but you will note the situation is worse now than it was even 5 years ago. **[Attachment I]**

We would be happy to contribute our knowledge and experience about the process to the Committee to assist in drafting appropriate legislation.

Thank you again for the opportunity to present the views of the Schaghticoke Tribal Nation. . I ask that this statement and all of the attachments by included in the Committee hearing record.

I look forward to any questions you may have at this time.

DC01/ 482231.4

ATTACHMENT A

Early Newsclips Regarding BIA Decision

ATTACHMENT A

Blumenthal Asks For BIA Decision Probe
March 18, 2004
By JOHN A. MacDONALD, And MARK SPENCER Courant Staff Writers

In a "spirited and frank" meeting Wednesday, state Attorney General Richard Blumenthal asked U.S. Interior Secretary Gale Norton to impose a moratorium on all new Indian tribal recognition decisions.

Blumenthal's face-to-face meeting with Norton in Washington came as the entire Connecticut congressional delegation released a letter saying the Bureau of Indian Affairs, an agency of the Interior Department, had followed a flawed process in recognizing the Kent-based Schaghticoke Tribal Nation.

Federal officials granted recognition to the Schaghticokes in January even though they knew the decision did not meet existing Bureau of Indian Affairs rules, The Courant reported last week. The report was based on an internal briefing paper supplied to the newspaper.

The decision is critically important because federally recognized tribes are eligible to operate casino-style gambling in the state. Another tribe, the Golden Hill Paugussetts, also is seeking federal recognition.

Blumenthal, who represented the congressional delegation at the meeting, said he expressed dismay over the memo to Norton and asked her to launch an investigation into the recognition decision.

"The discussion with Secretary Norton was spirited and frank," Blumenthal said afterward. "There was no specific result or decision, but Secretary Norton indicated clear interest, and her comments were thoughtful and informed."

He said he did not expect Norton to make an overnight conversion, adding, "Today's meeting is simply another step in a hard-fought battle we will pursue as long as necessary."

Dan DuBray, an Interior spokesman, confirmed Blumenthal's characterization of the meeting and said Norton will respond later to the issues he raised. DuBray said the department does not make a habit of responding publicly to letters from members of Congress. Last week he said the department is confident the decision "will be upheld in all legal forums."

Investigation Requested

In their letter to Norton, Connecticut's five U.S. representatives and two U.S. senators wrote that they are "are deeply troubled by the possibility that the [bureau] would make a decision with regard to the recognition of the Schaghticokes that either ignored, overrode or waived existing criteria."

The delegation asked Norton "to take personal action" to investigate the recognition decision. Separately, Rep. Nancy L. Johnson, R-5th District, has asked the General Accounting Office, the investigative arm of Congress, to review the Schaghticoke recognition. A spokesman said Wednesday that Johnson has not received a definitive answer from the accounting office.

Blumenthal predicted the accounting office will conduct an inquiry and that Congress will hold hearings on the Schaghticoke decision. But, he also said, "we will have to continue to fight."

The attorney general said he was shocked by the internal memo because it showed the Bureau of Indian Affairs' "lack of concern for the rights of the state of Connecticut, its citizens and the interested parties who participated in these [recognition] proceedings under the apparently mistaken view that their input would be heard and considered fairly."

Members of the congressional delegation said they are not seeking to prevent the lawful recognition of tribes. "Instead, we want to ensure that the process works fairly for all parties, and that the confidence of the public is not undermined," the delegation members wrote.

Richard L. Velky, chief of the Schaghticoke Tribal Nation, said Wednesday he was not aware of the congressional delegation's call for an investigation. He said he had sought help from members of the delegation in 2000 when he complained about the slow pace of the recognition process.

"They told me it was the only process that existed and [that] it was a fair process," Velky said.

Proposed Restrictions

Efforts to hinder additional Indian casinos also continued in the state legislature Wednesday. The judiciary committee heard testimony on a proposal that would bar a tribe from building a casino anywhere except on reservation land.

Several tribes have expressed interest in developing casinos in urban areas, where some local leaders see them as a remedy to the economic troubles of their communities.

Kent First Selectwoman Dolores R. Schiesel told legislators she opposed the bill because it could leave the Schaghticokes with no choice but to open a casino on their reservation in her rural town, which does not want it.

If you want other stories on this topic, search the Archives at ctnow.com/archives.

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Friday, Apr 2, 2004

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Simmons Calls For Congress To Change 'Corrupt' B Of Indian Affairs

By MELINA VISSAT
Published on 4/1/2004

Washington — Calling the federal process of recognizing Indian tribes "unfair" and "corrupt," U.S. Rep. Rob Simmons, R-2nd District, urged Congress Wednesday to take immediate action to fix problems in the Bureau of Indian Affairs.

"Federal recognition policies are turning the 'Constitution State' into the 'casino state,' " Simmons said in testimony before the House Committee on Resources. "We want more control over the process. We want to close the loopholes. We want relief provided to our localities for what can be a very expensive battle on a very uneven playing field."

Simmons said he agrees that Indian tribes "need to be granted the federal status they deserve and accorded their sovereign rights. But the determination to acknowledge such tribes cannot be made under false pretenses and without regard for overall economic, social and political consequences that will result.

"Unfortunately, that is exactly what is happening under the flawed and biased BIA system," he said.

The congressman referred to the BIA's January decision to recognize the Schaghticokes of Fairfield County as an Indian tribe. According to Simmons, the BIA admitted in "an internal agency memorandum" that the Schaghticokes did not fulfill the federal requirements for recognition.

"Nonetheless, BIA violated its own regulations to reverse a previous ruling a
favor of the Schaghticoke group," Simmons said. The reason, he said, has t
the troubling ties between "powerful money interests and petitioner groups."

The BIA did not respond to requests for comment.

The issue of tribal recognition is under constant scrutiny in Connecticut, esp
the 2nd Congressional District, home to Foxwoods Resort Casino and Mohe

Simmons recommended several steps he said would guarantee "fair, objecti
credible" decisions on tribal recognition. To ensure a non-discriminatory pro
suggested enacting recognition standards and adopting regulations to requi
seeking recognition to identify the source of their funds, any contractual arra
they have with financial backers and how much money they have spent to m
case.

He also proposed a moratorium on BIA recognition decisions until changes
made.

The BIA, a part of the Department of the Interior, mandates that tribes seeki
recognition fulfill seven criteria to prove a "continuous unbroken existence a
group," said Guy Martin, a Washington-based attorney who represents thre
Connecticut communities battling casino expansion.

Once a tribe is recognized, according to a spokesman for the Mashantucket
Tribe, it becomes eligible for various federal grants and BIA funds for progra
health, education, law enforcement and the court system.

Recognition also allows the tribe to exercise its own jurisdiction on land fede
designated as "ancestral homeland."

John Filchak, executive director of the Northeastern Connecticut Council of
Governments, agrees that action needs to be taken.

"Changing the law itself, there's not much need there," he said. "It's where it
administered. There's a real lengthy and deliberate process groups go throu
recognized. Too often decisions are made, not necessarily based on fact, b
politics and whatever. ... There are about five to 15 shades of gray in this w
debate."

The casino controversy sometimes overshadows the real issue: tribal recog
Filchak said.

"Everybody wants to talk about casinos, but recognition is an important thin
Americans," he said "There's different legal rights that they gain through tha
in terms of health care and other things. Or just the acknowledgement that y
you are." ■

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Moratorium suggested for tribal process

Connecticut leader pushes ban, argues gambling money is culprit

By TONY BATT
STEPHENS WASHINGTON BUREAU

WASHINGTON -- Gambling money is fueling the drive by American Indians seeking federal recognition, a Connecticut congresswoman said Wednesday in calling for tribes and the Interior Department to declare a moratorium on the recognition process.

But the pleas of Republican Nancy Johnson appeared to fall on deaf ears of the members of the House Resources Committee.

Almost all of the committee members expressed sympathy for the tribes, some of which have waited almost 30 years for recognition.

Without federal recognition, a tribe cannot begin gambling operations. Nor can it qualify for a range of government payment programs.

Johnson called for Congress to invalidate the Bureau of Indian Affairs recognition in January of the Schaghticoke Tribal Nation of Connecticut.

Johnson and Reps. Christopher Shays and Rob Simmons, all R-Conn., met Tuesday evening with Interior Secretary Gale Norton to discuss the Schaghticoke decision. A news report said Shays described the meeting as unsatisfactory.

"You're letting casino dollars roll into areas where there weren't tribal traditions and overwhelm the process," Johnson told the committee. "We can't let big money just drive this."

Indian gaming operations in Connecticut are causing traffic problems and burdening the resources of small

communities in the state, Johnson said.

Last month, Johnson introduced legislation that would require Congress to give money to local communities opposing tribal recognition applications. She said this would add balance to the process.

Rep. Frank Pallone, D-N.J., told Johnson that tribes are sovereign nations and the federal government, not the states, should make the decision on recognition.

Pallone went further. He said he may offer legislation to counter Johnson's bill by requiring Congress to give money to tribes seeking recognition.

The committee chairman, Rep. Richard Pombo, R-Calif., suggested an independent commission should make tribal recognition decisions instead of the Bureau of Indian Affairs.

"No one should wait three decades to process an application for anything," Pombo said.

ATTACHMENT B

Inspector General's Report

ATTACHMENT B

United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

AUG 27 2004

Memorandum

To: Secretary

From: Earl E. Devaney
Inspector General

Subject: Results of OIG Investigation – Federal Acknowledgment of Schaghticoke Tribal Nation

In response to your memorandum of March 31, 2004, regarding the Federal acknowledgment of the Schaghticoke Tribal Nation (STN), I am attaching a copy of my letter to Senator Christopher Dodd. An identical letter was sent to Senator Joseph Lieberman, Congressmen Christopher Shays, Rob Simmons and John Larson, and Congresswomen Nancy Johnson and Rosa DeLauro.

In summary, our investigation found that the regulatory acknowledgment process was followed, and that no outside influence or personal bias affected the decision to grant acknowledgment to the STN. The rationale contained in the Office of Federal Acknowledgement (OFA) briefing paper and the decision of the Principal Deputy Assistant Secretary – Indian Affairs to rely on that rationale in her decision is pending before the Interior Board of Indian Appeals, the appropriate tribunal for administrative adjudication in this matter.

On May 5, 2004, in testimony before the House Committee on Government Reform concerning the tribal acknowledgment process at the Department, I commended the process as one of the more transparent ones in DOI, especially after several recent changes to the program. If, as we found in the STN matter, the Department follows the well-established statutory and regulatory requirements – which include notice, opportunity to comment, and an appeal or review mechanism – acknowledgment decisions rendered by the Department will always be buttressed by the administrative process. If, however, established requirements are not followed – whether related to tribal acknowledgment or other matters before the Department – decisions become vulnerable to attack and can lead to an erosion of public confidence.

Although the STN acknowledgment decision was highly controversial, we found that OFA and the Principal Deputy Assistant Secretary – Indian Affairs conducted themselves in keeping with the requirements of the administrative process, their decision-making process was made transparent by the administrative record, and those parties aggrieved by the decision have sought relief in the appropriate administrative forum – each, as it should be.

If you have any questions or concerns about this matter, please do not hesitate to contact me at (202) 208-5745.

Attachment

United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

AUG 27 2004

Honorable Christopher Dodd
Unites States Senate
Washington, D.C. 20510-0702

Dear Senator Dodd:

This is in response to your March 12, 2004 letter in which you requested the Office of Inspector General (OIG) to conduct an investigation into the process associated with the Bureau of Indian Affairs' (BIA) Final Determination decision of Federal acknowledgment as an Indian tribe to a group known as the Schaghticoke Tribal Nation (STN). Your letter referred to allegations in a March 12, 2004 article in the *Hartford Courant*, which criticized the acknowledgment because the group allegedly did not meet all of the mandatory criteria for Federal acknowledgment. In response to your letter, the OIG initiated an investigation. Subsequently, the OIG received a request from the Secretary of the Interior, Gale A. Norton, asking the OIG to give this matter high priority, given its importance and the concerns raised.

The newspaper article alleged that (1) BIA "bent the rules" to grant acknowledgment to the STN; (2) BIA's Office of Federal Acknowledgment (OFA) authored a briefing paper explaining how the STN's petition could be approved; (3) STN supporters influenced BIA officials to award acknowledgment to STN; and (4) an OFA employee had a personal bias against the Connecticut Attorney General's Office that may have influenced the review and acknowledgment process. We reviewed thousands of documents related to the STN petition and interviewed the senior Department of the Interior (DOI) officials involved in the acknowledgment process, officials representing the State of Connecticut and affected Connecticut towns, STN leaders, and supporters of the STN in the Federal acknowledgement process.

Background

In connection with a lawsuit against Connecticut for 900 acres of land adjoining the STN reservation, STN filed a petition for Federal acknowledgment as an Indian tribe with BIA. In May 2001, the U.S. District Court with jurisdiction over the lawsuit issued a court-approved negotiated scheduling order that addressed the group's land claim issue and resolution of the group's recognition status. The group failed to submit adequate documentation to BIA by the court-imposed deadline, and on December 5, 2002, BIA issued its Proposed Finding denying Federal acknowledgment. Subsequent to the issuance of the Proposed Finding, during the comment period, the group submitted additional information to BIA for consideration. With the additional information, BIA issued its Final Determination acknowledging the STN as a Federally recognized tribe on January 29, 2004.

Investigative Findings

Allegation that BIA "bent the rules"

The *Hartford Courant* article alleged that BIA "bent the rules" by granting STN Federal acknowledgment. On December 5, 2002, the former Assistant Secretary – Indian Affairs issued a Proposed Finding that denied STN Federal acknowledgment because the group failed to meet the requirements of the Code of Federal Regulations (CFR) Title 25, Chapter 1, Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe." The Proposed Finding stated that STN did not meet two out of the seven mandatory criteria for obtaining Federal acknowledgment. Specifically, STN did not demonstrate the *continual existence of a distinct community* from 1940 to 1967 and from 1996 to the present, and STN did *not maintain political authority and influence* for specific time periods from 1801 to present.

After the Proposed Finding was issued, the regulations provide for a period in which the petitioner and third parties may submit comments and additional information to BIA. During the comment period, STN did submit additional information to address these two criteria, which was considered by BIA in issuing its Final Determination.

On January 29, 2004, the Principal Deputy Assistant Secretary – Indian Affairs issued a Final Determination acknowledging the STN as a federally recognized tribe. The Final Determination stated that the additional information submitted by STN provided sufficient evidence to meet the requirements of the two criteria that had been lacking. The regulations, as written, are permissive and inherently flexible, and therefore afford latitude in the evidence used and considered to support Federal acknowledgment.

Whether or not the Principal Deputy Assistant Secretary – Indian Affairs acted within her regulatory discretion is not for the OIG to decide. Rather, we note that this matter is on appeal before the appropriate administrative tribunal, the Interior Board of Indian Appeals, which has jurisdiction to adjudicate this issue.

Allegation that briefing paper is a "smoking gun"

An OFA briefing paper, which was contained in the administrative record, was described as a "smoking gun" in various news articles. A team of OFA employees (a historian, a genealogist, and a cultural anthropologist) was responsible for reviewing STN's application for Federal acknowledgement and preparing the briefing paper for the Principal Deputy Assistant Secretary – Indian Affairs to assist her in making a decision regarding STN's acknowledgment. The options contained in the briefing paper were discussed in a meeting among the OFA team members, the Principal Deputy Assistant Secretary – Indian Affairs, and an attorney from the Office of Solicitor. Our investigation determined that the team prepared the briefing paper with knowledge that it would be subject to full public disclosure and part of the STN administrative record.

Allegation that STN representatives influenced BIA officials

Our investigation found no evidence to support the allegation that lobbyists or representatives for STN directly or indirectly influenced BIA officials to grant Federal

acknowledgment to STN. Interviews with STN's leader and council representatives disclosed that the Federal acknowledgment process cost the group approximately $12 million. In pursuing its land claim, the group incurred even more costs.

In order to cover these costs, the group sought supporters and ultimately secured several financial backers, including Frederick A. DeLuca, founder of the *Subway* restaurant chain and a member of a small investment group known as the Eastlander Group in Hartford, CT. The Eastlander Group employs Paul Manafort as a consultant who facilitates communications between Eastlander and the STN. Mr. Manafort was reported in at least one article as having lobbied DOI on behalf of STN.

The Eastlander Group's managing director told us that no one from the Eastlander Group had contacted DOI employees regarding STN's Federal acknowledgment. Mr. Manafort also told us he had no contact with DOI employees regarding STN's Federal acknowledgment. The DOI employees we interviewed also denied having been contacted by any STN lobbyist about the STN Federal acknowledgment petition, and our investigation found no independent evidence of any contact.

Allegation of personal bias against the Connecticut Attorney General

Finally, we addressed the allegation that an OFA employee had a personal bias toward the Connecticut Attorney General that may have influenced the review and Federal acknowledgment process. Representatives of the Town of Kent, CT, referred to e-mails in the administrative record authored by one of the OFA staff as evidence of personal bias. Using the Federal Acknowledgment Information Resource database for the STN petition, we searched for and identified 114 e-mails in the STN administrative record. We reviewed each e-mail, regardless of author and found none that could be construed as showing a personal bias toward the Attorney General.

Although the STN recognition decision was highly controversial, we found that OFA and the Principal Deputy Assistant Secretary – Indian Affairs conducted themselves in keeping with the requirements of the administrative process, their decision-making process was made transparent by the administrative record, and those parties aggrieved by the decision have sought relief in the appropriate administrative forum – each, as it should be. Therefore, we are closing this matter.

If you have any questions or additional concerns, please do not hesitate to contact me at (202) 208-5745.

Sincerely,

Earl E. Devaney
Inspector General

ATTACHMENT C

Reaction to Inspector General's Report

ATTACHMENT C

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

M. JODI RELL
GOVERNOR

August 31, 2004

Senator Christopher Dodd
Senator Joseph Lieberman
Representative Nancy Johnson
Representative Christopher Shays
Representative Rob Simmons
Representative Rosa DeLauro
Representative John Larson
United States Capitol
Washington, DC 20510

Dear Member of the Congressional Delegation:

I write to you today to share my dismay and disbelief relating to the conclusion by the U.S. Department of the Interior, Office of the Inspector General, that there was no wrongdoing in the decision that granted federal recognition to the Schaghticoke Indians.

This incomprehensible decision, sent in a letter to Senator Christopher Dodd, was apparently based, in part, on the conclusion by the Inspector General that there is no clear standard for granting federal recognition to tribes and that the regulations governing the Bureau of Indian Affairs (BIA) are "permissive and inherently flexible" when it comes to recognizing Indian tribes. More disturbing, was the Inspector General's acknowledgement that such flexibility exists even though tribal recognition carries with it unique entitlements, including limited sovereignty.

