UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

IN THE MATTER OF:

Federal Acknowledgment of Indian Tribes
Proposed Rule 25-CFR-83
Consultation and Listening Session

PUBLIC SESSION
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
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MR. WASHBURN: Thank you,
Chairman Cromwell, and, Chief, for being here today, in his nineties, and thank you for the wonderful the beautiful drum group. What was a wonderful way to start. Thanks to all of you for that, and my thanks to the whole Tribe for giving us such a proper welcome.

Let me now, in turn, welcome all of you here, who are here to participate in this public meeting this morning and tribal consultation this afternoon.

Let me tell you how I anticipate this going today. I have a power point presentation to make that will last around twenty minutes or so, and after twenty minutes, we will open it up to public comments.

And when we do, I will ask everyone to limit their comments to about three minutes or so in the beginning, until we've had the chance to hear from everybody who wants to speak, and then those that have more to add, and I know that some of you may, can give us more after that.

I have a couple of members of my staff
here. Kaity Klass, who is with our Solicitor's office is here. Kaity is a member of the Wyandotee Indian Nation of Oklahoma, it's really great to have her on the team, along with the rest of the Solicitor's Office.

And Elizabeth Appel, who runs all of our regulatory affairs back in Washington, D.C., and she'll be back there running the power point for now, but she'll also be up here to answer questions.

Both of these young women know more about this than I do, because they've lived it almost every day as we've worked on this important regulatory reform process.

So, we will have a public meeting this morning. This afternoon, we will have a formal government to government consultation with federally recognized Indian tribes, and that will be closed to -- it would be open to only leaders of federally recognized indian tribes, and so it won't be open to the public or to the press.

And so I would ask that any members of the public or petitioning groups or others who would want to speak, this morning is your opportunity and
we're anxious to here from you.

So, let me proceed, to give you some background information about the acknowledgement process and how we got started with this.

There are three ways that American Indian tribes have been recognized by the United States Government: One of them is judicially, through the federal court decision. That's one route.

Another one is through the congressional route, congress has enacted a law or a settlement that recognizes the Tribe formally.

And then, finally, it's the administrative process, and that's the process that we run, and it involves a determination by my office, by the Assistant Secretary for Indian Affairs, and that's the process we're focusing on here today, the process that we are looking to reform.

The history of this process was really -- before 1978, it was an ad hoc process. There was no formality to it. There was not necessarily a regular regulated way to do this.

Petitions were filed on a ad hoc basis
before the assistant secretary and the assistant secretary acted on those petitions; but, in 1978, the department created this federal acknowledgement process with regulations under Part 83 that really formally defined the process and establishes law, in essence, for us to use in looking at these petitions.

Those regs were established in 1978 and they were revised in 1994, and they've been revised, not -- not "revised" but we've had additional guidance added in 2005, 2000, and 2008.

Of the five hundred sixty-six currently recognized federal Indian tribes, seventeen have been recognized by the Part 83 process, and during that time, more than thirty have been denied recognition through that process, and so it has been a very active process since 1978.

We have been told, and as you've just heard from Chairman Cromwell, the process is broken and needs to be fixed, and Chairman Cromwell has echoed something that many people have said now for many years.

More than ten years, people have said that the process is broken and it's -- it's been in
the United States Senate, senators from both sides of
the aisle, and people throughout the public and the
government that have made that assertion. The notion
is that it takes too long.

Chairman Cromwell just said, it took
Mashpee thirty years to get recognized, and that
certainly -- is certainly too long. No government
process should take thirty years, for sure.

Also, we've heard that it's too
burdensome; that it demands too much, and that's why
it takes too long, in part, and it's also why it's
expensive.

So what we would like is a process
that's a little bit more efficient and a little less
expensive, but not less rigorous.

We think that rigor is very important
because we don't want to have anyone have doubt when
we recognize a tribe, that they are legitimate, and
that they should be legitimate. It is a very
rigorous process and it should remain that way.

It should not be an unpredictable
process, too, and that's the other thing that we've
heard.
We've heard that the criterion has been interpreted in different ways, depending on the different petitioners, petition groups, and we need to take a look at that, and to make sure we are not arbitrary; that we apply the same rule to each pistoning group.

There needs to be a little more clarity about what proof is sufficient to meet the criteria.

And we've also been criticized for not being transparent enough.

So those are the kinds of things that we've heard about the process being broken, and we aim to try to introduce some changes that will fix that.

So, this process, in this administration, which really started in 2009, when the then secretary of the interior, Ken Salazar, said that we will fix this process; that we need to be committed.

When he first began as the secretary, and he's now gone, and we now have a new secretary, Secretary Sally Jewell, but he committed, on behalf
of the administration that we would work to fix this
process.

    And, indeed, in 2010, some draft
revisions were begun to start the 83 process, and it
was -- and they were worked on, and they were
promised; they weren't ever produced.

    But, in 2012, a representative of my
office, Bryan Newland, identified several guiding
principals that should guide this sort of reform, and
those are: Transparency, timeliness, efficiency,
flexibility, and integrity.

    And around 2013, the summer of 2013,
about a year ago, we released the discussion draft,
to -- giving people an idea of what we thought might
need to be changed, and we asked for comments on that
discussion draft.

    Now, that's an unusual activity.
Usually, we start a regulatory format with a notice
of proposed rule making, but we started one step
earlier than that, because we wanted to be
transparent. We wanted to give views to people even
before we started the formal process, and so we
started this informal process where we received
comments from people on our discussion draft.

And over the past year, we have worked
with those comments, the discussion draft and the
comments into a proposed rule, and it is the proposed
rule we are here to talk about today.

Let me say, though, that we
distributed the discussion draft in June of 2013. We
held public comment and public hearings and public
consultations on the discussion draft, as well, so we
have utilized a lot of process in working on this
rule.

Part of the reason for that is because
we need the public and tribes to be educated on what
we're doing so that they have the intelligence, the
information, to comment wisely and thoughtfully on
our proposal.

And Reverend John Norwood is here, who
we've worked with, with the National Congress of
American Indians to help us with these efforts.

And we're really honored to have that
partnership with a large group of Indian tribes to
work on this process, because, frankly, we need
guidance, and that's why we're here, we're here to
get guidance. It helps to have people here who are really expert on the process and thoughtful about the process.

We have received more than three hundred fifty comments to our discussion draft, so, again, we have gotten a lot of guidance already, and that was in over two thousand, more than two thousand comments.

Some of them were letters signed by more than one person or form letters, we got two thousand comment letters and three hundred fifty comments.

So, as I said, we have worked those comments into a proposed rule.

Now, the way we did that is, we had a team of people at the department, and Kaity was a member of the team, and Liz was a member of the team, and I was a member of the team, at some points, to go through the comments, and really look carefully through the rules, to see what we should change.

And they met for weeks at a time before the discussion draft was released and they had met for weeks at a time after we got the comments in,
and they came up with these proposals, and we are now ready to talk about them.

We reviewed all those comments and we made some changes to the draft rule, the discussion draft, before the proposed rule.

We also have written a rule that is -- that speaks in much more plain language than the existing Part 83 regs. We think that's important.

And we've also submitted this rule to the OMB for document management and budget for review. They have looked at a variety of things, but not the least of which is how much paperwork, what's the paperwork burden that this imposes on the public and the petitioners.

So, we published our first rule in the Federal Register, on May 29th, 2014 at the beginning of the summer.

Comments were originally due on August 1st, but we had extended that period for sixty days, so comments to the rule will be due at the end of September, September 30th.

We had requests from all over the country for an extension of that time period and so
we're being responsive to those requests, and so we would -- we've opened that up for another two months, in essence, for people to comment on those rules. 

So, let me now give you an overview of the proposed rule itself. We have revisions to the process.

We've got minor revisions and clarifications to criteria.

We have clarification to some of the terms, including previous federal acknowledgement.

We've clarified the burden of proof that's required in a petition.

We have clarified or provided for re-petitioning, under very limited circumstances, and we've also added notice requirements to the rule.

And I'm going to discuss each of those in detail, to give you a sense of the overall context.

So, first of all, one of the things that we have heard is that it takes too long for a tribe to get -- to petition, to get through the recognition process.

And one of the reasons, from our
perspective, we do have a team of hard working people, people that -- with graduate degrees in History and Ethnology and Genealogy who work on these petitions, but often what we get is a letter of intent from a petitioning group and then actually don't get further evidence from them for many, many years.

And then they complain: Well, we filed our letter of intent many years ago, but it wasn't really sufficient to get the whole team working.

So we have basically eliminated the letter of intent process and we will now start the application when we've got a complete petition, and that way, we'll get more of a -- sort of, a real understanding of how long it takes to get one of these petitions through, because we aren't going to start the process until we have a complete petition.

And we are going to start with a phased review, and we're going to look at certain criteria first, and one of those is the descent criteria, criteria E.

And the reason is -- that criterion
requires descent from a historical tribe; in other words, you have to be an Indian people. If you're not Indian people, then you're not going to be able to petition to become an Indian tribe, and so that's very, very important, and, frankly, if you can't meet that criteria, we don't need to look at any others.

If you can't meet that criteria, we can do a denial, a fast denial, an expedited negative decision in that circumstance, and just get that resolved and off the table, and we think that's important because we need to speed up the processes.

We will next, after we've reviewed criteria, criteria E, we will next review other important criteria, criteria, criteria: A, E, F and G before we go any further.

Those are also criteria, and all the criteria, of course, are important, but we feel like if we can stage our phase of review process, we can get to quicker decisions.

So we will look at each of the criteria, roughly, in the order of the importance of those criteria and make decisions.

So, the other thing we are going to
do, those are the discussion -- brief discussions about some of the processes.

And another big part of the process is that we're going to change the way we perceive after a proposed finding, so we will issue a proposed finding and then ask for comments, and there will be a brief comment period.

If there are no negative comments, and if the proposed finding is positive and no one comments in a negative way or objects, then there's no reason to do a lot process, I think, is the way we feel.

And at that point, we would automatically turn that proposed positive finding into a final positive findings, again, without a lot of additional process; on the other hand, if the proposed finding is negative, we will then give the petitioner an opportunity for a hearing, if they want one, so that they have due process.

