

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

----- x

IN THE MATTER OF:

Federal Acknowledgment of Indian Tribes
Proposed Rule 25-CFR-83

Consultation and Listening Session

----- x

TRIBAL LEADERS
CONSULTATION AND LISTENING SESSION

Held at the Mashpee Wampanoag Tribe Community and
Government Center Gymnasium, 483 Great Neck Road,
Mashpee, Massachusetts, on July 29, 2014, commencing
at 1:12 o'clock p.m.

DIANE KELLY
COURT REPORTING SERVICES
P.O. Box 147
CENTERVILLE, MA 02632

1 A p p e a r a n c e s :

2

3 KEVIN K. WASHBURN
4 Assistant Secretary of Indian Affairs
5 United States Department of the Interior
6 1849 C Street BW
7 MS 4141-M1B
8 Room 4160
9 Washington, DC 20240

10 ELIZABETH APPEL
11 Director, Regulatory Affairs and
12 Collaborative Action
13 1848 C Street
14 MIB, Mailstop 3071
15 Washington, DC 20240

16 KAITLYN KLASS
17 Attorney-Advisor
18 Division of Indian Affairs
19 General Indian Legal Activities
20 1849 C Street, NW
21 Room 6519
22 Mailstop 6513
23 Washington, DC 20240

1 MR. WASHBURN: We will go ahead, get
2 started.

3 We're going to ask that you -- that
4 everybody come forward as much as you can, just
5 because there's a fairly small group of us, and we do
6 still ask everyone to use the microphone.

7 Welcome to our formal
8 government-to-government tribal consultation on the
9 proposed federal acknowledgement regs.

10 It looks to me like everybody that's
11 present in the room was also here this morning and
12 has already seen the power point, so I can go through
13 that again, but I think it's probably not necessary
14 to spend, you know, twenty-five minutes doing that.

15 So I think that what we'll do is begin
16 by going around the room and asking everybody to
17 introduce themselves and who they represent.

18 And, again, this is a formal
19 government-to-government consultation and so
20 everybody in the room needs to be representing an
21 Indian tribe or an Indian Tribal organization, and
22 that is the only people that should be in the room.

23 So I'm Kevin Washburn, Assistant

1 Secretary for Indian Affairs at the U.S. Department
2 of the Interior.

3 MS. KLASS: I'm Kaity Klass. I work
4 in the solicitor's office.

5 MS. APPEL: Liz Appel, I'm the
6 director of the office of regulatory affairs, and the
7 Office of the Assistant Secretary for Indian Affairs.

8 MR. CROMWELL: I'm Cedric Cromwell,
9 Chairman and President of the Mashpee Wampanoag
10 Tribe.

11 MR. WASTON: Charles Waston, Tribal
12 Council for the Wampanoag Tribe.

13 MS. BAIRD: Yvonne Baird (phonetic),
14 Tribal Council member, Mashpee Wampanoag Tribe.

15 MS. STONE: Good afternoon, again, I'm
16 Marie Stone, tribal secretary, Mashpee Wampanoag
17 Tribe.

18 MR. PETERS: John Peters, Junior,
19 member of the Mashpee Wampanoag Tribe.

20 REVEREND NORWOOD: Reverend
21 John Norwood, National Congress of American Indians.

22 MS. SHAPIRO: Judy Shapiro. I'm a
23 lawyer for the Mashpee Wampanoag Tribe.

1 MS. CORONADO: Elizabeth Coronado, a
2 member of the Picayune Rancheria Chukchansi Indian
3 Tribe.

4 MS. LITTLE DOE BAIRD: Jessie Little
5 Doe Baird, Vice-Chairwoman, Mashpee Wampanoag tribe.

6 MR. WILLIAMS: Joe Williams, and I'm
7 here on behalf of the Mississippi Band of Choctaw
8 Indians.

9 MS. TERRY: Good afternoon everyone,
10 my name is Terry Henry, and I'm Chairwoman of the
11 Eastern Band of the Cherokee Tribal Council.

12 MR. RANDOLPH: Richard Randolph,
13 Wampanoag Tribe of Gay Head.

14 MR. WASHBURN: Okay. By the way,
15 we're going to have comments from each of you.
16 Please, articulate your name slowly and clearly so
17 that our court reporter can get it properly. And
18 getting the substance of these comments down is very,
19 very important to us, so we have a clear record for
20 amending or changing or going forward, so --

21 So, is there another step or -- we'll
22 just start to receive comments? Okay.

23 Well, first, I want to thank everybody

1 for being here and for traveling all this way, and,
2 once again, to thank the Mashpee Wampanoag for such a
3 gracious welcome, and for providing us with such a
4 wonderful space to do this in. We're really grateful
5 to you all.

6 We are now, sort of, open for
7 business, for comments from Indian tribes and tribal
8 organizations, so, as you wish, please, identify
9 yourselves and present us with your comments.

10 And to the court reporter, because it
11 would be helpful to the court reporter if you would
12 present those comments at the podium.

13 * * * * *

14

15 REVEREND NORWOOD: My name is Reverend
16 John Norwood and I'm here representing the National
17 Congress of the American Indians task force on
18 federal; acknowledgment.

19 We've been working with the Bureau of
20 Indian Affairs on these changes, and I would like to
21 thank Secretary Washburn for all of his efforts, and
22 the entire team, for all you've been doing.

23 I want to thank, once again, the

1 Wampanoag Nation for hosting us in this wonderful
2 building.

3 The official position of the National
4 Congress of American Indians is that they are in
5 favor of the -- there have been several resolutions
6 dealing with trying to change the process, making it
7 more fair, the most recent, which is reflecting all
8 of them, is that the national congress is in favor
9 and supports changing the process, making it more
10 transparent and urges the BIAG to swiftly implement
11 the regulations.

12 The task force has made comments
13 previously and will do so again regarding the issue
14 of the third-party veto.

15 No tribe that meets the criteria
16 should be held hostage by those who may for political
17 reasons seek to detract from that ability to become
18 acknowledged by the Federal Government, and also,
19 certain issues in regard to the way that descent
20 could be determined prior to 1900, not changing the
21 rule as posed, but adding additional language that
22 will be submitted in order to further clarify how to
23 apply that.

1 This is a matter of justice. It is
2 the reason that NCAI formed originally, to ensure
3 that the sovereignty of tribes was protected during
4 the determination.

5 The way that the rules have been
6 applied over the past decade and a half, maybe twenty
7 years or so, has increasingly become a new form of
8 termination for worthy tribes, and we're excited
9 about the opportunity to see that change and put that
10 in place and made more fair.

11 Thank you.

12 MR. WASHBURN: Thank you,
13 Reverend Norwood. We appreciate your comments.

14 And we have been joined by Hiawatha
15 Brown from the Narragansett Indian tribe.

16 (Discussion off the record.)

17

18 * * * * *

19 MS. STONE: Thank you.

20 I really think that it is only fair,
21 as sovereign nations, and, actually, members of two
22 nations, the United States, that there has to be a
23 cap. To allow an open-ended process is just -- it's

1 just not fair.

2 We have a lot of requirements, the
3 tribes do, in order to meet that, and some of the
4 ownership, too, should go back on the department.

5 And when you think of the average
6 turnaround in D.C., being a four-year cycle,
7 something is going to take thirty years to get
8 through, it's a flip-flop, socially, depending on who
9 is in office.

10 So if we -- you know, we get a
11 Republican in office, a lot of people go, oh, I might
12 as well not do anything right now because nothing is
13 going to change until the face of the office changes.

14 And it would seem to me to be more
15 consistent if everyone were held to the same standard
16 of meeting a four-year term, then you're not running
17 the risk of, you know, everyone for thirty years
18 having different opinions, different attitudes, and
19 also political influence, which is probably the
20 biggest issue that I have.

21 But, if we have to pay our taxes by
22 April 15th, why doesn't the department of interior
23 have to be mandated to provide an answer to a tribe

1 within four years; if you can't get all your stuff
2 together in four years, that tells me, or that reeks
3 of something else.

4 Four years is still a long time, but
5 thirty years is just -- it's almost like when -- the
6 Chief is my uncle -- when we got so tired of waiting
7 and sent the chief down for the year, it's, like --
8 we shouldn't have had to badger people over the head
9 because of the thirty years, you know, but, I feel
10 like we -- we got through it.

11 We broke the barrier because we put a
12 limit on the DOI, and we said, listen, we expect an
13 answer in a year. If we don't get it in a year, then
14 we need to take other actions, and so that's when we
15 got it in another year.

16 So it would seem to me, a regulation
17 that would include a cap of four years, based on that
18 being the average term of any senator or congressman,
19 whatever, or the president, should be seriously
20 considered and upheld.

21 Thank you.

22 MR. WASHBURN: Thank you for that
23 comment, Marie.

1 Let me say that, you know, we're
2 attempting to put a process in place that will
3 govern -- I mean, it will govern this process and --
4 it would be the law that governs this process, and so
5 it shouldn't depend on who is in office as to what
6 the outcome is in these cases.