In light of these unique and significant entitlements, and the serious impact on states that tribal recognition has, the recognition process cannot and must not be "flexible." The tribal recognition process must be rigid and strict, thereby ensuring that only those groups who can legitimately and conclusively prove native American ancestry can avail themselves of the benefits that federal law provides to native American tribes.

This unsupportable decision begs more than ever for an immediate investigation into the entire recognition process at the BIA, as well as immediate legislative initiatives to repair the seriously flawed existing tribal recognition process. I ask that you immediately renew and redouble your efforts to legislatively correct this process in order to restore faith and integrity and to protect the rights of the states and their citizens.

I thank you in advance for your efforts.

Sincerely,

M. JODI RELL
Governor

Connecticut Attorney General's Office

Press Release

Attorney General's Statement On Interior Department's Report On Irregularities In Tribal Recognition Process

March 4, 2002

"This report is a bombshell. It confirms our worst suspicions and tragically reflects a disregard, if not contempt for the law by former officials. The report should lead to further scrutiny and convincingly supports my call for complete, comprehensive reform of the current tribal recognition system.

"The report is compelling, powerful evidence that the current tribal recognition system is irretrievably flawed -- rife with improper influence -- and needs to be rebuilt and reformed. Given the profound and irreversible ramifications of federal tribal recognitions, we must have an independent agency, insulated from the influence of politics and money so that these decisions will be made objectively on the merits.

"We are actively exploring the potential impact of this report on currently pending recognition applications and litigation."

Back to the Attorney General's Home Page

Back to the Press Releases Page

E-Mail Attorney General Richard Blumenthal

FOR IMMEDIATE RELEASE

August 31, 2004

Contacts:
Chief Richard Velky
Schaghticoke Tribal Nation
203-736-0782

Statement Regarding:
The Inspector General's Ruling to Support the Decision Making Process that Acknowledged the Schaghticoke Tribal Nation
By Chief Richard Velky

"The Tribe is gratified that the independent office of the Inspector General, which conducted a full investigation at the request of Connecticut's Congressional Delegation, has completely vindicated the court-supervised recognition process followed by the Office of Federal Acknowledgment and the Schaghticoke Tribal Nation.

As we have stated throughout, the exhaustive process we followed was independent, comprehensive and totally transparent.

We would hope that the strength and clarity of this decision, which rejected all implications of bias or improper influence, will temper those who have attempted to use politics and the media to undermine this comprehensive and fair determination."

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THE HILL

SEPTEMBER 9, 2004

Probe clears Bureau of Indian Affairs
By Klaus Marre

Connecticut Gov. Jodi Rell (R) is calling for a legislative fix to the federal tribal-recognition process after a probe that found no wrongdoing in the case of the Bureau of Indian Affairs' (BIA) acknowledgment of a group in her state as an Indian tribe.

The U.S. Department of the Interior's Office of Inspector General (OIG) concluded in its "high priority" investigation that there is no evidence that members of the group, known as the Schaghticoke Tribal Nation, influenced bureau officials or that a bureau official had a personal bias against the Connecticut attorney general.

Sen. Chris Dodd (D-Conn.) had requested the inspector general's investigation after reports in The Hartford Courant that bureau bent the rules to grant the tribe acknowledgment. Interior Secretary Gale Norton asked the inspector general to give the issue a high priority. Connecticut officials are worried that the acknowledgement of the group as a tribe would result in another casino's being built in the state.

State Attorney General Richard Blumenthal (D), in a statement, called the inspector general's report "highly superficial and totally unsatisfactory. It is a whitewash. I am disgusted and deeply disappointed."

Rell, in a statement, called the inspector general's finding incomprehensible and expressed "dismay and disbelief" that it found "no wrongdoing in the decision that granted federal recognition to the Schaghticoke Indians."

Blumenthal said an internal memo "clearly shows BIA staff admitting that the Schaghticoke group fails to meet the criteria for federal recognition and then searching for ways to skirt the agency's own rules."

Connecticut has appealed the recognition of the group.

In its report, the inspector general's office said the regulations used to determine which groups could be recognized "are permissive and inherently flexible, and therefore afford latitude in the evidence used

and considered to support Federal acknowledgement," adding, "Whether or not the Principal Deputy Assistant Secretary — Indian Affairs acted within her regulatory discretion is not for the OIG to decide."

Blumenthal said this statement shows that the "BIA is lawless, out of control, and the process is irrevocably broken."

Rell said the "the tribal-recognition process must be rigid and strict, thereby ensuring that only those groups who can legitimately and conclusively prove Native American ancestry can avail themselves of the benefits that federal law provides to Native American tribes."

Rell added that the inspector general's report shows the need to investigate the entire recognition process. She also called for "immediate legislative initiatives to repair the seriously flawed existing tribal recognition process."

In an interview with The Hill, Blumenthal agreed that it would take an act of Congress to fix the current system. He suggested that Congress establish an independent agency to deal with tribal recognition.

While he said that, realistically, Congress would not act on the issue this year, Blumenthal added that he sees "a growing sense throughout the nation that the process is broken and needs to be fixed." He said he hoped Congress could build on the "momentum toward reform" in the next session.

Earlier this year, the House Committee on Resources held a hearing on the Indian tribe recognition issue.

Last year, Dodd and Sen. Joe Lieberman (D-Conn.) introduced legislation to address the Bureau of Indian Affairs' recognition process. At the time, Dodd said there are "serious defects" in the current process, adding that it was "arcane, burdensome, time consuming, difficult to understand, and too easily manipulated for political purposes."

Dodd said: "The evidence is overwhelming that the rules of recognition are being applied strictly for some and bent or ignored altogether for others."

Sen. Ben Nighthorse Campbell (R-Colo.), chairman of the Senate Indian Affairs Committee, has also introduced legislation on the issue.

The BIA did not return a call seeking comment.

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ATTACHMENT D

Letter to Judge Linscheid and his Reply

ATTACHMENT D

Congress of the United States
Washington, DC 20515

February 10, 2005

FEB 15 2005
OFFICE OF HEARINGS AND APPEALS
BOARD OF INDIAN APPEALS
docketed

The Hon. Steven K. Linscheid
Chief Administrative Judge
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203

Re: *In Re Federal Acknowledgment of the Schaghticoke Tribal Nation*

Dear Judge Linscheid:

We are writing to inquire on the status of the Request for Reconsideration of the federal acknowledgment of the Schaghticoke Tribal Nation (STN), the administrative appeal presently pending before the Interior Board of Indian Appeals (IBIA).

Because of the tremendous interest our constituents have in the appeal proceedings, we would appreciate a detailed account of the actions IBIA has taken to date and its expected future schedule, including when you anticipate rendering a decision.

We are hopeful that the IBIA will adjudicate this matter according to federal regulations, based on a thorough and impartial review of the evidence in the record. We believe this review will reveal ample grounds for reconsideration under the regulations. These grounds include material errors in analyzing STN marriage rates and the January 12, 2004, internal "briefing paper" in which Bureau of Indian Affairs staff outlined an explicit strategy to disregard both regulations and precedent in recognizing the STN. This unlawful action was subsequently approved by the Assistant Secretary-Indian Affairs.

We believe a leadership vacuum at the Bureau of Indian Affairs has contributed to the unlawful and erroneous decision to recognize the STN. Our constituents are relying on the IBIA, after an objective and thorough review of the evidence in the record, to correct this breach of the public trust and provide necessary leadership on this important matter.

Sincerely,

Nancy L. Johnson
Member of Congress

Christopher Shays
Member of Congress

Rob Simmons
Member of Congress

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

February 22, 2005

Hon. Nancy L. Johnson
Hon. Christopher Shays
Hon. Rob Simmons
U.S. House of Representatives
United States Congress
Washington, D.C. 20515

Re: In re Federal Acknowledgment of the Schaghticoke Tribal Nation, Docket Nos. IBIA 04-83-A, 04-94-A, 04-95-A, 04-96-A, 04-97-A (consolidated)

Dear Representatives Johnson, Shays, and Simmons:

This is in response to your joint letter to me dated February 10, 2005, which I received on February 15, 2005, in which you inquire about the actions of the Board of Indian Appeals (Board) in the above-styled administrative appeal and the expected future schedule, and in which you express certain views concerning the merits of the case.

In response to your request concerning the Board's actions to date, I am enclosing copies of the Board's orders that have been issued in this case since the requests for reconsideration were filed. With respect to the future schedule for this case, please note that in the enclosed January 13, 2005, order, the Board granted a request made on behalf of the Secretary of the Interior to expedite consideration, although the Board noted that it does not intend to interrupt or delay several older cases that are already under active consideration, including In re Federal Acknowledgment of the Historical Eastern Pequot Tribe.

As a matter of practice, the Board generally declines to estimate a date by which it anticipates rendering a decision in a particular case, and I believe that practice is appropriate here. The time that it takes for the Board to issue a decision in any given case depends on a variety of factors, including the number and complexity of issues raised, the size of the administrative record, and the other responsibilities to which the Board must attend. Although the Board attempts to consider and decide cases as expeditiously as possible, it is important that the Board ensure that it has given thoughtful and thorough consideration to a case, before issuing a decision. I assure you that the Board intends to give independent and impartial consideration to the Schaghticoke case.

With respect to the views that your letter expresses on the merits of the Schaghticoke case, please be advised that this case is a formal administrative proceeding, governed by regulations that prohibit *ex parte* communications. See 43 C.F.R. § 4.27(b)(1). It does not appear that a copy of your letter was served on the parties in this proceeding, although your letter suggests that you may be representing the views of constituents who possibly have a particular interest in the outcome. Under these circumstances, the prudent — and perhaps required — course of action is for the Board to provide copies to the parties and provide them with an opportunity to file responses. See id. ("copies * * * shall be provided to all parties, who shall be given an opportunity to respond in writing").

By separate order being issued today, I am providing the parties to the Schaghticoke proceeding with a copy of your February 10, 2005, letter, and am giving them an opportunity to file responses with the Board.

Sincerely,

Steven K. Linscheid
Chief Administrative Judge

Enclosures: Nine orders issued to date in IBIA 04-83-A, 04-94-A, 04-95-A, 04-96-A, 04-97-A (to Representatives Johnson, Shays, and Simmons).

Copies to (no enclosures): Distribution List in IBIA 04-83-A, 04-94-A, 04-95-A, 04-96-A, 04-97-A.

ATTACHMENT E

Letters to the White House and Secretary Norton

ATTACHMENT E

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

December 15, 2004

The Honorable Alberto Gonzales
Assistant to the President and
White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Judge Gonzales:

In light of mounting evidence that the Bureau of Indian Affairs ("BIA") is dysfunctional—due to a leadership void—I urge the immediate appointment of a new Assistant Secretary – Indian Affairs to replace the present Assistant Secretary Dave Anderson. Because of his past involvement in a casino management business tied directly to groups seeking federal acknowledgment as Indian tribes, Mr. Anderson has recused himself completely from any involvement in three major responsibilities of his office: federal acknowledgment decisions, land-into-trust requests, and Indian gaming issues. This uniquely broad recusal has produced a dangerous lack of leadership and accountability for these important responsibilities of the head of the BIA.

This lack of leadership and accountability has been felt acutely by the State of Connecticut. Several petitions for federal tribal acknowledgment under consideration directly affect Connecticut and its citizens. Tribal recognition has serious and broad implications for any state, its municipalities and its citizens. A federally recognized Indian tribe has a unique sovereign status, exempting it from a broad range of state laws and regulation. Thus, Connecticut is particularly concerned by the current deeply troubling state of affairs at the BIA.

The most recent evidence that the BIA is dysfunctional—suffering from a leadership vacuum and crisis— is an extraordinary concession made by the BIA that it made critical and material errors in the final determination granting federal recognition to the Schaghticoke Tribal Nation ("STN"). In a filing dated December 2, 2004, with the Interior Board of Indian Appeals, where our appeal of the STN final determination is presently pending, the BIA admitted, in response to issues raised in our appeal, that it used a faulty methodology in calculating intra-tribal marriage rates – a critical component

to the final determination -- and stated that the final determination "should not be affirmed on these grounds absent explanation or new evidence." BIA Supplemental Transmission, at 3 (copy attached). Although the BIA is to be commended for its candor in admitting its mistake, the concession points to a larger problem. The BIA is an agency lacking proper oversight, and its decisions have been reduced to little more than arbitrary and unlawful exercises of administrative power ultimately to the detriment of the public.

The remarkable admission of this critical mistake follows an equally astounding discovery of a document reflecting the lawless and arbitrary nature of the BIA's decision making. In a so-called briefing paper to then-Acting Assistant Secretary Aurene Martin regarding the STN final determination, BIA staff recommended, and Ms. Martin adopted, an approach that explicitly disregarded prior agency precedent and regulations governing the acknowledgment process. A copy of the briefing paper is attached.

In my view, these deeply troubling actions are the direct result of a lack of leadership and accountability that is now endemic to the BIA. His unprecedented recusal relating to acknowledgment, land-into-trust, and gaming issues makes Assistant Secretary Anderson completely ineffectual and unaccountable--powerless to remedy this untenable situation. He has been forced to delegate these important decisions to underlings who are not confirmed by the Senate. Unless addressed, this inherent complete lack of leadership and accountability under Mr. Anderson will continue to produce arbitrary, misguided and unlawful actions by this agency.

I have brought these concerns to the attention of Secretary Norton, whose commitment and dedication I admire and respect. I am making this formal request to the President rather than to her at this point because the Assistant Secretary-Indian Affairs is a presidential appointment. I now call on the President to take the step that is now obviously needed: Replace Mr. Anderson immediately with an Assistant Secretary who will be effective and accountable in serving the responsibilities of this office fully and properly.

Sincerely yours,

RICHARD BLUMENTHAL

c: Connecticut Congressional Delegation

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel (860) 808-5318
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Office of The Attorney General
State of Connecticut

December 13, 2004

The Honorable Gale A. Norton
Secretary
United States Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Re: *In Re Federal Acknowledgement Petition of Schaghticoke Tribal Nation*

Dear Secretary Norton:

No doubt you are now aware of the extraordinary and material concession by the Bureau of Indian Affairs ("BIA") that it made critical errors in the Final Determination that seriously undermine its grant of federal recognition to the Schaghticoke Tribal Nation. As a consequence, the State of Connecticut ("State"), joined by the Kent School, both interested parties in the recognition proceedings, request that you instruct the Assistant Secretary for Indian Affairs or his designee to withdraw the Final Determination and issue a new determination denying recognition to this group. Your immediate and decisive action is necessary to remedy the BIA's clearly erroneous recognition of a group that fails to satisfy the acknowledgment criteria. Such action is also vital to uphold basic principles of integrity and public trust.

This petition is presently on appeal before the Interior Board of Indian Appeals ("Board") on a request for reconsideration filed by the State of Connecticut and other interested parties on May 3, 2004. In that request, the State and other parties specifically demonstrated, inter alia, that the BIA incorrectly calculated the marriage rates using a methodology that was contrary to the regulations and overwhelming and well established precedents of the BIA. We also showed that the BIA used the incorrect methodology and calculations as the basis for its finding that the petitioner had met two of the key mandatory criteria, sections 83.7(b), social community, and 83.7(c), political community, for most of the 19th century.

Now that the BIA has conceded that our analysis is correct on these points, the Final Determination cannot stand.

The concession was made by the BIA, through the Office of the Solicitor, on December 2, 2004, in a "Supplemental Transmittal" to the Board in the appeal. In this

extraordinary filing, the BIA essentially concedes the validity of the State's position on the marriage rates calculation: the Final Determination's finding on criteria (b) and (c) for a substantial part of the nineteenth century relies on a mistaken and now disavowed basis—one that is contrary to the BIA's own longstanding extensive precedent expressly cited in its filing. The BIA also concedes that it made a "material mathematical error in the calculations for 1841-1850, which when corrected lowers the calculation to less than 50%." BIA's Supplemental Transmission, p. 3 (a copy of the BIA's Supplemental Transmission is attached for your convenience).

These concessions by the BIA are fatal and must result in reversal of the Final Determination. The use of the admittedly erroneous marriage rate calculation and methodology was the sole basis for the BIA's finding that the petitioner met criteria 83.7(b) and (c) for almost all of the nineteenth century. Hence, two of the mandatory criteria have not been met. The Final Determination is fundamentally invalidated and must be reversed.

Indeed, the BIA itself has conceded, as it must, that the error is fatal to the Final Determination: "The analysis under 83.7(b)(2)(ii) in the Summary of the carryover under 83.7(c)(3), therefore, ***should not be affirmed on these grounds*** absent explanation or new evidence." BIA's Supplemental Transmission p. 3 (emphasis added).

No "explanation" can cure this fatal defect, which is contrary to both agency precedent and logic. Since the time for the submission of new evidence has passed without any evidence that would compensate for this deficiency, the final record is plainly inadequate to support a finding that two key mandatory criteria have been satisfied. The conclusion is inescapable that the petitioner is not—and cannot be—entitled to federal recognition.

I welcome the BIA's candor in admitting its mistake, and I commend it for taking steps to correct the error. Its admission alone is inadequate to correct the egregious mistake that has been made. I urge you to exercise your authority, pursuant to 25 C.F.R. § 1.2, to immediately direct the Assistant Secretary of Indian Affairs or his designee to withdraw the fundamentally flawed Final Determination and issue a corrected determination rejecting recognition.

While such action may seem extraordinary and unprecedented, so is this situation—involving a unique admission of error implicating the basic accuracy and integrity of the recognition decision.

Very truly yours,

RICHARD BLUMENTHAL

C: All parties of record on the
Attached Service List

United States Department of the Interior

OFFICE OF THE SOLICITOR
1849 C STREET N.W.
WASHINGTON, DC 20240

DEC 2 3 2004

Honorable Richard Blumenthal
Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Re: *In Re Federal Acknowledgment of the Schaghticoke Tribal Nation*

Dear General Blumenthal:

By letter dated December 13, 2004, you requested Secretary Norton to direct the Assistant Secretary - Indian Affairs or his designee to withdraw the final determination on the Schaghticoke Tribal Nation and "issue a corrected determination rejecting recognition." I discussed with Secretary Norton your correspondence. She is on travel and requested that I respond to your letter.

Interested parties, including the State of Connecticut, filed requests for reconsideration of the final determination on the Schaghticoke Tribal Nation (STN) that are pending before the Interior Board of Indian Appeals (IBIA). As part of the court-approved negotiated partial settlement of *United States v. 43.47 Acres of Land*, Civ. No. H-85-1078 (PCD), D. Conn., and related cases, the parties specifically agreed that the administrative reconsideration process before the IBIA would be available. Complying with the request in your recent correspondence would, in effect, be defeating that portion of the partial settlement agreement that provides for the application of the regulatory reconsideration process. The Department declines to take action that may be viewed as inconsistent with the settlement agreement that was the result of extensive negotiation among the parties.