And at that hearing -- and that hearing would occur before an office appearing, before an appeals judge and will give the petition group an opportunity to make their case before a
judge that is utterly -- well, judicial. It's highly objective and they've got that place to make that case.

And third parties, other tribes or cities or local governments or others that are interested will be able to participate in that hearing.

That judge would issue a proposed finding that would then be issued by my office, by the assistant secretary, a recommended decision and the final decision would be issued by my office.

And that decision issued by my office would be final by the department and would not be an additional stage of administrative review at that point.

If someone was unhappy with the decision, at that point, they can take that decision to court, but there would not be another review process at the department.

So we think that this portion of this will expedite the process and portions of it will add greater due process to the people seeking recognition.
Now, we do need your input on some things, and so one of them is the nature of the judge who would preside over the hearing and issue the recommended decision to my office.

And there are various different kinds of judges that exist in the department of interior process. One of those is the administrative law judge, and this is the one who has, sort of, the maximum kind of independence, because they have no supervision. They were considered to be an independent decision-maker and they routinely conduct hearings about -- on other matters before the department.

The second type of judge is the administrative judge, and the administrative judge is also an objective decision-maker, but does have a supervision in the office of hearing appeals. The director of the office of hearing appeals.

And this kind of judge routinely serves on an appellate court, does not serve as the single judge at a hearing.

And then, finally, the other possibility would be an attorney designated by the
office of the hearing appeals director, and this -- having an attorney do this work would be possible, as well.

That person is, sort of, the least independent of these three options, and that attorney may not have the same kind of experience conducting hearings as these other actors would.

So those are some of the things that we're trying to put through, is what kind of judge to be used in this process.

Secondly, if there's a question about whether the judge's decision should be limited to the hearing record or should be able to consider other information.

And just to -- some background, hiring the administrative law judge is a lot more complicated than hiring a mere attorney. There's a lot more in the process, because they are so independent, these ALJs get a lot more scrutiny for hiring, so that's what -- part of where the independence comes from.

So, more revisions to the process. We have -- we are -- we currently have a rule that the
petitioner can not withdraw if their petition is under active consideration, and we are considering changing that, to allow a petitioner to withdraw the petition at any time before the proposed finding is published, to give them a chance to -- you know, to develop more evidence, or whatever they think that they need to do.

They would, however, lose their spot in line if they withdraw. If they withdraw, they go back to the back of the line, the end of the queue and start over again, in essence, in that respect. This gives them more flexibility, but it also imposes some costs on them.

Now, we also would like to improve transparency, and the way we have is to post to the Internet, those portions of the petition and proposed finding and reports that are releasable under federal law.

Some things are not releasable. Some things would violate the Privacy Act to release because they've got, you know, very personal information about genealogy and those sorts of things, about individuals and their families, and so
we wouldn't post that.

   We would post the things that we can
do appropriately under federal law, and, again, in
order to be more transparent.

   Okay. Now, let's go into the
criteria. We currently have seven mandatory
criteria. We propose to continue to having seven
mandatory criteria, but we are changing them
slightly.

   The current criteria A requires that
external observers identify the petitioner as Indian,
and we generally require external identification from
1900 to the present, every decade.

   Well, we've had complaints about this
criteria and we've had people say that, you've asked
us to get external proof of our existence at the time
when some of us wanted to be underground because we
would be discriminated against or violence might be
committed against us if we were -- you know, if we
were public about our identities, so it's not fair to
require external identification at the time when
there are so many forces encouraging us to be
secretive.
So, what we propose instead is that a group, a petitioning group provides a narrative of their existence as a tribe prior to 1900.

They can still provide external identification, if they wish to, but they won't be required to provide that external identification.

The idea here is that we get a narrative. It certainly is -- and a legitimate tribe will be able to tell us its history, and we need to know its history, and they should not just tell us the history, but they should include evidence of that history.

We feel like this is a criteria that is very easy for a legitimate tribe to meet, but it will be difficult for someone who is not a tribe to meet.

We don't -- and we're not asking for a treatise necessarily, but we're not asking for a ten-page book report, either. We need something more than that.

We'd love to have your thoughts and guidance, you know, about what -- some better ways, to state or give us more guidance as to what that
should be.

Now, the second criteria is B; that the group show -- demonstrate their community, that they have been a community.

Currently, the analysis is from 1934 to the present, they show that they demonstrate their community. At least thirty percent must show a distinct community for each time period and just --

So one of the pieces of evidence would be attendance of students at Indian boarding schools. That would be the kind of thing that would be acceptable evidence to show that they're -- that these people came from a distinct community, which -- and this is just evidence of their existence as a community, but this criteria would be met.

This would be more than evidence; in other words, the criteria would be met if a state reservation has been maintained since 1934 or the U.S. held land at any point for the tribe since 1934, and so that's a modification to the community criteria.

Criterion C is that the tribe be able to show political influence and authority, and,
again, this -- this criteria is from 1934 to the present.

And this, also, would be met with the state reservation being maintained since 1934, or the U.S. held land at any point since 1934.

And it also defines -- and the idea, by the way, of both of these criteria, is that community must be demonstrated, political influence and authority must be demonstrated continuously, without substantial interruption.

That part of the criterion has existed in the past, though we are told that we have not been always clear in how we apply that, and sometimes, we have gotten an interrupted period for ten years, and in some cases, up to twenty-seven years.

What we're defining is that there cannot be a substantial interruption for more than twenty years in this process.

So, those are the criterion that are -- the suggested changes to criterion B and criterion C.

Another criterion that I would like to talk about is criterion E and this is descent from a
historical Indian tribe.

A current rule of thumb that the office of federal acknowledgement, the office that runs this process, is that eighty percent must descend from the tribe that existed in historical times; that is, before 1900.

We think this should continue to be the rule, but we wanted to state, it's not actually in our regulations; that we're creating this rule, making it clear that it is a regulation, and, again, been used informally as a rule for the office of federal acknowledgement.

And this criterion allows the descent to be traced from the role prepared by the department or at the direction of congress; otherwise, if they don't have one of those things, we would require the most recent pre-1900 evidence to demonstrate that that criterion is met.

Criterion F is membership, and this criterion ensures that the petitioners who file by 2010 and then had members join another federally recognized Indian tribe are not penalized by that.

One of the things we heard from people
is that they were in a petitioning group and they
were waiting to be recognized but they were eligible
to be enrolled in other tribe, and some of them
ultimately just said, I'm just going to enroll in the
other tribe, because I can't wait any longer for
recognition. I can't wait thirty years.

So some people have that option
available to them. This rule would not penalize them
for doing that.

Those people could still be considered
as part of the membership of the petitioning group
again, and that's because they have -- they shouldn't
have to have left their petitioning group because of
the slowness of our process, and so as long as they
-- the petition group had been filed by 2010, then
they will not be penalized if they join another
federally recognized tribes.

Now, criterion G is congressional
determination. Criterion G is, basically, if
congress has terminated an Indian tribe, our
administrative process cannot restore them. They can
basically only go back to congress, and so --

And so criterion G shifts the burden
to us, the department, to show that a petitioner was terminated by congress. That should be a fairly simple showing, and it would be up to us to determine whether that criterion exists.

It won't be a burden -- we won't be asking the petition group to prove a negative. We will take on the responsibility if we believe that they have -- they are a group that's been terminated; we will prove that out.

So, we also have the question on the proposed rule about previous federal acknowledgement, and the current rule is kind of unclear as to how we treat previous federal acknowledgement.

And we aren't making substantive changes to this rule, but what we are doing is trying to clarify how it will be applied and adopt a rule that will reflect what we have been doing in practice.

And so the idea is that, a group has to meet the criteria A, D, E, F and G, but not the community or political influence or authority, but can establish previous unambiguous federal acknowledgement, and either meet the community
criterion at present and the political authority criterion from their last acknowledgement to present using authoritative knowledge of third parties or governing bodies and one other item of evidence; or, meet community and political authorities since the last acknowledgement.

This will ensure that if we have previously recognized a group as a tribe, they only have to prove that, since that last formal federal acknowledgement that they have -- that they are a tribe to get recognized under the ruling.

Now, we are also proposing to clarify the burden of proof. The burden of proof remains a reasonable likelihood, but we are clarifying that, reasonable likelihood is based on a supreme court case and the supreme court explanation and so that gives people greater guidance in where to go to understand what it means.

It requires more than a mere possibility, but it does not require more likely than not.

Again, this is -- by making clear that this is the same standard that's used in case law, it
will give people a real frame of reference for what that means.

    Now, we are also -- we have also proposed a limited rule on re-petitioning. The idea is, we aren't changing the criterion very much at all. We are largely clarifying what the criterion are.

    We don't really anticipate that any group that has been denied recognition will necessarily be able to obtain recognition because we've changed the criteria, because we really haven't that much; however, we are changing them moderately, and so the question becomes, should we allow re-petitioning.

    Given, that we are not changing it very much, some people have said, well, you shouldn't allow any re-petitioning at all.

    And there are several groups that have already had their chance and they didn't get recognized and have been denied.

    The other possibility, the other end of the scale, would be to allow re-petitioning by anyone, and it's already been decided. There's
thirty-one groups that have already been denied, allowing anyone to come back and re-petition.

What we've decided is not to -- to adopt neither of those, neither shutting down petitioning or opening it up completely, but it offers a very narrow opportunity for re-petitioning.

One of the things we've heard is that the people who have opposed a petition group have said, look, we spent thousands of hours, and maybe tens of thousands or hundreds of thousands of dollars fighting a petitioning group and we were successful, and you can't pull the rug out from under us. We won, fair and square, and if you allow open re-petitioning, then that's not fair, because we spent all that money and all that time, you know, on this process.

So, what we have done, again, created a very narrow rule, they would recognize those third parties that have participated in that process.

So, if a third party has participated in that process, the proposed rule, if they've been involved in an IBIA, interior board of appeals, administrative appeal, or have gone to federal court
to appeal, then they will be able to demand their
consent to be obtained for re-petitioning, and so
that they will have a voice in the matter.

