Tribal Consultation: Draft Revisions to Federal Acknowledgment Regulations (25 CFR 83)

Afternoon Session

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Tribal Consultation
Draft Revisions to Federal Acknowledgment Regulations (25 CFR 83)

Menominee Casino Resort
Keshena, Wisconsin
July 17, 2014

APPEARANCES:

LAWRENCE ROBERTS, Deputy Assistant Secretary - Indian Affairs

STEPHEN SIMPSON, Office of the Solicitor - Division of Indian Affairs

ELIZABETH APPEL, Office of Regulatory Affairs - Indian Affairs
TRANSCRIPT OF PROCEEDINGS

LARRY ROBERTS: Okay. So for purposes of consistency and my being consistent with the process as part of the consultations on this proposed rule, I'm going to just ask that everyone respect that this is a closed session with tribal leaders from federally recognized tribes and their staff, and so I'm just asking you all to respect that and, yes, hopefully -- please comment on the proposed rule itself. The comment period ends August 1st, and everything that is being said in both the public meetings and in the tribal consultations is being transcribed and will be available on our website. So we really appreciate that, and we really appreciate everybody respecting the executive order that's in place on tribal consultation.

Okay. So before we get started, I'm going to ask the chairwoman to provide a --

(Discussion held off the record.)

LARRY ROBERTS: Chairwoman?

LAURIE BOIVIN: So good afternoon.

Some of you were here in this morning's session, so you may hear a repeat of some of the things
said. I'd like to welcome you to the Land of Menominee, and as we always do, we like to start all of our sessions in the way of a prayer. So at this time I'm going to ask Dave Grignon to come up and provide the prayer for us.

(Invocation given in Native language.)

LAURIE BOIVIN: So, again, on behalf of the Menominee Indian Tribe of Wisconsin and the Menominee Tribal Legislature, I welcome you here to Menominee Casino & Resort in the Land of Menominee, and I hope that if you had the opportunity to stay here, that you had a good experience, and we always welcome you back.

So a little bit about Menominee. We are almost 9,000 members strong. We are indigenous to what is now known as the State of Wisconsin. We've been here for over 10,000 years.

We also understand the importance of federal acknowledgment. Our tribe was very successful a long time ago, and as part of a federal experiment, we were one of three tribes that were selected for federal termination. That occurred in 1954, and with that experiment came devastation to our tribe. We were no longer recognized as Native Americans. We were no
longer recognized as a tribe. We suffered loss of our identity, our culture, our land, jobs, everything that goes along with the loss of your identity, and the experiment failed for us, and our tribal members realized that, and a grassroots movement called Drums came into play and fought for restoration of our tribe, and it took many years for that to occur, but in 1973 we were restored, and so we fall under Menominee Restoration Act.

And to this day, our tribe has never been made whole from that experiment. We continue to struggle, and so I think anytime when there's the opportunity to have consultation and have input on any changes to any of the federal law, we should take the opportunity, because at the end of the day, it's all about self-determination and self-governance.

So I appreciate that Deputy Secretary Larry Roberts is here with us today and that Menominee is hosting this, and I hope that there's good discussion here and that any discussion that comes out, that the Bureau is listening. So with that, waewaenen and thank you.
LARRY ROBERTS: Thank you, everyone.

So I'm going to go ahead and get started. My name is Larry Roberts. I'm a member of the Oneida Nation of Wisconsin and deputy assistant secretary for Indian Affairs.

This is our third consultation, tribal consultation, on the proposed rule, and so I know that some folks were here this morning and are probably tired of hearing me talk, so I'm going to introduce my colleague Steve Simpson here from the Office of Solicitor with us and also Liz Appel from our Office of Regulatory Affairs, and Liz is going to go through a short PowerPoint that should be in your materials and walk you through that and then open it up to tribal comments and questions after that.

ELIZABETH APPEL: Okay. Can everyone hear me? I speak softly, so I'll -- so I'm going to walk a little bit through the background of how we got to this proposed rule and then discuss a little bit what the proposed rule contains and we'll talk about next steps.

So beginning with the background, there are three primary ways -- well, three ways that the
U.S. government can acknowledge an Indian tribe, and those are judicially, congressionally, or administratively, and what we're discussing here is the administrative process for recognition.

So before 1978, the Department of the Interior reviewed requests for federal recognition on an ad hoc basis, and in 1978 the Department promulgated regulations that would establish a uniform system for reviewing those requests for recognition, and those regulations are at 25 CFR Part 83, which is what we're proposing to revise. The regulations were revised in 1994, and then in 2000, 2005, and 2008 the guidance documents were published to -- that didn't change the regulations but specified how the Department would be implementing various parts of the regulations. And so of the 566 federally recognized tribes, 17 have been recognized through that Part 83 process since it was established in 1978 and approximately 30 have been denied.

So we started looking at Part 83 because over the years there have been several criticisms that the process is broken, criticisms from people going through the
process, people who make it through the process successfully, congressional testimony. So to paint with a broad brush, the complaints are basically that the process is too long, it's too burdensome, it's expensive, unpredictable, and not transparent.

So in 2009, Secretary Salazar, the secretary of the Department of the Interior at the time, committed to examining the regulations and trying to find ways to make improvements, and at that time, in the following year, an internal departmental working group was pulled together to look at the regulations, and that included people from the Office of the Solicitor, people from the assistant secretary for Indian Affairs, and people from the Office of Federal Acknowledgment. And in 2012 the Department again testified before the Senate Committee on Indian Affairs, and they had in 2009 promised to have a rule out within the year but failed to do that. So when they testified in 2012, they said that they have at least identified these guiding principles for revisions to the process, and those principles are listed: Transparency, timeliness, efficiency, flexibility, and
integrity.

So shortly after that, in the fall of 2012, Assistant Secretary Kevin Washburn and Deputy Assistant Secretary Larry Roberts came on board, and they tackled this pretty much right away and promised the release of a discussion draft, and in June of that following year they fulfilled that promise and released a discussion draft of changes that were aimed at meeting these five goals.

So in June -- June 21st was when the discussion draft was released, and then in July and August there were tribal consultations and open meetings held throughout the country, and during that process we received over 350 unique comments, and that included over 2,000 people and representatives who signed in support of those comments.

So we received all those comments on the discussion draft and then reviewed them and figured out how we could address them in a proposed rule, and so this was the internal team again. We had representatives of the solicitor's office again, the assistant secretary's office, and the Office of Federal
Acknowledgment review all the comments, make additional changes, and we totally redrafted the rule so that it's now in plain -- what they call plain language. So it's question-and-answer format and broken down into more digestible pieces. The rule went through review at OMB and was published in Federal Register on May 29th. Comments are due August 1st.

So the proposed rule as far as the content, we're going to talk about revisions to the process and revisions and clarifications that were made to the criteria. Because it's a plain language draft, there is also -- the language is different for previous federal acknowledgment and burden of proof, but those are really intended to be clarifications, and the proposed rule also allows for repetitioning in limited circumstances and provides for some additional notice requirements. So we'll go through those.