7 If we have good, clear rules that can,
8 you know, can be followed and they're transparent,
9 then we should get the same rule, no matter -- get
10 the same outcome no matter who is in office, and
11 ideally, that's the way it would work.

12 Let me say this: If we had a strict
13 timeline, say, four years, I think that a lot of
14 tribes would be denied because they didn't get their
15 information in on time, because it's a bit of an
16 iterative process, going back and forth with the
17 tribes, and with us saying, look, we've got, you
18 know, criteria A and B, but we need a little more on
19 C, and that sort of thing. Can you give us more
20 information, and that's a back and forth process.

21 And, you know, again, certainly, some
22 people write letters of intent. We've got, you know,
23 well over a hundred letters of intent. I mean -- so,

1 you know, you face the question of --

2 We've got a staff, and we don't want
3 it to devote all of our Indian affairs staff that are
4 doing good things for the federally recognized
5 tribes, but we don't have to hire, you know, to take
6 away from that money to hire a bunch of new FTEs just
7 to do this process.

8 So we have a fixed number of staff
9 that we devote to this process, and it's a good
10 staff, but it is time-consuming and pains-taking
11 work, and so there is, sort of, some resource issues.

12 And as head of all Indian affairs at
13 the department, I don't want to rob from Peter to pay
14 Paul. I don't want to take a whole bunch of FTEs
15 that are serving Indian tribes and move them over
16 into the office of federal acknowledgment or
17 something, and if we had to do all those hundred plus
18 petitions all at once, you know, that might be the
19 outcome.

20 The fact of the matter is, we usually
21 only have -- more like a dozen petitions that are
22 actually complete and ready to go, and we don't focus
23 on all of them all at once, and we do divide them up

1 among the teams.

2 We have three teams operating at any
3 given time at the office of federal acknowledgement
4 and they do -- you know, they work, you know, very
5 hard, but they also work in a meticulous fashion, and
6 it takes time, so --

7 I don't know, do either of you want to
8 add anything to that?

9 MS. KLASS: I want to add, under the
10 proposed rule, after OFA, once it's on active
11 consideration, there are pretty strict time frames
12 for each step.

13 And we haven't plotted out exactly
14 what that adds up to, but there are specific time
15 frames for each step going forward.

16 THE COURT REPORTER: I'm sorry, I
17 can't hear you.

18 MS. STONE: Is that all the material I
19 can have, that I can you figure out the entire
20 timeline based on the steps and how long each takes?

21 MS. KLASS: Yes. If you trace through
22 the regulations and add them out, you can figure it
23 out, but we can also do that ourselves.

1 MS. STONE: And One last question, how
2 many -- aside from the dozen that might be standing
3 in a ready status, when something is in a ready
4 status, how long before it goes through? How long do
5 I have to stay ready before it's actually
6 acknowledged? And then -- I think that's what I
7 wanted to ask.

8 MS. KLASS: The order that OFA gives
9 consideration to petitions is in the order that the
10 documented petition comes in, so it just depends on
11 how many petitioners are ahead of you, basically.

12 MS. STONE: So, again, there's no time
13 frame that says, okay, this one is ready now and we
14 have, like -- we have posted it in the Federal
15 Register for so long, and -- so do you --

16 I guess it's becoming even more
17 concerning that you don't have these parameters
18 around, that, like, I can't just say, okay, it's
19 ready.

20 MS. KLASS: A time frame for the ready
21 and waiting is a helpful comment. Thank you.

22 MS. STONE: And then, after the dozen
23 that are waiting, can you tell me, or just to give me

1 an idea, what's in the pipeline beyond the dozen?

2 MR. WASHBURN: Do we have that list?

3 I was trying to find it here and I
4 don't think I've got it in front of me, but they are
5 in line.

6 Thank you, Marie.

7 MS. KLASS: According to OFA, thirteen
8 petitioners, their total workload, that probably also
9 includes those under active consideration.

10 MS. STONE: Thank you.

11 MR. WASHBURN: Hiawatha.

12 * * * * *

13

14 MR. BROWN: Greetings once again,
15 Hiawatha Brown, Narragansett --

16 THE COURT REPORTER: I'm sorry.

17 MR. BROWN: Hiawatha Brown,
18 Narragansett Tribe from Rhode Island.

19 I think that there needs to be some
20 distinctions. I do recognize that there's a team
21 that works towards this effort, but I think the
22 distinction needs to be between the historical part
23 of what the team does and who they evaluate for

1 historical records in history as opposed to the legal
2 part of it.

3 I would say that you folks are the
4 legal part of it, which is good, because you need
5 that, and we sit -- we sit with you in the many
6 venues and have some chance to have some ongoing
7 dialogue on a regular basis, so there's a commonality
8 here, even though it's not literally written, you
9 understand what our views are and we understand
10 somewhat and accept what your views are.

11 But the people who do the historical
12 work, the archeologists, anthropologists and some of
13 these other research people, in my opinion, they
14 should be sitting right in this forum, right before
15 us so they can be questioned and challenged as to
16 what they perceive as accurate history.

17 I can tell you -- and I can tell you
18 this from my own tribe's experience, that the
19 information that we put forth, much of it was never
20 even used in our process of defense thirty years
21 later.

22 So when -- if you go back and look at
23 the decisions that come out of federal court, been in

1 the federal courts for over thirty years now, my
2 tribe did very well in the first twenty years within
3 the federal court system here in region one.

4 We didn't bear up too well at the
5 district level, but we pretty much prevailed at the
6 appeals level.

7 Well, the last ten or twelve years,
8 the very cases that we defended and honored at the
9 court level has now been overturned or challenged.
10 Something is wrong with that picture.

11 And, frankly, the hope was is that if
12 we could get through this Cherokee situation and
13 Indian country prevailed, then we'd get a chance --
14 that my tribe would get a chance to get a federal
15 court review as to changes in their position from the
16 standpoint of law.

17 Frankly, my tribe has not been dealt
18 with from a standpoint of law. It's politics that
19 has manipulated my tribe in this state, and I'll use
20 two examples.

21 In 1996, when we was knocked out of
22 the Indian Gaming Regulatory Act by Chaffee, a former
23 senator, we defeated him on the -- at the court level

1 and defeated him on the congressional floor.

2 He had to pull a back door on us,
3 which was -- which was an attachment to the
4 appropriations bill in 1996, and it was again
5 ambiguous in his -- it its outcome.

6 He said, for the purpose of gaming,
7 the Narragansett land is not considered Indian
8 country. That was probably the less truthful
9 statement you ever wanted to state.

10 I mean, we've been in the federal
11 system for twenty years and received an excess of six
12 million dollars a year for the federal system, you
13 know, to meet the requirements.

14 Our cadastral survey was completed and
15 a host of other requirements to allow our region to
16 be Indian country, and so that was a lie.

17 You come around to this Carcieri
18 issue, which, again, was an issue pertaining to
19 thirty-two acres of land going for Trust to housing.

20 Again, this was -- the land was put
21 into a Trust, eleven fifty-one, eleven fifty-two
22 jurisdiction, which was not the settlement agreement,
23 and the State of Rhode Island lied out of their

1 teeth, and the Town of Charlestown lied out of their
2 teeth.

3 And, of course, they had the juice, so
4 to speak, they had the political clout, as well as
5 the economic clout to bring in a former supreme court
6 justice to work against the tribe for the State of
7 Rhode Island, and the these lies just continued on.

8 Nowhere does it state in IGRA that we
9 cannot have gaming. The law does -- does nowhere say
10 (sic) that we can't have gaming. Again, it was --
11 it's political. There's nowhere in the law that says
12 that our land cannot be put in Trust under a
13 different jurisdiction.

14 The State of Rhode Island tried
15 everything under the sun to block us, and they've
16 been successful. It ended up before the Supreme
17 Court.

18 And now we're dealing with this issue,
19 that now -- that now has an affect on every tribe in
20 this country, under every aspect of our sovereignty,
21 and it's a lie. It's clearly a lie, but congress is
22 not willing to take a position to correct this
23 problem that's affecting every aspect of every tribe

1 in this country. There's -- something is wrong with
2 this picture.

3 So if -- if you're going to go back to
4 where we are today, I will just reiterate what I said
5 earlier: We need to police our own issues here in
6 this area.

7 The history that you folks have isn't
8 even close to the history that we have; furthermore,
9 the United States Government, if you go beyond the
10 boundaries of the United States, and there's greater
11 history of our tribes in England and in France and in
12 Germany than here, here, in the United States.

13 Because, if we go to the archives, and
14 I'm talking thirty years ago, you could go in there
15 and there -- and there's volumes of information,
16 anyone could go down in the deep crevices of rooms
17 that you couldn't even open the doors unless you had
18 the wherewithal, to ask to get in there, and once you
19 get in there, there's some valuable history of the
20 New England tribes.