Secondly, we aren't going to allow
anybody to re-petition as a matter of course. They
will have to first establish to an appeals judge
that, by a preponderance of evidence, that the change
in the regulation has warranted the reconsideration
or if there was a misapplication in the burden of
proof in their case that warrants reconsideration.

So there's a pretty high burden for
re-petitioning, and we are certainly willing to
entertain your views on that, but we think that there
should be a high bar, because we aren't changing the
subsequent criteria very much.

Now, we also have to change the office
of hearings and appeals regulation to allow for the
processes that we have changed with regard to the
office of hearing and appeals.

And since the secretary's office does
not run the office of the office of hearing and
appeals, we have a separate rule-making process
that's related to this bigger rule-making process to
deal with the office of hearing and appeals issues.

All right. And the last thing that I want to talk about, one of the changes of the rules is that deals with transparency, and it will increase the notice that we give to the public and other interested parties regarding the petitioning groups.

So when the office of federal acknowledgement receives a petition under our proposed rule, it will acknowledge receipt to the petitioner within thirty days. Within sixty days, it will publish another receipt in the Federal Register; it will post the petition's narrative and other information on the office of federal acknowledgement website.

It will notify the governor and attorney general in the state in which the petition group is located. It will notify any federally recognized tribe within the state or within a twenty-five mile radius, and it will also notify any other recognized tribe and any petition that appears to have a historical relationship with the petitioner or that may otherwise be considered to have a potential interest in acknowledgement determination.
And the requirements on this slide that are bolded are new. They are not part of the current process. They are additional notice that we are providing.

And, again, the idea is that, we don't want to run a secretive process. We want to run one that people understand and that public is aware of, and so we want maximum transparency in our work.

Now, the notice to -- we will provide notice to petitioner and informed parties at several different points in the process. One of those is OFA, the office of federal acknowledgement, begins review of the petition.

When OFA issues this proposed finding, and we also publish our notice of availability of that finding in the Federal Register and on the OFA website, we will grant notice any time -- and this is the secretary for Indian affairs, grants any time extensions or begins review of a petition or issues a final determination, and that will also be published in the Federal Register, or at least the notice of appeal availability will be published in the Federal Register, and so those are the notice provisions.
We are just about done here, but let me talk about the comments. Comments on the proposed rule from the assistant secretary for Indian Affairs will be due at the end of September, September 30th, and comments on office of hearing appeals related to the rule will also be due on September 30th, 2014.

We would -- we prefer that you submit your comments by email, because that's the easiest for us, Consultation@bia.gov.

And the next step, once that comment period closes, we want to hear from as many of you as have subsequent comments to make, the next step would be to review those comments, make changes, as appropriate, and, ultimately, publish the final rule in the Federal Register.

Final rules don't become effective for at least thirty days after publication, so if someone has really got a problem with the rule, they can -- you know, they can litigate, or they can seek to go to court before it takes effect.

And there's always opportunity for judicial review after we've adopted the rule if people don't like the rule that we've adopted.
So that concludes my presentation, and so the next step is to hear from people who want to speak.

And just a couple of things, also, we have a court reporter here and it's -- the words that you have give us today are very important to us, and we want to get this down carefully, and so it's very important that the court reporter be able hear everyone that speaks and be able to take down their words, so she needs to be able to both hear you and see you.

We have mics and we ask you to speak into the mic and to arrange yourself so that she -- so that our court reporter can see you when you speak, and I may ask you to start over if I get a signal from her that she didn't get your name or something like that.

Again, to repeat, we will give everyone three minutes for their initial comments, and once we've gotten through that, everybody that wants to speak, I will allow repeat speakers to speak for longer at that point, as long as we've had a chance for everyone to speak already.
Okay. We're just getting set up here. I'll wait for a signal.

We are ready, so if anyone would like to be heard, step up to the podium and speak into the microphone.

* * * * * * * *

CHIEF ADAMS: Good morning, I'm Chief Kent Adams of the Upper Mattaponi Tribe, King William, Virginia.

Of course, we did file a letter of intent in 1979 and we were one of those that didn't follow up for quite some time, but we're now in both the legislative process and the administrative process.

I would like to ask a few questions about the administrative process.

Number one, you said that you start the application when the petition is complete with the proposed findings. How do you determine when a petition is complete? That's my first question.

I'll give you a list of questions and you can respond as you desire.
The second comment I would like to make is on expediting findings. You said, in order to go into the expedited finding process, when there was a negative ruling after comments, you made that, in order to use that negative ruling, that the office must determine that the petitioners are Indian people, which, that's what we're going through, so if you can order an expedited ruling on a negative finding, and I think it may be possible to order an expedited ruling on a positive finding. I would like to make that comment.

And if that's possible, that would be a great thing, to make a positive ruling, positive expedited ruling, especially on some of those who have been in the process for an extended period of time and gone through multiple hearings and before congress and have been approved by the senate Indian affairs committee and approved by the House of Representatives but yet still fail to get positive rulings.

A couple more comments. On page five of the proposed changes, the proposed rule and criteria, you mention community, and on line three,
at least thirty percent must show distinct community
for each time period.

Can you explain and specify what a
"specific time period" is in that particular
criteria.

And if you go to the previous proposed
rule, in the section above that one, page five, it
requires a narrative of the petitioner's existence as
a tribe pre-1900.

I was under the assumption, and I may
be wrong, that we're looking at more of -- more
indications from 1934, so if we're talking about 1934
in one block, talking about 1934 and 1900 in another
block, it seems to be a bit confusing.

And then, likewise, if you go down to
the bottom block of -- on that particular page, page
five, it says "criteria," descent, eighty percent
descent -- must descend from tribe that existed in
historical time.

Again, pre-1900, so each of the three
have a part in this, the specifics of the criteria.

I would think that 1934 should apply
for all three.
And then, likewise, it says, in the next portion of that, "allows descent to be traced from," and this was also confusing as you presented it, "roll prepared by the department or at direction of congress."

None of the Mattaponi Indians, for instance, has any roll prepared by congress, of course, otherwise -- and most recent, pre-1900 evidence, again, pre-1900, so if you had a roll prepared in 1901, does that apply to meet this particular portion of the criteria?

So, again, we have these different years: 1934, 1900, pre-1900, in 1934, back and forth between the different criteria. I think that's a little bit confusing.

That's the extent of my comments on the particular criteria.

MR. WASHBURN: Chief, your time is just about up, so if you want to make a concluding comment, but I'll let you come back, you can come back up if you have more to say.

CHIEF ADAMS: Thank you very much for your presentation.
MR. WASHBURN: Should we address any of those? Okay, we'd like to proceed.

MS. APPEL: Sure.

I think the first question, about when we let you know that the petition is complete, and the regulation, as written, doesn't specifically say when the petition will have a way to figure out when the petition is complete.

You can assume that when materials are submitted in support of each of the criteria, it would be considered complete, but if that should be clarified in the rule, please, let us know, and we can -- and if you have a suggestion for how to clarify it, when a petition should be considered complete, please, submit comments on that.

MS. KLASS: And the proposed rule provides for technical assistance leading up to your documents, and you can correspond with us and get an understanding where your document in the petition stands.

MR. WASHBURN: Let me talk about that issue, because you discussed -- actually, we did -- we do have an expedited negative.
We do have an expedited positive, and that is, if we get a proposed finding that's positive, we don't give you negative comments, but we turn that into a final finding of positive, so that's how we expedite the positives.

It's harder -- it is easier to expedite the negative, because the tribe has to meet all the criteria.

And what we propose is to -- is to start to work with the most important one. If you can't show that you're historically descended from a historical Indian tribe, then you can't get the recognition, so it's -- but we can expedite a negative based on that.

But a tribe has to meet all the criterion, and so we do have to go through each of the criterion.

We still intend it to be a very rigorous process, and the way we worked on it was backing up the process after proposed findings, and we think that's important and that's the best way that that would work.

MS. KLASS: Additionally, when a
petitioner has a state revision, since 1934 or the
United States has held land for the petition, it sort
of expedites the community and political influence
criteria.

MR. WASHBURN: And let me just make
one final comment, I guess, and that is, this 1934
date is -- it's not our anticipation that a group
that just effected -- came into existence in 1934 or
1933, something like that, is an Indian tribe, and
that's part of the reason for the narrative.

We think that the evidence from 1934
to the present is good, because that's eighty years
and a good proxy for all of history, in essence, but
we anticipate what people will be able to show, that
as of 1934, they were an Indian tribe; that they did
have an organization and had a government and a sense
of community that didn't - wasn't created in 1934,
but was preexisting 1934.

And so that period from 1934 to the
present is really just a proxy for looking at all of
history, but we anticipate that the tribe, you know,
needed to preexist in 1934, and that's partly where
that narrative issue comes in.
They need to tell us their history well before 1934, so --

Is there anything else that you wanted to address from the Chief's comments?

MS. APPEL: Sure.

You had a question about the thirty percent in the community, and what it means is for -- is requiring to show at least thirty percent for each time period, and, basically, that means without substantial interruption, so without more than twenty year gaps. That's what that is.

MR. WASHBURN: Chief, I'll invite you back up. We've got more comments.

Who's next? Yes, sir, please, step up to the microphone, please, and identify yourself.

* * * * * * * * * *

MR. MOORE: Hello, my name is Alan Moore -- legally, my name is Alan Moore and I'm a direct descendent of the Massasoit family and Royal member of the Wampanoag.

The paperwork that I gave you is the same paperwork that I gave to walk the halls of
I have since spoke to Mr. Triccy (phonetic) at the Bureau of Indian Affairs and we were discussing the reservations that exist here in Massachusetts.

That paperwork that you have in front of you is for Freetown, to follow the state forest, which was an original part of our original reservation in Freetown, is a total of four thousand two hundred twenty-seven acres of land.

Mr. Triccy had done a determination because the tribe, the Mashpee tribe was claiming reservations, and he determined that the Massasoit family, when my family owned the reservations and that there are also three other reservations that are in trust with the BIA and interior department.

And even with the letter from Congressman Keating stating the Massasoit's family name to help me to to build a house there, four hundred years after the United States becoming -- becoming to the United States, to this day, I still have not been able to build a house on my own property.
And there's another paragraph, the state determining a reservation, saying the state is acting as stewardship.