The negotiated partial settlement also provides, however, a means to expedite the IBIA process. Specifically, the order provides in ¶ (j) that "[A]ny party may request the IBIA to expedite its consideration of and decision" in the proceedings and "may represent in such request that the other parties who are subject to this Order give their consent thereto, except the Department of the Interior which agrees not to oppose the request."

In consideration of the unique circumstances here, the Secretary requested that we file a motion with IBIA to expedite the pending proceedings, in accord with the court approved partial settlement. If the IBIA grants expeditious review, the IBIA can address all grounds raised by interested parties within its jurisdiction, and also may refer other issues not within its jurisdiction

back to the Department. As you recall, the parties in the settlement negotiations were not willing to limit their request for reconsideration to the four grounds delineated in the regulations as within the jurisdiction of the IBIA. Letting the IBIA process continue allows these other grounds to be addressed. Ultimately, letting IBIA conduct a full and fair evaluation of the filings of all parties may speed review and provide all parties with the opportunity to have their arguments and evidence addressed.

In reference to the Department's earlier filing with the IBIA and the final determination on the STN, your letter provides that "[n]o 'explanation' can cure this fatal defect" and requests a "corrected determination rejecting recognition." This conclusion is premature, at a minimum because interested parties and the petitioner filed new arguments and evidence before the IBIA that have not been considered. The IBIA has the authority under the Federal acknowledgment regulations to establish such procedures it deems appropriate to provide a full and fair evaluation of the requests for reconsideration, to request experts to provide comments, to request technical assistance, to conduct a hearing, and to rule after briefing is complete. 25 C.F.R. § 83.11(e). Depending on the IBIA's decision on the requests for reconsideration, additional review may occur at the Department under regulatory time frames. 25 C.F.R. § 83.11(f), (g). Until the administrative process is complete, it is premature to draw conclusions from the evidence in the record.

Thank you for your continued interest in the acknowledgment process.

Sincerely,

Sue Ellen Wooldridge
Solicitor

cc: Counsel of record

ATTACHMENT F

Procedural History

ATTACHMENT F

PROCEDURAL HISTORY

The Schaghticoke Tribal Nation ("STN" or "Tribe") formally began its quest for federal acknowledgment with the filing of its Notice of Intent on December 14, 1981. That entry into the federal acknowledgment process, more than twenty years ago, began the Tribe's efforts to meet the demanding (and changeable) standards applicable to establishing tribal existence through the Department of the Interior's administrative process. The Tribe's first substantial submission was in December of 1994; the BIA 's response, an Obvious Deficiency letter, followed on June 5, 1995. STN, by itself, and through a research team, engaged in extensive research and analysis to answer the BIA's criticisms of the original petition. By June 5, 2002, when the BIA put the STN petition on Active Consideration, the Tribe's petition had been extensively supplemented, including separate narratives covering History, Anthropology and Genealogy as well as thousands of supporting documents.

While the Tribe awaited substantive BIA action on its petition, three separate land claim actions were pending in United States District Court for the District of Connecticut that concerned the STN's tribal status for land claims.[1] The Original litigation had been filed by the United States in 1985, seeking to expand its taking of land on the Schaghticoke Reservation for the Appalachian Trail. STN opposed that additional taking, which would, among other things, have threatened the last rattlesnake den in Connecticut, located nearby on the Reservation. In each of these actions, the Tribe requested the District Court to act on the Tribe's petition, since

[1] United States v. 43.47 Acres of Land, More or Less, Situated in the County of Litchfield, Town of Kent, et al, No. H-85-1078 (D. Conn.); Schaghticoke Tribal Nation v. Kent School Corp, Inc., et al, No. 3-98-CV-01113 (D. Conn.); and Schaghticoke Tribal Nation v. United States and The Connecticut Light & Power Co, No. 3-00-CV-00820 (D. Conn.).

the BIA process had broken down to the extent that it could not provide timely relief to STN or others.

Originally, the District Court stayed the pending actions to give the BIA a fair opportunity to move forward with the process. On September 11, 2000, the District Court terminated the stay, noting that although BIA's "technical expertise makes it better positioned to make a recognition determination, such expertise is outweighed by its now- demonstrated inability to make such determinations in anything remotely resembling a timely manner." Ruling on Pending Motions, Schaghticoke Tribal Nation v. Kent School Corp., Inc., et al., No. 3-98-CV-01113 (D. Conn.) at 2.

The BIA's Active Consideration of the STN Petition was expedited, pursuant to an Order dated May 9, 2001, and as subsequently amended, entered by the District Court. That Order, negotiated over the course of several months among the parties (with the State as Amicus Curiae) and the District Court, was intended to facilitate the eventual resolution of the Tribe's land claims against the United States and others, which depended on a determination of STN tribal status. Under the Order, the interested parties, including the State, had extraordinary input in BIA's process -- far exceeding an interested party's normal input.

The Order provided firm scheduling deadlines and set out opportunities for the parties to do the following: (1) access to the Documented Petition and BIA's administrative file, including genealogical information, which would normally have been protected from disclosure under the privacy exception to FOIA,[2] (2) submit input regarding the design of the database, (3) submit documents and comments regarding any part of the database, (4) submit comments, arguments or documents in response to BIA's proposed findings, (5) request technical assistance, and (6)

[2] Freedom of Information Act, 5 U.S.C. 552(b)(6)

request expedited reconsideration before the IBIA. Furthermore, the Order was amended at times to accommodate the State's request for additional time or to submit additional evidence.

On December 5, 2002, the BIA issued a Proposed Finding (hereinafter "PF") against tribal acknowledgment following a review of the supplemented STN petition, finding that the Tribe had failed to satisfy two key criteria: 83.7(b)(community) for the periods covering 1940 to 1967, and 1996 to the time of the Proposed Finding, and (c)(political authority) for the period substantially covering 1801 to 1899, from 1900 to 1967, and from 1996 to the time of the Proposed Finding.

STN and most interested parties thereafter participated in the comment process. On August 8, 2003, the State of Connecticut filed 148 pages of comments, accompanied by approximately 660 pages of supporting documents. Various Connecticut towns and organizations also filed comments. STN submitted significant additional data and analysis answering the deficits identified by the BIA in its Proposed Finding. Under both the regulations and the Court Order, STN then had a limited opportunity to respond not only to the Proposed Finding, but also to the Interested Parties' comments on the Proposed Finding. The final STN submission, dated September 29, 2003, included supplemental documentation as well as additional analysis and argument in support of a determination that the Tribe had, with its new materials, finally and fully satisfied all the mandatory criteria under the regulations.

With the close of the comment period, the STN Petition was once more placed on Active Consideration by the BIA. Following that review, on January 29, 2004, the Acting Assistant Secretary notified the STN and all Interested Parties of her Final Determination to Acknowledge the existence of the Schaghticoke Tribal Nation. That Final Determination was published in the Federal Register on February 5, 2004. 69 Fed. Reg. 5,570 (Feb. 5, 2004). Within the 90-day

period for appeal, the State of Connecticut filed a Request for Reconsideration on May 3, 2004, jointly with others, the Coggswell Group and the "Schaghticoke Indian Tribe."[3] Thereafter, the parties agreed upon and submitted a stipulated Order requesting the IBIA to expedite its review, in furtherance of the District Court's goal of promptly resolving the long-standing litigation.

In contrast to its conclusion in the Proposed Finding,[4] and upon review of additional evidence and analysis submitted by the STN, the BIA determined that the Tribe's petition satisfied all seven mandatory criteria for federal acknowledgment as set forth at 25 C.F.R. Part 83. Those criteria, originally established by Notice and Comment Rulemaking in 1978, as amended by similar notice and Comment Rulemaking in 1994, constitute the sole criteria that a Tribe must satisfy to achieve federal acknowledgment. These delineated standards set forth the requirements the Petitioner must meet, but do not limit the proof by which the Tribe may satisfy those requirements.

On November 29, 2004, the STN submitted its brief in opposition to Request for Reconsideration of the Final Determination. Shortly thereafter, the BIA submitted to the IBIA an unprecedented "supplemental transmittal" that cast into doubt a complex analysis of tribal marriages that was part of the support for the Positive Determination. Since that time, STN has been asking the BIA to provide technical assistance to explain the meaning of the supplemental Transmittal, and, alternatively, has asked the IBIA to order the BIA to explain its current position. STN is still awaiting clarification and guidance.

---

[3] The others joining the State of Connecticut were the Kent School Corporation, CL&P, the Towns of Kent, Danbury, Bethel, New Fairfield, Newton, Ridgefield , Stamford, Greenwich, Sherman, Westport, Wilton, Weston and the Housatonic Valley of Elected Officials. Many Connecticut towns either joined the State submission or filed separately adopting and endorsing the State's submission. Because of the nearly identical content of those additional submissions, the IBIA, in its August 10, 2004 Order, directed responses only to the State's request for reconsideration. Order, August 10, 2004 at 6, n.5.

[4] In its Proposed Finding, the BIA concluded that the STN had satisfied five of the seven mandatory criteria. As for the two that were not satisfied (community and political authority) the BIA's discussion disclosed that, while there were gaps in the evidence to support a positive finding on these criteria for some periods, the STN had provided very significant and substantial evidence on them. There was nothing in the Proposed Finding indicating any view that these gaps could not be closed with acceptable and appropriate documentation.

ATTACHMENT H

Press Reports
on the
Connecticut Historical Society Forum

ATTACHMENT H

Indianz.Com. In Print.
URL: http://www.indianz.com/News/2005/007058.asp

Schaghticoke chief debates foe of tribe's recognition
WEDNESDAY, MARCH 16, 2005

Richard Velky, chief of the Schaghticoke Tribal Nation, and Connecticut attorney general Richard Blumenthal appeared for the first time together at a forum on the federal recognition process.

Velky defended the tribe from accusations of influence-peddling at the Bureau of Indian Affairs. He said the tribe had to turn to private investors to document its recognition petition. The founder of the Subway restaurant chain poured millions into the effort.

Velky said state officials are hypocritical for their stance on the issue. He said they urged the tribe to follow the BIA process but when the tribe succeeded, they criticized the process. He said they told the tribe not to seek recognition through Congress but now they are asking Congress to intervene.

Get the Story:
Schaghticoke Recognition Debated (The New London Day 3/16)
Username: *indianz@indianz.com*, Password: *indianzcom*
Forum on tribes illustrates tensions (The Waterbury Republican American 3/16)

Only on Indianz.Com:
Federal Recognition Database (July 2004)

Relevant Links:
Schaghticoke Tribal Nation - http://www.schaghticoke.com
Interior Board of Indian Appeals Decisions - http://www.ibiadecisions.com

Related Stories:
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Bill revokes BIA's recognition of Connecticut tribe (3/7)
Tribe wants details of lobbying firm's contacts (02/25)
Group denies contact with DOI over tribe's recognition (02/18)
Lobbyist hired to overturn tribe's recognition (01/24)
Schaghticoke Tribal Nation in dispute with backer (01/20)
Lawmakers ask Norton to block tribe's recognition (12/10)
BIA made error in tribe's recognition case (12/9)
Group claims tribe's recognition will hurt community (09/30)
State officials want 'fix' to recognition process (09/09)
Probe finds no wrongdoing in BIA recognition case (09/01)
Inspector General investigation called 'bunch of b.s.' (09/01)
Schaghticoke recognition to go before review board (06/04)
Critics take BIA to task over federal recognition (05/06)

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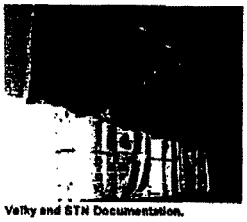
Attorney General Blumenthal and STN Chief Velky Go Head to Head in Panel Discussion

Dean Newton,l, Velky, Bellantoni and Blumenthal

HARTFORD -- Connecticut Attorney General Richard Blumenthal and Schaghticoke Tribal Nation Chief Richard Velky squared off against each other Tuesday night at a panel discussion at the Connecticut Historical Society -- with each of them giving their version of their legal confrontation over federal recognition of the Kent-based Indian tribe.



Velky and STN Documentation.

Blumenthal presented a detailed legal brief on why the federal recognition process of Native American tribes was corrupt and needs to be reformed -- and why he was leading the fight to appeal the recognition given to the STN by the Department of Interior's Bureau of Indian Affairs.

For his part, Velky gave an impassioned defense of the STN's right to be recognized as sovereign Indian nation.

A disinterested observer might call the two presentations a draw, but if the give and take between Blumenthal and Velky were to be judged by an applause meter then Velky won hands down. That said, it should be pointed out that the audience in the packed auditorium of the Connecticut Historical Society

Museum was filled with members of the Schaghticoke tribe.

The panel discussion was sponsored by the CHS and Connecticut Public Radio, which will broadcast the discussion on Sunday afternoon at 4 p.m. In addition to Blumenthal and Velky, who were appearing in a public forum for the first time, the panel included Nicholas Bellantoni, the state archeologist, and Nell Jessup Newton, dean of the UConn School of Law, who is an expert in Native American law.

The four panelists in the carefully negotiated presentation each spoke for 20-30 minutes. No questions were allowed, and there was no debate among the members of the panel -- though Velky and Blumenthal shook hands cordially when they mounted the stage.

Bellantoni led off the panel with a review of the history of Indians in New England in general, and the past history of the Schaghticokes in particular. He explained what was needed to gain federal recognition, but he reserved judgment on the issue of STN recognition.

Blumenthal was the second panelist, and he gave no apologies for his critical review of the federal recognition process -- including the decision on Jan. 29, 2004 by the BIA to give the STN recognition.

"We are at a crossroad in this country, at a historic turning point... we have a window of opportunity to make the system better," said Blumenthal. "This system has completely run amuck. It has become broken, and we need to fix it -- and the reason is that gambling money has distorted and driven the process."

The attorney general said that the casino money is being used to pay for an army of lobbyists and PR consultants, and the proof of that vast amounts of money could be found in court documents that describe the legal wrangling between the STN and their financial backers, the Eastlander group, which is funded by the founder of the Subway Restaurant chain, Fred DeLuca.\

"The public record is replete with backers of tribes who have given them millions of dollars," said Blumenthal. "There are papers saying that the Eastlander group has already advanced $10 million to the Schaghticokes. There is litigation going on to dissolve the (partnership), there are motions for contempt, and Eastlander has blocked attempts to re-negotiate the agreement (with the Schaghticokes), insisting that a $30 million mortgage must be paid by any future investor."

Blumenthal said the BIA itself is in disarray. He said the Schaghticoke decision was flawed, and that an internal BIA memo conceded that the STN had failed to meet two of the seven criteria needed for recognition.

"The basic problem is that Congress has delegated power to an agency that is leaderless and lawless," Blumenthal said.

The attorney general said the decision to recognize Indian tribes should be made by an independent agency, similar to the Security Exchange Commission, which is not involved in managing and supporting Native American tribes. He also said Congress should codify the specific requirements for recognition as a federal law, rather than depend on agency administrative regulations.

"I hope we can recognize that we have a lot of common ground," the attorney general concluded. "We all agree that the system is too slow, too costly. We ought to agree that these standards should be recognized in law, codified by the U.S. Congress. We ought to have full disclosure of all the money spent by lobbyists, lawyers, political consultants, public relations. A process that has been infected by money has to be disinfected....We should give these decisions the kind of respect they deserve. The tribes themselves deserve that respect."

Blumenthal received polite if tepid applause when he ended.

If Blumenthal's presentation was that of a practiced lawyer arguing his case before a jury, Velky made his case with the passion of a practiced politician speaking at a rally. Speaking immediately after Blumenthal, Velky took a drink of water and said of Blumenthal's remarks:

"I needed something to wash that down."

Velky recounted the effort by the Schaghticokes to document their history in order to gain recognition.

"Recognition does not create tribes," he said. "Recognition acknowledges a tribe's continuous existence. Recognition confirms the governmental relationship between the tribe and the U.S. Government. That doesn't just mean gaming. It means the unquestioned ability to govern ourselves, to protect tribal land, establish housing, protect health care and education and to help our children grow with pride and dignity."

He took on Blumenthal's criticism of the STN financial backers directly.

"Our petition contains more than 33,000 pages of documentation, and over 70 binders," he said. "It contains genealogy, photos, letters, state documents, church and Moravian documents, newspaper and magazine articles, interviews, citations from books, records from personal archives, personal journals, maps, census date and other resources."

As Velky spoke, members of the tribe marched down the center aisle, carrying stacks of documents which filled up the front of the stage. And as they did, the crowd applause grew louder and louder.

"That's what our backers paid for," said Velky as that round of applause peaked.

Velky also took on critics of both the Schaghticokes and the recognition process, including Congresswoman Nancy Johnson, who last week said she would introduce legislation to repeal the BIA's recognition of the STN.

"Recognition is ours and it won't be taken away from our tribe by Congresswoman Johnson's bill," he said.

He said Blumenthal claimed the BIA decision "was legally flawed before anyone had a chance to read it."

And he displayed three editorial cartoons that appeared in the KentTribune.com, one of which, he said, was "degrading " -- and he added:

"We have met all the criteria, we have stayed within the rules, it has now become time for Connecticut to accept that the Schaghticoke Tribal Nation is a federally recognized tribe."

For her part, Nell Jessup Newton, dean of the UConn law school, acknowledged that speaking immediately after Velky was a hard act to follow.

"It is very difficult to follow a stem-winder of a speech," she said. "So I guess the idea is to get everyone to calm down. My job is to talk a little bit about the law."

She then described the legal difficulties facing the federal government, the state and the federally recognized tribes in working together as Indian law is a work in progress.

"Federal recognition is a political act," she said, adding that federally recognized tribes are essentially "domestic dependent nations," and the federal government, the states and the Indian tribes are still working out details on specific issues, such as gambling and land claims.

Newton said the gambling issue was addressed by the 1994 revision of Indian Gambling Regulatory Act, but even now there are open issues that have to be negotiated between the states and the tribes. And different states have different gambling standards so that as more tribes are recognized, different gaming scenarios will develop.

In Connecticut, she said, the land claim issue surrounding the Schaghticoke claim of 2,200 acres in Kent has been held in abeyance by order of U.S. District Judge Peter Dorsey, until the federal recognition issue is finalized. And, she cautioned, if the appeal process goes into court, it might take years to settle those claims.

-- T.M.