So starting with the revisions to the process, currently a petitioner can submit a letter of intent to the Office of Federal Acknowledgment, which can basically be a one line saying, We intend to petition for acknowledgment. This proposed rule would delete
that step so that the process would begin with
the documented petition, and we found that
several -- that the letter of intent was causing
confusion because petitioners would submit a
letter of intent and then expect to hear back
without having had submitted a documented
petition yet, so we're hoping that it clarifies
the start point of the process.

We also in the proposed rule have
established a phased review so that the
Department will first look at the descent
criterion (e) to determine whether the
petitioner descends from an Indian tribe and
then review -- if they are not of Indian
descent, then they would receive a negative
proposed finding at that point. If they meet
criterion (e), then the Department next reviews
criteria (a), which we'll talk about, it has
changed a bit; criteria (d), which is governing
document; (f), which is membership; and (g),
which is congressional termination. And then
assuming all those are met, then they would go
to phase II, and phase II is looking at criteria
(b) and (c), which are community and political
influence and authority, and those are the last
step, basically, because they tend to be the most time-intensive steps.

So currently OFA prepares paperwork and the assistant secretary signs off on the proposed finding, and the proposed rule would instead have OFA issuing the proposed finding. And if the proposed finding -- there would be a comment period on the proposed finding as there is now. If the proposed finding is positive, the proposed rule provides that it would automatically become a positive final determination then if no comments opposing the positive determination are received. So currently, rather than if -- rather than going through the process of drafting a final determination, it kind of cuts out the step well. If there's a proposed -- positive proposed finding and no one negatively comments, then it's automatically final. If the proposed finding is negative, the proposed rule allows for a hearing before a judge in the Office of Hearings and Appeals, and the Office of Hearings and Appeals is still within the Department of the Interior but an independent office, and that OHA judge would then make a recommended decision.
to the assistant secretary. So the assistant secretary is still ultimately making the determination, but there's that opportunity for an independent review by a third body out there. And then the assistant secretary issues the final determination.

And the other big change is that currently there's limited review of the assistant secretary's final determination before the Interior Board of Indian Appeals, IBIA, and this rule would delete that process and instead the assistant secretary's final determination would be considered final for the Department, so it would be available for immediate review in federal district court then.

So with regard to the hearing on a negative proposed finding, the Office of Hearings and Appeals has published a separate rule, which is also in your packet, and those rules address how those hearings would be conducted. So it's basically sort of a civil procedure type rule, but some of the questions they're asking are who should preside over that hearing? Should it be an administrative law judge, who is probably the most independent of supervision; an
administrative judge, who is someone who reports to the director of the Office of Hearings and Appeals; or should it be an attorney who could be farther down in the Office of Hearings and Appeals but still would ultimately report to the OHA director? And they're also asking should the basis for the OHA judge's decision be limited to the hearing record or to the entire body of evidence?

Another change to the process the proposed rule provides is it allows the petitioner to withdraw the petition at any time before the proposed finding is published, and at that point OFA will cease consideration of the petition. The only thing is if the petitioner then resubmits, they lose their place in line essentially. And in the interest of transparency, we're also providing in the proposed rule that the Department will post on the Internet those portions of the petition that are releasable. So if they're not subject to the Privacy Act, those will be available on the Internet and reviewable by anyone.

So those are the primary changes to the process. As for changes to the criteria, the
first criteria, criterion (a), currently --
well, first of all, there are seven mandatory
criteria currently, and the proposed rule also
has seven mandatory criteria, but this first
criterion (a) is changing a bit. Currently (a)
requires that external observers have identified
the group as Indian, and generally these
identifications are required every 10 years.
Instead we're replacing this criterion with a
requirement that the petitioner provide a
narrative of their existence prior to 1900.
Since we're not creating new tribes as part of
this process, we're recognizing tribes that have
been in existence, this external evidence isn't
necessarily something -- well, we've never
denied a petition solely on the current
criterion (a), for external evidence, and that
makes sense because if a tribe meets all the
other mandatory criteria, it doesn't really --
it's not any less of a tribe if third parties
haven't written about it. So the new, the
replaced proposed criterion (a), though, would
give some history of the petitioner's existence
prior to 1900 with some evidence but not a
treatise, as Larry would say, but a brief
narrative.

So moving on to criterion (b), community, and criterion (c), political influence and authority. Right now those -- the regulations provide that those need to be shown back to 1789 or the period of first sustained contact, and instead we are changing that so that the analysis would be from 1934 to the present, and that date comes from the Indian Reorganization Act as the watershed legislation that identified the change in federal policy from one of assimilation and allotment to one supporting tribal self-determination. And it's also interesting to note that to date no petitioner that has gone through the process has met these criteria (b) and (c) from 1934 to the present but failed up to 1934. So this seems like a clear way that we can reduce the administrative burden. Also to criterion (b), currently it says a predominant portion must show that distinct community for each time period, and in an effort to make that more of an objective criteria, we're providing that at least 30 percent must show distinct community for each time period, and we're also specifying that
attendance of students at Indian boarding schools are acceptable. Another change to both criteria (b) and (c) is that we're providing that if the petitioner has maintained a state reservation since 1934 or if the U.S. has held land for that group as a group at any point since 1934, that those in effect meet criteria (b) and (c), and that comes from the time period when the Department reviewed requests on an ad hoc basis, as I mentioned. One of the things that the Department would look at was whether there was a collective ownership in land. And finally on this slide, as a general matter, we're defining without substantial interruption to be less than 20 years, and that's also an effort to make the increased predictability and transparency and make it more consistent in applications.

So for criterion (e), descent, we are specifying that 80 percent must descend from a tribe that existed in historical times, which we're defining to be pre-1900, and that 80 percent aligns with current practice. It doesn't mean that 20 percent can be non-Indians. It just means that you need the documentation
for 80 percent. And we’re also specifying that we are allowing descent to be traced from a roll that was prepared by the Department or a roll prepared at the direction of Congress. If that roll -- whenever that roll was prepared, we would look at that roll and descent from that roll. If that kind of roll isn't available, then we'll look at the most recent pre-1900 evidence that's available.

For (f), criterion (f), regarding membership, we made one change in the proposed rule. We heard on the discussion draft that some petitioners' members had joined federally recognized tribes just out of necessity because they needed health care benefits or whatever benefits were available through the federally recognized tribe, and the Department was taking so long with the petition that that was a necessity, as I said. So we added an allowance in that that if a petitioner filed a letter of intent by 2010 and then had their -- any of their members who had joined federally recognized tribes wouldn't be counted against their membership.

And in criterion (g), congressional
termination, currently the petitioner has to prove that it hasn't been terminated by Congress, and the proposed rule would switch that so the onus will be on the Department to show that petitioner was -- if they were, that they were terminated.

And previous federal acknowledgment, as I said, there's no substantive change here, but the language has changed as a result of it going through plain language.