I don't need the state to act for stewardship for my property, nor would I act as stewardship for anybody else's property.

This just -- and he just seems so repetitive to me that -- and my family sat at the original Thanksgiving that started the United States of America.

Me and the Chief sat together in Chief Cromwell's office, and he told -- the BIA told the councilman, straight out, that the only reservation in the country that even has the same condition as this property is one by the nation and that's owned by a nation not by individuals; and, therefore, the federal government has no treaties with individuals whatsoever; and, therefore, the only real sovereign corporation in the United States of America.

But, to this day, I can not live on my own reservation, and it's just -- I don't understand, and --

And even with letters from congress,
and I worked for Governor Romney, and I'm going to actually attempt to get a hold of President Putin to see if he can help me resolve this matter.

And that's the reason I'm here today, and even the newspapers didn't want to publish it. They were spending two hundred million dollars to -- trying to achieve recognition and reservations on land we already own.

Every deed in this state was signed by my family, for the whole state, every single deed, and it just -- even with the recognition and all that, they want you to file a lawsuit and do all these things, and everybody shuns you, rejects you, and pushes you to the side.

And, you know, Mr. Washburn, the Chief speaks very, very highly of you, and I appreciate everybody coming out.

The reason I'm here is, I want to go public, and to live on our lands. We have established reservations, deemed and owned by certain families, members of federally recognized tribes, and deserve the same rights as any other American.

Thank you.
MR. WASHBURN: Thank you, Mr. Moore.

Who is next? Who else would like to speak?

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MR. ADKINS: Good morning, my name is Stephen Adkins, and I'm Chief of the Chickahominy Tribe from Virginia.

I would like to thank you all for holding this session and the meeting here today.

I trust that, from what I heard, the comments, the comments you've gathered today and additional comments through the mail, they will use to inform us of your decisions.

I also thank you for what you've done thus far, but I do have a couple of observations. You mentioned those folks in the review process who have these credentials. It seems kind of duplicating the tribe who had tribes with impeccable credentials present the documentation to you, and then you go over those again.

It seems to me to be some kind of way to work together to reduce the duplication of records.
and of evidence.

You mentioned the criteria E, and if that's met, then you can assume there's an Indian tribe, so it looks like, as you go through those other criteria, it wouldn't take so long.

I worked for a Fortune One Hundred company for forty years and in the thirty-six years that I've dealt with the office of federal acknowledgement, has been rendering decisions and findings, you only have forty-seven in thirty-six years. I couldn't have kept my job.

So -- and so I think you're very astute in your observation that the current process is broke.

Well -- and these -- will these proposed regs expedite that process, and I'll be sixty-nine in December, and I've been working on this since the early nineties, so I would love to see you recognize my people, and I would love to see it before the grim reaper takes me.

So I would -- I made the observation, when I went to the office of federal acknowledgement, that -- the meetings I had there, it felt like an
adversarial relationship, and it shouldn't be that way.

I'd like to think that those folks within that office would understand that they're there to help and not to prove that people are not Indian tribes.

And I would like to comment, also, with the idea that we're on the same page. We're here to help you to do those things that you need to do to establish that you're a legitimate Indian tribe.

So, again, I hope, as -- that these proposed regulations -- these proposed regulations do occur, and that it can speed up the process.

I would hate to think that if I walked in here today fresh off the streets, it would take thirty years to render a decision.

I have -- I've often said, if I worked for the bureau of Indian affairs and someone walked in on my first day of the job, I'd say, well, here's my thirty year career. It just shouldn't be that way.

But, again, thank you for what you're
And this question is kind of flipped, but -- and as you look at your crystal ball, do you think that the these proposed regulations will pass?

MR. WASHBURN: Thank you for the questions and the comments.

MR. ADKINS: Thank you for your time.

MR. WASHBURN: And we thank you for your time and comments.

We certainly hope that, and as we plan to go forward, we have heard over and over and over again that the process is broken, and so we know that we need to do something.

You know, I can't tell you if we're going to be enacting in their current form or proposed form, but we will do something. I'm confident that we will go forward to do something.

So many people have asked us to fix these regulations, and so my crystal ball is a little bit cloudy, but I am confident that we will move forward with changes.

MR. ADKINS: Just barely one decision in thirty-six years doesn't speak very well for the
process.

    MR. WASHBURN: Well, let me just say, just to address a couple of things that you just
said, there's a lot of collaboration, between our
social scientists and the petitioner groups social
scientists.

    And we have -- we've got teams that
work on these and each team tends to have a
genealogist, a historian, and an anthropologist, and
sometimes other, and lawyers, lawyers, too, to get us
to -- when we review some of these things.

    And so, we're getting -- frankly, most
of the information we get comes to us from the
petitioning group social scientist.

    We are certainly trying to speed up
the process, because it -- everybody agrees, it
shouldn't take thirty years.

    On the other hand, though, you know, when our scientists don't have anything to work with,
we shouldn't be criticizing them for taking thirty
years to review a petition when it clearly didn't
have all the information they needed, except for the
last five years, or it's something like that.
And so -- and so we're trying to make it more clear, more transparent, more clear when a petition is ready to be considered and when it's complete.

And just to be fair to them, because they do work really, really hard on these, these petitions.

And I can tell you, they -- you know, they find it very rewarding when they can recognize a tribe. Those people work really hard on these processes and find it very rewarding when they do, and a lot of them, they find that they can't recognize, but that's part of the process, too.

Thank you for the comments.

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MS. SAVATTERE: My name is Elaine Savattere and I'm here today from the Northern Cherokee Nation.

First, the Cherokee would like to thank the Bureau of Indian Affairs as a whole for what they -- for the work you're doing, and a special thank you for Mr. Larry Roberts for being the
principal representative for the BIA and who is
taking most of the flack.

Our Chief Ken Grey Elk sends his
regrets that he could not attend today's meeting
personally, but sends his warmest regards to all
those participating today.

We want to thank the BIA for
responding to the needs of the indigenous people of
the United States and to thank you -- to applaud your
efforts to review the 25 CFR 83.

We wish to revisit the continued
third-party involvement. This issue can not be
hammered on enough.

In our research going back to the
start of the federal recognition, all such
involvement usually turned out badly for the
petitioner.

This third-party involvement was
biased, arbitrary, discriminatory, self-serving and
unfair and for the most part continues this way to
the present.

As we have seen, just because it has
always been this way, gives no justification that it
should continue to be done in this manner.

If a tribe's bid for recognition is successful based on historical data, then any failures should be based on the same criteria and not arbitrary statements by a self-serving third-party.

We do have just a couple of more questions to address. We acknowledge that the eighty percent descendent requirement from previous documents is mostly acceptable for going through the recognition process for those tribes that were fortunate enough to have records.

We maintain, however, that if we are recognized as a sovereign nation, should we not already be an acknowledged sovereign nation in reality and, therefore, entitled to determine our own citizenship requirements, as we have done so since our beginning.

Just one more item: We greatly appreciate the decision to extend the comment period for sixty days, which provides an opportunity for a few more public venues such as this.

We have noticed, however, that all the previously held meetings were at the perimeters of
the United States boundaries. While Keshena, Wisconsin was stated as the Midwest, we do not consider that to be entirely correct.

In the states of Kansas, Nebraska, Missouri, Arkansas, Tennessee and Kentucky, there are in excess of five million non-federally recognized indigenous people. This represents more individuals than all previously held meetings combined and these people should be represented.

As such, we feel that some serious thought be given to at least having one or more meetings held for their consideration in or near the center and the actual Midwest areas of America.

Believe me when I state that, literally, millions of Western and Midwestern indigenous people wait for the news of these meetings in the near future.

Wado, and, with respect, the Northern Cherokee Nation.

MR. WASHBURN: Thank you for your comments.

It's always difficult to figure out where to hold consultations, but let me say, this
process we're doing is largely to effectively recognize Indian tribes, and because we have obligations under President Obama to consult with Indian tribes when we make decisions.

We're at public meetings largely because petition groups would not be able to communicate with us if we didn't do that, and other members of the public.

But, most rulings like this don't have any public hearings. Most of them are done on paper back in Washington, D. C, and so -- and we simply can't go everywhere.

No one is happy about where we've been. There are five hundred sixty-six recognized tribes who would like to host us, and I'm not sure that they would all do as good a job as Mashpee has done, but there are a lot of places that would love to have us, and there are places, obviously, off of Indian reservations where we would like to go.

So what we've decided to do is to do teleconferences for the additional consultations, and that way, anybody, you know, can speak to us from there own living rooms if they like, and we would get
maximum participation that way, because all you need
is a telephone to participate in those further
meetings.

And so we will have further
opportunities for discussions, but they will be
telephonic, and anybody from anywhere in the country
can participate, for that matter, probably in the
world, can participate.

Let me push back a little bit here on
this idea about third-party information, because we
do need to have a rigorous process.

And, you know, we've got scientists,
social scientists that sift between good information
and bad information, as to whether it's substantive
or it's just rumor or something like that.

But, we do need the information and we
have a rigorous process, and we will process
evidence, and we need to get evidence from reliable
sources, and we need to have an open process to keep
people -- for people to provide that for us.

In addition to us, we actually
encourage third-party participation, so that we've
got, you know -- so anybody interested in providing
information can feel like they've been heard, and
that's -- and we know that people don't always like
it, but that's the American way, is to get input from
a broad swath of the public and get their viewpoints
on things.

And, certainly, if they've got
evidence to provide, we'll decide whether it's good
evidence or whether it's not substantive, but we
encourage people to provide that evidence in any of
our processes, so -- and that needs to be a part of
what we need to do moving forward.

Thank you very much for your comments.
I appreciate that.

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MR. JENKINS: Good morning, my name is
Dennis Jenkins. I'm the Chairman of the Eastern
Pequot Tribal Nation in Connecticut.

And, first off, I want to thank you
for conducting these hearings and what you're doing
to change the regulations. We really appreciate it.

I'm not going to ask a lot of
questions because I want to get my statement on the
record in my three minutes of allotted time, so I'm going to read that statement, and I will also give you a copy.