Forum focuses on federal recognition

By Kathryn Boughton
Contributing Editor

Attorney Gen. Richard Blumenthal went head to head with a flamboyant Richard Velky, chief of the Schaghticoke Tribal Nation (STN), Tuesday night in an informational forum in Hartford. The program, Federal Recognition or Flawed System? Pride, Politics and CT's Native American Tribes, was sponsored by the Connecticut Historical Society and WNPR public radio.

It featured presentations by Chief Velky and Mr. Blumenthal, as well as by state archaeologist Nicholas Bellantoni and University of Connecticut School of Law dean Nell Jessup Newton.

Chief Velky and Mr. Blumenthal focused on the contested federal recognition granted to the STN in January 2004, while Mr. Bellantoni discussed the history of North American tribes and the U.S. government. Ms. Newton talked about the legal processes of recognition and the potential consequences. The great fear in Western Connecticut is that the STN will open a casino, changing the region's landscape forever.

Mr. Blumenthal and Chief Velky reiterated their divergent views of the BIA's recognition of the STN, with the attorney general asserting it was the result of a flawed and corrupt system and the chief insisting that the STN had fully and honestly complied with federal regulations.

Mr. Bellantoni said that he "had a foot in both camps" as a state official who also works closely with the Native American population in the preservation of sacred places and Indian burial sites.

"I am a dirt archaeologist, and archaeology can be used to dispo-

> ***'Who are they to say we are pretend Indians? We are Schaghticokes. Our recognition will stand.'***
>
> —Richard Velky, chief, Schaghticoke Tribal Nation

overseers to take care of the Indians and the overseers also disposed of tribal lands, sometimes to pay debts. The Indians were powerless to seek redress. The Native Americans had to move away from their lands—some left the area to live outside of tribal lands."

In 1933, he said, reservations were placed under the control of the state Park and Forest Commission, and, in 1940, the state Welfare Department took over administration of Indian affairs. Assimilation of native populations into non-tribal society was seen as the best way to improve their economic status. Indians were denied the right to conduct businesses on their reservations and powwows were forbidden.

This period of cultural suppression was followed by the activism of the 1960s, when Native Americans initiated their own civil rights demonstrations. This movement was promoted in Connecticut by "savvy Indian leaders" who sought formation of an Indians Affairs Commission. In the 1980s, the Mashantucket Pequots were recognized and established their highly successful casino, Foxwoods. At that point, the governor's Legislative Task Force on Indian Affairs came into being.

Mr. Bellantoni remarked on the extreme importance of federal recognition for tribes because of the legal rights it bestows on them,

Although he termed the BIA "leaderless and lost" and said it was "lawless in its disregard of the seven criteria for recognition," Mr. Blumenthal's presentation lacked its usual forcefulness on the issue.

Meanwhile, he reiterated his contention that reform would benefit Native Americans as well. "It is a system that is too slow and too costly," he said. "We ought to be able to agree that the agency needs more resources. We ought to be able to agree that the regulations should be codified. We ought to be able to agree that we need full disclosure, to know about the lobbyists' and the political consultants' efforts. The process needs to be made cleaner and more transparent. It needs to be disinfected.

"Recognition decisions should be made by an independent agency—not the BIA, which is set up to be an advocate for Indian groups," Mr. Blumenthal continued. "We need rules that recognize how important these decisions are. We should give the decisions the kind of respect they deserve, and the tribes deserve that respect, too."

Chief Velky delivered a forceful, sometimes angry, presentation. "It makes no difference who we talk to in the halls of Congress," he asserted. "We have been fighting for recognition since 1981. For more than 300 years, this is the land we have been at. It's been 24 years [since we started to seek recogni-

Ms. Newton focused her legal scholarship on the intersection of Indian law with constitutional law. The managing editor of the Handbook of Federal Indian Law said that federal Indian law was designed to reduce state control over Native American affairs. While the issue is tremendously complicated, she reduced it to three basic tenets: recognized Indian tribes possess sovereignty; the federal government has both power over and responsibility to the tribes, and the states' powers are limited.

Although limited, states do have some control of "their" Indians, she said, particularly in the East. Indeed, levels of control vary even within single states.

She said recognized tribes are sovereign nations and conduct government-to-government relations with the United States but this does not make them entirely independent. "They are domestic dependent nations," she explained. "Domestic because they are within the United States, dependent because they are subject to U.S. laws. Some tribes are treated as states for [the administration] of environmental laws. They can set up courts and in some instances they are immune from lawsuits. But tribal rights are limited—they can't just take land away from people who may have purchased it; they can't sell their tribal lands without permission and they can't make treaties with foreign nations. But they do have sovereignty over tribal members and some sovereignty over others [who may work on Indian lands]."

The U.S. government has much more power. It can terminate tribal status, if it desires, can

racis," he said. "I am here to set the table for you, to put the issue in historical context."

He noted that "historical context" varies with the tribal group under discussion. In the Eastern colonies, where contact between whites and Native Americans extends from "Plymouth to tonight," issues are often more complicated than in the Western states, where contact may have come in the mid-19th century. Indeed, a complicating feature is that "continuous contact" started in the East 175 years before there was a United States.

Mr. Bellantoni said the saga of relations between white settlers and Native Americans "is a not very pretty history," involving introduced European diseases that wiped out entire tribes, wars and displacement.

Federal recognition is granted to tribes who have opposed white incursions into their lands, negotiated with the U.S. government, sold land and signed treaties, he explained.

"Many Native Americans in New England left to join tribes farther West," he said. "But in Connecticut there were Native Americans who persisted, organizing in small groups. They were often indigent and were not considered citizens, but they resisted accommodating and survived. Their survival is one of the most dramatic miracles in history."

The 1790 Indian Trade and Intercourse Act, which prohibited the sale of Indian lands without Congressional approval, did little to protect tribes. Mr. Bellantoni said. "[Connecticut] started to appoint

because of the importance of recognition, the process is exacting.

Mr. Blumenthal followed this presentation, making his point that "this is a system that has run amok, a system distorted by gambling money." He asserted that there is growing awareness of the problems of recognition across the country and said there is an opportunity to reform it.

"I am not the first attorney general to feel this way," he said, noting that U.S. senators John McCain, chairman of the Senate Indian Affairs Committee, and former chairman Ben Nighthorse Campbell, a Native American, have both criticized the process.

"The landscape has changed," he told the audience, saying that both Native Americans and other citizens should be concerned with improving the system. "We have more in common than it might seem," he said. "There is a growing consensus that the system should be made better and faster. Groups that meet the criteria should be recognized, but those that fail should be denied sovereign status."

Mr. Blumenthal referred to the "incidents of lobbying we have seen in Washington" and the "series of scandals at the national level" that have given the reform movement momentum.

He referred to the internal BIA memo that "provided the blueprint to allow it to disregard two key criteria" in the STN recognition, and to the miscalculation of marriage rates that purportedly raised consubial rates among STN tribal members to the essential 50 percent level when the rates actually hover around 20 percent.

[illegible] history of the Schaghticokes in Kent, where the tribe has a reservation, including the sale of tribal lands by the overseers and the containment of the tribe against a backdrop of a rocky mountain while their fertile river fields were sold to others.

He lamented the flooding of a tribal burial ground when Connecticut Light & Power built a hydroelectric dam and the pollution of the river that had once helped sustain his tribe.

"The ground they left us to call our home is rocky and barren," he said. "As our efforts [for recognition] moved along, the U.S. government tried to take more of our land to expand the Appalachian Trail. So we started our efforts to reclaim [some of the lands taken from us.] Our claims are for our historical reservation—they are solid and legitimate."

He asserted that the STN has followed to the letter the federal requirements for recognition.

"It was fair," he said, "and we didn't want to have years of appeals." Still, he said, there was an instantaneous demand for repeal of the decision in January 2004.

Referring to political cartoons showing white gambling interests hiding behind an Indian mask, he said assertively, "Our genealogy is 100 percent solid. Who are they to say we are pretend Indians? We are Schaghticokes. Our recognition will stand. We will not be terminated. Our recognition will not be taken over by Congresswoman [Nancy] Johnson's bill."

Mrs. Johnson recently submitted legislation seeking to repeal the STN's federal recognition.

[illegible] groups and give it to individual tribal members and can impose federal laws on a tribe—as in making a tribe comply with federal labor laws when the tribe employs large numbers of non-tribal workers.

Recognition is required, she added, for the groups to take advantage of programs and services administered by the BIA.

She said the federal government's control over Indian affairs brings with it responsibilities. "The federal government is held to exacting fiduciary standards," she said, at the same time noting that the BIA has always been under-funded.

She said state authority is limited when it comes to gambling, as well. The 1988 federal gaming act provides that to have gambling on Indian land, the tribe must have a compact with the state. But a state cannot simply deny a tribe the right to operate a casino. Good faith negotiations must be entered into. She added that case law will eventually determine what constitutes "good faith."

"A state can't say, for instance, that a tribe can only have a casino if it can tax it, but it can talk about revenue sharing," she said. "It can talk about licensing certification, about the size of the operation. There are many issues that can be fairly on the table." She did not, however, comment on the strength of the Schaghticokes' claims.

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Blumenthal and Velky Press Claims in Forum

By: Kathryn Boughton 03/17/2005

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HARTFORD-An understated Attorney General Richard Blumenthal went head-to-head with a flamboyant Richard Velky, chief of the Schaghticoke Tribal Nation (STN), Tuesday night in an informational forum in Hartford.

The program, "Federal Recognition or Flawed System? Pride, Politics and CT's Native American Tribes," was sponsored by the Connecticut Historical Society and WNPR public radio, and featured presentations by Chief Velky and Mr. Blumenthal, as well as by state archaeologist Nicholas Bellantoni and University of Connecticut School of Law dean Nell Jessup Newton.

Each presented an overview of a different aspect of the federal recognition process for Native American tribes in the United States.

Chief Velky and Mr. Blumenthal focused on the contested federal recognition granted to the STN in January 2004, while Mr. Bellantoni discussed the history of North American tribes and the U.S. government. Ms. Newton talked about the legal processes of recognition and the potential consequences. The great fear in Western Connecticut is that the STN will open a casino, changing the region's landscape forever.

Mr. Blumenthal and Chief Velky reiterated their divergent views of the BIA's recognition of the STN, with the attorney general asserting it was the result of a flawed and corrupt system, while the chief insisted the STN had fully and honestly complied with federal regulations.

Mr. Bellantoni led off, telling the audience that he "had a foot in both camps" as a state official who also works closely with the Native American population in the preservation of sacred places and Indian burial sites.

"I am not a lawyer in understanding the legal processes surrounding recognition," he said. "I am a dirt archaeologist, and archaeology can be used to document tribal histories through artifacts. I am here to set the table for you, to put the issue in historical context."

He noted that "historical context" varies with the tribal group under discussion. In the

Eastern colonies, where contact between whites and Native Americans extends from "Plymouth to tonight," issues are often more complicated than in the Western states, where contact may have come in the mid-19th century. Indeed, a complicating feature is that "continuous contact" started in the East 175 years before there was a United States.

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Federal recognition is granted to tribes who have opposed white incursions into their lands, negotiated with the U.S. government, sold land and signed treaties, he explained.

"Many Native Americans in New England left to join tribes farther West," he said. "But in Connecticut there were Native Americans who persisted, organizing in small groups. They were often indigent and were not considered citizens, but they resisted accommodating and survived. Their survival is one of the most dramatic miracles in history."

The 1790 Indian Trade and Intercourse Act, which prohibited the sale of Indian lands without Congressional approval, did little to protect tribes, Mr. Bellantoni said.

"[Connecticut] started to appoint overseers to take care of the Indians, and the overseers also disposed of tribal lands, sometimes to pay debts. The Indians were powerless to seek redress. The Native Americans had to move away from their lands-some left the area to live outside of tribal lands."

In 1935, he said, reservations were placed under the control of the State Park and Forest Commission, and, in 1940, the State Welfare Department took over administration of Indian affairs. At that time, assimilation of native populations into non-tribal society was seen as the best way to improve their economic status. Indians were denied the right to conduct businesses on their reservations and powwows were forbidden.

This period of cultural suppression was followed by the activism of the 1960s, when Native Americans initiated their own civil rights demonstrations. This movement was promoted in Connecticut by "savvy Indian leaders" who sought formation of an Indians Affairs Commission. In the 1980s, the Mashantucket Pequots were recognized and established their highly successful casino, Foxwoods. At that point, the governor's Legislative Task Force on Indian Affairs came into being.

Mr. Bellantoni remarked on the extreme importance of federal recognition for tribes because of the legal rights it bestows on them, not the least being the right to operate gambling casinos. He said because of the importance of recognition, the process is exacting, with approximately 30,000 documents filed to support petitions for recognition.

"The burden of proof is on the applicant," he said, "and more are denied than are accepted, but the benefits are very important."

Mr. Blumenthal followed this presentation, making his point that "this is a system that has run amok, a system distorted by gambling money."

He asserted that there is growing awareness of the problems of recognition across the country, and said there is now an opportunity to reform it.

"I am not the first attorney general to feel this way," he said, noting that U.S. Senators John McCain, current chairman of the Senate Indian Affairs Committee, and former chairman Ben Nighthorse Campbell, a Native American, have both criticized the process.

"The landscape has changed," he told the audience, saying that both Native Americans and other citizens should be concerned with improving the system. "We have more in common than it might seem," he said. "There is a growing consensus that the system should be made better and faster. Groups that meet the criteria should be recognized, but those that fail should be denied sovereign status."

Mr. Blumenthal referred to the "incidents of lobbying we have seen in Washington" and the "series of scandals at the national level" that have given the reform movement momentum. He referred to the internal BIA memo that "provided the blueprint to allow it to disregard two key criteria" in the STN recognition, and to the miscalculation of marriage rates that purportedly raised connubial rates among STN tribal members to the essential 50 percent level when the rates actually hover around 20 percent.

Although he termed the BIA "leaderless and lost," and said it was "lawless in its

disregard of the seven criteria for recognition," Mr. Blumenthal's presentation lacked its usual forcefulness on the issue.

Meanwhile, he reiterated his contention that reform would benefit Native Americans as well. "It is a system that is too slow and too costly," he said. "We ought to be able to agree that the agency needs more resources. We ought to be able to agree that the regulations should be codified. We ought to be able to agree that we need full disclosure, to know about the lobbyists' and the political consultants' efforts. The process needs to be made cleaner and more transparent. It needs to be disinfected. "Recognition decisions should be made by an independent agency-not the BIA, which is set up to be an advocate for Indian groups," Mr. Blumenthal continued. "We need rules that recognize how important these decisions are. We should give the decisions the kind of respect they deserve, and the tribes deserve that respect, too."

His less confrontational presentation may have been in response to the audience he faced, which was heavily weighted toward Native Americans and their supporters. The emotional tenor of the audience became apparent when Chief Velky took the podium. Deliberately pouring water into a glass and taking a long drink, he declared, "I needed something to wash that down," a quip that provoked strong applause.

Chief Velky delivered a forceful, sometimes angry, presentation. "It makes no difference who we talk to in the halls of Congress," he asserted. "We have been fighting for recognition since 1981. For more than 300 years, this is the land we have been at. It's been 24 years [since we started to seek recognition] and we're still struggling."

Chief Velky discussed the amount of documentation needed to support the tribe's petition-some 33,000 pages of documents held in 70 binders. On cue, young tribal members paraded down the central aisle toting copies of the binders and piling them on stage, again to the loud appreciation of the audience.

Mr. Velky recounted the unhappy history of the Schaghticokes in Kent-where the tribe has a reservation-including the sale of tribal lands by the overseers and the containment of the tribe against a backdrop of a rocky mountain while their fertile river fields were sold to others. He lamented the flooding of a tribal burial ground when Connecticut Light & Power built a hydroelectric dam, and spoke of the pollution of the river that had once helped sustain his tribe.

"The ground they left us to call our home is rocky and barren," he said. "And as our efforts [for recognition] moved along, the U.S. government tried to take more of our land to expand the Appalachian Trail. So we started our own efforts to reclaim [some of the lands taken from us.] Our claims are for our historical reservation-they are solid and legitimate."

He asserted that the STN has followed to the letter the federal requirements for recognition, even allowing extensions of certain timeframes to "the state and a growing list of opponents."

"It was fair," he said, "and we didn't want to have years of appeals."

Still, he recounted, there was an instantaneous demand for repeal of the decision in January 2004. "They said the decision was legally flawed even before I had a chance to walk downstairs to get it off the fax," he said.

Referring to political cartoons showing white gambling interests hiding behind an Indian mask, he said assertively, "Our genealogy is 100 percent solid. Who are they to say we are pretend Indians?"

"We are Schaghticokes," he declared. "Our recognition will stand. We will not be terminated. Our recognition will not be taken over by Congressman [Nancy] Johnson's bill." Mrs. Johnson recently submitted legislation seeking to repeal the STN's federal recognition.

His hard-swinging presentation was followed by Ms. Newton, who focused her legal scholarship on the intersection of Indian law with constitutional law. She is the managing editor of the Handbook of Federal Indian Law. She wryly commented that putting a legal expert on after such an emotional appearance was designed to calm the crowd down.

Ms. Newton said that federal Indian law was designed to reduce state control over Native American affairs. While the issue is tremendously complicated, she reduced it to three basic tenets: recognized Indian tribes possess sovereignty; the Federal government has both power over and responsibility to the tribes, and the states' powers are limited.

Although limited, states do have some control of "their" Indians, she said, particularly

in the East. Indeed, levels of control vary even within single states.
"It's all very complicated," she said.
She said recognized tribes are sovereign nations and conduct government-to-government relations with the United States. This does not, however, make them entirely independent.
"They are domestic dependent nations," she explained. "Domestic because they are within the Untied States, dependent because they are subject to U.S. laws. Some tribes are treated as states for [the administration] of environmental laws. They can set up courts and in some instances they are immune from lawsuits. But tribal rights are limited-they can't just take land away from people who may have purchased it; they can't sell their tribal lands without permission and they can't make treaties with foreign nations. But they do have sovereignty over tribal members and some sovereignty over others [who may work on Indian lands]."
The U.S. government has much more power. It can terminate tribal status, if it desires, can take lands away through eminent domain, can break up tribal land groups and give it to individual tribal members and can impose federal laws on a tribe-as in making a tribe comply with federal labor laws when the tribe employs large numbers of non-tribal workers.
Recognition is required, she added, for the groups to take advantage of many of the programs and services administered by the BIA.