21 Much of that stuff has been removed
22 today, because when you get down to the bowels of
23 these buildings, there's nothing down there now

1 pertaining to us.

2 Well, that's a big lie, and so it's my
3 opinion that the United States Government, in this
4 case, the department of interior, to research and
5 open up every avenue you can, to be able to define
6 who we are here, East of the Mississippi.

7 We are unique, and I'm not saying we
8 should get any preferential treatment, but I do think
9 that there needs to be a greater level of -- a
10 balance, to put us on the same page as these tribes
11 West of the Mississippi.

12 You know, I look around this
13 (indicating) room, there's ten tribes in region one,
14 ten tribes. There's ten of us. There's three or
15 four tribes here today.

16 We're never going to get anywhere if
17 we keep to changing -- having divisive rules against
18 ourselves, and this time, I put the finger down on
19 the tribes. We need our people here so we can defend
20 what we believe in, what our beliefs are as opposed
21 to what somebody else's interpretation of what their
22 beliefs are.

23 And I'm now referring to the -- what

1 the Department of the Interior -- I don't like the
2 position you folks are taking, as far as doing your
3 reviews and drawing your conclusions. It's not
4 accurate, folks, and that needs to change.

5 But we have to change amongst
6 ourselves first and put the trust amongst ourselves,
7 and work with us so we can provide that additional
8 information, so you guys could make a more
9 informative decision affecting our future
10 generations.

11 It's easy right now for me to stand up
12 here, thirty years after we first came here to this
13 federal system, what "should have, would have, could
14 have" -- that's getting us nowhere.

15 The only thing we can do now, or I can
16 do, as tribal leader, is to try to pick up the pieces
17 and move forward, to make sure that the future
18 generations of all of our nations here on the East
19 Coast are going to be protected.

20 Just a couple of points
21 (indicating) --

22 I really don't see how the Interior
23 can put a final determination until this Carcier

1 issue is resolved. Carcierri has affected everything
2 we do now as Indian people within this federal
3 system, and the laws have now -- that once were
4 provided for us, to be able to have equal footing is
5 now questioned and challenged under this Carcierri
6 determination, and it is a major catastrophe, as to
7 what the outcome is going to be.

8 I just see that this whole federal
9 recognition issue is going to end up being a
10 snowball, simply because of the inabilities, for some
11 of these other laws to be upheld.

12 In my mind, and I'm certainly no
13 attorney, no lawyer, but by no means am I a fool,
14 either, and I know what -- I know more than more
15 lawyers will ever know, because I've lived being an
16 Indian all my life, but I don't see how you can turn
17 around and get some type of a balance as to what and
18 how the laws are supposed to be applied to protect
19 our rights as indigenous people, or as people of the
20 United States falling under Indian federal law.

21 There's hundreds of precedent cases
22 that should supercede Carcierri, because the Carcierri
23 ruling is from the Supreme Court, and it's not

1 happening.

2 The closest we ever got to any of that
3 challenge was coming out of the solicitor's office,
4 and all that did was to generalize what we
5 potentially could do. It defined nothing. It
6 opened -- it gave great hope to the tribes, as to how
7 we may be able to resolve this problem, but there's
8 nothing definitive.

9 So I think we need to get to the base
10 of this issue before we can -- before this particular
11 issue could have a final determination.

12 You know, it's interesting, that -- in
13 our lifetimes, things change, but thirty, forty,
14 fifty, a hundred years ago, when tribes first started
15 -- whatever the timeline was, when tribes first
16 started this process of federal recognition and
17 acknowledgment, their desire, their dreams and their
18 goals are no greater than the goals of the Indian
19 people pursuing it today.

20 Some of us have been fortunate enough,
21 because of our documented history; not the Indian
22 history, not the Native American documented history,
23 the White man's documented history. That's how we

1 proved who we are, because much of our unwritten law
2 is never requested or even asked, and when it is
3 asked, it has to be substantiated, and it's something
4 that's been passed on for generations. It's very
5 hard to substantiate.

6 And even though there may be a process
7 for an elder to come in and give an affidavit, that
8 document is cast aside. I've seen it happen numerous
9 times.

10 And maybe it weighs a little bit, but
11 it certainly doesn't weigh in in comparison to
12 someone else's, a non-Indian written history that's
13 documented and used as a format of law, something to
14 that level.

15 But the cause yesterday is no greater
16 than the cause today, and the tribes that are coming
17 on board, or potentially coming on board, they should
18 have the same rights and privileges as -- that was
19 afforded us twenty years ago, thirty years ago, or
20 fifty years ago.

21 And maybe that's what this process is
22 attempting to do. Maybe that's what this proposed
23 rule is attempting to do. I don't know if it is yet,

1 until we see the final outcome.

2 But just to follow up with a comment
3 earlier, it's very hard for us to take a position
4 when we don't know what our brothers and sisters are
5 doing across this country.

6 That stuff needs to be provided to
7 -- it needs to be copied and provided to every level
8 you go to; every level you go to, that stuff should
9 be on the back table so we can review it, so we're
10 not stepping on each other's toes, or crossing over
11 on each other, or defeating the purpose of one region
12 versus another, and that's a tactic that the Federal
13 Government has always, always (sic) applied against
14 the Indian country: Divide and conquer.

15 Now, fortunately, standing in front of
16 me is a favorable administration. You've done some
17 marvelous work, in my mind, in your short time as
18 Assistant Secretary, but under this administration,
19 there was two others, so -- at least in this eight
20 year period, there's a potential, there's going to be
21 three assistant secretaries. It doesn't always mean
22 each administration is transferring to the next, the
23 same level and degree.

1 Fortunately, right now, you're
2 carrying the torch, hopefully, towards the end of
3 this administration, and you're going to carry that
4 message forward, but who the hell knows what we're
5 going to end up with in the next presidency, in the
6 next administration.

7 All the good work that's been done
8 under this administration will be in the back drawer,
9 put in the back room until -- just until somebody
10 else sees it from the same point of view.

11 So that's why it's very important for
12 us to unify as tribes and drive this message home,
13 regardless of who sits in and under what
14 administration.

15 Marie's point is exactly right: If we
16 end up with a Republican, Indian Country is dead in
17 the water for another four to eight years. It's just
18 the way that the system works. If we're fortunate
19 enough to end up with a Democrat as a -- as the
20 president, some of these things may carry forward.

21 But, for us, it's a tremendous chance.
22 It's a leap of faith, that we have to, kind of,
23 instill within us from administration to

1 administration, and, unfortunately, the
2 administration is not -- has not always stood up to
3 what their requirements are, to uphold our trust and
4 to their fiduciary responsibilities.

5 So, with that being said, I think
6 there's a lot to be desired in the paths that we
7 choose as Indian people; but, most importantly, the
8 path that was provided to us, we have limited
9 choices, so economics controls the Indian country
10 today.

11 It's not about the protection of
12 tribal rights of sovereignty, as it was fifteen,
13 twenty years ago, when we had a common goal. Now
14 what drives us is money and politics, and that's --
15 to me, that is a detriment to our future.

16 Last but not least, this is -- in my
17 opinion, this is exactly what the federal system has
18 been waiting for, waiting for us to assimilate back
19 to the mainstream, so there's no such thing as a
20 distinct group of people such as we are.

21 I was always taught this: The only
22 thing that separates an Indian tribe from any other
23 ethnic group is our tradition and culture, and when

1 you turn around and put that on the back burner for
2 the almighty dollar, that's precisely what this world
3 has been waiting for, especially in this country,
4 just waiting for us, so that we could be cast aside
5 as just another ethnic group of people.

6 Thanks for the opportunity to speak.

7 MR. WASHBURN: Thank you, Hiawatha.

8 * * * * *

9

10 MR. WILLIAMS: Good afternoon. My
11 name is Joseph Williams and I'm here on behalf of the
12 Mississippi Band, Choctaw Indians, Choctaw,
13 Mississippi.

14 I'm a tribal member and I'm an
15 attorney with a practice in Okmulgee, Oklahoma. It's
16 O-k-m-u-l-g-e-e.

17 I also served as chief justice for the
18 Sac and Fox Nation located in Stroud, Oklahoma.

19 Let me begin by saying thank you to
20 the Wampanoag Tribe for hosting this consultation
21 session.

22 I'm honored to be here on behalf of my
23 tribe, the Mississippi Choctaws for this important

1 consultation regarding proposed changes to
2 regulations regarding federal acknowledgment
3 25 CFR-83.

4 The Tribe does intend to submit
5 written comments in full by the deadline, and I thank
6 you for extending that deadline. It was much needed
7 for us.