The Department of the Interior, DOI, took a positive step forward by acknowledging in the draft that the existence of a historical reservation is tantamount to the existence of a tribal nation.

This change is consistent with Cohen's thinking in the mid 1900s and reflects the practical result of maintaining tribal territory. Such reservations sustain a tribal homeland and allow the tribes to continue culturally and ethically.

When a people live together on a particular land base, they are bound to have important community ties. This is particularly so when they are ethnically and culturally different from the surrounding community; when the area is fairly isolated; and when the inhabitants of the community have a common foe or overseer. This is the case of the Eastern Pequot Tribal Nation.

With the change in the regulations, the DOI took the additional step to allow those to meet the changed regulations to review their requests.
for recognition. This was necessary; otherwise, tribal nations who have not yet petitioned could be recognized while other nations have gotten through the acknowledgement process would not be recognized.

However, in the proposed regulations, DOI additionally allows states and local government to decide whether tribal nations can reapply for recognition. DOI has given states and others a veto over federal decision-making.

We know that the decision-makers of DOI, particularly Assistant Secretary Washburn and Deputy Secretary Roberts are people of honor and integrity, taking great pride to be doing the right thing rather than what is politically expedient; therefore, you can imagine our shock and dismay that they abandoned the support of the old tribes to declare as a matter of equity they owe a higher duty to state and local governments who have done all they can no decimate tribes.

In 2003, the National Congress of American Indians issued a resolution, the title, to support the Eastern Pequot Nation.

I would like to read two of those
Whereas, less than ninety days following the recognition, the attorney general of Connecticut and twenty-nine towns filed an appeal with the IBIA asking that the assistant secretary's final decision be reversed; and the State of Connecticut and other appellants appear driven not by concerns of compliance with recognition regulations, but instead, by the desire to stop the expansion of Indian gaming and to prohibit future acquisition of federal Trust land in Connecticut to ensure that the Eastern Pequot Tribal Nation can never bring a claim for land against the state.

The action of the State of Connecticut in appealing the federal recognition of the Eastern Pequot Tribal Nation is an attempt to undermine the process of federal recognition of Indian tribes, and it hurts all of us.

NCAI further urges the State of Connecticut, its representatives and its towns to recognize legal, historical and political relationship with the tribes within Connecticut, the tribal, social, and political structures that predate
the Constitution of the United States, to respect the inherent sovereignty of those tribes and to engage in good-faith bargaining regarding land acquisition, gaming compacting and other issues of mutual concern, and to refrain from the Bureau of Indian Affairs in the process to the courts to declare legitimate federal tribal recognition decisions, unquote.

This decision is not only morally reprehensible, it is also arbitrary, capricious and not in accordance with the laws of the United States.

The proposal which delegates the authority to third-parties without any recourse of the tribal nations violates the Constitution's Appointment Clause, Supremacy and Commerce Clauses, and the Fifth Amendment Due Process and Fourteenth Amendment's equal protection as applied by the Fifth Amendment, and, finally, and most importantly, the Department's trust responsibility for Indian tribes.

The Appointment Clause, Article II, Section two, Clause two of the U.S. Constitution requires that any person who exercises significant authority under the laws of the United States is considered an officer of the United States and must
be appointed by the president with the advice and consent of the Senate.

Buckley versus Valeo, it also permits the appointment of inferior officers to make decisions.

Congress, however, must delegate the authority to the department to appoint those inferior officers.

The decision to recognize an Indian tribe is a significant decision, second to none for tribal nations that are not federally recognized, and consequently, any provision that delegates the authority to third-parties to veto the federal recognition, especially when the tribes are entitled to such recognition, violates the Appointment Clause.

I'm going to try to get through these things here, so bear with me.

The Supremacy Clause, Article Six, clause two of the U.S. Constitution and the Commerce Clause as it applies to Indians completely preempts the field of tribal commerce including recognition.

Congress has implemented this authority by delegating authority to DOI to interact
with tribal nations through 25 USC one and nine and a
number of other congressional acts.

Rarely does congress grant
jurisdiction to states; moreover, the power of the
Federal Government to manage its affairs has led
courts to treat as presumptively invalid under the
Supremacy Clause local enactments which attempt to
impede or to control the Federal Government.

In the instant case, congress must
clearly and specifically express any delegation of
state jurisdiction over tribal nations. Having taken
no such action, DOI does not have the authority to
delegate state and local government jurisdiction over
decisions affecting tribes without congress's
approval.

The Due Process Clause of the Fifth
Amendment guarantees that the Federal Government will
not deprive a person of his life, liberty or property
without a reasonable opportunity to challenge the
agency's actions.

The United States Supreme Court held
that it was improper to withhold welfare benefits to
applicants who meet the requirements for entitlement
to those benefits, Goldberg versus Kelly.

The individual welfare benefits at issue in Goldberg are minor in comparison to the benefits to which tribes are entitled as a result of the government-to-government relationship; therefore, tribes that meet the regulatory requirements are also entitled to due process. They cannot be precluded from challenging an agency's decision not to recognize them by the arbitrary and political decisions of third parties.

Further, the Fifth Amendment Due Process clause incorporates the concepts of the Fourteenth Amendment's Equal Protection as it applies to the Federal Government. When the government discriminates based on race and national origin, as it does in the proposed regulations, the standard of review is strict scrutiny.

Any arbitrary process that allows political operatives, who are known as Indian fighters, to decide whether a tribal nation may enjoy the government-to-government relationship with the Federal Government does not pass the express strict scrutiny standard of review.
Finally, and most importantly, the proposed regulation bows to political pressure and abandons the Department's trust responsibility for tribes.

The purpose of the regulations is to carry on the special trust relationship between the United States and the tribal nations.

The DOI took on that responsibility when Congress and DOI determined that it should be the agency responsible for deciding who will receive the benefit of the government-to-government relationship.

Having taken on that responsibility, any Indian tribe that meets the requirements for recognition is entitled to the benefits of the government's trust responsibility. That entitlement trumps any so-called equitable third-party considerations.

There is simply no scenario that allows the department to recognize some tribes while not recognizing other tribes that are equally tribes under the same criteria.

This proposal is the worst type of
modern day genocide. While we are all aware that there are tribes that are the haves versus the have nots, this proposal would establish the most egregiously unfair classification recently devised by the Federal Government. It would allow states, counties, cities and others that do not want tribes in their neighborhoods to prevent recognition.

In our other comments section, we would like to support these new provisions that are proposed.

We agree that the department's proposal to define historical as 1900 or earlier.

We agree that the ASIA should make the final decision for the department, that any IBIA and OFA ruling should be advisory, and that the IBIA reconsideration process should be deleted.

We agree that the thirty percent of a tribal community may represent a predominant portion of the community.

We agree with using the 1934 as a starting point for proving community under (B) and (C).

We agree that third-party comments
should be provided within a specific, limited time period.

We agree that the ASIA should establish a method for providing expedited decisions for some petitioners; however, we believe that the process proposed in the preliminary draft is a better, more useful process.

I want to thank you for your time, and I'll hold my questions to later, sir. Thank you.

MR. WASHBURN: Thank you, Chairman Jenkins.

I think what we'll do, because a lot of you have been sitting a very long time, so I think what we'll do is to take about a ten minute break, while I digest all those cases that Mr. Jenkins just talked about, and we'll get re-started at 10:25.

Thank you.

(Whereupon, a brief recess was taken at 10:10 a.m. Proceedings resumed at 10:27 a.m.)
UNIDENTIFIED SPEAKER: Thank you for being here today. I would like to start by thanking Cedric Cromwell and the Mashpee Wampanoag Council, and I appreciate us being here today. Thank you.

MR. WASHBURN: Chief, please introduce yourself for the record.

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MR. VELKY: My name is Richard Velky and I'm the Chief from the Schaghticoke Tribal Nation, located in Kent, Connecticut.

The Schaghticoke Tribal Nation chooses not to submit any written testimony today because of the sixty day continuance, which I appreciate very much, that you notified us instead of tomorrow, because then, everybody else has a chance to look at -- look our work over, for and against it, so that was timely on our part. Unfortunately, for the other four forums, it wasn't; but, we do appreciate it.

We would like to state -- the position I was going to end with, but instead, I think I'll begin with, because the Chairman from the Eastern
Pequot Tribe did such a good job in covering quite a bit on this veto power, that I don't have to hit on the same comments.

But, up there (indicating) you have comments on the proposed rule, it's September 30th, 2014. Last year we testified or gave testimony in the Nascot Reservation (phonetic) and that closing period on comments was supposed to be in August, and then it was extended until September, which is fine. Everybody had a chance to rebut.

But, four months after that, the governor from Connecticut, Governor Dannel Malloy, walks a letter into the White House. His letter was basically demands on how he wanted to see this process handled; that it was affecting the State of Connecticut and his citizens, which we are not any of, and that had to be changed to his liking.

Now, I'm not saying that you're department, Mr. Washburn, you know, bowed to any of his changes, but I will say, they mirrored a lot of what he had in his letter.

And, when they also -- when they came out in print, it seemed to be that the people who
were being interviewed for the State of Connecticut, that represented the State of Connecticut as congressional leaders, they said that they were working behind the scenes on this for nine months in Washington, D. C, and I bring that up because that's exactly what happened to the Schaghticoke Tribal Nation back in 2005.

In 2004, we were granted our federal recognition and then we were attacked by the State of Connecticut, literally attacked by the State of Connecticut, an onslaught that never stopped and it still continues today.

And it seems every time these politicians from our state, this little state gets involved, all the good work that you've been doing has a change in it and the change is always against the Indians.

I need to recognize -- (applause) recognized the two tribes that have been federally recognized in our state, and that's great, and that's the way it should be and that's the way it should be for the other three indigenous tribes that were recognized by the State of Connecticut, but we can't
seem to get that message across to them.

The State of Connecticut, along with a few other states, I'd say, at least the senators -- I believe there was fifty senators that signed on to a letter to do away with the name Washington Red Skins, which I thought was powerful on their behalf, but I don't stand here today in front of you trying to defend it.