And burden of proof, we've tried to clarify the burden of proof. It's still reasonable likelihood, but since the last revisions of the rules, there has been a Supreme Court case that explained what reasonable likelihood is, so we incorporated that into the rule.

And for repetitioning, currently if a petitioner goes through the Part 83 process and is denied acknowledgment, there is no opportunity for repetitioning. The proposed rule would allow a narrow opportunity for repetitioning, and it works like this. If a petitioner was denied and third parties litigated and prevailed, then the petitioner would need to get the consent of those third
parties before they could request to repetition essentially. If they get that consent or if there wasn't any litigation with third parties -- and that litigation includes both administrative challenges and federal district court challenges, but if -- so if they get the consent of the third party or there was no third party involved, then the petitioner would go before an OHA judge and they would have to show that either a change in the regulations warrants reconsideration of their petition or that the Department misapplied the burden of proof when they reviewed the petition and that that warrants reconsideration. And OHA in their separate rule has set out procedures for how that request would be reviewed by the OHA judge.

And finally we have in the proposed rule attempted to increase the notice of petitions. Currently when OFA receives a petition and acknowledges the petition, it publishes notice of receipt in the Federal Register. We would add that OFA will also post the petition's narrative and other information on the website. It will continue to notify the governor and attorney general in the state, but we've added
that any federally recognized tribe within the state or within a 25-mile radius of the petitioner, so that captures anyone who may be across state lines, they will also receive notification, and we'll continue to notify any other federally recognized tribe or petitioner that has a historical or present relationship with the petitioner. And then notice goes to the petitioner and informed parties at several points in the process: When OFA begins review of the petition, when it issues the proposed finding, anytime AS-IA grants a time extension or -- and when AS-IA begins review of the proposed finding and the petition, and when the assistant secretary issues a final determination.

So comments on the proposed rule Part 83 are due August 1st. Comments on OHA's separate civil procedure rule for the hearings are due August 18th. And, if possible, we prefer comments to be emailed to us at consultation@bia.gov, but we accept them also by mail or through www.regulations.gov, whatever is easiest for you all.

As far as next steps, we're going to run
through much the same process we did when we
reviewed the comments on the discussion draft,
and we'll make any appropriate changes and then
publish a final rule in the Federal Register.

LARRY ROBERTS: All right. Thank
you, Liz. So we will now open it up to tribal
leaders to make any comments or questions that
they have.

TERESA MCCOY: (Speaking in Native
language.) My name is Teresa McCoy, and I
represent the Big Cove Community, and I am a
member of Eastern Band of Cherokee, and for
years I have often questioned the entire process
anytime, anywhere for the federal government to
determine who is and is not a Native person, and
I think what I'm hearing and seeing here is that
you may be placing your cart before the pony
with the fact that you seem to already want to
go through with this and do it. And I know
that to me, I get the feeling that the
consultation process is just a nice thing that
you're wanting to do to accommodate the persons
who already met the criteria for federal
recognition.

I think you would do a greater service to
the Native populations if you would define the word "descendant." You must define that word because it's been kicking Cherokee in the backside for a long, long time. We have defined who is a descendant to our nation, but the federal government has -- your definition of descendant is so broad that it hurts our health care, it hurts our grant funding, it hurts any type of assistance that we receive from the federal government. Your definition basically says a person who is born to an enrolled member, a descendant of that person. Does that mean that descendant has to be enrolled also? Was it meaning, like in 1934 -- let's go back to IRA in 1934 when they said members of federally recognized Indian nations and their descendants. Did you mean that those descendants needed to be enrolled or did you mean for persons who no longer met the blood criteria for enrollment? I would like that definition established. And since we're on record, I need that to be taken -- I want that to be taken seriously. I've been asking about it for years.

Now, getting on with this thing we just saw here, I too wish to say thank you to all of you
who took the time to be here and to offer your
dexterity in this consultation process. I also
wish to thank the Menominee Nation, and yes,
ma'am, we've been treated very well since we've
been here. And I did research your history, and
I'm so happy that you were able to come back
like you did, and it hurts me that once again
the federal government deemed our Native people
an experiment, because you were right, that's
exactly what that was, and I'm glad you're here.

I am Cherokee, and I stayed in the mountains
in North Carolina while the rest -- during the
Jackson years our tribes of the south and the
east were rounded up and they were moved to
Oklahoma because somebody in Washington
determined that it was best to keep the Indian
people in the country all together. It wasn't
very -- it was a bad idea, and it divided my
tribe. There are three Cherokee nations in the
United States of America: Eastern Band, Western
Nation, and the United Keetoowah Band. That's
it. Between Cherokee, North Carolina and
Tahlequah, Oklahoma, there are probably 17,
18 groups of people who choose to step up and
say, "We're Cherokee." I am threatened. My
identity, my unique and special being Native is threatened whenever these groups may be able to fast-track their way into a recognition process that I don't think they should get to.

I agree in transparency in government. I have represented Eastern Cherokee for 18 years, and I believe in transparency, responsibility, and accountability. Those are important, but what I don't believe in is that in 2014 the federal government still has the authority to jump up and say who is and is not a Native American Indian. I don't agree with that, but I don't agree with people jumping up all over the country saying they are.

I listened to the comments here this morning. People were jumping -- one of the comments that caught me off guard was -- or got my interest was, Well, we just couldn't get people recognized quick enough so they went back to other tribes. They should have always been with the other tribe because apparently that's where they belonged.

You talk about -- let me put my glasses back on. Let me go through here right quick because I know others want to speak, and I apologize for
LARRY ROBERTS: No need to apologize. I think we have plenty of time for you to speak.

TERESA MCCOY: Thank you. I'm going to keep it brief. I can be long-winded.

Okay. You get down here to -- I don't believe -- I think that we, the Eastern Band -- and I can only assume that the tribes who are federally recognized here, we met the criteria. If somebody today cannot meet the same criteria that the tribes -- you already have 566 federally recognized nations, and if there are groups of people in this country who cannot meet that criteria, then I would question -- I highly question it.

The next question is of blood. In my tribe, we have people who are determined -- we have full blood, and it goes all the way down to a sixteenth, and then we recognize those not on the roll at a thirty-second, and then we cut it off there. It's the government, your federal government, that chooses to recognize beyond, and that's what causes a hardship to us. There comes a time we picked a cutoff point. That needs to be respected.
You talk about -- I think that 100 percent of the people that petition to be Native and be recognized by the federal government, 100 percent, not 80, 100 percent of those persons need to be recognized as Native.

I also believe that if you are going to determine -- and I'm only going to use Cherokee. From my home in the mountains of North Carolina to the plains of Oklahoma and all those tribes in between, I would hope and I would pray that somewhere in there you would consult with the three Cherokee nations of the United States before the federal government says, Oh, golly, look, this bunch from Arkansas, they met four or five of the criteria. Let's give them federal recognition. Overnight you diminish -- you diminish my tribe when you do that. I would hope that the federal government would take into consideration that whenever you decide that these new groups are Cherokee, that you consult, you ask the Eastern Cherokee. We know who we are. You ask the Western Nation and the UKB, Are the people between you Cherokee? Let us have some input on that before you go through with this because it's my personal opinion that
had they been what they claim to be, they would
have already been recognized. I'm not blaming,
I'm not pointing the finger or pushing fault on
anyone. I'm just speaking the truth.