8 But, I just wanted to say a few words
9 today. The tribe understands that the single reason
10 cited by the Department of the Interior for the
11 proposed changes is to address criticism that the
12 Part 83 process is too slow, it's expensive,
13 ineffective, and less than transparent; however, the
14 unique relationship between the United States
15 Government and the Indian Nations and tribes in this
16 country demands that the federal acknowledgement
17 process be stringent and to be conducted with
18 integrity. The process is supposed to be stringent
19 and lengthy in order to help ensure that only
20 meritorious petitions are submitted and considered
21 under the Part 83 process.

22 It is not in the best interest of both
23 the United States and the current federally

1 recognized tribes or petitioners to avoid an arduous
2 process designed to provide critical examination and
3 evaluation based on the well-established criteria to
4 achieve federal acknowledgment.

5 While the tribe applauds, in general,
6 the efforts of the Interior to improve its
7 responsibilities, the tribe does not believe that
8 lowering the standards on the subsequent criteria of
9 the Part 83 process is the answer.

10 This would have the effect of
11 minimizing the significance of a historical
12 relationship between tribes in the United States.
13 Any attempt to lower the standards of the federal
14 acknowledgement process would open the door to invite
15 various groups to submit non-meritorious petitions,
16 resulting in an even more backlog at Interior.

17 This would also offend the integrity
18 of the process. It can be seen as offensive to those
19 tribes who are able to fulfill the stringent
20 requirements required by the current regulations.

21 As I said, the tribe intends to submit
22 its comments in full, but one thing that I wanted to
23 point out today is, the tribe questions the need to

1 change establishing 1934 as the starting year for
2 evaluation of community and political authority.

3 Even though this starting year
4 coincides with the Indian Reorganization Act, the use
5 of this date is simply due to the favorable shift of
6 U.S. policy for its Indian tribes and should not be
7 used to lower the standards required to establish
8 community and political authority.

9 The petitioners who are truly able to
10 establish community and political authority should be
11 able to do so regardless of the state of the U.S.
12 policy at any particular time.

13 We know there are real budgetary
14 concerns at Interior; however, it would seem that one
15 resolution is to address the concerns of the
16 burdensome and lengthy process that is the Part 83
17 process; would be to have better staffing at
18 Interior; to provide clearer guidelines so that
19 petitioners are fully capable of submitting petitions
20 without having to go back and forth between Interior
21 and petitioners.

22 It would seem that providing better
23 guidelines for the petitioners, in order to have a

1 proper, complete application submitted, would be a
2 better solution than actually addressing the
3 substantive criteria and make it more easier (sic)
4 for those petitions to be submitted.

5 Again, the tribe will submit its
6 written comments, and I thank you today for the time
7 to speak.

8 MR. WASHBURN: Chairwoman Henry.

9 * * * * *

10

11 MS. HENRY: Good afternoon again
12 everyone.

13 First of all, I would like to say to
14 the Mashpee Tribe, thank you so much for this
15 wonderful hospitality, for the lovely lunch. The
16 lobster was definitely quite delicious.

17 And, again, thank you, Kevin,
18 Assistant Secretary Washburn, for coming here and
19 making your staff available to this process.

20 As many of you probably know, the
21 Eastern Band has participated in every single
22 consultation in this series that has been available.

23 We have a very rigorous, I guess,

1 position on this issue of federal acknowledgement and
2 for a very specific reason. For many of you
3 listening, first of all, let me just say, I was very
4 taken aback by some of the things that I heard in
5 this mornings comments.

6 One of the things that particularly
7 struck me -- and, Hiawatha, you were, kind of,
8 pointing at it in your comments this morning, and
9 that was, the difference between how tribes are
10 treated in the North and in the South.

11 And, I guess, I've never -- because
12 I'm not from here, I wouldn't have known; but, it
13 seems like the bulk of the comments were that the
14 states are actually against the tribes, and that
15 that's really the biggest burden that has to be
16 overcome with respect to third-party interventions,
17 if you will.

18 In the South, we don't have that
19 issue, in my understanding. We have states that have
20 no standards at all for recognizing Indians and they
21 want to recognize any group of people that comes to
22 it; and so, subsequently, as a result of the history
23 and the removal period, in particular, we have over a

1 hundred groups in the South claiming to be Cherokees,
2 and, of course, we have a very specific issue with
3 that.

4 So I just wanted to make those
5 preliminary comments, just to, kind of, try to give
6 you some understanding, I guess, of the reason why
7 the Eastern Band has the position that we do, and
8 with all due respect to our hosts, I'm going to begin
9 my official comments.

10 My name is Terry Henry, and I am the
11 Chairwoman of the Eastern Band of Cherokee Indians
12 Tribal Council. I'm very happy to be here at this
13 event.

14 Our reservation is located in --

15 THE COURT REPORTER: I'm sorry?

16 MS. HENRY: Our reservation is located
17 in Western North Carolina where most of our over
18 fifty thousand tribal members live and have lived
19 since time in memoriam.

20 The Eastern Band of Cherokees have a
21 written language, a culture, history and ways that
22 have survived wars, treaty making, the removal
23 period, the allotment period, and other federal

1 actions that tried to eradicate our government and
2 turn our Cherokee people into non-Indians.

3 Through those hard times, we have
4 struggled, we have fought, and we have -- and in the
5 effort, many of our people have died to preserve our
6 separate identify as Cherokees.

7 We hold our separate Cherokee language
8 and culture to be sacred and our people are still
9 willing to fight to preserve it.

10 As many of you know, we hear all the
11 time that people -- from people who claim a Cherokee
12 princess as a grandmother or greatgrandmother, and
13 we've heard everyone from Cher to Johnny Cash to
14 Beyonce have Cherokee ancestry.

15 While we understand that it's a
16 beautiful thing to be a Cherokee, we, as tribal
17 leaders, feel strongly that we must protect our
18 Cherokee identity from those who would take it, water
19 it down or destroy it.

20 And so, with that introductory piece,
21 I'm going to go ahead and get into the substantive
22 comments.

23 We believe that the federal

1 acknowledgement process needs to be reformed. We
2 don't disagree with that at all. The fact that it
3 takes thirty years for a tribe to be recognized is an
4 awful long time, and I can't imagine my own tribe,
5 how we would have handled that, and so my heart goes
6 out to those who have.

7 We believe that the process does need
8 to be more transparent and more efficient for the
9 petitioners who are seeking acknowledgement as Indian
10 tribes.

11 We also agree with the fundamental
12 policy statement about federal acknowledgement that
13 tribe leaders made before the establishment of the
14 1978 regulation to the present. A petition group
15 should have to demonstrate and a tribe should
16 demonstrate a continuous history of tribal relations
17 in order to receive federal acknowledgement.

18 It is restated again as a present day
19 policy imperative and we continue to believe the
20 central question of federal acknowledgement has
21 maintained tribal relations. We agree again.

22 We are concerned that the proposed
23 rule would amend this policy and require the

1 petitioning group to demonstrate tribal relations
2 from 1934 to the present, at a single point in
3 history, before 1900. Even more to the point, that
4 the single point of history would only require a
5 brief narrative with evidence. We believe this is a
6 major departure of federal Indian policy.

7 Now, having heard your presentation, I
8 understand that you are seeking specific
9 recommendations as to the time frame.

10 I guess, what I was thinking was, is
11 there an outline that could be provided to a
12 petitioning tribe, an outline, because if you've got
13 acknowledgers that are doing this work for years,
14 they pretty much know what the outline should look
15 like -- right?

16 And, not to say that it should be a
17 treatise, but at least give a petitioning group an
18 outline of what you're looking for, with some
19 guidelines, as to how they should respond to that,
20 and I think that might address Mr. Williams'
21 comments, as well, about some guidance. I know
22 that's not the only idea out there, but it's just one
23 that I had.

1 We believe that the proposed rule
2 which lowers the policy bar and the current rule that
3 reflects the policy supported by the tribal leaders,
4 to -- this is the piece about the brief narrative,
5 and we understand that you're trying to work on that.

6 That's the point that I was trying to
7 make there, but we do believe that evidence of a
8 group's existence at some point in time during
9 historical times, as late as the 1900s; that that
10 would point to your current proposed rule which would
11 no longer require petitioners to account for more
12 than a century more of history that is essential to a
13 determination to -- of continuous existence.

14 We understand that federal
15 acknowledgement issues can be emotional and
16 controversial.

17 As the Eastern Band of Cherokees, we
18 do have a living language and culture and history.
19 We are also concerned that -- about the rule that
20 would, we believe, water down the requirement that a
21 petitioning group demonstrate that its individual
22 members have ancient ancestry.

23 So most tribal governments today

1 establish membership based on a descent from a base
2 roll of Indians prepared for allotment purposes, in
3 addition to other criteria, such as blood quantity.

4 For most established tribes, all or
5 nearly all of the persons on the base roll are
6 Indians from that particular tribe. Under the
7 proposed rule, eighty percent of the petitioner's
8 group members would have to demonstrate ancestry from
9 the historical tribe; the other twenty percent would
10 not have to demonstrate any Indian ancestry
11 whatsoever. That concerns us.