I didn't understand how a name, Washington Red Skins, offends them and they want to be politically correct, but yet, they can hold genocide against residents of our State and nobody says a damn thing about it (applause).

The State of Connecticut has a fiduciary responsibility, not just to its citizens, which we are, but they had outstanding fiduciary duties to protect the tribes in the State of Connecticut.

We understand that the attorney general's first job is to oversee for the citizens that he considers a right to be in his state, but we're not to be left behind.

The fiduciary duty cannot be upheld by
the people who oversee the tribes in their state, should be removed and it should be handed to another state or another jurisdiction that can properly represent us and we can have our voice heard. It's not happening.

I'd ask you today to see that it does, because it's not a fair system for the tribes in the state. We're constantly being attacked by them.

You know, what's going on here today is a sad thing with this veto power. To think, after thirty years of fighting with these guys, to be in the State of Connecticut, after three hundred years of them holding our documents, our information, our overseers, on our land, and our people, to help us not one bit to get to this federal recognition process, but today, we have to ask their consent in order to move forward, because we would -- what you consider to be re-petitioning.

I don't look at this as a re-petitioning; I look at this as restoring what was rightfully ours and stripped away by another government, and that we had (applause).

One last thing, if I can, because I
know I'm over my three minutes, we have five hundred
sixty-six federally recognized tribes, all deserving
of their recognition. If every one of them (sic)
tribes had to resubmit and get the consent from
people who were against them, I wonder today if we
would have a dozen. Don't allow it to happen.

I ask you, Kevin, and I ask your
staff, stand strong with us. You're our protection.
You're our Indian agency, not the State of
Connecticut or any other state. Let them go get
their own outside help.

And, you know what, for the money
they've put into it, each and every tribe had to
triple that money to fight, whatever they did put
into it.

And yet, we're still going to give
them the right to give us their consent? No. We
were here. They came later.

Thank you.

MR. WASHBURN: Thank you,
Chairman Velky.

Reverend Norwood.

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REVEREND NORWOOD: Reverend John Norwood, and I am here speaking on behalf of the National Conference of American Indians Task Force on Federal Acknowledgement.

I want to thank the Secretary for being here, holding these consultations. I congratulate you on your efforts and will formally state, that you are a man who has kept your promise to the task force and the Indian country.

I also want to congratulate my brothers and sisters in the Mashpee Wampanoag Nation. I am thrilled to be standing in this wonderful edifice. I thank you for all your good work and congratulate you on all your progress. Thank you for hosting this event.

I want to just simply formally state on behalf of the NCAI task force that the resolution portions that were read by the Chief of the Eastern Pequot, mentioned again in the comments by the Chairman for the Schaghticoke, that these comments are still in place; that the resolutions were neither changed nor rescinded, so they are still a policy of
the National Congress of American Indians.

And while, at the time, the concept of a third-party veto was not even considered, given the current presentation, the task force has discussed this on several occasions, and we've even discussed it with you, sir.

You are aware that we are of the position that any tribe that meets the criteria should not be derailed by the comments of any third party.

And in the event that a tribe can show that there was inappropriate activity with a third-party participation in the decision to decline or rescind their recognition, that they should have the opportunity to appeal, yet again, under the new rules, under the new spirit of the regulations.

And that would be more consistent with the intent and the spirit of the United Nations Declaration of Rights of Indigenous People, which has been embraced by this nation, with the Obama administration; that, indeed, the rights of indigenous people need to be preserved and respected.

And their status within their
countries has to be observed and respected in a spirit of having a third-party veto when certain criteria obviously were abused in the process. I think that that is unfair and I ask you to reconsider the wording.

Although we understand why there should be, perhaps, some comment with third parties, we do not believe they should be the decision-makers, as to whether a tribe has the opportunity to have their material reviewed.

While I would like to reserve the ability to comment at another time, one of the things that I just wanted to mention, also, is you listed the issue of boarding schools in criteria B, using that for proof of community, which is quite appropriate, at least in the spirit of the rules, and has always been the case.

We've seen evidence that it hasn't always been the case in the way that the criteria has been applied; however, we would like to state that it should clearly be shown, and should be added to the descent criteria, in E; that a tribe shouldn't suddenly become Indian simply because the children
are enrolled in a federal boarding school.

Obviously, it was known to have been a community of Indian descent prior to that, and in many instances, the registration in boarding schools, which happened in the middle of the last century, were with tribes that may not have had any enrollments done by the department in the years of the enrollment period.

We think that Indian boarding school attendance, those types of things, in addition to studies listing family names should be included to show Indian descent, even if subsequent to 1900, if that same tribe can demonstrate its unique existence prior to 1900.

I thank you for being able to make these comments at this time.

MR. WASHBURN: Thank you,
Reverend Norwood.

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DR. AUSTIN: I'm Steven Austin, and I am an anthropologist, have worked with federal recognition, and I also worked for six years for the
office of federal acknowledgement, and so I've had experience from both the government's point of view and with working with petitioners.

    Normally, I'm the guy who is recommending to everyone to stay calm and cool and rational and to keep everything focused on the evidence. If you're going to present a case to the federal government, they're going to hear it objectively.

    I have to say, however, I'm going to step outside of my role as an anthropologist for a moment and say that, in terms of the third-party veto that's provided for in the current version of the proposed regulation, that this presents a real problem for me and for some of the folks that I have worked for in the past.

    I'm thinking of your comment, Mr. Washburn, about groups that have opposed certain tribes are saying that -- that these groups should not be allowed to re-petition because they've lost and we've won fair and square, as you put it earlier.

    There's a great difference between "fair and square" and being loud and flaunting your
power, and that's what we faced in the State of Connecticut, as you've just been hearing from the tribal chairmen of both the tribes there.

I've worked very hard on the cases in Schaghticoke Pequot. They're not paying me to make my comments today. I'm doing this of my own freewill.

But then, the idea that they're ever going to get the State of Connecticut to give consent for them to re-petition is ludicrous. That's never going to happen. It's just not going to happen. (Applause) so this provision, in particular, seems to me to be aimed at the Connecticut tribes in particular.

Getting back to the "fair and square" idea, we presented the cases for Eastern Pequot and the Schaghtecoke Tribal Nation, and those cases were both approved by the office of federal acknowledgment professionals, the researchers that you were talking about earlier, as well as by the assistant secretary for Indian Affairs.

They both received final determinations that were positive, only to have them
overturned on the basis of political opposition, not because of the facts of the case.

The idea then that you're going to allow the State of Connecticut and its non-Indian citizens to stand in the way of the Schaghticoke Nation and the Pequot to have their petitions heard fairly, on the basis of the facts of the case is very upsetting, and I think that it would be really well-received if you would please reconsider the third-party veto.

I may not like third-party participation in these things, but I understand it, and, for me, as far as an individual scholar is concerned, I'm not -- I'm okay with it. I'll deal with it, but it should be based on the facts of the case, not based on the disparity of power between several million non-Indian citizens and a few hundred Indians.

This is part of your responsibility, to weed through some of the comments that come in from third parties when they're in opposition, which may not be based on anything having to do with the facts of the case and have everything to do with
people who don't want to see another casino go up in their neighborhood.

And I'm here to tell you, I'm just reminding you, because I know that all of you know this, the Indian Gaming Regulatory Act makes gaming legal in this country. If people want to oppose Indian gaming, let them oppose it as gaming. Federal acknowledgement is about so much more. (Applause)

And there are -- there are plenty of groups in this room today that have no particular designs on gaming, so that this proposition, that this opposition is based on this, political position, and not on the facts of the case.

The same thing would be true in terms of someone deciding whether or not the two tribes in Connecticut get to re-petition or not. It's going to be based -- if it continues on this basis, of having third parties have a veto power over whether somebody gets to re-petition or not, justice is not going to be done, and I think it's really important that you please consider that.

I'm fine with allowing a judge to decide in the case whether somebody should be allowed
to re-petition or not. I think that's fine.

I don't have, ultimately, any trouble
with third parties participating in the
acknowledgement process, but to give them veto power,
I think, is just unjust, and I think that it needs to
be reconsidered.

Thank you.

MR. WASHBURN: Thank you, Dr. Austin.

Who else would like to make a
statement?

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MS. COUREY TOENSING: My name is
Gale Courey Toensing, and I just want to tell you how
I feel --

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

MS. COUREY TOENSING: -- Gale,
G-a-l-e, C-o-u-r-e-y, Toensing, T-o-e-n-s-i-n-g.

I'm a reporter, but I'm not here
speaking as a reporter, I'm speaking as someone who
deals with --

UNIDENTIFIED SPEAKER: Speak up, Gale.
Speak up a little bit.

MS. COUREY TOENSING: I'm not here speaking as a reporter, I'm here speaking as a person who lives in Connecticut.

I just want to say that the politicians who spent all that money in Connecticut opposing the Schaghticoke and Pequot Tribe spent my tax dollars without my permission.

And the other thing I want to say is, I spoke to my selectman last night --

THE COURT REPORTER: I can't hear you.

MS. COUREY TOENSING: -- my board of selectmen in Connecticut refused to sign onto a letter opposing your daft, your proposed reformed regulations, because this letter was distributed by the Schaghticoke Tribal Nations, and my Board of Selectmen said it was full of lies, lies about what would happen if the Schaghticoke Tribal Nation were to be recognized, lies about what would happen to my town.

And they said it was untrue, but they refused to sign it, and I felt that -- thanked them for doing that; unfortunately, that's not true of the
other towns.

(Discussion off the record).

MR. WASHBURN: You may proceed.

Please, introduce yourself.

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MR. RODRIGUEZ: I'm Scott Rodriguez.

I want to comment on the draft proposal for establishing procedures, establishing an Indian as a sovereignty and being entitled to a government-to-government relationship with the United States.

A tribe's sovereignty is established by the ability to meet or exceed a stringent criteria and intended to be a clear demonstration of the historical career, not merely a group of Indians proud of their heritage.

The current rules, as they stand, protect the nature and intentions to inherent sovereignty. The proposed rules will make it impossible to distinguish between recently formed groups of individuals of Indian descent and
long-established tribal entities existing as governmental bodies.