And I'm going to tell you something. The
Menominee Nation, you come from longhouses, the
Iroquois. We do too. Most of your tribes from
the north and the east descend from one great
place, and the Cherokee and the tribes of the
south come from the same. And I'm here to tell
you, I just don't want to ever -- I'm so angry
at what's going on with how the federal
government doesn't listen to the Native people
of this country but take it upon themselves to
determine and define for us what is still best
for us 200 years after the creation of the
Bureau of Indian Affairs or longer. I have some
personal anger issues there. You see, my
grandparents were removed and they are buried in
Oklahoma when they should be buried at home.

I feel for the people that don't have the
recognition they say that they want, but I feel
that they should meet the very requirements that
all the other tribes had to meet. I don't
know -- I don't put the blame on those tribes
for having to wait decades to get an answer back. I put that blame on the Interior. When you get a request, that letter of intent, don't do away with it. Keep the letter of intent but respond to it in a timely manner because those people deserve an answer.

And I don't know that I want to hear -- I don't know -- I'm probably wrong here, but when they have been told no, no, no, it's like you're going out of your way to find ways to accommodate them and to work it in. That is so insulting to the Native people from where I live to Alaska to Hawaii, from the north to the south, the east and the west. I'm asking you to take into consideration those that you already have. I'm asking you to make sure that those people are recognized nationally. I'm asking that the Bureau of Indian Affairs, the Department of the Interior, I know that you take the issue of Indian business seriously, but we're out here waiting, we're wondering, you know.

So I have a sick feeling in my stomach that what you've just presented here today and you've been presenting all over the country, and thank
you for that, thank you, it's a done deal. I feel like that is a done deal. Am I correct?

LARRY ROBERTS: No. No. And so, I mean, part of the importance of the consultation is to have this dialogue, and so I want to clarify a few things.

One is that first off, we are looking at improving the process because we don't think it should take decades and millions of dollars to go through. We are seeking input from Indian country on how that process should be reformed. So, for example, you've asked us to define descendant.

TERESA MCCOY: Absolutely.

LARRY ROBERTS: And one of the things that as part of this dialogue what we need to hear from the Cherokee Nation in writing, Eastern Band of Cherokee in writing or at one of these consultations is your suggestions in terms of how we should define it, right, because I don't want -- I don't want to leave the conversation where you're asking us, You need to define this, and so we go back to Washington DC and we come up with a definition that a couple years down the road you're saying, Why did they
define it this way? We need ideas from Indian
country in terms of how to define these things
and how to clarify the rule. So it's not a done
deal.

I will say that Secretary Jewell,
Assistant Secretary Washburn, the administration
is committed to improving the process, but we
put out -- we've been trying to be extremely
transparent and get a lot of input from Indian
country by going out with the discussion draft,
getting comments, and having all of the
consultations and public input on the proposed
rule here today. So this is something that is
definitely going to change because of input.
We're trying to get as broad input as possible.

A couple of other things in terms of -- and
I've said this at a couple of other tribal
consultations and public meetings, and that is
that, and I said it this morning, we're not
looking at creating tribes; we're looking at
recognizing long-existing tribes. And so, you
know, a group that came together in the 1940s,
1950s, 1980s, 1990s that calls themselves
Cherokee or calls themselves whatever tribe,
they're not going to cut it under this proposed
rule, okay? So we've had a start date of 1934 for review for two of the criteria. The other criteria -- there's also two criteria that are prior to 1900. And so we're not looking at recognizing splinter groups. We're not changing that. We're not looking at recognizing groups that just came into existence in the '60s, '70s, '80s, '90s, today when it's more popular to, you know, be Native.

TERESA MCCOY: Uh-huh.

LARRY ROBERTS: In terms of the letter of intent, I just want to clarify that on the letter of intent part, it's a letter that a group sends to the Department, but the onus is still on the petitioner to submit an application. So there's no step after the letter of intent for the Department to take, and so I think some petitioners are unclear about that, and I think the letter of intent, in the -- we've proposed taking it out of the proposed rule because we don't know what purpose it serves. Every other process that we start within the Department of Interior -- and we're not fast on a lot of things, and I represented a lot of tribes before I came to the Department,
but every process we start, we start with the complete application, and so that's what we're proposing to do here. Send us your application. Don't send a letter from some group that came into existence yesterday and thinks it's cool and send in a letter. Send us an application. Show us where you meet these criteria.

TERESA MCCOY: Then why don't you do just that? Why don't you accept that letter of intent, turn right around in a timely manner and explain that clearly to them, We received your letter, because there are --

LARRY ROBERTS: I think --

TERESA MCCOY: I'm going to say something. I think there are people out there that deserve to be listened to and to be heard when it comes to -- this is important to them. If they're Native people, this is their life. The worst thing you can do to one of us -- our boundaries, for instance, we can disenroll somebody for certain crimes, and the worst thing that you would do to a Cherokee where I come from is to disenroll them. Take them out back and shoot them in the head would do less damage and be less detrimental to that human than to
take that person and to have them cast from the tribe. So why don't you just go ahead and continue to accept the letter of intent but turn around and acknowledge that you've received it and that they are going to be required to fill out an application and start some dialogue with them? I would recommend that. But just to accept applications doesn't speed the process up because I'm thinking that application is still going to lay there for, what, a decade maybe? I've heard that this morning, and that's not good. I think this federal recognition thing can happen quicker, you know, because the people --

And another thing, and this bothers me, and I'm going to get this on record. I am a gaming tribe. We have a casino. We're building a second one, and we're very successful at what we do, and I'm very proud of that, but when I hear Native people that look for enrollment, that look for recognition say out loud that they feel like those of us that are recognized, have that status in gaming are trying to keep them from being enrolled or being recognized because we don't want them to have what we have is wrong,
and I will scream it from the highest mountain.

I am Cherokee because of language, land, culture, history, tradition, community, and blood. Money is not the color. My color is red. Money is not red, it is green, and when people want recognition thinking they're going to jump through the -- go through NIGA and whoever to get gaming, to get land into trust, to me that is wrong. But when I heard that today, I heard -- and I need whoever said that and persons in the room to understand unh-unh, unh-unh.

LARRY ROBERTS: So the other thing that I wanted to touch upon was you had mentioned in your comments about land. We do receive a petition, and we're looking at a petition that the Department should talk with the Cherokee Nation of Oklahoma, Eastern Band of Cherokee --

TERESA MCCOY: And UKB.

LARRY ROBERTS: -- and UKB, and under our current process, we do that; and under the proposed process, we're still proposing to do that. We're not -- we're proposing to provide greater outreach on that front than we typically
do.

TERESA MCCOY: I appreciate that.