12 Further, the proposed rule would -- we
13 believe, could clarify what the required Indian
14 ancestry would be met by providing a roll prepared by
15 the department at the direction of congress or -- at
16 the direction of congress, or even if the roll is
17 demonstrably inaccurate.

18 We think that there should be some
19 historical accountability, and we believe that the
20 genealogists, historians and -- you know, we don't
21 have -- I don't know how many you have. I don't know
22 how many of those folks that you have at the
23 department, but -- and I don't know how many

1 applications you have before you, either, so given
2 the fact that the unknown, to me, is the workload, it
3 would seem to me that making sure that you have those
4 professional folks on your staff is very important,
5 and should be, and continue to be important as a part
6 of the process.

7 Because, some of this is -- it, kind
8 of, is feeling like -- the way the proposed rule is
9 written, some of it feels like it could be left to a
10 political decision, and so -- perhaps, I'm wrong in
11 my reading of that, but we certainly want to make
12 sure that these are merits based standards and that
13 they are to be followed very purposefully.

14 And, finally, I would like to thank
15 you for the extension of time. I know that we had
16 requested it and had worked with some folks to see if
17 we could make that happen.

18 We will be providing some more
19 specific written comments by the deadline and I took
20 some -- I took some pretty good notes from this
21 morning's session to help me understand the various
22 viewpoints, of what's going on.

23 So I thank you very much.

1 MR. WASHBURN: Thank you,
2 Madame Chairwoman, and thanks for the very
3 substantive comments.

4 Do we want to address (indicating) any
5 of that?

6 Let me say, to start with the last,
7 which is that you're worried that it might be more
8 like a political decision, we have worked to make
9 that less so under these regs, and so that's the
10 inclusion of the judge, whether the administrative
11 law judge or administrative judge, or an attorney for
12 that review process.

13 That's one thing that we've created,
14 another objective decision-maker in there, to lessen
15 the role of a, sort of, political actor, so that's
16 one example, where we are actually trying to go in
17 the other direction; which is, make it more objective
18 rather than political.

19 MS. HENRY: And at that point, that's
20 where you have the additional deadline, of September.
21 Those are the additional pieces of the regs which are
22 new; right?

23 MR. WASHBURN: Yes, ma'am.

1 MS. HENRY: Okay. All right, thank
2 you.

3 MS. KLASS: In our proposed rule,
4 section 83.6B, the proposed rule directs OFA to
5 create an example, documented petition, and to make
6 it available for petitioners.

7 But, if you have a more specific idea
8 of what that should look like, please, let us know.

9 * * * * *

10

11 MS. LITTLE DOE BAIRD: Thank you folks
12 for coming and for the opportunity to speak, and
13 welcome to everybody, if I haven't said so.

14 Just a few comments. One quick
15 comment was, if people aren't aware, you can get on
16 to OFA's website, and maybe we should put up -- put
17 it up (indicating) on the -- well, it's kind of late
18 now.

19 But, if you put up the web address,
20 there are actually some really great documents that
21 you can find.

22 I check it out periodically. You can
23 see the petitioners by state, and you can see all the

1 letters of intent submitted, and you can see the
2 final determinations, and you can also see examples.

3 So I've noticed, over the last seven
4 years or so, the website is giving a lot more
5 direction to people, so that when it says you should
6 submit a letter of intent, there's an example there
7 of a letter of intent.

8 So there are, in a sense, some
9 guidelines for people that are applying in that there
10 are some examples on the website that people can look
11 at, and you may be augmenting that; but, certainly, I
12 felt that was great.

13 And, again, as I stated in Maine, and
14 I'm stating it here, I agree, one hundred percent,
15 with the reduction of time for documentation from
16 first sustained contact to early in the 19th Century
17 for the reasons I already stated.

18 It is unreasonable to expect people to
19 be able to document themselves every ten years: In
20 1650, 1660, 1670, 1680, et cetera, and it is
21 completely unfair to try to do that East of the
22 Mississippi, so pushing it to 1900, 1934 -- but, I
23 would prefer 1900, it's so much more reasonable, and

1 giving people some latitude for a larger gap in time.

2 I remember a specific tribal meeting
3 where the tribe was discussing that we didn't feel
4 like we had enough documentation in one ten year
5 period, which was making everybody insane, and I was
6 thinking, there's something wrong with this then.

7 So asking people to document from 1900
8 forward actually means that for at least a hundred
9 and fourteen years, we've had a recognizable
10 community and government.

11 I don't think that's just yesterday;
12 it's over a hundred years, and it certainly is prior
13 to the inception of any tribal gaming, which is
14 always everybody's big complaint.

15 You've got tribes that are complaining
16 that their neighbors shouldn't be recognized, when
17 everybody really feels like the complaint is
18 sometimes down to gaming, the potential of gaming,
19 and the potential loss of economic development of
20 their neighbors, and we need to talk about that
21 openly.

22 If we use documentation, and I've been
23 saying this for a good twenty years now, if we use

1 documentation of recognition of one tribe by another
2 tribe and weighed it more heavily -- so right now,
3 it's not excluded; a tribe can submit something that
4 shows that their neighbor recognized them and
5 interacted with them, and it's not -- it's not
6 precluded.

7 People can certainly submit that as
8 evidence of existence and interaction, but if it gets
9 more weight, and it gets more weight prior to the
10 inception of tribal gaming, then, certainly, I think
11 it's helpful, because what OFA is trying to do is to
12 apply objective standards to a very subjective topic,
13 and so we're trying to apply concrete evidence to
14 abstract things, like existence and culture.

15 So any time that we can assist people
16 outside of a particular tribal group in meeting that
17 test, we should try to do that.

18 I certainly know that -- and I could
19 talk about things; for example, that a research team
20 might want to look for in tribe A, if we were talking
21 about tribe A being from this region.

22 But, there are things that I'm -- as
23 an Indian person, I am not going to know about some

1 tribes in the Midwest. I don't even know the
2 question, nevermind the answer, and I'm another
3 Indian person.

4 So I think it's hard to ask people to
5 come up with evidence for -- empirical evidence for
6 standards that are so -- we're trying to be so
7 objective about some material that is so subjective.

8 And so, I think, that if we weight the
9 recognition of one Indian community recognizing
10 another Indian community, as I said, prior to gaming,
11 then it eliminates anybody's argument that any of
12 this is about politics, or gaming or money.

13 And I think that's basically all I had
14 to offer. Thank you.

15 MR. WASHBURN: Thank you, Vice-chair.

16 MS. KLASS: I would add, in the
17 political authority criteria right now, evidence of
18 the government-to-government relationship between the
19 petitioner and another federally recognized tribe is
20 a formal suggestion right now.

21 MS. LITTLE DOE BAIRD: Okay, but it's
22 not formally weighted as it should be. Thank you.

23 * * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

MS. SHAPIRO: My name is Judy Shapiro and I'm a lawyer for the Mashpee Wampanoag Tribe.

I've had the honor to work with this tribe before recognition and after, and to work with other tribes in the Northeast before recognition and sometimes after --

THE COURT REPORTER: I'm sorry.

MS. SHAPIRO: I'm sorry.

I'll go back to, I've had the honor of working with the Mashpee Wampanoag Tribe both before its recognition and after, and in that context, I have become familiar with the very brutal reality that the recognition process is, at its heart, the exposure of the federal failure to pay its due, to observe its duty to Indian tribes in various parts of the country, more so in the Northeast, more so than other fringe areas of the country, who have had the longest period of contact, and that this process needs to correct that failure.

It needs to be attended to, the fact that there are errors that have cost tribes dearly over a period of hundreds of years.

1 The Mashpee Wampanoag Tribe awaiting
2 federal recognition watched its land base disappear.

3 Every tribe working on recognition
4 sees its elders die; it sees that there is almost
5 never a tribe whose recognition team at the beginning
6 lives to see the end.

7 I understand that you are very mindful
8 of that, and I applaud the attempt to change that
9 process and to make it more transparent and
10 efficient, and I believe that Mashpee also believes
11 that.

12 I believe that the process that you're
13 trying to put in place within the department will do
14 enough to maintain the rigor of this process; those
15 set of criterion cannot be met by just a tip-toe
16 through the archives. It's hard work.

17 Mashpee has survived it and other
18 tribes have survived it, but no one should have to go
19 through what the last several tribes who have
20 survived the process have had to do.

21 So, please, keep doing it, and thanks
22 for trying to fix that mistake.

23 MR. WASHBURN: Thank you, Judy.

1 THE COURT REPORTER: I'm sorry, I
2 cannot hear you.

3 (Discussion off the record.)

4 * * * * *

5

6 MS. STONE: I wonder if you could just
7 give us a summary of what the technical assistance is
8 about. Who does it serve? How does it serve, and --
9 et cetera.