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ATTACHMENT I

May 24, 2000 Testimony Of Chief Richard L. Velky Schaghticoke Tribal Nation

ATTACHMENT 1

Statement of Chief Richard L. Velky
Schaghticoke Tribal Nation
Kent, Connecticut

Senate Committee on Indian Affairs

May 24, 2000

Hearing on S. 611
A bill to provide administrative procedures to extend
Federal Recognition to certain Indian groups

Chairman Campbell and other distinguished Members of the Senate Committee on Indian Affairs, my name is Richard L. Velky and I am the Chief of the Schaghticoke Tribal Nation ("Schaghticoke Tribe") of Kent, Connecticut. We commend the efforts of Senator Campbell and the Senate Committee on Indian Affairs to find a legislative solution to the considerable delays facing tribes that are seeking federal recognition. Over the past several years, the Schaghticoke Tribe has become intensely aware that the current acknowledgment process under the Branch of Acknowledgment and Research (BAR) of the Bureau of Indian Affairs (BIA) is broken and must be fixed. As the Schaghticoke Tribe has been working to obtain federal recognition, we have learned a great deal about the existing procedures, and, unfortunately, about how deeply those procedures become mired in endless delay.

As a long-term solution to these bureaucratic delays, we support the concept contained in Senate Bill 611 that would establish an independent Commission to assume authority for recognizing an Indian group's tribal status. Given the shortened legislative calendar this year, however, and competing demands upon this Congress, we are concerned that S. 611 may not receive action this year. Therefore, until such a Commission is established, we believe that Congress must increase funding to BIA to give BAR adequate resources to address the serious backlog of petitions filed by tribes seeking federal acknowledgment.

A tribal petitioner can expect to wait eight to ten years as its petition for federal acknowledgment winds through the various stages of BAR investigation, review, and post-determination appeal. As a result, it is safe to say that the federal acknowledgment process -- the process that establishes the fundamental right of Indian tribes to engage in government-to-government relationships with the United States -- is broken.

The first stage for substantial agency delay is the "Ready, Waiting for Active Consideration" queue. The regulations set no time limit as to how long the BAR may permit a petition to languish there. Five of the eleven petitioners currently in the "Ready, Waiting for Active Consideration" queue have been waiting for more than four years. The Schaghticoke Tribe has been waiting three years.

Evaluation does not begin until the tribe's petition advances to the "Active Consideration" phase. The regulations require the BAR to issue a "Proposed Finding" on the tribal entity's federal status within a year of beginning its active consideration of the petition (with discretion to extend active consideration for an additional 180 days). In spite of these regulatory timelines, the tribes under active consideration and awaiting a Proposed Finding or Amended Proposed Finding have been waiting an average of three years. See, BAR, Summary Status of Acknowledgement Cases, April 4, 2000.

Following the Proposed Finding, the process can still continue for years. The BAR issued Proposed Findings for the United Houma Nation, the Duwamish Indian Tribe, and the Chinook Indian Tribe/Chinook Nation in 1994, 1996, and 1997 respectively. None of these tribal entities have received a "Final Determination" of tribal status, yet each has been under active consideration for nine, eight, and six years, respectively.

Even a Final Determination may lack finality, as, for the first time, appellate review is available, either in the agency or in the federal courts. For example, the Final Determination of the Match-E-Be-Nash-She-Wish Band of Pottawotami Indians of Michigan was suspended pending appeal brought by the City of Detroit. That Determination was finally effective last year, nearly a year after it was first "final."

The Schaghticoke Tribe has been in "Ready, Waiting for Active Consideration Status" since May 29, 1997. There are seven tribes on just the "Ready, Waiting for Active Consideration" list ahead of them, which does not include the tribes in Active Status awaiting a Proposed Finding or Amended Proposed Finding, some of which have been there since 1995. That also does not include the four tribes awaiting Final Determinations.

For the Schaghticoke Tribe, the deterioration of the federal acknowledgment process has serious implications. The Schaghticoke Tribe has been continuously recognized from historic times by the Colony and State of Connecticut. Our Tribal Reservation in Kent, Connecticut, provides the historical and spiritual base for our tribal members. The Reservation is mountainous and rocky, with a small strip of flatland located on a flood plain along the Housatonic River. For us, federal recognition is essential to our ability to safeguard what remains of our tribal holdings and to secure our survival into the future.

The Schaghticoke Tribe has managed to survive the past centuries under adverse circumstances. We lost the great majority of our original landbase to incoming settlers and to the "overseers" commissioned by the Colonial and State authorities to manage the resources of impoverished tribal members. As subsistence became impossible, tribal members sought survival elsewhere, but always returned to the Reservation, at least at the end of their lives. Over time, the State's "detribalization" policies sought to take away even that last refuge, gradually attempting to force the remaining families from their reservation home, even burning homes to hasten abandonment.

We have not abandoned our homeland and we refuse to do so. For years, tribal members have fought against State policies designed to terminate and separate tribes from their reservations.

The Schaghticoke Tribe's federal attempts to preserve its heritage and defend its landbase have ranged from an unsuccessful claim filed in the Indian Claims Commission in 1949, to our current petition for federal recognition and pending land litigation. Throughout its history, and continuing into the present, the State has continued its formal recognition of the Schaghticoke Tribe. Although our petition for federal acknowledgment has been pending with BIA since 1997, the United States has not reached any conclusion about our tribal status. Nonetheless, the United States has routed the Appalachian Trail directly through the Reservation, without any authority to do so. It has trespassed on our lands without even a shred of a claim of any right to do so.

In recent years, the Tribe has been caught up in litigation connected to the United States' efforts to acquire additional land for the Appalachian Trail right of way. The Tribe's ability to defend itself from that land condemnation depends upon its federal tribal status. The United States filed its condemnation suit in 1985, and, over its many objections, that action was delayed pending the determination of Schaghticoke tribal status. Since the submission of the Tribe's research to the BAR in 1997, the federal government has changed its approach. Now the government is willing to wait years for the BAR to determine the Schaghticoke Tribe's federal status. By the BAR's own estimates in 1999, it may not even begin review of the Schaghticoke petition for another five years, and may not reach a final determination of tribal status for ten to twelve years.

While the circumstances of the Schaghticoke Tribe are unique in that we are defending litigation brought by the federal government against our land, our experience with the BAR's acknowledgment process mirrors that of many other tribes. From its inception, the BAR's performance has been marked by delay. Since 1978, the BAR has resolved only 30 petitions through the acknowledgment process in 22 years, averaging 1.4 petitions a year.

Although the BIA has recently announced new internal procedures to streamline BAR's lengthy and cumbersome review process,[1] the BIA continues to fail to request sufficient funding to adequately staff and upgrade BAR procedures to meet the backlog of current petitions and to process incoming petitions. Even if under the new revised procedures and current resources, BAR was able to double or triple its processing time, it would still move only two to three tribes off the application list per year. With more than 150 tribal entities that have expressed their intent to seek recognition, it could potentially take 50 to 75 years before BIA could clear this current backlog.

The BAR currently receives only about $900,000 each year for its work.[2] Significantly more money is needed for BAR in order to allow it to add staff and other resources that can assist with processing the petitions. As BIA has acknowledged, the current BAR staff is overwhelmed not only with processing existing and incoming petitions, but also with responding

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[1] See 65 Fed. Reg. 7052-53 (February 11, 2000).

[2] Funding for the acknowledgment process (along with tribal government and tribal court programs) is contained within Tribal Government Services, a program element of Central Office Operations. Approximately $900,000 of Tribal Government Services funds went to BAR in FY 1999 and FY 2000, according to that office.

to information requested in connection with independent review of Final Determinations by the Interior Board of Indian Appeals and with five pending lawsuits concerning acknowledgment decisions.[3] The BIA staff is also tasked with responding to substantial numbers of Freedom of Information Act (FOIA) requests.[4]

The BAR's own estimates for processing petitions raise further questions about its capacity to make any headway without significant additional resources. For example, the Schaghticoke Tribe's petition was deemed "Ready, Waiting for Active" in 1997. At that time, BAR officials estimated completing action on our petition in one or two years. In 1998, the BAR explained to me that it would need another two to three years to work our petition through the system. In 1999, the BAR anticipated that more than seven to ten years will pass before the Schaghticoke Tribe's federal status can be resolved. Without significant additional funding to BAR, we anticipate that the new internal procedures at BAR will not significantly increase the speed with which our petition is processed.

With more funding, BAR would have the ability to obtain additional assistance with the intake and processing of petitions, by hiring additional staff and/or possibly outside consultants to conduct the preliminary review of the pending petitions and weed out those that are most complete for further review by BIA professionals. Additional funding would also provide BAR with the resources it has apparently lacked in the past to seriously consider expedited procedures to resolve petitions of tribes that are clearly entitled to recognition, for example through the establishment of a priority system for tribes meeting certain criteria.

For example, BAR could expedite the review process for certain tribes by giving priority to petitions filed by tribes that are clearly entitled to federal recognition based on long-standing recognition under federal treaties and/or state law and strong tribal ties to a reservation.

In addition, the BAR could consider joining the petitions of tribes where factual questions exist as to the relation of the ancestry of the petitioning tribes. For instance, the Schaghticoke Tribe believes that it would be in the interest of the BAR to review the pending Golden Hill Paugusset and Schaghticoke Tribe petitions together. BAR review of the Golden Hill Paugusset petition without reference to the information contained in the Schaghticoke Tribe petition has serious implications for the Schaghticoke Tribe and does not make sound policy sense.

The Golden Hill Paugusset petition includes the names of individuals cited as ancestors of the Paugusset Tribe who, according to the research of the Schaghticoke Tribe, are clearly ancestors of the Schaghticoke Tribe. Therefore, if the Golden Hill Paugusset application, which is under Active Consideration, is reviewed prior to that of the Schaghticoke Tribe, which is eighth in line for Active Consideration, the Schaghticoke Tribe's case for federal recognition will be unfairly compromised to the detriment of the legitimate descendants of those ancestors.

The BAR bases its findings on the accuracy of the material submitted by tribes to document the seven criteria for federal acknowledgment and uses a "preponderance of the

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[3] See 65 Fed. Reg. 7052 (February 11, 2000).
[4] Id.

evidence" standard. Establishing ancestry based on bloodlines is obviously a complicated, fact-based inquiry. Given that there are critical factual issues in question as to the ancestry of these two Connecticut tribes, we believe the BIA should have the flexibility to combine the petitions in order to prevent making a determination on the merits of the Golden Hill Paugusset petition without benefit of the information contained in the Schaghticoke Tribe petition. Accuracy in government public policy-making and the soundness of agency decisions is in the interest of all concerned – the Schaghticoke Tribe, the Golden Hill Paugusset, and the federal government.

In conclusion, the federal acknowledgment regulations were designed to insulate the BAR from political pressures that might improperly influence determinations of federal tribal status. Yet lack of adequate oversight has resulted in an unworkable acknowledgment process from the perspective of many tribes.

With more than 150 tribal entities expressing their intent to seek recognition of a government-to-government relationship with the United States, the inability of the BAR to respond to requests for federal recognition constitutes a denial of justice and runs counter to stated federal policy favoring self-determination. By delaying tribes' requests for federal recognition, the United States, through its inaction, impedes prospects for self-determination by otherwise eligible Indian tribes.

On behalf of the Schaghticoke Tribal Nation, I thank the Committee for today's hearing, and its deeply committed interest in this most important matter.

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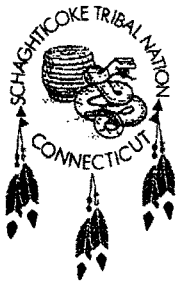

SCHAGHTICOKE TRIBAL NATION
CONNECTICUT

June 20, 2005

Senator John McCain, Chairman
Senator Byron L. Dorgan, Vice Chairman
Committee on Indian Affairs
United States Senate
836 Hart Office Building
Washington, DC 20510

Dear Chairman McCain and Vice Chairman Dorgan:

In follow-up to the May 11th hearing, we thank you for asking the Schaghticoke Tribal Nation (STN or Tribe) to provide additional information.

It was an honor for me, as Chief of the Tribe to testify before your Committee at the oversight hearing on Federal Recognition of Indian Tribes and to tell about the 25-year process we endured to achieve Federal Recognition. I also listened to the other tribal leaders who echoed similar hardships created by this process. If the Senate Committee on Indian Affairs intends to reform the recognition process then I sincerely hope that the result will be a process that is much less complicated and that can be navigated in a more timely manner.

At the hearing, STN was put in a very defensive position with most of Connecticut's delegation appearing to testify against the process that they called "lawless and out of control." I can assure you both that this was not their sentiment when STN started this process, especially when we submitted our petition to the Branch of Acknowledgment and Research (BAR) on December 7, 1994.

We followed the regulations. We stayed within the process and now our opponents want to change the regulations after they agreed, in a consent order entered by United States District Judge Peter Dorsey in May of 2001, to comply with those regulations. Connecticut's Attorney General Richard Blumenthal in a Press Release on May 9, 2001, stated: "This order provides for an open, orderly process to review the Schaghticoke petition for federal recognition. Key to the process is the timely provision of documents, the creation of an information database and a fair time frame for providing comment."

When the Schaghticoke filed for federal recognition, we followed the Official Guidelines to the Federal Acknowledgment Regulations that were provided to us by the United States Department of the Interior. We read them carefully and provided documentation for all seven Criteria. The members of the Connecticut delegation who testified before your Committee are some of the same individuals who encouraged us to simply have patience and stay within the federal acknowledgment process. We did exactly that.

Schaghticoke Reservation: Schaghticoke Road, Kent, CT 06757 • P.O. Box 893 • tel. 860-927-8050

PAGE 2/33 * RCVD AT 6/20/2005 5:04:03 PM [Eastern Daylight Time] * SVR:DCRFAX02/1 * DNIS:5391 * CSID:2037360875 * DURATION (mm-ss):11-22

Now our Congressional delegation wants to change the regulations. They asked the Committee to impose a moratorium on recognition and to support the termination of our Tribe, even before the process is over. After many years of research and encouragement from Connecticut's Congressional delegation, it was hurtful to see and hear the position they now take against us, especially after we listened to them and followed their advice.

Today, petitioning tribes are faced with a problem that makes recognition more difficult -- as if that were not already hard enough. Indian gaming -- regulated by the federal government under the Indian Gaming Regulatory Act in 1988 and intended to provide opportunities for tribal economic self-sufficiency -- clouds the issue. Even though we filed our Letter of Intent in 1981, we no longer have to just prove our existence for over 300 years under the seven Criteria, we also have to fight off every organization that oppose us because of the prospect of gaming.

For the Schaghticoke, it is not just Connecticut's Attorney General, but over 30 towns -- some which are located on the opposite side of our State in southeastern Connecticut -- and groups like TASK (Town Action to Save Kent) who are trying to overturn our recognition. The resistance against Schaghticoke was spear-headed by the Attorney General and some of Connecticut's Congressional delegation, including Congresswoman Nancy Johnson who has introduced a bill to detribalize the Schaghticoke. The bill was co-sponsored by Congressmen Christopher Shays and Rob Simmons from very different parts of the State. Our own Governor, M. Jodi Rell, has spoken against us, yet she has refused to afford an opportunity to STN's representatives to meet and discuss the process with her.

The Governor testified before you that there are no reservations in Connecticut. However, the Schaghticoke's Reservation boundaries were outlined by the Colony of Connecticut General Assembly 269 years ago. We are the people of that land. Since long before Connecticut reserved the land for us, our people have been born and have lived and died on our land. We will continue to call our Reservation "home" although we have only 400 acres remaining from what was once thousands of acres. Much of our land was illegally taken from us after 1790 – and by actions of the State of Connecticut.

Others might have the Committee believe that we do not deserve the right to be recognized. If we do not deserve it, then what other tribal group would? Through our research we have submitted over 70 volumes of Schaghticoke history comprising over 30,000 pages of documentation, along with 10 CD's and 19 DVD's to support our petition. Schaghticoke roots are very deep and well documented in Connecticut. We are among Connecticut's first families.

Many of our opponents, such as the members of TASK, do not share our values in preserving the land that surrounds our Reservation. They come from New York City and use our homeland for their weekend retreats. They destroy the area with mansions, fences, gates, stone walls, and then call themselves caretakers. This was our land long before European settlement. The Schaghticoke have not destroyed their land by over building or polluting. With the formation of the Connecticut Indian Affairs Council in 1973, legislation reestablished our rights to control our land.

The State of Connecticut, Department of Environmental Protection, still holds title to our land as overseer. State Officials, however, say they recognize the land and not the people. It is interesting to note that the 1973 State legislation designated five tribes as indigenous to Connecticut - the Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett.

It is hard for the Schaghticoke to understand how our state politicians can deny a relationship that their predecessors endorsed for nearly 300 years. As you can imagine, this has not been easy for the Schaghticoke people.

On a personal note, I have always known who I am. I was raised with the understanding of the ways of my people. My grandfather, Chief Howard Harris, made sure of that, as well as my mother, Catherine Velky [Matoaka] ("Wherever She Goes She Brings People Together"). After my honorable discharge from the Navy in 1971, I became active in my Tribe's government. I have been a Tribal Council member, a Representative of American Indians for Development, a Representative to the Connecticut Indian Affairs Council, Chairman of the Housing Authority, Vice Chairman of the Schaghticoke Tribal Nation, and the elected Chief of the Schaghticoke Tribal Nation since 1987. As Chief, I have a full and complete understanding of what is needed to be successful in the recognition process.

I realize that this might be a little more of an introduction than you wanted, but it is important to the Schaghticoke Tribal Nation that the Senate Committee on Indian Affairs understand that the Schaghticoke followed the regulations, were successful in satisfying all seven Criteria for federal acknowledgment, and put their trust in the full and fair completion of the federal acknowledgment process.

Attached are answers to the specific questions you posed to the STN. I have taken the liberty of asking legal counsel to respond to your first question because we are still in litigation. Should you or your Committee Members have any further questions or need any further information from Schaghticoke, please do not hesitate to call us.

In Brotherhood,

Richard L. Velky, Chief

Enclosures

RESPONSE OF SCHAGHTICOKE TRIBAL NATION TO LETTER

FROM

SENATE COMMITTEE ON INDIAN AFFAIRS

1. The process for handling your petition has been formed in part by litigation.

1A. What is the basis for that litigation? Who were the parties to that litigation?

RESPONSE

The Schaghticoke Tribal Nation ("STN" or "Tribe") has spent many years in court trying to preserve and protect the Reservation it holds through a 1736 action of the General Assembly of the Colony of Connecticut. The United States, not the Tribe, started the first lawsuit – a condemnation action -- in 1985 (*See*: U.S. v. 43.47 Acres of Land). This was approximately three years before the Indian Gaming Regulatory Act. The Tribe had already filed its letter of intent in 1981 to seek federal acknowledgment through the federal administrative process.

The STN defended against the condemnation and later filed its own land claims to preserve the Tribe's Reservation lands against encroachment, and to restore a portion lost to prior encroachment (*See*: Schaghticoke v. Kent School et al; and STN v. U.S. and Connecticut Light & Power). In addition to the land threatened by the United States' condemnation action, the Tribe had lost much of its original Reservation land through the unlawful actions of the State of Connecticut serving as "trustee" for the Tribe.