Now, this morning you also spoke about third party.

LARRY ROBERTS: Yes.

TERESA MCCOY: Is that what you're talking about right now?

LARRY ROBERTS: No. No. I'm talking about as part of the -- just as part of our normal process right now. Let's say, for example, we get a petition in and it -- a petitioner relates to -- you can name the federally recognized tribe. It doesn't matter.

TERESA MCCOY: Pick Cherokee, yeah.

LARRY ROBERTS: Whatever it is. We then provide notice to that federally recognized tribe and say, We've gotten this petition. We need your input on it. We've expanded that so that not only are we going to continue that practice, but we're going to notify every federally recognized tribe in the state and every federally recognized tribe that's within 25 miles of that petitioner if it's across state lines.

So what I would -- and I know that your
nation has been very involved in this consultation process.

TERESA MCCOY: Right.

LARRY ROBERTS: I know that your nation is going to submit written comments for the record, and I want to assure you that your comments will be considered through this process. It's not -- we haven't made any substantive decisions in terms of how the final rule is going to look. This is a proposal. I can say that, you know, we're committed to improving the process.

TERESA MCCOY: Do you want those comments from the tribe? Do you want them from council? Do you want them from chiefs? Do you want them from individuals? What are you going to be considering?

LARRY ROBERTS: We will consider all comments, so it's up to you. We're not going to dictate who sends in comments.

TERESA MCCOY: So then you're not -- it doesn't matter that -- you don't prefer that we have official comment from Eastern Band?

LARRY ROBERTS: Sure.

TERESA MCCOY: You would prefer that?
LARRY ROBERTS: I mean, if that's what Eastern Band wants to do, they should do that.

TERESA MCCOY: Okay.

LARRY ROBERTS: If that's what they want to do, they should definitely do that.

TERESA MCCOY: Well, then having said that, I once again wish to say thank you. I know that this is time-consuming. I know -- I hope -- please don't ever take the needs of Native people lightly. We're still here. We're going to be here.

PERRY SHELL: Good afternoon, everybody, and I'd like to say thank you, chairwoman, for the hospitality as well. I really enjoyed it up here. I've enjoyed the area and the people, and they've all been friendly and very helpful.

Mr. Roberts, Mr. Simpson, and Ms. Appel, "Ay-pel" --

ELIZABETH APPEL: "App-el."

PERRY SHELL: -- well, thank you all, too, for having these consultations. This is the second one I've been to. I was down in Marksville. And for those --
LARRY ROBERTS: Please just identify yourself for the record so we have it clear on the transcript.

PERRY SHELL: My name is Perry Shell, Tribal Council Representative Eastern Band of Cherokee, Sergeant First Class Retired United States Army, and serve on council. This is my sixth term.

Anyway, I don't think it should be easy to be federally recognized. I think that because of the gravity of a nation-to-nation government mandates that it be difficult. It should not be easy, and I'm afraid that some of the criteria that we're talking about now will make it easier to do that.

This brief narrative about our history prior to, what is it, 1934, 1900 --

LARRY ROBERTS: 1900, sir.

PERRY SHELL: 1900. Well, there's one tribe in North Carolina that's looking to be federally recognized that's 55,000 strong that is outside of their -- outside of our homeland, doesn't have our language, our culture but claim to be us from 1913 to 1953, that would be 40 years, claiming to be a Cherokee tribe that
was maybe, I don't know, 400 miles from where we were at.

There are over 200 groups of -- and they may -- they're groups of people that have came together that may have some Indian blood for whatever reason who claim to be Cherokee. How many are petitioned right now?

LARRY ROBERTS: We have 13 complete petitions on file.

PERRY SHELL: That's Cherokee. That's just our tribe. They're stealing our culture, as we see it, that is taking what isn't --

STEPHEN SIMPSON: That's Cherokee?

LARRY ROBERTS: No, not that -- I'm sorry. Not that are saying they are Cherokee. I'm sorry. I misunderstood.

PERRY SHELL: How many?

LARRY ROBERTS: From Cherokee? I don't know.

PERRY SHELL: From Cherokee. I know there's several that -- but there's over 200, and they're everywhere, from Texas to Delaware and where else. I've testified in Nashville, Tennessee. I think there was a Cumberland
Cherokee, Tanasi Cherokee, Wolf Clan Cherokee state recognized. I don't think we should give credibility to the states because I don't think they have the expertise or the knowledge to determine who is a tribe or not.

The testimony that I heard from this group of -- I don't know if they were Overhill Cherokee or whomever, and they had a chief and they had a government, and they were going to build an Epcot Center outside of Memphis, and their basis for being recognized was to bring millions of dollars to the State of Tennessee and thousands of jobs. They were going to build a Cherokee town near Knoxville, near Gatlinburg, near Hillbilly Heaven to bring in millions of dollars and thousands of jobs, and they were getting support for that, and most of the ones that make up these groups are on those state boards.

North Carolina recognized this other tribe in North Carolina when they had no basis whatsoever. If you're going to depend on someone -- your credibility to some groups in Tennessee, Alabama, Georgia, Mississippi or Florida, or wherever you're at, whatever state,
I think that it's a huge mistake, and it's very short-sighted. I think they don't have the expertise at all. I see where you give some credibility to state land or whatever, you know, but the states I don't think have an idea of what a tribal government is or who Indian people are.

You see a lot of new-age Indian groups that speak in 1950s movie talk, you know, and have these names off the wall that are recognized by these states and they come up and ask for recognition. I don't think that we should give any credibility to the state as far as recognition. It's based on some grand idea or whatever but not on facts. I think it should be based on facts and evidence and not on somebody's grandiose ideas or whatever.

There's a lot I want to say about this. We are formulating more specific responses, comments to what is proposed here, and there are a lot of issues with it.

When you summarize a tribe's history into 10 pages or whatever it is, you know, you can go to the Library of Congress now and you can see volumes and volumes of Cherokee history,
interaction with not only United States
Government but foreign governments, the British,
the French, the Spanish, whoever else was in
that area, Worcester versus Georgia, Supreme
Court. It goes back. I don't think you can sum
up the Trail of Tears where all the tribes in
the southeast, the Choctaw, the Chickasaw, the
Creek, Seminole, the Cherokee were rounded up
and moved east of the Mississippi, west of the
Mississippi where a quarter of our people died,
that you just relegate that to 10 little pages
and say -- I don't think it's fair. I don't
think it's fair to the tribes that have -- and
our members that have given their lives, their
blood. I think we have an obligation to give
them more than that, especially when groups are
trying to steal their identity now for money,
whatever, you know, that for the last, I don't
know, however many years have been defined to
be non-Indian. And they may have some Indian
blood, I don't doubt that they do, but I think
we need to be very careful with that.