10 MS. KLASS: So the technical
11 assistance starts, if the petitioner wants it to, it
12 can start before the documented petition.

13 The petitioner can reach out to OFA to
14 ask for guidance and help, and it's sprinkled
15 throughout different steps in the process.

16 And the whole point is basically for
17 the petitioner and OFA to, sort of, work together to
18 figure out where the holes or weaknesses are and
19 patch those up, basically.

20 MS. APPEL: And the proposed rule adds
21 that -- basically, that all the information that OFA
22 has will be given to the petitioners so that the
23 petitioner knows what OFA is thinking in making its

1 decision.

2 * * * * *

3

4 MR. PETERSON: Good afternoon. My
5 name is John Peterson and I'm from the Mashpee
6 Tribe --

7 THE COURT REPORTER: "John"?

8 MR. PETERSON: -- one of the issues
9 that I've seen --

10 MR. WASHBURN: John Peterson.

11 MR. PETERSON: -- is we've spent a lot
12 of time, according to this process, and it's very
13 expensive, and unless you're a gaming tribe, or
14 something like that, I have -- it's a sum, heavy,
15 heavy money, something like that, you won't be able
16 to do this process, and I have a number of state
17 groups that are trying to do something here, and are
18 probably unable to meet that financial need in order
19 to go through this process.

20 And I don't know whether it's through
21 technical assistance, or whatever, what other
22 process, whether they would actually be able to bear
23 the cost of meeting the requirements for the federal

1 regs.

2 I don't know whether you have any
3 suggestions, or anything like that, in order to --
4 for this process.

5 MR. WASHBURN: Thank you, Council
6 member Peterson.

7 That is certainly one of our concerns,
8 that it not be so expensive; that -- you know, so
9 that a petition group has to mortgage its future to
10 get recognition, so that's one of the things that we
11 are trying to address with this rule.

12 So, thank you for your comments.

13 * * * * *

14

15 MS. LITTLE DOE BAIRD: Jessie Little
16 Doe Baird, Vice-Chairwoman, Mashpee --

17 MR. WASHBURN: Certainly.

18 MS. LITTLE DOE BAIRD: -- sorry, I
19 forgot -- I meant to ask a question I saw in my
20 notes, just for a clarification on the descendency
21 issue, are you saying that eighty percent of those on
22 a petitioning roll have to tie back to an individual
23 on a particular census that the tribe is using as

1 their base roll, and that the other twenty percent
2 can be non-Indian? Or, are you --

3 I mean, I just want that clarified,
4 because I didn't think that was the case --

5 MR. WASHBURN: Yes. Sorry to
6 interrupt you, but I think that's important, and
7 thank you that you brought it up.

8 It's not that twenty percent can be
9 non-Indian. It's that you have to absolutely verify
10 eighty percent?

11 There's always a problem with a
12 handful of people, and maybe you can't get quite the
13 right documentation. It's just something that -- you
14 know, it's really hard to get absolute perfection
15 with these things.

16 So, basically -- and this is not a new
17 rule, and they've been doing it this way within OFA
18 already, if eighty percent of the people are
19 absolutely verified, you know, that's good enough.

20 It's not that those other twenty
21 percent are non-Indian; it's just that we might not
22 have been able to get the certainty of every single
23 person, and so that allows just a little bit of

1 wiggle room, not very much, but a little bit of
2 wiggle room, so that we don't absolutely have to have
3 every single person that's in the petition to be
4 absolutely bullet proof.

5 MS. LITTLE DOE BAIRD: Thank you.
6 That was my reading of it prior, but when the
7 Chairwoman made the statement that (indicating)
8 they -- so that's why I wanted to clarify that, with
9 respect to that.

10 Thank you.

11 MR. WASHBURN: Should we take a ten
12 minute break and then come back and see if anybody
13 has additional comments at that point?

14 (No response).

15 MR. WASHBURN: We certainly don't have
16 to use the whole afternoon. We've got more time, but
17 why don't we take a ten minute break, until 2:30, and
18 then we'll resume, if necessary.

19 And I do want to thank everybody so
20 far for these wonderful comments that you're engaging
21 in, because we appreciate it. Thank you.

22 (Whereupon, a recess was taken at
23 2:12 p.m., and resumed at 2:31 p.m.)

1 * * * * *

2
3 MR. WASHBURN: Ladies and gentlemen,
4 let's gather again and get any additional comments
5 that you folks would like to make.

6 I've decided to give back to people
7 their afternoon, but if there are any -- I,
8 obviously, don't want to leave if people have
9 important points to make.

10 So, is there anyone that would like to
11 make further comments?

12 So we can get what you say on the
13 record -- go ahead, Reverend, whenever you're ready.

14 * * * * *

15
16 REVEREND NORWOOD: Just one or two
17 comments. I wanted to make a couple of comments
18 based on some of the information provided earlier and
19 to give some level of response based on the
20 information that has come before our task force and
21 some of my own personal studies and dealings with
22 some of the tribes across the country.

23 And the first thing is that -- and

1 that I think it needs to go on record, why many of
2 the federal tribes have a problem with or a
3 trepidation of changes in the process, is suddenly
4 opening the flood gates for groups with questionable
5 histories. A couple of points need to be made about
6 that.

7 The fear is that the post-regulations,
8 which actually still have the bar high enough that a
9 recently-organized ethnicity, a group or heritage
10 club would not qualify, that aren't historic tribes,
11 and, to my knowledge, that are not federally
12 recognized.

13 That, for the most part, and it's been
14 my experience in dealing with people through the task
15 force, that many tribes that come to the task force
16 meetings and state their cases, that those that have
17 a verifiable history and for one reason or another
18 are not currently listed, are even more enraged by
19 groups claiming histories that are not there; that
20 were -- or are recently coming together, that do not
21 have continuing community, that they are outraged at
22 the claims of those groups, and are actually more
23 harassed locally than if -- than tribes that are

1 within federal protection locally, and so I think
2 there's a bit of misunderstanding in regard to that.

3 The second thing is, because the
4 criteria still requires proof of continuing community
5 and from the time period where folks weren't trying
6 to be anything, you know, didn't have a whole lot of
7 groups forming around an Indian identity, and
8 suddenly, wanting to be pursued by those wanting to
9 be Indian, that was -- wasn't typically the case,
10 because you were maintaining community, maintaining
11 community at a level of pushing back that proof for
12 approximately a century.

13 I think that the standard is higher
14 than a lot of people think when they have simply
15 looked at a 1930 date or 1940 date.

16 We have to remember what was happening
17 in the country, happening to the American Indians at
18 that point in time, if anybody can point back that
19 far, it is because they have a history of a
20 legitimate community, and that community is one that
21 should be enjoying a government-to-government
22 relationship, and denying that is actually a
23 travesty.

1 Another statement that was made, that
2 I think needs to be commented on, and I don't mean to
3 disrespect the Honorable Chief that made the comment,
4 that there are states recognizing without criteria.

5 That may be what is happening in some
6 states, but some states, to provide some level of
7 protection to their tribes and nowhere near federal
8 acknowledgement, and many of them do have criteria
9 that are either in the law itself or have been
10 adopted by committees, and that is something that a
11 quick study of the different states that have
12 criteria will show.

13 There may be states that don't. One
14 of the positions that several regional organizations
15 have taken is that those tribes that lack federal
16 acknowledgement for one reason or another, and
17 believed to be historic, are deserving of some level
18 of protection, some services provided by the Federal
19 Government, encourage that those states have a
20 process, that they have some level of verifiable
21 histories of those organizations and to know the
22 difference between groups that recently come together
23 and groups that have histories going back for

1 centuries.

2 There was a comment about coming to
3 grips with the fact that it's already political; as a
4 matter of fact, right now, it's far more political
5 than the effort of reform is aiming at in trying to
6 re-do the politicalization of this particular
7 process.

8 Right now, states have already, within
9 the past decade, interfered with the process, caused
10 reversal of the worthy application, and right now,
11 there are states that interfere with tribes and cause
12 them to lack the resources to be able to even do some
13 of the steps.

14 It's already a political process, very
15 political, even between tribes, where we've seen one
16 tribe attack another tribe simply because of concerns
17 over economics.

18 It's already a political process, and
19 the claim that it's going to suddenly digress into
20 something political is not really being honest about
21 what it right now, and we are hoping to take it out
22 of the process.

23 There was a question about how arduous

1 the process should be, how difficult, how high the
2 bar, and are we currently lowering the standards.

3 I think that when Mr. Secretary came
4 and made a presentation to the task force, one of the
5 things that you indicated was that your goal was not
6 to make it easier but to make it more fair, more
7 just. These efforts at reforming the process are
8 truly heading in that direction, are doing that.

9 The process, right now, is unfair and
10 unjust, and it is not just Indians that have said
11 that, not just the folks going through the process
12 complaining about that, the government itself has
13 researched, has studies on the official record -- you
14 can pick it up -- that indicate how ridiculous the
15 process has become.