None of these cases can be resolved until STN's tribal status is established. Federal law requires that the Tribe achieve federal recognition before it may succeed in these efforts. The Federal acknowledgment process has been daunting and notoriously slow. As a result, the United States District Judge presiding over these cases has assumed a measure of control over the integrity and efficiency of the Bureau of Indian Affairs recognition process.

(i) United States Condemnation of (STN) land for widening the Appalachian Trail.

U.S.D.C. Civil Action No. H-85-1078 (PCD)

UNITED STATES OF AMERICA
v.
43.47 ACRES OF LAND, MORE OR LESS, SITUATED IN THE
COUNTY OF LITCHFIELD, TOWN OF KENT; TOWN OF KENT;
SCHAGHTICOKE TRIBE OF INDIANS;NEW MILFORD
SAVINGS BANK; FRANK H. TURKINGTON AND HEIRS;
TAX COLLECTOR (TOWN OF KENT); AND UNKNOWN OTHERS

The United States filed this lawsuit seeking to expand the right-of-way used for the Appalachian Trail, which crosses the STN Reservation. The United States sought to broaden the Trail through condemnation of lands contiguous to the existing rights-of-way. In addition to STN (whose official name was then the Schaghticoke Tribe of Indians), the defendants were those who owned or held interest in lands to be condemned for the right of way. As captioned above, that case is still pending before Judge Peter C. Dorsey in the United States District Court for the District of Connecticut. With only 400 acres of land remaining of its original Reservation, STN declined to accept payment for any further land transfer. Moreover, because the United States may not condemn land of an Indian Tribe without express authorization of the United States Congress, that suit cannot be resolved until STN's status is finally resolved. That resolution is subject to the action of the Department of the Interior, as supervised by the Court through a negotiated scheduling order. (*See:* Scheduling Order attached.)

(ii) Schaghticoke Tribal Nation Land Claim – North and East of the present Reservation

U.S.D.C. Civil Action No. 3:98-CV-01113 (PCD)

SCHAGHTICOKE TRIBAL NATION
v.
KENT SCHOOL, INC.; PRESTON MOUNTAIN CLUB;
CONNECTICUT LIGHT & POWER CO.; TOWN OF KENT;
LORETTA E. BONOS, Administratrix c.t.a. of the ESTATE OF
FORENCE E. M. BAKER BONOS; APPALACHIAN TRAIL
CONFERENCE, INC.; BARBARA G. BUSH; ESTATE OF
EUGENE L. PHELP S; AND NEW MILFORD SAVINGS BANK

The STN filed this action in 1998. The defendants are those (other than the Tribe) occupying the lands recognized by the State of Connecticut as of 1790 as STN's reservation. The lands, located immediately to the North and East of the present Reservation, that are the subject of the suit were unlawfully transferred after 1790 to third parties by Overseers appointed by the State of Connecticut to safeguard the Tribe, its lands and its peoples. Subject to the final determination that STN is and has always been an Indian Tribe, the Non-Intercourse Act (25 U.S.C. § 177 and predecessors) render any such transfers void. As with the condemnation action, STN's tribal status is a threshold requirement for the resolution of this lawsuit.

The Attorney General for the State of Connecticut participates in this lawsuit as a "friend of the court" pursuant to Conn. Gen. Stat. § 47-7b, to protect the interests of the people of Connecticut against tribal land claims.

Most of the defendants in this action are institutions holding large tracts of primarily open land within the boundaries of the Schaghticoke Reservation defined as of 1790. Of the two private parties, Ms. Bonos is the descendant of a family that lived near the Reservation in the middle of the last century, and Barbara Bush is the owner of a house built after the lawsuit was filed. The lawsuit does not otherwise affect any homeowner in Kent.

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Connecticut Light and Power is a party defendant because its predecessor company -- New Milford Power Company -- built a dam downstream from the STN Reservation in the first decade of the twentieth century. As a result, the water along the riverbed backed up above the dam, flooding a portion of the Reservation, including the tribal cemetery. The Tribe was not given sufficient opportunity to recover the remains of its ancestors, and the river water over tribal lands is a continuing trespass on the tribal lands within even the most conservative understanding of the Reservation boundaries.

(iii) Schaghticoke Tribal Nation Land Claim - - South of the present Reservation.

U.S.D.C. Civil Action No. 3-00-CV-0820 (PCD)

SCHAGHTICOKE TRIBAL NATION
v.
UNITED STATES OF AMERICA AND
CONNECTICUT LIGHT & POWER

STN filed this action in May of 2000 (also under the Non-Intercourse Act, 25 U.S.C.§ 177) seeking to restore possession of certain Reservation lands held as of 1790. Specifically, STN seeks to restore lands located south of its present Reservation.

All of the above cases have been consolidated before the Honorable Peter C. Dorsey, Senior United States District Judge. In addition to the parties noted above, the Court allowed the Schaghticoke Indian Tribe to intervene on June 15, 2001. Originally, the cases were stayed pending the federal recognition process.

The court began to take a more active role in the latter part of 2000, because the BIA process was not moving at all --to the detriment of STN. The Court reasoned that while the BAR's expertise might make it better equipped to make a recognition determination, "such expertise is outweighed by its now demonstrated inability to make such determinations in anything remotely resembling a timely manner." (*See:* Judge Dorsey's decision, dated September 11, 2000 attached).

The Court entered a Scheduling Order, subsequently amended in the consolidated cases. Through this case management order, the court monitors and controls the progress of BIA's processing of the STN recognition petition. The Scheduling Order was the product of months of intensive negotiations between Attorney General Blumenthal and representatives of his Office, the Office of the U.S. Attorney for the District of Connecticut, counsel for STN, all other parties and the Court. All involved agreed to very detailed procedures concerning the recognition process before the BIA and subsequent appeals. (*See:* Scheduling Order attached).

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1B. Has the Tribe ever placed a lien on any real property in Connecticut?

RESPONSE: No

1C. Did the State ever agree to abide by the decision of the BIA on your recognition?

RESPONSE: Yes, under a Court order. (*See*: Scheduling Order attached).

2. It has been reported that your recognition efforts have cost $12 million.

2A. Is that accurate?

RESPONSE:

Our expenses for achieving Federal Recognition have been very high and we have had to accept backing from several investors to support STN in achieving our Final Positive Determination. The actual costs so far are close to $15 million. We believe this amount is only going to increase for other Tribes that seek federal recognition in the future. The cost of the recognition research for a period of over 300 years of history and providing the documentation to support the seven Criteria under the Regulations totaled approximately $6 million. In addition, it has cost the Tribe $9 million more to defend itself in court and in the press against those opposing the Tribe, particularly Connecticut's Attorney General.

The Tribe has been forced to retain several different counsel, including those with expertise in Native American issues and law, land claim and title issues, and litigators before the U.S. District Court and before the Connecticut State Courts. In addition, we have hired a public relations firm to help with the onslaught of media inquiries, many generated by hostile newspapers, editors and politicians. Thus the effort to defend ourselves in court and publicly has cost more than the anthropological and genealogical consultants and researchers necessary to complete the documented petition.

2B. Did you feel compelled by the intensive, complicated nature of the process to accept financial support?

RESPONSE

We filed our Letter of Intent to Petition in 1981 and submitted our first draft petition in 1994. It took us 13 years to research and prepare the petition ourselves. The BIA encourages all Tribes seeking recognition to prepare the petition themselves. In fact, at the very beginning of the regulations, petitioners are advised not to hire attorneys. Schaghticoke conducted our own research and drafted our own petition without the aid of attorneys.

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When we received our Technical Assistance Review from the BIA describing "obvious deficiencies or significant omissions" in June 1995, we continued to do the research ourselves, but we knew then that in order to be successful we would require professional assistance. Initially we received grants from Administration for Native Americans (ANA) totaling $165,000 over a two year period. It was almost as difficult to fill out the grant application as it was to do our historical research but we needed the funding badly. It was not until the summer of 1996 that we first sought an outside investor to provide financial support.

The State of Connecticut would not allow us free access to the documents held in State archives, nor would they even help us locate them. It is important to remember that many of our people were illiterate well into the 19th Century. Our petition depends on written accounts of our tribal history from outside sources – especially from our State Overseers. It took trained researchers to define our search effort and to help assemble documents held in State and local archives.

Today, after more than 25 years of research, Tribal members have the skills to conduct the research on their own, and in many areas have taken over the effort from the professionals who trained them to conduct the work. But that has not always been true, and the process demanded more than we could complete ourselves. So due to the intense, complicated nature of the process, our Tribal Council decided to seek out and accept financial support.

2C. Would you have done so otherwise?

RESPONSE

We honestly believe that we would not have sought financial support had the process and litigation not been so intense and complicated. We are a proud people and do not fear hard work. However, it also became apparent to us that recognition would take several more generations if we could not obtain significant professional assistance.

2D. To address allegations that "unsavory" characters are affiliating with petitioning tribes, would you have been willing to disclose who your backers were and possibly have them go through background checks?

RESPONSE

The Tribal Council has always been conscious of "unsavory" characters attempting to infiltrate Indian tribes and as such has been careful and selective about with whom we enter into agreement. We have been very aware that any investor would be subject to great scrutiny. Upon the selection of financial backers, we did our best with the resources available to us to assure ourselves of their credibility. We also made it clear to those financial backers that someday they would be asked to undergo complete background checks, financial and personal, and that if we missed something, they could rest assured that the National Indian Gaming Commission would not.

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As for disclosing our backer, sometimes publicizing that information is not in the best interest of the Tribe. News media twists the information to support their political views. The recognition process gets translated into a gaming event. That is not what recognition is about. No one should ever lose sight of the fact that this is about preservation of the inherent rights of people, something that no government should have ever taken from them to begin with. To prevent a media frenzy, Schaghticoke chose to wait until the Tribes received its Final Determination before revealing its investor.

In February 2004, the Tribe along with Fred DeLuca jointly announced that he is the principle investor for the Schaghticoke Tribal Nation. (Attached are several news accounts of the official announcement of our financial backer.) When Mr. DeLuca first entered into an agreement with us in May 1997, as Tribal Chief I personally shared his identity with Senators Dodd and Lieberman, our Members of Congress, and our Governor. On behalf of the Tribe, I asked that this information be kept confidential, and they did so. The Committee can see that all key Connecticut elected officials were aware of everything the Tribe was doing. The Tribe also informed Attorney General Blumenthal prior to filing its land claims to recover approximately 2,000 acres of our Reservation land taken illegally after 1790. That is the Schaghticoke way.

3. It is clear that you plan to get into the casino business. The Kent community complains that a casino will destroy their fair community.

3A. Is it your intent to build a casino in Kent? If not, then where?

RESPONSE

Schaghticoke has always said that it would exercise all rights afforded us by the United States government. As you know, our State allows gaming and if there is a community interested in hosting Schaghticoke, then we would be willing to engage in substantive discussions related to economic development opportunities. Schaghticoke has always made it clear that we would not go where we are not welcome.

As for a casino in Kent, we have repeatedly stated it has never been our intention to locate a casino there. However, the State Senator and Representative for Kent have attempted to pass legislation that would not allow us to operate a gaming facility in any community other than Kent. During consideration of this legislation proposed by Kent's Representatives, STN was left with no other recourse than to revisit what economic development might take place on our lands there. The Tribe will not make an agreement with Kent Officials not to engage in gaming in Kent if those same Kent Officials work against the Tribe in another community that is interested in hosting such an economic development project, including a gaming facility.

As stated earlier, we have the right to control our land, except that the Tribe cannot alienate it. The Tribe put a moratorium on construction on our Reservation in 1975. This was done to preserve our land. The STN Tribal Council decided to wait until all litigation and land claims are concluded to insure that the development of our land will be with the thought and care of generations to come. Having been successful thus far, we will continue to use this strategy.

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The Tribe finds it very unfortunate that when the town of Kent speaks about their community, they exclude the STN. As long as the town officials consider tribal members to be outsiders, it will be difficult to establish any working relationship. We can assure you and your Committee that the Tribe has made a number of attempts to be appear at town meetings when STN issues have been on the agenda. While Selectmen said we could sit in the audience, they would not afford us any opportunity to participate on a panel where others were speaking against the STN. When there is only one message being delivered to the townspeople, it is impossible for a fair decision to be made. These town meetings have been designed to build resentment against the Tribe. TASK members have, in fact, held private meetings in Kent with our State Representatives behind closed doors. Excluded from these closed door meetings, the Tribe obviously had no opportunity to set the record straight or to defend itself.

Schaghticoke has filed a land claim for approximately 2,000 acres of post-1790 Tribal Lands sold by State Overseers without the consent of Congress. Of the entire acreage, only 1 acre is occupied by a single family house, and a few other acres may be occupied by some types of structures; the rest is open space. While our claims might involve a few structures, we have always been amenable to resolving the matter in a way that minimizes the impact on those owners. It is the Tribe's intention that this land, when recovered, will be used for tribal housing, where Schaghticoke members can live on their traditional Reservation.

3B. Are other communities more receptive to your presence?

RESPONSE

We expect to plan our economic development ventures elsewhere in Connecticut in a partnership with a willing host community.

Under existing law and regulations, initial tribal lands placed into federal trust can include one site for gaming that is not necessarily contiguous with existing reservation or tribal lands. We intend to partner with a willing host community with land from that community, purchased or otherwise acquired, for a casino and for other economic development opportunities. Several communities have expressed a willingness to discuss the opportunities for Native American development on sovereign trust lands within their townships. The City of Bridgeport, for example, has expressed interest in any economic endeavor that the Tribe would have to offer that would also benefit the City. A letter from the Mayor of Bridgeport, John Fabrizi is attached. Other towns and cities in Connecticut have also expressed an interest in working with the Tribe.

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5/8/01

United States District Court
District of Connecticut
FILED AT NEW HAVEN

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	
PLAINTIFF,	:	
V.	:	
43.47 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COUNTY OF LITCHFIELD, TOWN OF KENT, ET AL.,	:	CIVIL NO. H-85-1078(PCD)
DEFENDANTS.	:	

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MAY 1 1 2001

SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
KENT SCHOOL,	:	CIVIL NO. 3:98CV01113(PCD)
DEFENDANTS.	:	

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SCHAGHTICOKE TRIBAL NATION,	:	
PLAINTIFF,	:	
V.	:	
CONNECTICUT LIGHT & POWER,	:	CIVIL NO. 3:00CV00820(PCD)
DEFENDANTS.	:	

MOTION FOR ENTRY OF STIPULATED ORDER

The parties in the above-referenced cases, after several conferences with the Court and after detailed negotiations, have agreed to stipulate to the entry of the attached order governing further proceedings to be conducted before the Department of the

ORDER

The following order is entered to permit, and establish a framework for, the determination by the Department of the Interior ("DOI") on the petition for tribal acknowledgment submitted by the Schaghticoke Tribal Nation. This Order is meant to serve the rights and interests of all parties to the captioned litigation, and allow the DOI to determine the merits of the petition on a schedule other than that set forth in the applicable regulations, 25 C.F.R. Part 83, except as otherwise provided herein. For purposes of the Order, the terms "party" or "parties" include the United States, the petitioner Schaghticoke Tribal Nation ("peitioner"), the defendants in these cases and any *amicus curiae* parties ("*amici*").

Based upon negotiations conducted among all the parties and *amici* in the above-captioned cases the Court orders the following:

a) The Documented Petition and the administrative correspondence file as of January 19, 2001, have been provided by the Bureau of Indian Affairs ("BIA"), on CD-ROM, to each party and *amici*. The genealogical information from the petition in the Family Tree Maker format, has also been provided to each party and *amici* on computer disks.

b) The design of a database in progress. The design of the database will be finalized and a copy provided to the parties

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and *amici* by September 1, 2001. All parties and *amici* may, and shall to the extent they have information which permits their doing so, comment on a proposed design by May 1, 2001. Assistant U.S. Attorney John B. Hughes will schedule, in New Haven on June 1 or 4, 2001 a conference to include members of the BIA staff and/or consultants, to permit a detailed discussion with parties, *amici* and counsel of the status of the design and providing details sufficient to permit the parties and *amici* to comment meaningfully on the design. The parties and *amici* shall comment within 14 days. Further comment will only be accepted by BIA on a showing that despite due diligence, the basis for the comment was not reasonably known or available within the time limits set forth herein, and modifications will be made only to the extent feasible and appropriate. The BIA will report, to the court, the parties and *amici*, the status of the design development on June 20, 2001.

c) On or before December 17, 2001, the parties and *amici* shall provide an initial submission of any information or documents deemed appropriate to the determination of the petition for inclusion in the administrative record and database. By February 15, 2002, the parties and *amici* shall submit comments, information, documents, analysis or argument, for

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inclusion in the administrative record and database. The actual creation of the initial database, after finalization of its design, including any modifications, shall be completed by March 15, 2002. The time period for completion of the database may be extended by the court depending on the nature and extent of the comments received.

d) The BIA will serve notice of its entry of the data in paragraph (c) into the initial database and serve copies of it on CD-ROM to the parties and *amici*, within five business days. Upon service of such notice, the BIA shall commence development of a proposed finding to be completed within 6 months. All parties and *amici* may provide comments on the initial database for 30 days following service of the database. No new factual documentation will be accepted. Notwithstanding the prior creation of the initial database, it is contemplated that the BIA may alter or add to the database during the decisional process.

e) Upon issuance of the proposed finding, including the summary of the evidence under the criteria, the BIA shall serve it, including, if any, charts and technical reports, on all parties and *amici* within 10 days. The databases as supplemented by BIA staff and any supplemental documents

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considered by the Assistant Secretary - Indian Affairs in the formulation of the proposed finding, not previously provided to the parties and *amici*, shall be served on all parties and *amici* within 30 days, subject to the assertion of any privileges by DOI. A log identifying the documents and the asserted privileges will be provided.

f) The parties and *amici* shall submit all comments, information, documents, analysis or argument on the proposed finding, including the summary of the evidence under the criteria, within 6 months of its service. Parties and amici may request the court for an extension of the comment period on a showing of good cause which shall mean any cause which could not in the exercise of due diligence be reasonably avoided. Any reply by petitioner shall be filed with the BIA within 30 days of the close of the comment period.

g) Any party or *amici* to these cases wishing technical assistance, as provided in 25 C.F.R. 83.10(j)(2), shall request the same from the Assistant Secretary - Indian Affairs not later than 30 days after service of the proposed finding. Any such request shall be in writing and contain a detailed statement of the questions for which technical assistance is requested. A formal technical assistance meeting compliant