Since the time of first contact, changes to the current requirements do little more than allowing a recently formed group to circumvent the long-established principles followed by the indigenous people who are currently recognized as Native American Indian tribes.

I'm asking you, do not diminish the meaning of the sovereignty for the tribes that have achieved that status.

The current process of federal recognition ensures that only tribes with inherent sovereign rights enjoy a government-to-government relationship with the United States.

The proposed rule eliminates the requirement that a tribe exist as a social and political entity; in fact, the new ruling favors tribes already identified, and when you create new rules for groups previously named, you affect the foundation of sovereignty, what it means to be a tribal government.

A better, a most needed change would
be the ones that add transparency to the process of recognition and an updated manual or explanation of the tribes undergoing federal recognition coupled with a timely review would have satisfied the need for a change in this process.

This change is unnecessary and hurtful to historical Native Americans. I ask that you defer in adopting this.

Thank you for allowing me to speak.

MR. WASHBURN: Thank you, Mr. Rodriguez.

Chairman -- wait just a moment. Are you coming up to the mic? No?

Thank you for your patience.

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UNIDENTIFIED SPEAKER: Thank you for having this public hearing and thank you to the Mashpee Wampanoag Tribe, to welcome us to your lands. It's a beautiful building --

MR. WASHBURN: Please, introduce yourself.

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MS. LITTLEFIELD: My name is Michelle Littlefield. I'm a resident of the State of Massachusetts.

It has long been departmental policy to prove that a tribe exists as a government and as a social culture at the time of first contact. This supports the belief that the tribe sovereignty predates the United States Government and exerts political control over its members. Many tribes today are recognized due to the fact that they have lived as a distinct culture.

In the proposed rules, the historical evidence is in a relaxed and liberal manner. This change to the current process will damage the entitlement of the tribal sovereignty by devaluing the historic nature of the tribes that have continuously existed in the United States.

It will also undermine the true sovereignty of the Native American Indian and change the political landscape for tribes that have proved their sovereignty since first sustained contact.

It is because of this threat of the
historical tribes of the United States that I ask that you not to change the rules for federal recognition.

    The current process of acknowledgement protects the integrity of the historical -- the history of the Native American Indian that proved they continuously existed since the year 1789.

    Many tribes in the United States existed long before the process of acknowledgment did. These tribes have had an honored place in our nation's great history.

    The rules eliminating that a tribe existed before the federal government did would wipe away Indians who have always lived with their culture and that of their ancestors.

    The current process was not -- the intent is not to prove tribal existence where none had previously existed. The proposed rule is based on ethnicity rather than historical fact.

    I ask that you do not change or relax the rules for federal recognition.

    Thank you.

    MR. WASHBURN: Thank you,
Miss Littlefield.

Chief Adams? Gone away? No?
Chief Adams.

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MR. ADAMS: I just want to say a few more words. I'll only talk for two and a half minutes. I saw people up here for about ten minutes -- oh, that's okay.

On the third-party veto, I knew a little bit about it, and I wasn't totally informed about it, but from just a few things I read, if third-party veto is going to carry the weight, it's going to be presumed that --

THE COURT REPORTER: I'm sorry --

MR. ADAMS: -- it's going to carry the weight of whoever the third-party is.

Third-party affirmations should carry the same weight. If someone wants to affirm that this tribe exists, it should carry the same weight as third-party veto.

I also wanted to mention something
about the beginnings of the session. We have two separate sessions, a federal tribal consultation session and a public session. I'm disappointed. I came six hundred miles to be here for this half day, and at this point, I can't be in on that.

These federal tribes -- federal tribes have direct access to the Federal Government all the time. We have it just a very little bit of the time. They should not have any more access than we have as citizens of the United States.

I totally agree that the changes need to be made, in spite of opposition, and I totally -- I do agree, because I've gone to a dozen or more hearings in the United States, in the senate Indian affairs committee, the house of representatives resources committee, been going to hearing after hearing, after hearing, where all the panel members on those particular committees agreed in the United States Congress that the process is broken, totally broken.

And if it wasn't broken, why would it take thirty years to go through it? That's insanity, right there, to take thirty years to go through it.
I want to go back a little bit to try to clarify, if I can, something on the boarding schools that Pastor Norwood mentioned.

He mentioned that the folks that came to attend the Indian boarding schools would get a step ahead in the line, so to speak, would have a little more opportunity for having that, to carry some weight in the process. I want to add something to that, if I may.

Private Indian boarding schools, such as Batewell College (phonetic), and Indian boarding schools run by the federal government -- Batewell College was very similar in that it -- a government boarding school, because it catered to educating Indians; as a matter of fact, Batewell College, in its mission statement, was chartered to educate American Indians.

How do I know so much about it? I'm the chairman of the board. A private boarding school such as Batewell College somehow got connected with that statement about boarding schools. I don't know how you can fit that in, but it's a major -- and at one time, of course, Hampton Institute (phonetic),
which is now a public institution, was also educating American Indians, so there are a few things in there. Once again, this process certainly needs to be changed, and the sooner the better.

MS. APPEL: Thank you. Just to clarify, the proposed rule, it also says, other Indian educational institutions, so I think that would capture your concern.

MR. ADAMS: Thank you.

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REVEREND NORWOOD: I was actually rising to support the chief's statement, that in no way was I trying to exclude those closely affiliated Indian boarding schools, which actually received federal dollars under federal law in the 1800s. I apologize if my comments appeared to exclude those closely affiliated Indian schools.

I would also like to respond to a comment with regard to whether the process as currently being proposed harms sovereignty. Actually, the process, as it is, currently being carried out and conducted harms sovereignty.
There are historic tribes in this country, tribes of first contact, tribes that have, to this very day, treaties with colonial powers clustered on each of the coasts, and even on the Southern seaboard, and who, because of accidents of history imposed upon them, find it difficult to go through the process as it is currently being applied.

The interesting thing is, NCAI, the organization I represent, assisted in the development of the current rules with the intention of assisting worthy tribes.

Studies being done show that many tribes were denied their rights, inherent sovereign rights when the process was put in place, and the way that it was managed is very different from the way it's managed today.

The problem is not necessarily just the criteria; it is the way that the criteria has become a stumbling block for worthy tribes.

The last two tribes through the process required the federal courts and millions of dollars to get the office of federal acknowledgment to do the right thing.
There were many tribes that don't have that kind of access and should not be subjugated and persecuted because of a history designed to destroy the Indian people in this country.

It is important that we acknowledge the fact that all historic tribes are inherent in sovereignty, whether they're judged to be so, whether they're listed by the Bureau of Indian Affairs or not, but all the historic tribes deserve to be able to be acknowledged and have their rights protected by the bureau.

If I didn't say it before, the official policy of NCAI is in support of the positive form changes being proposed.

MR. WASHBURN: Thank you.

Sir?

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MR. LITTLEFIELD: Good afternoon. My name is Dave Littlefield and I'm from East Taunton.

It's a pleasure to meet you, Mr. Chairman, and I'm looking forward to meeting in you in the future.
Clearly, I'm not an Indian, and I --
I've come to this process trying to learn as much as
I can. It's very overwhelming, to say the least, and
it's very interesting.

It's a lifestyle, a culture that I
probably just touched the surface of learning about
and I'm very impressed with it.

I have been following in this country
the -- some of the hearings, and I've had -- have put
together some real quick -- is that (indicating)?

Basically, Western tribes object to
the new proposals, and I'll read (indicating) what I
wrote, everything about the federal acknowledgement
fulfills, what is Indian tribes.

There have been tribes around since
formation of the United States government. They have
existed as an Indian tribe in continuity, have a
strong tribal character in the communities in which
they live, and they are much more than a defined
racial group living among us. Tribes enjoy
sovereignty as a historical and legal fact.

Is relaxing the determination of the
Indian tribe's sovereignty, creating tribes of racial
and ethnic and social entities is contrary to case law in every aspect, so we go from inherent sovereignty to a tribe's sovereignty being determined by the federal government.

The proposal to loosen up the standards for recognition is well intended, but the current process serves the undisputable facts for tribal recognition, nor do these reasons align with the department, to the proposed rule.

My concern is that this goes into a possible racial issue, to civil rights. Who knows? Where does this go, who sovereignty protects (sic) and will come, at what point, to civil rights violations.

So, thank you for your time. I appreciate it and I look forward to seeing you.

MR. WASHBURN: Thank you, Mr. Littlefield.

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MS. CORONADO: My name is Liz Coronado, and I'm --

THE COURT REPORTER: I can't hear you.
MS. CORONADO: -- Liz Coronado, Picayune Rancheria Chukchansi Indian tribe in California.

This summer, I found the opportunity to work with the Mashpee Wampanoag court experience, and, so far, my comment is about revisions to the process. After final, there is a remedial review of reports; however, I feel like if -- tribal courts are ill-equipped to deal with these issues and brings Mashpee to a lawsuit in federal court. The Court attempts to find what a tribe is.

It also is shown by the Supreme Court's misunderstanding of Indian tribes after their recent decision a couple of years ago. We have Justice Scalia and Thomas, hard core annihilists, and do not understand these complex Indian issues.

Instead of utilizing federal courts, we should utilize tribal courts. We have the ability to set up tribal courts. Why not have these tribal courts decide what the tribe is dealing with, the complex administrative issues, the tribal issues on a daily basis.

If the BIA is not up to that, we
should have more conferences, conventions with federal judges, and helping them to understand the Indian tribes and how different they are.

Also, if -- a review seen by (unintelligible) criteria A, that is clearly seen as hearsay, as -- and as federal courts see as one of the basic evidence things, we learned in law school that that would be a huge issue the federal court is facing, what is hearsay and what is completely Indian culture. Everything is told, narrative, not necessarily written down.

Thank you.

(Discussion off the record.)

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16 MR. VELKY: Okay?

17 Richard Velky, Chief of the Schaghticoke Tribal Nation.

19 What he's talking about, I have a question, not directed to you, Mr. Washburn, but to all Indians. I was wondering if anybody was here to represent any third parties or the State of Connecticut?
MR. WASHBURN: Chairman, I --
actually, the purpose of this was for us to get
comments from you, so I think that I'll just stop you
there --

MR. VELKY: You know -- I understand.
I appreciate that, Mr. Washburn, but the point is,
being it's a two and a half hour drive, it is too far
for the State of Connecticut? For a third party to
have an interest, when all they have to do is sit
down, wait a minute, and not give consent to trying
to get the federal regulation.