16 Some of these studies are fourteen
17 years old. If you look at the history of
18 acknowledgement, what compares to what, what it took
19 to be acknowledged in 1980 compared to 2014, it's
20 extremely clear that the way the standards are being
21 applied has changed.

22 Instead of being the venue for tribes
23 to get a good hearing of their evidence, it has

1 become the stumbling block; that you need a battering
2 ram, with millions of dollars, with attorneys, and
3 with court cases to get through.

4 So the concept of the standard being
5 fair now, really, it's disingenuous, not what's
6 happening around you, and it's not only non-federal
7 tribes saying it's unfair.

8 There were many federal tribes saying
9 it's unfair; BIA saying it's unfair; the Federal
10 Government has reported that it's unfair.

11 If the rules were applied today in the
12 same way that they were in the early eighties, many
13 of the tribes that have been denied might have --
14 potentially, would have gotten through, which is part
15 of the reason that there was an inclusion, my
16 assumption, as -- part of the reason that there was
17 an inclusion, that tribes previously denied feel that
18 they would get a fairer hearing, at least under the
19 regulations, to try to go through the process again
20 if they met some of the criteria.

21 Even within the regulation, there's an
22 acknowledgement that some things went wrong for some
23 tribes. You have worthy historic tribes that should

1 be granted acceptance that are -- that, instead, were
2 denied.

3 We need to understand, there are
4 regional realities, that many tribes are unfamiliar
5 with. Five hundred sixty-six tribes and only
6 seventeen have gone through the process. One of the
7 things that that figure does not acknowledge is how
8 many tribes go through the process once it starts
9 going awry, the majority of the seventeen occurred
10 prior to complaints in federal court, and
11 resolutions, political organizations.

12 Really, when you get right down to it,
13 the denial of regional realities, you should have
14 been enrolled in some enrollment done by the federal
15 government, it might make it easier for some tribes,
16 but if it was not the history of your tribe, then it
17 wouldn't. If you have tribes that have a colonial
18 history, that have colonial treaties, federal
19 studies, federal services, you can show all of that,
20 and in some of these documents, it actually cites
21 individuals, areas, have proven that these are the
22 same people; yet, these very tribes find it difficult
23 to get through the process.

1 It is -- it is unjust, not to call
2 that process broken and desperately in need of
3 repair.

4 I needed to address those things, and
5 I'm glad you're in the process of addressing them.

6 I just wanted to get on record, I
7 think what we're trying to do is to bring integrity
8 to a process that has long abandoned integrity.

9 MR. WASHBURN: Thank you, Reverend.
10 We're going to start charging you.

11 * * * * *

12
13 MS. STONE: You know, just -- we can't
14 make up for lost time and lost family, people no
15 longer here, but we are still trying to advocate for
16 the future, but in those thirty years, we saw the
17 majority of our land base gone, and so when I looked
18 at the thirty year mark -- I'm still on the thirty
19 years -- it just seems that there should be some way
20 to recoup a loss that we had no control over -- okay?

21 And so, we've got land that we can't
22 build on, and we've just, kind of, been surrounded by
23 outsiders.

1 We've grown up here, and they've
2 infiltrated this land, and what is the -- what is the
3 responsibility of the Federal Government for such a
4 loss, that occurred under a thirty year waiting
5 period?

6 It would seem like the -- I think that
7 Chairman Cromwell calls it reactualizaion or
8 reacknowledgement, reaffirming --

9 UNIDENTIFIED SPEAKRER:
10 (Unintelligible).

11 MS. STONE: I'm sorry, if we're
12 reaffirming, does that mean you're telling us, yes,
13 you are who you say that you are?

14 But, there doesn't seem to be any
15 accountability economically, to -- for all we've lost
16 while we've waited for you to catch up, waiting for
17 you to know who we are.

18 Is there any comment about that?

19 MR. WASHBURN: Well, the rule today is
20 not going to right every injustice in the Indian
21 Country, that's for sure.

22 Maybe we're not being ambitious
23 enough, but -- so, no, you know, this rule has

1 limited scope, and it is -- I think that it's --

2 I don't know. I find it frustrating
3 sometimes. This job is tough, because there's
4 several centuries of wrongs that deserve to be
5 righted, and we can only do a few of them at a time.

6 And we've got some ideas, so we're
7 trying to push forward with this rule, hopefully, to
8 make a more just and fair world as we go forward, and
9 a more accurate world, but we won't necessarily be
10 able to address some of the wrongs that have happened
11 for -- we certainly acknowledge those wrongs; that
12 the United States has rarely lived up to its
13 responsibilities as well as it should, absolutely,
14 and that's one of our -- I think, all of our
15 (indicating) frustrations in this area.

16 And we know this, because we hear
17 about it a lot, and we -- and we're trying to make an
18 improvement, a small improvement to the subjects
19 you've raised, and that's what we'll try to get this
20 done, beginning with this process.

21 Those other issues you identified are
22 very good ones, but we probably won't be able to
23 satisfy those through this process.

1 MS. STONE: Without having our land,
2 there's so much we can't -- we can't really benefit
3 from them, these regulations, and we -- and we can't
4 regulate the domestic violence on our territories,
5 the Carcieri ruling, the Bower (phonetic) ruling.

6 Back in 2005, my assistant was
7 Alice Lopes (phonetic). She recognized that our
8 tribal members were leaving, leaving even the Cape,
9 and our members have been leaving the Cape, because
10 it's hard to make a living and raise a family here,
11 but she was able to. She applied for the housing
12 funds, and that was the start of our first housing
13 program.

14 But, there are a lot of laws out there
15 for -- protecting us that we simply can't get
16 protected under; and, it all has a cost applied to
17 it, so -- I just thought that I would ask.

18 Thank you. And I won't come up again.

19 * * * * *

20

21 MS. CORONADO: And I tried not to, but
22 I have more questions about this.

23 The appeals going to the Federal

1 District Court instead of going through the IBAA, so
2 I know -- I work with a judge right now in Boston,
3 Greater Boston area, so when we get a decision from
4 the department of unemployment, the judge is not a
5 fact-finder when they're reviewing the appeal, but --
6 they're simply just going over the facts, and the
7 decision decided whether or not there's evidence that
8 supports those facts that they find. Is that the
9 same type of laws, that apply to these types of cases
10 in Federal Court?

11 MR. WASHBURN: In this case, it would
12 be the Administrative Procedures Act, Federal
13 Administrative Procedures Act, Title 28 of the
14 U.S. Code, which has a standard in there similar to
15 that one.

16 But, I believe there are four or five
17 different bases on which someone could appeal: One,
18 if it's arbitrary or capricious or not in accordance
19 with law; and, there is one about evidence, whether
20 the "facts" are substantial evidence to support the
21 termination, something like that.

22 There is a series of them. They're
23 basic ABA standards, administrative standards that

1 you may have or will perhaps study, under
2 administrative law, basically, and those would be the
3 standards that the Federal Court would apply.

4 MS. CORONADO: So when these appeals
5 come to State court, the department of unemployment
6 is a party in the lawsuit -- would that be this case?
7 Would the BIA be a party in the lawsuit?

8 MS. KLASS: Basically, what happens,
9 the ABA entity challenges us, the Federal
10 Government's decision, and it goes to Federal Court,
11 and depending upon what process was involved in
12 making the decision, there are different levels of
13 deference, so the Federal ends up giving deference in
14 a situation like that.

15 MS. CORONADO: Would the BIA have
16 attorneys representing them on their behalf in the
17 lawsuit?

18 MS. KLASS: When -- at the time when
19 the Federal Government gets sued, it's the department
20 of justice that steps in and represents the
21 government in litigation.

22 MS. CORONADO: Before, when they
23 appeal to the IBA, would it be a similar appeals

1 process, rather than going through the federal
2 courts?

3 MS. KLASS: It's actually called
4 reconsideration. The IBIA hasn't reached the step of
5 federal court, or any court, really, at that point.

6 MS. CORONADO: Have there been very
7 many tribes that appealed that process, or not?

8 MS. KLASS: That's on the OFA website.
9 I don't know it off the top of my head.

10 MS. CORONADO: That's it. Thank you.

11 MR. WASHBURN: Thank you for your
12 questions and comments.

13 * * * * *

14

15 MR. BROWN: Hiawatha Brown,
16 Narragansett Tribe.

17 As we move forward with this, and I
18 mentioned earlier about the parallels that -- some of
19 the other laws that are affecting the Indian Country
20 and the Indian Nation, do you have any kind of
21 feedback whatsoever as far as the final rule versus
22 what's happening on that particular level, because it
23 affects everything we do?

1 MR. WASHBURN: Well, let me just say
2 that -- I think, what I understood you to say,
3 Hiawatha, is that you would like us not to move
4 forward on this until we get this clearly fixed. If
5 that's what you said, I think that we need to keep
6 the rest of it -- keep moving forward on all fronts.