There's a tribe in North Carolina that is
55,000 now. They'd be the largest tribe east of
the Mississippi. Well, I'll say this. Whenever
Andrew Jackson sent General Winfield Scott down into the southeast to round up the Cherokee people and others, they didn't recognize them either because apparently they weren't there at the time. They've tried to get recognition under four different names, I believe, four different groups. There's no history there. They've taken from every other group. I heard someone say, Well, that just has to do with money. It doesn't have to do with gaming. We opposed their recognition because of our culture ever since 1913, long before there was any idea of gaming or whatever, you know.

So anyway, I'm sorry to get on this rant, but it scares me for all Native people because I think ultimately when we look seven generations forward like we're supposed to do as tribal leaders, I think this harms Native Americans more than what they know. I think it's just part of assimilation. I think that soon -- as the society grows, that soon everybody is going to be part Indian and you all are going to be recognized, and I don't know where we go from there, but I think we need to be very careful with this.
But we will come up with more formal positions on the different items here, but -- and the different proposed changes, but I think that if you can't pass -- like Teresa was saying a while ago, if you can't pass the criteria to become recognized, if you can't pass the bar or you can't pass the -- you know, to get licensed, you know, you don't lower the standards, and I think that's what we're trying to do. We're trying to make the standards lower because you get so many complaints and so many groups that can't make it and that shouldn't make it. All the time we have political influence or whatever on a national level, and I think that our national leaders need to think about this a lot more than what they are. I think it's very short-sighted. I think some of the positions are taken without really considering the facts. But anyway, Perry Shell, Eastern Band of Cherokee. Thank you for your time.

LARRY ROBERTS: So I just wanted to make a couple of comments on that. One is that with regard to state recognition and the -- state recognition of tribes, that's not something that's in the proposed rule. We do
have proposed the state reservations. If a
group -- and, again, we're looking at collective
ownership and land because that's one of the
things that the Department of Interior looked at
when they were implementing the Indian
Reorganization Act, and so we proposed state
reservations but not state recognition because,
you know, those vary all over the place in terms
of how states recognize tribes, and so we are
not proposing that.

The other thing that we're trying to do is
we are trying to reduce the administrative
burden on everyone, the paper documentary burden
on everyone, but yet maintain the high
standards, which we think we are maintaining the
high standards, but this is why we're having
this consultation, and this is why we want the
comments from Indian country on what those
standards should be. We are trying to -- just
to provide a little bit more feedback and, I
mean, we need this dialogue. We're trying to
provide -- what we've seen, quite frankly, are
inconsistencies. We've only -- we've recognized
17 tribes, right? We have seen where we'll
treat one petitioner who has been recognized one
way and another petitioner the other way. So we need to have uniform objective criteria, and that's, you know -- quite frankly, that's what we need.

So what is helpful and what I'm hoping tribes provide in their comments are specific ideas on how to improve the process, specific ideas for objective criteria. Comments that we receive, if it's from Indian country or whether it's from the public, if they say, you know, we don't like it or we do like it without any ideas, it leaves us -- we need to see the ideas from Indian country on the path forward to improve the process, because what I heard from your colleague earlier is that everybody wants a functional process and --

PERRY SHELL: And that's true. We want the clarity, and we want the transparency, we want it expedited in a fast -- in an efficient manner, but it needs to be based on fact. It needs to be based on -- rather than -- anyway.

LARRY ROBERTS: And nobody, absolutely nobody, whether it's Assistant Secretary Washburn and/or myself or Indian
country or anybody, nobody wants to recognize non-legitimate tribes, but we want the process to work, and we want the process to get answers out in a timely fashion because, you know, quite frankly, we have a petition sitting out there for 30 years, 20 years. It's out there.

PERRY SHELL: What tribe is that, by the way?

LARRY ROBERTS: Well, we've had petitions out there with not a final decision for over -- for at least over 20 years. Shinnecock took decades to go through the process. They're recognized. I don't have a list off the top of my head, but my point is --

PERRY SHELL: Yeah.

LARRY ROBERTS: -- if it's lingering out there --

PERRY SHELL: Right.

LARRY ROBERTS: -- it not only causes headaches for the federally recognized tribes, but it causes headaches for the community and everyone else. So we're trying to provide faster decisions that are based on the facts and that are objective criteria so that at the end of the day nobody is saying, You, Department of
the Interior, have applied the rules one way for one group and another way for the other group, and that's not fair either, so --

PERRY SHELL: Okay. I appreciate your comments here.

LARRY ROBERTS: So --

PERRY SHELL: Yeah. And I understand that, and we all need to do better than that, you know, as far as coming up with a decision. They deserve it, and we deserve -- and everyone does for that matter, but anyway, you will see a more formalized -- we're working on this. You will get some more formalized and more, I guess, to-the-point --

LARRY ROBERTS: Yes, sir.

PERRY SHELL: -- comments and questions on this. Thank you.

LARRY ROBERTS: Thank you.

DAVID WOLF: Good afternoon.

David Wolf, Eastern Band Tribal Council. My question is you mentioned three avenues: The administrative, the congressional, and judicial. Is this process going to be narrowed down to one process or is it just going to be narrowed down to one standard that everybody has to meet
within these three processes?

LARRY ROBERTS: We lay that out to let folks know that there are three processes. We only have control over Interior's Administrative Part 83 process, and we're just narrowing it down. That's what we're talking about, is the Part 83 at Interior. You know, Congress is -- you know, they have the authority to write the laws, and we follow the laws, and we implement those laws. So it's just meant to say, Here are the ways -- Here are some of the ways that tribes have been recognized in the past. So, for example, Congress, you know, it could be by statute, it could be by treaty, right? I mean, Oneida Nation recognized the 1794 Treaty of Canandaigua. One of the first signatories of our treaty is with George Washington. I have a picture of it on my -- up on my office wall. So there's all different types of ways that tribes can be recognized, and it's just meant to say -- what we're talking about here today is just the Part 83 process.

DAVID WOLF: Okay. I won't go over -- I think my colleagues there have mentioned all of our concerns, and I won't go
over it again, but I'd just like to appreciate, say a thank you for having this consultation and taking our thoughts and our -- I want to say that people deserve a speedy process, but I think if we lower our standards, the things that our grandparents, our elders went through before, the Trail of Tears, and to summarize that in a brief narrative, it would do them no justice because what they lived in one day or one week, it would probably take a year to write about, you know, if you really put it into words of what was really happening in those days, so --

LARRY ROBERTS: So under the proposed rule, that new criterion that you're just talking about, I mean, that is a proposal, and so we need feedback on how that should be clarified.

And as Liz sort of mentioned, the existing criterion, you know, as Liz said, we could have a group, right, that demonstrates political authority and community from time of first sustained contact to the present and be Native and can show all of those issues and can show all of those things, that they have been
functioning as a sovereign tribal government over time, and yet if there's not a third party out there like the State of Wisconsin or the State of North Carolina writing about it, a petitioner could fail under that criterion. And so we look at it saying, you know, just because someone's -- some non-Indian is not writing about this tribe, does that really make them any less of a tribe? And so that's why -- one of the reasons why we removed that criterion, but we also wanted to maintain high standards, and so we're proposing this. We've heard from other folks that the proposal for criterion (a) is less than clear and needs to be more clarified, and we're looking to the public and tribes to help provide that clarity on what that should be.