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with such request(s) and 25 C.F.R. 83.10(j)(2) shall be held in Washington, D.C., within 60 days of the first such request. The BIA will develop an agenda for the formal technical assistance meeting which would permit the BIA staff to cover all of the subject matter areas raised. The parties shall use their best efforts to complete the agenda in two days or less, but in no event shall the meeting last more than three days.

h) The final determination, including the summary of the evidence under the criteria, of the petition shall be issued by the Assistant Secretary - Indian Affairs within 4 months of the end of petitioner's reply period. Notice of the final determination shall be published in the Federal Register, and the BIA shall serve copies of the final determination, including the summary of the evidence under the criteria, on the parties and *amici* within 5 business days of issuance of the final determination. The database as supplemented by BIA staff and any supplemental documents considered by the Assistant Secretary - Indian Affairs in the formulation of the final determination, not previously provided to the parties and *amici*, shall be served within 30 days of service of the final determination on all parties and *amici* subject to the assertion of any privileges which shall be set forth in a log identifying the documents and the asserted privileges.

i) The final determination shall be effective 90 days from the date notice is published in the Federal Register unless independent review and reconsideration is requested under 25 C.F.R. § 83.11 or unless any party or *amici* files a petition for district court review as set forth in paragraph (j)below. The final determination shall have no probative effect or value for purposes of the land claim issues remaining for the court's consideration in these cases until such time as a final judgment is entered on any review of the final determination under the Administrative Procedure Act ("APA") and all further rights of appeal have been exhausted. Nothing herein shall prevent any party or *amici* from seeking a court order staying or enjoining the effectiveness of the final determination for any other purposes.

j) The parties and *amici* agree to defer further negotiation of the question of whether, for purposes of this case, an appeal of the final determination to the Interior Board of Indian Appeals (IBIA) may be filed. The negotiation period shall commence three months after the end of the petitioner's reply period as set forth in paragraph (f) above and conclude no later than thirty days after the final determination is issued by the Assistant Secretary - Indian Affairs. The parties shall report to the court, through Assistant United States

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Attorney John B. Hughes, within five days of the conclusion of the negotiation period. Participation in such negotiations shall not be construed as a waiver of any right to seek independent review and reconsideration under 25 C.F.R. §83.11 nor shall any party, *amici*, or interested party be compelled to forego such right. The negotiations among the parties shall be limited to the question of whether, for purposes of this case, the appeal of the final determination for independent review and reconsideration under 25 C.F.R. § 83.11 is to be made to the IBIA or shall be a part of a petition for review filed in the District Court under the Administrative Procedure Act. If a party requests independent review and reconsideration under 25 C.F.R. § 83.11(a)(1) and the Interior Board of Indian Appeals (IBIA) determines to take the appeal under § 83.11(c)(2), any party may request the Interior Board of Indian Appeals (IBIA) to expedite its consideration of and decision in such proceedings and represent in such request that the other parties who are subject to this Order give their consent thereto, except the Department of the Interior which agrees not oppose the request. If as a result of the negotiations, however, the parties agree that the issues for review set forth in 25 C.F.R. § 83.11 may be included in any petition for review filed with the District Court under the Administrative Procedure Act, such issues shall be decided by

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the Court as part of such review under the standards identified in 25 C.F.R. § 83.11. Upon any such combined petition for review the Court shall determine the effective date of the final determination from which the petition for review has been taken.

k) Any petition for review of the final determination under the Administrative Procedure Act by any party to these cases shall be filed within 90 days of the date that notice of the final determination was served and shall be filed in this court as a case related to the above-captioned cases.

l) Nothing in this order shall prohibit any party or *amici* from requesting informal technical assistance from BIA staff nor prohibit the BIA Branch of Acknowledgment and Research ("BAR") staff from providing technical assistance in response to such requests pursuant to 25 C.F.R. §83.10(j)(1). No non-federal party or *amici* shall communicate or meet with any officials in the immediate offices of the Secretary of the Interior, the Assistant Secretary - Indian Affairs or the Deputy Commissioner of Indian Affairs with respect to this petition, without notification to the other parties.

m) The parties shall be permitted to conduct discovery as

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provided for in the Federal and Local Rules of Civil Procedure, and in accordance with the previously entered Confidentiality Order, except that no discovery shall be directed against the United States Department of the Interior. Such discovery shall be relevant to the issue of tribal acknowledgment of the petitioner, unless the petitioner and a requesting party otherwise agree. Written discovery directed against a party to these proceedings shall be propounded not later than December 1, 2001. Discovery directed to or against persons or entities who are not parties to these proceedings may be made at any time. Discovery requests and responses shall be provided to all parties to this agreement. Copies of deposition transcripts shall be made available to all parties and *amici* as provided in the Federal Rules of Civil Procedure. Such responses and transcripts will not be included in the database or administrative record unless specifically submitted for inclusion.

n) Extensions of time may be allowed by the court for good cause which shall mean any cause which could not in the exercise of due diligence be reasonably avoided.

o) Except as otherwise provided in this Order the regulations set forth in 25 C.F.R. Part 83 are applicable to the BIA's

consideration of the Schaghticoke Tribal Nation's petition.

p) Any pleadings, documents, correspondence or other materials filed with this Court or with DOI, BIA, or BAR by any party or *amici* shall be served on all parties and amici in accordance with Rule 5, Federal Rules of Civil Procedure.

q) All proceedings in this court on these cases shall be stayed except as otherwise provided herein or unless leave of court is granted or all the parties agree.

SO ORDERED.

Dated at New Haven, Connecticut, May 8, 2001.

Peter C. Dorsey
Senior United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
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U.S. DISTRICT COURT
NEW HAVEN, CONN

UNITED STATES OF AMERICA, Plaintiff,	:	
-vs-	:	Civil No. H-85-1078 (PCD)
43.47 ACRES OF LAND, MORE OR LESS, SITUATED IN THE COUNTY OF LITCHFIELD, TOWN OF KENT, ET AL., Defendants.	:	
SCHAGHTICOKE TRIBAL NATION, Plaintiff,	:	
-vs-	:	Civil No. 3:98cv1113 (PCD)
KENT SCHOOL CORPORATION, INC., ET AL., Defendants.	:	

RULING ON PENDING MOTIONS

The Schaghticoke Tribal Nation ("Tribe") moves to terminate the stay entered in these cases on March 31, 1999. This motion is **granted**. Appalachian Trail Conference ("Appalachian Trail") moves to substitute the United States as a named defendant in Schaghticoke Tribal Nation v. Kent School Corp., 3:98cv1113 (PCD), and dismiss the Complaint against Appalachian Trial as it no longer has any interest in, claim, or possession to the land. This motion is **denied**.

I. BACKGROUND

Knowledge of the underlying facts of these cases is presumed for the purposes of this Ruling. Briefly, a stay was entered so that the Branch of Acknowledgment and Research ("BAR") of the Bureau of Indian Affairs ("BIA") could resolve the Tribe's petition for federal recognition. The Tribe's standing and likelihood of success in both actions depend on its status

as a formally recognized Indian tribe. Based on the doctrine of primary jurisdiction, the Court stayed the actions in deference to BAR. On reconsideration, the Court refused to lift the stay despite agency delay. However, it stated that, "[i]f it is clear, at some point, that protracted delay will continue in the face of the purported Tribe's best effort to avail itself of the agency's procedures to obtain a determination, the question of a court determination can be revisited." 1/31/00 Ruling on Motion for Reconsideration, Dkt. #61. The time has come to revisit that determination.

II. MOTION TO TERMINATE STAY

The Tribe moves to terminate the stay due to "inordinate agency delay." It argues that, based on statements made at a hearing held by the Senate Committee on Indian Affairs, there is no reason to believe that BAR will address the merits of the Tribe's petition any time in the near future. As stated by Richard Velky, Chief of the Tribe, "Mr. Gover, who is in charge of the recognition process, admitted that the BAR process has broken down and he admitted that the current administration would be unable to reform it." Affidavit of Richard L. Velky, Ex. A to Mem. in Supp., at 2.

While it may be true, as defendants argue, that BAR's technical expertise makes it better positioned to make a recognition determination, such expertise is outweighed by its now-demonstrated inability to make such determinations in anything remotely resembling a timely manner. "A federal court, of course, retains final authority to rule on a federal statute, but should avail itself of the agency's aid in gathering facts and marshalling them into a meaningful pattern." Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 60 (2d Cir. 1994). Where, as here, defendants fail to 1) show why the stay should not be terminated or 2) resolve

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the question of tribal status within an 18-month stay, the Court can reach the merits of the case. See id. at 61. Accordingly, the motion to terminate the stay is hereby granted.

III. MOTION TO SUBSTITUTE DEFENDANT AND DISMISS

Appalachian Trail moves to substitute the United States as a named defendant and dismiss the Complaint against Appalachian Trail. It claims that it transferred its interest in the land by quitclaim deed to the United States on April 26, 1999 and thus no longer has any interest in, claim, or possession to the land. The Tribe objects, stating that "the United States government, to the Tribe's knowledge, has neither acknowledged that it has specifically stepped into the shoes of the [sic] Appalachian Trail Conference nor has it acknowledged that it will be subject to all of The Appalachian Trail Conference's claims and defenses insofar as they relate to the property at issue." Mem. in Opp., at 3.

Fed.R.Civ.P. 25(c) provides :

> In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

Granting a motion to substitute one party for another lies within the discretion of the court. See State Bank of India v. Chalasani (In re Chalasani), 92 F.3d 1300, 1312 (2d Cir. 1996).

In the instant case, it appears that Appalachian Trail transferred approximately 52 acres of land via quitclaim deed to the United States without monetary consideration "as a gesture of goodwill and support of the Appalachian National Scenic Trail." Ex. A to Mem. in Supp., at 2. Given the Tribe's objection, and the fact that there is no evidence that Appalachian Trail served

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the motion on the United States, it would be inappropriate to permit substitution and dismissal at this time.

IV. CONCLUSION

The motion to terminate the stay (doc. 150) is hereby granted. The motions to substitute the United States as a named defendant (doc. 57-1) and to dismiss (doc. 57-2) are denied without prejudice.

SO ORDERED.

Dated at New Haven, Connecticut, September 21, 2000.

Peter C. Dorsey
Senior United States District Judge

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EMAIL ARTICLE PRINT ARTICLE

Article Last Updated: Friday, February 13, 2004 - 6:59:33 AM EST

Subway founder backs tribe

DeLuca hopes Bridgeport casino next

By MATTHEW HIGBEE mhigbee@ctpost.com

DERBY

Milford-based Subway founder Frederick A. DeLuca backed the Schaghticoke Tribal Nation's successful bid to gain federal recognition, in hopes the tribe would build a casino in his native Bridgeport.

Speaking publicly about his role for the first time Thursday, the founder of the international sandwich-shop chain said he lent the tribe more than 90 percent of the money it spent.

He said he invested in the Schaghticokes out of the desire that their first choice for building a hotel and casino would be Bridgeport, home of the first Subway shop.

"I feel like I owe a lot to Bridgeport," DeLuca said. "It think what the city really needs is a large amount of jobs."

DeLuca and Schaghticoke Chief Richard Velky declined to say how much money DeLuca had invested in the tribe, a number that is reportedly in the millions of dollars.

"After trying to get recognized for 25 years, I'd rather not put a dollar amount on who we are," Velky said.

The U.S. Bureau of Indian Affairs granted recognition to the 315 member Schaghticoke Tribal Nation on Jan. 29.

Velky declined to say whether the Indian tribe would build a casino in Bridgeport.

He said it is one of seven communities under consideration.

"No one has come out in the lead," Velky

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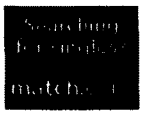

said.

Before finding a casino location, the tribe faces an appeal of the federal ruling from state Attorney General Richard Blumenthal. Appeals are likely in federal court and through the Department of the Interior.

In the meantime, Velky said the tribe was moving forward on using recognition to gain federal assistance to build senior housing on tribal land in Kent. The tribe has offices on Elizabeth Street in Derby.

DeLuca got involved in the tribe in 1996 through a Subway franchise owner, David Pugliares.

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The two set up a venture capital firm called the Eastlander Corp. with five other members, DeLuca said.

Through Eastlander, DeLuca said he loaned the Schaghticokes money they needed to conduct historical and genealogical research, lobbying and for legal representation.

DeLuca said the money given to the tribe was personal capital distinct from the privately held Subway.

In exchange for his investment, DeLuca said he would earn an undisclosed return on his loan and have an opportunity to invest in a hotel and casino.

DeLuca said he was motivated to back the Schaghticokes after listening to Velky describe the tribe's struggle for recognition.

DeLuca, 56, said he also wanted to help the city where at age 17 he began his sandwich empire, with a restaurant on Bridgeport's Main Street.

Today Subway has more than 20,000 restaurants in 75 countries worldwide.

"I thought that if it works, maybe I could give something back to Bridgeport," he said.

Bridgeport has also long been considered a possible location for a Schaghticoke casino. But another tribe, the Golden Hill Paugussetts, are also interested in the city.

Several years ago, Bridgeport Mayor John M. Fabrizi voted for a resolution passed by the City Council pledging the city would support a casino if the Trumbull-based Paugussetts obtained federal recognition. The Paugussetts are still awaiting a final determination by the Bureau of Indian Affairs.

Fabrizi could not be reached for a response to DeLuca's announcement.

Matthew Higbee, who covers the Naugatuck Valley, can be reached at 736-5440.

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Tribe's Backer Wants Bridgeport Casino

ADVERTISERS

By RICK GREEN
Courant Staff Writer

February 13 2004

DERBY -- Admitting for the first time that he is the primary investor behind the Schaghticoke Indians, Subway Restaurants founder Frederick A. DeLuca said Thursday that he will push hard for a tribal casino in Bridgeport.

"There will be a lot of outside investment that will come in, a lot of jobs created. There will be more entertainment options for the citizens. It's all really quite good," DeLuca said in an interview Thursday evening at the Schaghticoke Tribal Nation's offices in Derby.

DeLuca, founder of a 20,000-restaurant chain and with a personal worth of as much as $1 billion, envisions a casino resort complex that would anchor a Bridgeport comeback and help finance better schools and housing. He said he would like to see a hotel, retail and convention center facility similar to Mohegan Sun.

DeLuca said he has no interest in making an investment to make money off of Bridgeport.

"There is really no need for me to invest in anything now," DeLuca said. When he started supporting the tribe, "I was thinking to myself, I wonder if there is anything I can do for Bridgeport."

"This is a worthwhile thing to try. I can help these guys achieve what they want, and they can help me accomplish what I want," he said. "I want to see the city I started in have a chance to improve itself. I don't need to earn more money." DeLuca opened his first sandwich shop in Bridgeport in 1965.

As a nationally recognized business success, DeLuca presents a formidable challenge to Attorney General Richard Blumenthal, U.S. Rep. Christopher Shays and Fairfield County business leaders who say a casino would bring a traffic nightmare to Bridgeport and drive out corporations that want nothing to do with gambling. DeLuca said he was eager to meet with Blumenthal and Gov. John G. Rowland to discuss the merits of a casino in Bridgeport.

"People making more money is not something to be feared. That creates more business. If people are successful, then businesses are successful," DeLuca said. "I'm the one encouraging Bridgeport. I realize I don't control the process."

DeLuca is the one who controls the tribe's purse strings, however, in a contractual relationship dating to

1996. It has not always been as friendly as today. At one point two years ago, the two sides were in court when an angry DeLuca cut off the monthly checks that funded the phalanx of lawyers, lobbyists, historians, genealogists and tribal officials who were working on winning federal recognition.

"We had a temporary setback," DeLuca said. "After we had the disagreement, we discussed things and we got back together."

DeLuca said he is now eager to work with the tribe as it plans a casino development. He said his investment is all his own money and not from the Subway corporation.

The tribe won federal recognition on Jan. 29, giving it the right to negotiate with the state to open a gambling casino. State officials have promised to appeal the ruling of the federal Bureau of Indian Affairs.

DeLuca and Schaghticoke Chief Richard Velky declined to say how much the fast-food entrepreneur has given the tribe, which has 273 members and a reservation in Kent. DeLuca said he has provided more than 90 percent of the money spent on the long federal recognition process - a figure Velky has previously said could be as much as $10 million. Two-year-old court documents show that DeLuca has given the tribe at least $2 million.

Casino critics said DeLuca's sudden honesty about his role with the tribe is due to the growing pressure on tribes to reveal their investors. On Thursday, Shays, R-4th District, said the House Government Reform Committee will hold hearings later this winter on the recognition process.

Shays said it was "time we open the doors at the Bureau of Indian Affairs and investigate what influences are at work behind the scenes." Connecticut residents have the right to know what role money and investors are playing in the federal recognition process, he said.

Shays denounced DeLuca for saying he wanted to give something back to Bridgeport.

"That's absolute bull. If that's his case, why doesn't he renounce any return on his investment?" Shays said.

A tribal spokesman Thursday night described DeLuca's investment as a loan to fund the recognition process - not a casino investment. DeLuca said it was likely the tribe would look to Wall Street to finance a casino resort.

Casino opponents have been holding public meetings throughout southwestern Connecticut this week, blasting the tribe's plans for a casino. A meeting at Kent Town Hall is planned for tonight at 7:30 p.m.

"People invest in casinos to make money. A casino is not going to be a financial savior to Bridgeport. There is a very different dynamic involved when a casino lands in a city," said Jeff Benedict, president of the Connecticut Alliance Against Casino Expansion.

DeLuca said people have not stopped to carefully examine the benefits a casino can bring to Bridgeport, a city easily reached by highway, railroad and water.

He also said he is not a regular at casinos, but gambles a few times a year when traveling on business. He said he has been to Connecticut's Indian casinos a couple of times.

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WIRELESS PLANS STARTING

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Subway founder's dough backed tribal recognition

Former Bridgeport resident wants casino there

Friday, February 13, 2004

By Gale Courey Toensing
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DERBY — The president of Subway Restaurants acknowledged Thursday that he is the principal investor behind the Schaghticoke Tribal Nation.

Fred DeLuca, founder of the worldwide restaurant chain, said he agreed to finance the tribal nation for a promise that, if federal recognition were granted, the tribe would consider investing in Bridgeport. In 1965, DeLuca started what became Subway in Bridgeport with a $1,000 investment from a family friend.

DeLuca, 58, said he wants the Schaghticoke to open a casino in Bridgeport, where he attended high school and college and met his wife and got married. The city is also where, at age 17, DeLuca opened his first submarine shop to pay his way through college.

The Subway chain has grown to some 20,000 restaurants. DeLuca's personal worth is as much as $1 billion.

DeLuca said he has financed much of the tribal nation's efforts to gain federal recognition, a process that involved years of research and legal work. He will be involved should the tribe build a casino, DeLuca said.