7 We do need to get Carcieri fixed in
8 congress, but also, to make progress in other areas.
9 We intend to move forward with this rule, and I --

10 Again, I do think that we have to do
11 something here, the process is broken, and what we do
12 might not look like our rule, will have additional
13 tweeks and changes, but it probably will be based on
14 all the feedback we've gotten from the public, and we
15 do intend to move forward.

16 What the timeline looks like for that,
17 I can't tell you. It depends how many comments we
18 ultimately -- and we have two more months of
19 comments. We got more than three hundred fifty more
20 comments in our first discussion draft, so it takes a
21 long time to digest those comments, so it will take
22 us a while to get this rule in place, where it could
23 be a final rule, but I do think we will proceed with

1 something, and to, sort of, remain firmly committed
2 to that. We are still very open as to what that
3 might look like.

4 MR. BROWN: That's a fair assessment;
5 however, I do see that there's going to be problems
6 with the final rule, because the problem with -- the
7 other things impacting us in Indian Country is --
8 Carcierri, just one of them.

9 I also have a question dealing with
10 the two-part procedure you have in place. The first
11 part, you're dealing with the non-federal tribes and
12 the second session, you deal with the federal tribes
13 (sic).

14 I have a problem with that, also,
15 because we've been through this system. Any
16 recognized tribe has been through this, although we
17 identify to you what our problems may have been, as
18 far as past problems over a timeline, these tribes
19 that are coming into the system, I think, have a more
20 direct issue at hand, because they're -- they're now
21 confronted with the past, and, potentially, what
22 happens in the future.

23 And, again, I think it's -- for us to.

1 Resolve this amicably across Indian
2 Country, I think it requires all of us, although I
3 realize there are distinctions, as far as federally
4 recognized and acknowledged state tribes, there needs
5 to be some kind of parallel here.

6 You all need to step up, deal with
7 state tribes, at least entities that have proven
8 themselves through their thresholds or requirements.

9 You guys need to step up. That's what
10 this really is about. It's not about the tribes that
11 have come through the system; it's about the tribes
12 coming into the system.

13 At least the way I see it, to me,
14 there needs to be a more open-book policy, to accept
15 the testimony from all sides.

16 And, again, I'll reiterate, Indians
17 are Indians. Just because we're federally recognized
18 Indians, attested to that, because we all know, in
19 every state, there were perpetrators. We've all
20 experienced that. It's part of the conversation from
21 a number of people. We can divine who the
22 perpetrators are and the legitimate groups are. They
23 need to be recognized almost to the same degree as we

1 are.

2 But, when we start adding divisive
3 rules of separation, again, that's just what the
4 outsiders want us to do, divide and conquer. It's
5 been applied to us for thousands of years; in fact,
6 it's one of our own attack strategies, a strategic
7 planning in battle, in war, divide and conquer; it
8 works.

9 If you want to put a handle on this,
10 resolve the issues, put a plan in place for
11 everyone's needs. In this case, everyone needs to be
12 involved, almost on an equal level.

13 When we was (sic) in Maine last year,
14 the second session was open to the non-federal
15 tribes, so it wasn't imposed up there. I have a
16 little problem if -- with my back door (indicating),
17 -- because some of these folks sitting over there
18 (indicating), I've known them all my life, and some
19 of them are older than me; some are younger than me;
20 and, to me, if I have to turn my back to them because
21 of somebody's interpretation, as to who should be in
22 the room or shouldn't be, I take offense to that. In
23 my mind, Terry (phonetic) shouldn't be setting the

1 criteria. Maybe you should be at a regional level,
2 as to who can participate.

3 Some of these things, if you want to
4 do it right, you need to think about it, consider it.

5 Last but not least, when you deal,
6 again, with the Northeast tribes, you have to be very
7 considerate of the history, and when you deal with
8 the Northern tribes up in Maine and their problems
9 with the State of Maine -- you know, and you come on
10 down the line, to Rhode Island, to Massachusetts,
11 Connecticut, so forth and so on, all of our issues
12 are common with the people in control, people in the
13 government.

14 The governments of these states, you
15 have to realize that these folks refer to themselves
16 as blue blood, blue bloods, quote/unquote, they've
17 come across on the Mayflower and some of the other
18 boats, and for us, that don't mean nothing, because
19 three hundred years, or four hundred years ago, we --
20 has nothing to do with three, four thousand years,
21 thirty thousand years -- a drop in the bucket, but it
22 seems like the history, for three hundred years, is
23 superceded or taking precedence over the three

1 thousand year old history.

2 I said this earlier: These are some
3 of the things that you folks really need to take a
4 look at. Whatever your relationships are with these
5 states, where the problems exist, the Interior needs
6 to handle that in the states, provide the
7 information, the history, this documented history,
8 and that can make a big difference in the outcome, in
9 the plight of the tribes that are trying to gain this
10 status.

11 To me, these are critical issues.
12 When you talk about what's written in the law, what
13 you folks follow, as far as guidelines; it's
14 wonderful stuff for you guys, not so wonderful as I
15 stand. Much of it, I don't agree with, much of it is
16 a process that -- and maybe you have to find these
17 things in place so there is a degree of continuity
18 and a record, but this stuff is toilet paper to me,
19 frankly, and stuff you put in the fire, to start your
20 fire.

21 However, we understand that we have to
22 live within the perimeters of the laws of this
23 country. Whether they're acceptable or not, we still

1 have to live within the law.

2 But, the last point I would say today
3 is that, stay on your path; but, please, take the
4 time to involve some more of these tribes and get our
5 history and use that as your gauge rather than some
6 of the documented history that really has nothing to
7 do with our tribe.

8 Much of the stuff in the books, we
9 don't agree with. It's somebody else's history.
10 That's why they call it history.

11 We have a documented history, and in
12 Rhode Island, that is used over the years as a point
13 of reference in the history. Two of them are really
14 accurate, two of them are somebody else's
15 interpretation of it, but these are the things that
16 my tribe -- and there's no question of that, our
17 historical standpoint, who we are, as swell as the
18 rest of these Northeast tribes.

19 So the -- so there are things that are
20 just as important as the other issues we discussed,
21 and there's volumes of knowledge out there; but,
22 still, many elders are left. That's really where you
23 get your resource of information. Make it more

1 logical and an honest decision.

2 MR. WASHBURN: Thank you, Hiawatha.

3 I think that rather than respond to
4 Hiawatha on that, I'll let him have the last word.

5 Any last comments before we stop for
6 the afternoon?

7 (No response).

8 MR. WASHBURN: Well, let me repeat,
9 once again, on behalf of my colleagues and I, how
10 grateful we are to the Mashpee Wampanoag Tribe for
11 being such wonderful hosts for this session, and to
12 all of you for taking the time, taking the better
13 part of a day, and for some of you, even longer, more
14 time, because you've traveled to get here, to make
15 this a successful session and to give us your
16 viewpoints.

17 We heard a really lot of good views
18 and thoughts, and some, hopefully, helpful, and we've
19 heard some hopeful things, and -- so, as we go
20 forward, to figure out what our next draft should
21 look like, or final rule, if we're ready for that,
22 and we do appreciate that.

23 We've got two more months for you to

1 file comments, and we encourage you to do so. We
2 would love to have your considered thoughts on how we
3 should move forward.

4 Once again, I want to thank the tribe
5 and all its staff who have helped to make this
6 successful, and, of course, our court reporter, who
7 was with us all day and must be getting tired.

8 Thank you to everyone.

9 MR. CROMWELL: Kevin, I want to say
10 again, as I've said in the opening remarks, thank you
11 to you and your staff.

12 I think it's very important for you to
13 personally be here as Assistant Secretary, and that
14 shows leadership, strong leadership, and under your
15 leadership, the focus has been Indian Country
16 self-determination. It's well received, personally,
17 for me, and for the Wampanoag Tribe.

18 Thank you for coming to the territory
19 and our land, and, also, to the tribal leaders that
20 came here, as well, and all who helped to put this
21 on, Patricia, and Lou, thank you.

22 (The proceedings were adjourned at
23 3:07 o'clock p.m.)

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PAGE NO.

6 Rev. John Norwood, NCAI Task Force
8 Marie Stone, Secretary Mashpee Wampanoag, MA
15 Hiawatha Brown, Narragansett, RI
29 Joseph Williams, Mississippi Choctaw, MS
33 Terry Henry, Eastern Band Cherokee Nation, NC
43 Jessie Little Doe Baird, Vice-Chairman,
Mashpee Wampanoag, MA
48 Judy Shapiro, Mashpee, MA
51 Marie Stone
55 John Peterson, Wampanoag Tribe, Mashpee, MA
55 Jessie Little Doe Baird
66 Rev. John Norwood
63 Marie Stone
66 Elizabeth Coronado, Picayune Rancheria, CA
69 Hiawatha Brown