DAVID WOLF: Another point that was brought up, the 80 percent rule, how is that going to be applied? If you've got it proposed, then surely you've got some thought on how it's going to be applied.

LARRY ROBERTS: So that is actually being currently applied now. So the 17 tribes that have been recognized through the process,
it's applied now, and that 80 percent rule doesn't mean we're not -- we're not saying that 20 percent of the tribe can be non-Native. We're not saying that at all. What we're saying is that 80 percent of the petitioner who is determining their own membership has to provide documentary evidence that 80 percent of their members apply -- or descend from a tribe, and it is -- it's what we've used in past practice. We're trying to just codify it here in the regulation itself, but it's what OFA applies right now, and so it's more based on documentary evidence and talking about that documentary evidence than anything else.

DAVID WOLF: But it mentions historical tribes. Have do you determine historical tribe?

LARRY ROBERTS: So in past practice, there have been decisions where, for example -- and I'm not going to talk about specifics of any tribe we've recognized, right, but there have been situations where we have looked and said, Yeah, they have evidence that they've been functioning, political authority, community, and we have censuses from 1890, 1880, 1900, 1910,
it's the same people, they're all identified as Indian, they're all living together there, we have accepted that in the past, and so we're trying to provide some uniformity to that.

DAVID WOLF: All right. That's all I have. Thank you.

LARRY ROBERTS: Okay.

REBECCA ALEGRIA: Bousho. My name is Rebecca Alegria. I've been given permission to speak from Chairman Laurie Boivin. I know they had left, but I do want to thank you for being here today. I also want to thank you for allowing the tribes who are recognized in this room and to be able to speak because in the past I've served on the Menominee Tribal Legislature for six years, and I've been to NCAI and I've been in sessions like this, and I know the tribes that are seeking recognition throw their demands out there, sometimes they have no respect, you know, and they're just -- they're really pushing their issue, and so that's why I thank you for allowing us to speak here today.

As Menominee, we're indigenous to Wisconsin. We did not -- we are not allotted. This reservation is all we have. This is it. We
have no other place to go to but this reservation. I'm a tribal researcher for historic preservation, and I do a lot of different research, and our territory is vast. We have Chief Tomah buried up on Mackinac Island. We've been up into Canada. We've been -- we had a village -- villages on the Illinois borders where our people were murdered down there, Prairie du Chien, we've been out west. So we have a big territory, and we're lucky that we're on our ancestral land, you know, and that the -- we also do repatriation of our human remains, and we have more human remains and sacred items out there than we have living Menominee.

And so my question is is that, you know, our ancestors went through all of this and -- all of this suffering and through the boarding school era. We have had people -- we have children out there and they don't even know they're enrolled until they become adults and then they come to historic preservation to find out who they are, and I'm like, my God, you know, they don't even know they're an enrolled Menominee until they become adults.

Okay. Is that -- is this fair to them? Is
this -- what about these rules? Are they going
to -- are you setting standards like you set on
us? Are you -- you know, we have a creation
story. Our creation story is we emerged from
the mouth of the Menominee River. We have a
creation story. We have our own language. We
have our ceremonies. We have our songs and our
dances. We have our government. We have our
legal system, judiciary, education system. We
have all these things in place, and so is that
going to be the same for these tribes that are
trying to become recognized?

LARRY ROBERTS: We have the proposed
rule and the existing regulations. Certainly
that is evidence that those groups could submit,
but we've sort of -- you've sort of identified a
universe of things, right: Language, culture,
songs, ceremonies, all of those things, land.
There are -- we have boiled that down into --
and that can all be evidence of community,
right, and how is that community interacting?
It can be evidence of political authority,
right? Are there leaders? Are there leaders
that are making decisions for this group, not
just today or not just 1950, but we're going
back to looking at 1934, right, and starting that analysis there, has there been continuous leadership?

And one of the reasons that -- as we said before, why we're going back to 1934, that's a major shift in federal policy, right? And so while Menominee has never been allotted, a lot of reservations were allotted. Oneida was allotted, and I know Oneida's reservation comes from Menominee. But, you know, there are a lot of reservations that were allotted, and the federal policy at that time was to try to destroy tribal governments and break them up. And so we're looking at 1934 as the date where Congress said, you know what, this policy of destroying tribal governments isn't working and we need to support tribal governments, and so that's where we're starting our analysis. But when you think about it, 1934, while we're starting our analysis there, I mean, we're not saying that someone born in 1934 can somehow come into a tribe. We're looking at a community that -- a community that's functioning in 1934, that's exercising political authority in 1934. You're talking about adults, you're talking
about elders, you're talking about those sort of things. And so we're looking at 1934 because it changes that policy from the federal government policy, but we're also looking at it just that, you know, we've been administering this process for almost 40 years, and just administratively we have never had a situation where if a group petitions and says, We're a tribe, they failed prior -- if they fail under our process, they fail prior to 1934 and they fail after 1934. They fail in both time periods. Every group that has failed has failed both time periods. Every group that we have recognized, every tribe that we have recognized, they satisfy both time periods. And so we're proposing -- and it's just a proposal. We're proposing to shove our evaluation back because it's -- you know, there's a lot of historical documents out there. There's a lot of records. It gets more costly the more further back in time you go to find those records. And so we're proposing 1934 for administrative purposes.

REBECCA ALEGRIA: See, and that's what I've been hearing from these tribes that are pushing for recognition, 1934, 1934. So my
question is, is that what you're doing or are you satisfying these tribes that are demanding 1934? And the records of these tribes or the anthropologists or even, you know, their historic -- their historical people or foundation or whatever they have, is it authentic?

LARRY ROBERTS: And we're -- oh, right. Well, we definitely -- I mean, whether it's the existing rule or the proposed rule, we're not -- you know, we don't want to accept any falsified evidence, right? That just goes without saying. That's not any evidence at all.

REBECCA ALEGRIA: And how do you know?

LARRY ROBERTS: Well, I mean, we have experts in the Office of Federal Acknowledgment that are, you know, historians and anthropologists and genealogists that are paid to look at those things. And when we have a petition in, you know, we -- like I said earlier, we send notice to those federally recognized tribes that may have a relationship with that petitioner to get that information from them, so --
REBECCA ALEGRIA: Okay. Thank you.
LARRY ROBERTS: Thank you.
TERESA MCCOY: I'd like to clarify something.
LARRY ROBERTS: Sure.
TERESA MCCOY: Teresa McCoy, Eastern Cherokee. When I say define the word "descendant," what I'm getting at is this. We have just under 15,000 enrolled members Eastern Cherokee, but at Indian Health Service, in our hospital, we have probably close to 25,000 charts that are active for people who are not enrolled members of Eastern Band. They are descendants.