DeLuca and Chief Richard Velky went public with DeLuca's financial involvement with the tribe exactly two

weeks after the federal Bureau of Indian Affairs granted the tribal nation federal recognition. With that recognition comes health and education benefits, as well as the right to pursue negotiations to open a casino.

DeLuca and Velky spoke to reporters at the tribe's office in Derby, ending years of rumors that DeLuca was the tribe's financial backer. DeLuca said he chose Thursday to confirm his role because recognition was granted. Should the tribe's recognition withstand appeals, and should the tribal nation pursue a casino, any future investment would become public anyway, DeLuca said.

"I knew, of course, that once I made the investment that eventually it would have to come out, but I didn't think that prior to recognition it really mattered. So now that the tribe is recognized, it is a question of when," DeLuca said.

DeLuca and Velky did not discuss details of DeLuca's involvement, such as how much money he has spent or will spend on the tribe, or what kind of deal the parties may have should a casino be built. They also declined to say if the Schaghticoke spent anywhere near the $10 million the Mohegans did on their federal recognition process in 1994.

DeLuca got involved with the Schaghticoke Tribal Nation in 1996 when David Pugliares, a Subway franchisee, introduced him to Velky, who asked DeLuca if he could finance the tribal nation's effort for recognition.

"At the time, I was thinking about Bridgeport and I wondered to myself if there was anything I could do to help that town. But it's not very easy to help a big city, so when I met Rich I asked if there was a chance that we might do something there if the tribe got recognized. He said they would give Bridgeport the highest consideration and I agreed to help," DeLuca said.

While Bridgeport is his personal preference for economic development, DeLuca said the decision is up to the tribe and to the host community.

DeLuca said he had no doubts that over the long term the tribe would be recognized. Prior to meeting Velky, he no particular interest in Indian issues, DeLuca said.

"I have an interest in helping people achieve their goals and assisting folks working their way up from humble beginnings. So this is a little bit like that, but not exactly," DeLuca said.

It wasn't the usual business decision, DeLuca said.

"It's not like buying a stock on the stock market where I can see the investment and the product. They came to me and said they thought it would cost this much," DeLuca said, holding his hand about six inches above the table, "and I said I think I can afford to invest that much money. I said I feel pretty good about the chance of recognition and I think there's a good chance of getting payback."

"If everything works out then I'll really have been able to provide a lot of help to Bridgeport, because the city really needs jobs," DeLuca said.

DeLuca said he is not involved in the tribal nation's day-to-day operations. Instead, Pugliares and his two brothers set up a management organization called Eastlanders, which acts as a bridge between the tribe and DeLuca. The tribe tells Eastlanders what it needs, and Eastlanders relays that information to DeLuca.

It was Pugliares' suggestion to hire Paul Manafort Jr., a high-powered Washington, D.C. attorney, to provide guidance to the investors, DeLuca said. "There's myself and a few other people. I provide the bulk of the money," DeLuca said.

The hiring of attorneys, consultants and lobbyists is part of the process the tribe needs "to cover all the steps," DeLuca said. DeLuca said he was disappointed in rumors and allegations of corruption, political influence, or mob ties levied at the tribal nation, the BIA process or his involvement.

"But in terms of this crime business, I don't know anything about that. For me, I would never want to be associated with anything like that. ... I have a very nice business. ... There's no need for me to be involved with anything that would be unsavory in any way," he said.

DeLuca said it is he and his family that have financed the tribe's efforts, not Subway Restaurants.

"My way of thinking about this is that I want to be around as long as people perceive me to be helpful. It's not my primary work and it's not a necessity for me. It's sort of like the tribe saying they want to be good neighbors and they don't want to go where people don't want them. I only want to be in a place where people think I'm a positive influence," DeLuca said.

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JOHN M. FABRIZI
Mayor

June 20, 2005

Richard L. Velky, Chief
Schaghticoke Tribal Nation
Connecticut
33 Elizabeth Street, 4th floor
Derby, CT 06418

Dear Chief Velky:

As I have discussed with you on numerous occasions, I support the Federal Recognition of the Schagticoke Tribal Nation.

In addition, I welcome the presence of the Schagticoke Tribal Nation in a mutually beneficial economic development project in Bridgeport which may or may not include a gaming facility. I must stress again, that any economic development proposal must be good for the City of Bridgeport as it pertains to the creation of jobs and the expansion of our tax base.

The City of Bridgeport continues to welcome the opportunity to work with the Schaghticoke Tribal Nation and others to develop new business and commercial endeavors that will produce employment, jobs and revenue while improving the standard of living for our entire community and region.

Respectfully yours,

John M. Fabrizi
Mayor

JMF/sl

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GOVERNMENTAL AFFAIRS
ALVA VERNON JOHNSON

May 13, 2005

The Honorable John McCain
United States Senate
Chairman, Senate Indian Affairs Committee
836 Senate Hart Office Building
Washington, DC 20510

Re: Federal Recognition Hearing May 11, 2005

Dear Chairman McCain:

I write in response to a series of questions you posed to the Department of the Interior Deputy Inspector General Mary Kendall at the Committee's May 11, 2005 hearing on the federal recognition process. My name was raised with respect to certain ministerial papers affecting the Duwamish Tribal Organization of Washington State which I signed on January 22, 2001. The implication from your colloquy with Ms. Kendall could be interpreted by the public that I engaged in arbitrary conduct. Any suggestion by Ms. Kendall that I engaged in illegal, improper or arbitrary conduct is false and I would greatly appreciate you and Senator Dorgan reviewing this letter and inserting it into the May 11, 2005 hearing record.

As an attorney, I have always conducted myself with the highest professional standards and have long enjoyed a reputation for integrity. I have been privileged to have served as the General Counsel for the United States Senate Special Committee on Investigations (Chaired by Senator Dennis DeConcini and you as Vice-Chairman), and as the Associate Solicitor for Indian Affairs and Deputy Assistant Secretary for Indian Affairs in the Clinton Administration. Unfounded public remarks by the Inspector General's office that seek to damage my reputation as an attorney and with the American Indian tribal governments I represent are unfair and violate fundamental notions of due process.

The Inspector General's Report issued in February 2002 does not allege that I was unauthorized to make a final determination regarding the Duwamish prior to January 20, 2001, when I officially resigned as Acting Assistant Secretary. Instead the report examines steps I took on Monday, January 22, 2001 in signing (but not dating) certain ministerial paperwork intended to be signed January 19, 2001.

With respect to the specific activities to which the Inspector General investigated, please consider the following:

1. As the Acting Assistant Secretary for Indian Affairs for the Department of the Interior in January 2001, I was authorized to make a determination that the Duwamish Tribal Organization, an entity seeking federal recognition, met the standards for federal recognition as an Indian Tribe;
2. On January 16, 2001, I notified the Bureau of Indian Affairs Branch of Acknowledgement of my decision that the Duwamish Tribal Organization met the standards for federal recognition. This decision was made after a lengthy examination of the facts over several weeks. The matter had been pending with the Department for several years and I believe having studied the record, as a matter of good government, the Duwamish were entitled to a decision.
3. On January 19, 2001, I took the following steps to finalize the decision and notify the tribe, including:

    i. signing a 14-page Federal Register Notice entitled "Final Determination to Acknowledge the Duwamish Tribal Organization;"
    ii. editing a 78-page decision document on the Duwamish entitled "Bases for Final Determination;"
    iii. preparing, signing and dating a cover memorandum to the Final Determination directing that my edits be incorporated concerning recognition of the Duwamish Tribal Organization; and
    iv. notifying the Duwamish Tribal Chairwoman that I had issued a positive final determination. The Deputy Commissioner for Indian Affairs and the BAR Branch Chief, Lee Fleming, among others, participated in this call with me.

I considered the Duwamish petition to be final as of January 19, 2001. On that day the Solicitor of the Department of Interior also was notified of the Duwamish decision. On January 19, 2001, while I was signing the above listed documents, I intended to sign, but missed signing two Federal Register notices, identical to the one that I had signed on January 19, 2001. I also skipped-over a one page document entitled "Summary Under the Criteria and Evidence for Final Determination to Acknowledge the Duwamish Tribal Organization ("Summary")."

I did not realize that I had neglected signing the duplicate Federal Register notices and Summary sheet until January 22, 2001, when Daphne Berwald, the office secretary, called me at the direction of BAR Branch Chief Lee Fleming and advised me that I had missed these signatures. I made arrangements that day with Ms. Berwald to sign the additional documents, which I considered ministerial in nature. I did not date or back date these documents. Rather I left the date blank, and left to the Solicitor's Office and others within the agency the review of these documents. Several months later, I learned that Mr. Fleming had directed Ms. Berwald to stamp the Summary sheet with the date of January 19, 2001.

Because the Duwamish tribe had been notified of my decision and the essential documents were signed on January 19, 2001, I believe my decision on January 22, 2001 to sign the Summary sheet appropriately placed the Department of Interior in a position to evaluate whether or not this document could be date-stamped nunc pro tunc, or whether it needed to be dated at all or whether

it simply should be discarded. When the Inspector General's office began to investigate the matter, I voluntarily met with the investigators, readily admitted signing the documents in question, and explained my reasons for doing so. The Department of Justice declined to prosecute me based on the findings of the Inspector General's office and did not seek to interview me.

Notwithstanding my good faith efforts to appropriately protect the Duwamish administrative record, I have been the repeated subject of media criticism (and now this Committee's attention) on a matter for which I acted in good faith and as a responsible citizen. Mr. Fleming who sat next to Ms. Kendall during the May 11, 2005 testimony remained silent as attention deflected from his conduct in directing the backdating of documents. I believe the Committee should ask Mr. Fleming if he authorized the backdating of Duwamish documents.

I am an attorney licensed in the District of Columbia. In response to an anonymous complaint, the District of Columbia Bar Counsel conducted a thorough investigation of the Duwamish matter in 2001, pursuant to the District of Columbia Rules of Professional Conduct for Attorneys, and found no violation of any ethical standards I must adhere to as an attorney. The DC Senior Assistant Bar Counsel Julia L. Porter (202) 638-1501 can confirm that I have not been censured, reprimanded or informally admonished by Bar Counsel.

In summary, I believe it would be unwise and unfair to me for the Committee to rely upon misleading allegations from the Inspector General (as represented by Deputy AG Kendall) with respect to the Duwamish matter. I would appreciate any correction to the public record you can provide. I previously sought a meeting with you in 2002 through your assistant Jill Peters to discuss this matter but was not able to obtain a meeting with you. I also briefed your counsel John Tahsuda prior to the May 11, 2005 hearing but the information from this briefing was not reflected at the hearing. If you have any questions please contact me at (202) 543-5000.

Sincerely,

Michael J. Anderson

Michael J. Anderson

Cc: Vice-Chairman Byron Dorgan
Department of the Interior Deputy Inspector General Mary Kendall

Honorable John McCain
And Honorable Members of the Committee

Committee On Indian Affairs
United States Senate
836 Hart Office Building
Washington, DC 20510
May 09, 2005

Re: May 11, 2005 - Oversight Hearing on Federal Recognition of Indian Tribes
Consideration for Written Testimony

Dear Sir(s);

With fifty-four tribes currently petitioning for federal recognition, California has more tribes than any other state petitioning the federal government for recognition. California is significantly affected by the federal recognition process and has concerns about any attempts to side-step one of the three methods for federal recognition.

In some cases the Secretary of the Interior has damaged the credibility of the Department and the recognition process by preventing an unbiased and factual assessment of the history, governmental relations, and aboriginal presence. The Lower Lake Koi, reaffirmed by former Assistant Deputy Secretary of the Interior Kevin Gover and the Ione Band, reaffirmed in 1994 by former Assistant Deputy Secretary of the Interior Ada Deer, being two such examples. These "reaffirmations", not utilizing the process required of all other petitioning groups, results in serious injustice to petitioning Tribes, previously recognized Tribes, and communities and citizens of the State.

As part of a presentation by Cheryl Schmit, director of Stand Up for California given to No Casino In Plymouth on April 30, 2005, we see how the circumvention of the proper administrative procedure for recognition has resulted in our small community (800 citizens) now facing the prospect of hosting a World Class Indian Gambling facility.

History of Ione

In 1923, the Reno Indian Agency ("Agency") had jurisdiction over Indian reservations, colonies, villages and scattered band of homeless Indians in Nevada and Northern California not under the superintendence of any other jurisdiction. The Agency and its entire personnel gave considerable time surveying and compiling data on populations, location and needs of the various Indians reservation, colonies, villages and scattered bands of homeless California Indians as presented in its annual report of 1923.

Ione is included on this list and the report states, "As the office is aware, we have been considering the purchase of a tract for the Indians at Ione for the past several years, the

property being a forty acre tract which has been tied up by legal procedure." The report goes on to list forty-six residents on this land.

1992 - the IBIA appeal by the Ione Band declines their request for federal recognition citing the federal regulations for acknowledgement as the necessary process.

1994 - Ada Deer, in violation of the Administrative Procedures Act, reaffirms the tribe, granting a status of federal recognition, something the Assistant Secretary of the Interior has no authority to do and violating the APA.

1998- Ione Band again appeals to the IBIA to establish criteria for tribal membership in order to become organized to sign agreements citing the 1915 Ione Census.

Currently, the newly incorporated members of the Ione Band of Miwok, numbering over 500, plan to establish a World Class gambling facility in and on the borders the town of Plymouth, California on land that is ten miles from their ancestral land base in Ione. The so called "reaffirmation" does not conform to any of the three exceptions for gaming on newly acquired lands:

1. A settlement of a land claim
2. The initial reservation of an Indian tribe acknowledged by the Secretary
3. The restoration of lands for an Indian tribe that is restored to federal recognition

Nevertheless the pro-gaming faction of the tribe is moving ahead with this venture with the support of the BIA Regional Office, despite overwhelming community opposition and despite having sidestepped the federal regulations and safeguards put in place for acknowledgement.

Recent finding of the 10th Circuit case *Cherokee Nation of Oklahoma vs. Gale Norton* ("Cherokee Nation") on November 16, 2004, rejected the 1996 determination regarding the Delaware's recognition, finding that Indian tribes may be recognized only by (1) an Act of Congress, (2) the Part 83 acknowledgement process or (3) a decision of a federal court. The court stated: "Agencies...must follow their own rules and regulation. The DOI used a procedure heretofore unknown to the law - 'retract and declare'- to purportedly re-recognize the Delaware's. In so doing, the DOI's actions were arbitrary and capricious. The Agency simply elected not to follow the Part 83 procedures for recognizing an Indian tribe and, furthermore, did not even properly waive application of those procedures. See 25 C.F.R. Sec. 1.2. We accordingly hold unlawful and set aside the DOI's 1996 final decision."

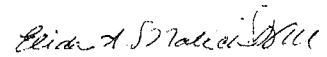
Likewise with Ione, the DOI must follow its own rules and cannot simply disregard the approved Administrative Procedure as Ada Deer did in 1994. This capricious circumvention of approved policy has resulted in havoc raining on the community of Plymouth in Amador County as wealthy investors from Mississippi fund the challenge to this community and working-class families fight to protect their hometown from becoming a gambling town.

The community of Plymouth does not reject the notion of self-sufficiency for Native Americans but clearly, the continued abuse of the IGRA and the lack of enforcement of those policies and guidelines that are in place for recognition and land acquisition are

resulting in the proliferation of the highly disfavored industry of gambling expansion, unfairness to those Tribes that have abided by the rules, and the State and its non-gaming citizens footing the bill to enforce compliance with gaming law. As Governor M. Jodi Rell of Connecticut stated, "The recognition of tribes has far-reaching consequences for our local communities and state and local government agencies."

With unscrupulous investors having found an avenue through Native American tribes to develop casino's across the country, the recognition and land acquisition processes are being abused in ways never imagined by Congress with the passage of the IGRA. We fully support Senator McCain's courage in tackling this sensitive and important issue.

Respectfully,



Dr. Elida A Malick
Director, No Casino In Plymouth
Former member Plymouth City Council
(209) 245-6211
olivefarm@centralhouse.net

SmokeSignals Communications: An Indigenous Voice

Senator John McCain
241 Russell Senate Office Bldg.
United States Senate, Washington DC 20510
Phone: (202) 224-2235
Fax: (202) 228-2862

Dear Senator McCain:

I am writing you as an independent member of the Mashpee Wampanoag Tribe located in Mashpee, Massachusetts.

I am the great-great-great-great granddaughter of the Rev. Blind Joe Amos,

My father Russell Peters was president of the Mashpee Wampanoag Tribal Council for 25 years. Thirty years ago he penned a letter to the Bureau of Indian Affairs seeking acknowledgement for this tribe, descendents of those credited with welcoming and rescuing the Pilgrims in 1621. In 1974 there was no BIA Office of Federal Acknowledgement, so he was simply expecting a reply to his letter to affirm his obvious assertion, "here we are, still."

Since then the Federal Recognition process has evolved into one of the most complicated and expensive legal litmus tests in government history. With each change in the Presidential administration new changes in the process presented new challenges. Legal expenses far exceeded what small bands could muster and then, in 1986 the Indian Gaming Regulatory Act was introduced making potential tribes ripe for investors.

Now gaming is at once our savior and our nemesis. While investors are willing to support tribal petitions for Federal Recognition including lawyers, lobbyists, and trips to Washington DC, Indian gaming has become a political hot potato, further slowing the process.

The story of my father's letter is evidence that the Mashpee Wampanoag quest for federal recognition was born out of pure intentions to preserve our heritage long before there was a federal recognition process, and long before Indian gaming. Unfortunately, Russell Peters Sr. died in March of 2002 waiting for a response to his letter.

Languishing in the federal recognition process for more than a decade with our own resources and the help of the Native American Rights fund proved ineffective. Then in 1999 a gaming backer entered the scene, luring tribal leaders into his confidence with the promise of endless backing until recognition is achieved in exchange for interest in an eventual casino.

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Page two

What has resulted since then is a tribe badly split over our objectives. And while our petition has moved only one spot on the "ready for active consideration list" our historic landmarks, including the oldest Indian church in the country, are falling down despite hundreds of thousands of dollars coming into the tribe from our wealthy investor. If you check the National Register of Historic places you will find our church and museum listed there, unfortunately both are closed to the public due to disrepair.

I agree that gaming has had a horrible influence on the recognition process and tribes, who are only pawns, but the government has put us in this place and something must be done.

I plan to be in Washington DC on May 11 to attend the Senate Indian Affairs Committee oversite hearing. It would be my honor to lend testimony to this issue as one of the few people who have witnessed the evolution of the Federal Recognition process and the damaging effects it has had on legitimate tribes for the last three decades.

Thank you for your consideration of my sincere testimony.

Sincerely,

Paula Peters
Mashpee Wampanoag

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