So I think what I'm leaning toward in a definition from the federal government is at the time your definition was written on we will serve enrolled members of the federally recognized nation and their descendants, I think what you might have meant or what -- not you, you were not even born, sorry -- they, the government, meant was members of the federally recognized Indian nation and their enrolled descendants, meaning those that were there in '34 and those that were going to come after them.
who met that tribe's criteria for enrollment. That's what I think it needs to say, because when the federal government sends any type of assistance to any nation, they're sending it to Cherokee.

LARRY ROBERTS: Right.

TERESA MCCOY: Then why do 10,000 more people benefit from that? So I just wanted to clarify that for you.

LARRY ROBERTS: Yeah, and that seems more of -- you're talking about a services issue right now.

TERESA MCCOY: Right.

LARRY ROBERTS: And so I'm just saying that the services issue on those individuals, on whether they're descendants and eligible for services under existing federal law is -- I hear what you're saying, that the federal government needs to clarify that, but that's outside the scope of this rule.

TERESA MCCOY: You're right, but I tied it in because to me, what we have petitioning you for recognition are descendants from Native --

LARRY ROBERTS: Okay.
TERESA MCCOY: -- from persons who are federally recognized.

What's happening to the Cherokee between my home in Oklahoma are that -- one of the first things you hear the Cherokee group say is, We are direct lineal descendants of the people that jumped off of the Trail of Tears, that hid in the bush and made out with great-great-great-grandma, and we're them. Well -- so descendancy does tie in.

LARRY ROBERTS: So you have three Cherokee nations right now.

TERESA MCCOY: Right.

LARRY ROBERTS: And you all have -- you all have experience in how that came about.

TERESA MCCOY: Right.

LARRY ROBERTS: And so, you know, you are positioned to, you know, help the Department in terms of the process that we're going under right now to understand, and your council and you have been very helpful in these public consultations -- in these tribal consultations to help us understand more of what's going on, but we need specifics in terms of how to address --
TERESA MCCOY: Okay.

LARRY ROBERTS: -- the Cherokee situation. I understand that me sitting here saying we're not interested in recognizing groups that came into existence in the '40s and '50s, '60s and '70s and '80s and '90s that call themselves Cherokee, they would fail under this proposed rule, I understand that that's not -- that you're not so sure about that, you have concerns about it, and so we need your comments on it.

TERESA MCCOY: Well, then please listen to the comments because --

LARRY ROBERTS: Yeah.

TERESA MCCOY: -- it's really hard after 250 years of BIA and Interior federal government for any Native to trust anything that comes out of Washington. I'm not apologizing for that. That is -- if you were me, you would understand that, and I understand --

LARRY ROBERTS: We're doing our best, ma'am.

TERESA MCCOY: Thank you very much.

Thank you.

BRANDON STEVENS: Good afternoon.
Welcome back. I'm Brandon Stevens. I'm a councilman for Oneida Nation of Wisconsin, and I guess when we talk about descendancy, that's kind of what we're getting at with Councilwoman Teresa McCoy is it's kind of difficult when we're doing administrative rulings and definitions in administrative procedures and then -- when they're not in statute. So it's difficult to, you know -- especially IHS funding, we have a lot of issues, because if we expand descendancy in our health care system, we get revenue back if they have insurance, but if we also don't limit that with descendancy, it's also a drain of funding for IHS because we're paying for that also, so I see the back and forth with that.

But I guess this is kind of a question where I'm kind of saying -- because we're originally from New York, and so we lost millions and millions of, you know, acres of land in upstate New York, and so when we traveled to Wisconsin, we left a community up in Thames, Canada and Ontario, and so we're using our individual tribal sovereignty to open up our enrollment to allow them to be a part of us because they're
technically Canadians, first nations, so we're allowing that.

So that's why I'm kind of saying, well, the administrative ruling, you know, where those Cherokees that traveled from -- they're a part of something. You know, they're not -- they're a community that became, you know, a community of people, but they originated from the Eastern. You know, we have Oneida and Eastern Cherokee as well in North Carolina right now.

That's kind of what we're -- we're taking that route to say, Yeah, we can take those, our Oneidas. They're Oneidas. They're a part of us, so we can take them, and that's where we're asserting our tribal sovereignty and saying, We're opening up our rolls. And that's why I really kind of -- you know, I'm glad this -- the procedures are more fluid, you know. The criteria should still be difficult to maintain but fluid and expedited as far as, you know, getting an answer back, and so that's why I really wanted to stress the individual tribal sovereignty, just to be able to do those types of things, where the Eastern Band, we're willing to take those. You know, that's their
individual right as sovereign nations to be able
to do that for them.

And as far as -- you know, we sit on
Menominee land, you know, right outside of
Green Bay. So, you know, they were gracious
enough at that point in time to give us the land
to start a reservation, 65,000 square acres to
start our community. And this is way back when,
you know, the Buffalo Creek Treaty. So that
established our reservation, and we have a close
relationship with our Menominee brothers here,
and so that's kind of what I really want to say,
you know, just really broadly, because we
haven't looked, reviewed over the proposed
regulations too thoroughly yet, but we really
want to kind of gauge what descendancy means as
far as broadly. You know, we want that, you
know, applied across the board and say how can
we apply descendancy in an appropriate fashion
without affecting all these other, you know,
resources. And, you know, bottom line, that's
what it's really up to sometimes, and that's why
we shouldn't make a decision based on resources.
It should be based on exactly what you're
saying, you know, community, language, culture,
you know, blood, all those types of things.

And, you know, I'd like to thank you, you know, Eastern Cherokee brothers. You know, we have a close relationship going back, you know, from then when we shared our songs, you know, our longhouse, our social dance songs. So we have a longstanding relationship, you know, the Iroquois down to the Cherokees, where we used to commerce, you know, back then, and I'd like to welcome you in our territory and thank the Menominee, you know, for being so gracious.

Thank you.

LARRY ROBERTS: Okay. Thank you.

Are there any more comments this afternoon? Do folks -- raise your hand -- I guess just give me a show of hands of folks who want to take a break and reconvene? Does anyone want to take a break and reconvene?

PERRY SHELL: Call it a day.

LARRY ROBERTS: All right. We've had one folk -- one council member say let's call it a day, so we will call it a day.

(Concluded at 2:47 p.m.)
STATE OF WISCONSIN   
COUNTY OF BROWN   

I, PAULA HUETTENRAUCH, a Notary Public and Registered Professional Reporter and Registered Merit Reporter and Certified Realtime Reporter in and for the State of Wisconsin, do hereby certify that the foregoing proceedings were taken at said time and place and is a true and accurate transcript of my original machine shorthand notes.

That the appearances were as noted initially.

That said witness was first duly sworn/affirmed to testify the truth, the whole truth and nothing but the truth relative to said cause.

Dated at Green Bay, Wisconsin
This 30th day of July, 2014.

______________________________
P A U L A  H U E T T E N R A U C H  
Registered Professional Reporter  
Registered Merit Reporter  
Certified Realtime Reporter  
Notary Public, State of Wisconsin  
My commission expires 9-13-15 (fc)