Thank you.

MR. WASHBURN: Thank you, Chairman,
your point is taken.

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MR. WHITE: Greetings. Thank you,
Mashpee Tribe, for having us here to speak before you
today.

My name is David White, Vice-Chairman
and spokesperson (unintelligible).

I would like to speak about the
third-party veto. We could not support any inclusion
of a third-party veto within this process because, from our perspective, it's always designed to be a two-party relationship, government to tribe. I don't know where the third-party came from, but we have suffered greatly at the hands of the State of Connecticut, as well.

But, just a couple of questions on that note, some of the language you used, sir, earlier, the American way and fair and square, and I believe that one gentleman spoke earlier, if things were fair and square, we wouldn't be here, for sure. Maybe your perspective, "the American way," is not the same as ours.

You use it as a positive thing. Our experience has not been so positive with America, honor, integrity, but it seems that honor/integrity has not been returned to us.

Also, with all the integrity you've spoken of, your academic teams, and the integrity of the teams working within the tribes, it seems you would not need -- with all these resources, you need to make a decision, why would this third-party be necessary?
Also, there seems to be some clarity needed on some of the other criteria, on what is considered evidence. Is it one page? Is it one hundred pages? Is it a picture? It seems always to be arbitrary and capricious and still unclear with us. What is the evidence and what is the standard for that?

Because we've been back and forth for thirty years, like Lennon (phonetic) here, (indicating) and it seems not to be enough. Standardizing that requirement might be a good idea. And, also, definitions for things like "community," the way you define community and the way we do it is different. What does that mean? A certain number of families, that makes the "community"? Interaction for a certain number of years? It's unclear, again, what is -- what sufficient evidence is.

And going back to the more than twenty years clause, I'm not sure where that number came from. Who came up with that? But -- and that's not even one generation.

We've been suffering for generations
here, hiding in the dark more than twenty years, been
quiet for a long, long, long time, more than twenty.
I don't know why that number was used, but a
clarification on that might be good.

Also, we support the changes that you
suggest. Some of the changes are positive; but, we
question, what -- that looks good on paper, but
what's to hold you to those words on paper?

For years and years and years, all
kinds of good things have been said, put on paper;
you don't follow what you write. What's to assure us
that's going to happen this time?

Thank you for letting me speak.

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MR. BROWN: Greetings to all. I want
to thank the Wampanoag Mashpee Nation for holding
this, a very important issue that impacts all
indigenous people and to thank the Bureau for Indian
Affairs for their presence, at least at this point,
lending an ear to some very home-hit issues (sic)
that we need to discuss and resolve.

Just a little background. I'm
Hiawatha Brown, a councilman for over thirty years, and I have been through the system, here, standing in front of you, trying to defend what we believe is right in honoring our ancestors, carrying forth their dreams and ideals, which is going to be a very important part of our future, of our nations.

With that being said, I just want to share this point with the tribes that are here, represented. I don't make a distinction between federal and non-federal tribes, through the process of history, whether it's our criteria or federal criteria or the state's criteria, that's probably the mechanism.

But, I can tell you, we've been in the system for over thirty years, and let me tell you now, we're in a system and still being challenged by the State of Rhode Island every step of the way. Once you get in the system, it's twice as hard to hold on to what you have.

Don't think you're being overshadowed or overlooked in your process, because it's happened to all of us. You're talking to Mashpee, who it took them over thirty years to acquire their federal
status.

   Everything we do today is just a footprint, as to what we'll have to do in the future, bear that in mind, and never, never overlook that. That's an important part of who we are as indigenous people of this Northeast continent.

   For many years, going back to 1978, we filed our petition, over thirty years ago. That is going to require each and every one of us to support one another, and just because we have made the grade, five hundred sixty-six federally recognized tribes made the grade, a federal entity doesn't make us any better than a tribe attempting to get to that same status.

   We should be able to define who our Indian relatives are and neighbors are, and we know there are a few groups perpetrating, who can't prove anything in history.

   It is through an act of congress and through the secretary's approval, as to how we become a federally recognized tribe, very strict; in fact, that's where we'll -- why we're here today, to define what is necessary and isn't necessary; however, I
don't agree with the Federal Government, certainly
don't agree with the State. It's up to us to
determine who we are, through our own histories.

Undoubtedly, we know who are neighbors
are through time and memoriam, and we know who the
tribes are, who have been part of our local wars, our
local support, and, currently, who we are dealing
with, our ceremonial requirements, dealing with a
very important part of who we are.

I have a -- have serious problems with
the position that the Federal Government has taken
for the a number of years dealing with tribes west of
the Mississippi, including all of us. There has to
be a different criteria.

We are the aboriginal tribes of this
particular continent, at least in this region. No
question about the tribes west of the Mississippi;
however, they're about a hundred years behind us, the
major cities on the East Coast. They were just
starting the war on the plains. Taking nothing away
from the -- their history, but what has been taken
away is our history, and other things that need to be
addressed and focused on.
I'm making this a personal issue, and I'm not personally concerned with the department of the interior, or justice, because it's a conflict of what our histories are. We are a people of oral traditions, oral tradition passed down through generation to generation. We learned long ago, it's -- once put on paper, it's open for interpretation.

We better be wise to the games and tricks and issues that we have to confront on a daily basis, to defend the people of the Northeast continent.

And I'll say it again, if we do not work together, collectively, none of us are going to succeed, because we've assisted for thirty years, and they're trying, still, trying to knock us out, under the state's control or the federal government, and not standing up to the fiduciary responsibility to us.

There's many, many issues at the forefront, and two of the issues right now at the forefront of the Indian countries are legal questions, dealing with Carcieri, which started out in Narragansett, two hundred acres for the purpose of
housing, a fundamental issue which we all need, and
this ended up before the United States Supreme Court,
have been fighting for five years to overturn this
issue, although the Federal Government.

And, certainly, this administration is
supportive, but we can't get the issue to the table
and have logical discussion through congress, and so
at one stage or another, we are either going to have
the support of congress or the support of the courts.
It appears to me, at least, in the last four or five
years, neither one support the issue.

Tribal sovereignty is being eroded as
we speak. Every time we take a little chink off the
armor, it crumbles, and I can tell you, I'm sixty-one
years old, and I'll guarantee, in my lifetime, many
lifetimes, there will be no federal status of Indian
tribes, probably end up going back to the same
situation we dealt with prior to this, coming to the
East Coast thirty-five years ago, forty years ago.
The problems that exist with the Northeast tribes are
unprecedented.

There's no other region in this
country that's run into the same conflicts and
problems that the Northern tribes are having, from Maine all the way down to Rhode Island; specifically, Massachusetts, Connecticut, all having major problems.

The Southern tribes, they have a little different responsibility -- I won't say "responsibility," a little different methodology, how they're dealt with. I'm not quite sure why there's a distinction between the North and South or the West, or Southwest. I'm not quite sure why. These things are apparent.

But, clearly, with this generation, it's identified that, certainly, there are two classifications of Indian tribes, and when you speak of Indian federal law, and there's much law out there, a precedent to defend self-determination, defend who we are as an independent sovereign nation; however, the federal agencies, in my mind, have not stepped up to defend us. It ends up being political. I'm always under the assumption the Federal Government supercedes the states and there's something is wrong with the picture.

Last but not least, I'm just
reiterating once again, we need to all work together. My tribe has supported a number of tribes over a thirty year period that have come about, come into the system, a federal system, and we will continue to do that, because we've done our research and we know who the aboriginal tribes are as well as the next person.

It's in our history, in our documentation, and it's part of who we are as Narragansetts, and the things we've done for thousands of years in support of these other nations, and we will continue to support that.

I do agree, also, this rule needs to be changed within the federal recognition process, but I think that the -- ultimately, the responsibility of the Federal Government is to make the final determination, and I think that we determine it right in this room. We're the ones to determine this in other venues in this country.

And I would strongly recommend that the consultations that have happened throughout Indian country to date, that -- and every time you go to consultation, and that stuff (indicating) needs to
be available.

We need to review it, make sure we're not stepping on others' toes and put more continuity into this, the effort we're putting forth.

Thank you.

MR. WASHBURN: Thank you, Councilman.

Anybody else?

* * * * * * * * *

MR. MANNING: My name is Charles Manning, and I'm from Falmouth, MASS, and the reason why I've come here, and I talked to the chairman in beginning, and I realized that, after my talk with him, that if -- if it isn't recorded by this young lady, he's not going to remember what we said in our conversation, and so --

So I raised this question with him: If the -- I have a friend who I came here with, who has a different problem than what this conference has been called to, and that is, as many of you know, the American Indian, which is the term that was used by a previous (indicating), and that at one time meant that anyone who lived in the United States or Canada
was an American Indian and could travel back and forth in one track.

And then, all of a sudden, a queen of England, former Queen, Queen Elizabeth, decided to draw a line, said that the Indians who lived in Canada be called the Canadian Indian and those living in the United States would be called the American Indian.

My question to him is this: Is the United States of America being controlled by a Europeans? If a tribe was in Canada originally and the people who were a member of that tribe immigrate to the United States, aren't they still a tribe?

And I asked him to answer that, and he said that -- I said that to him, Chairman, that I understand that this is not the purpose of this meeting, and -- because he made it a very clear in his presentation that you do not have a government in the United States; you do not have a tribe, but --

So, I asked him, planted a seed, and I would like to come back, just suggest that you take this back and discuss this problem.

I'm saying this now so that it's being
recorded by this young lady, so that when he gets
back and listens to the tape, that he'll be reminded
that he agreed to raise this question.

    Thank you.

MR. WASHBURN: Thank you, Mr. Manning.

    Yes, ma'am. Step forward.

* * * * * * * * *

MS. SOUZA: My name Dawn Blake Souza,
and I'm a Wampanoag.

    In the first place, I came to listen,
had no intention of speaking, but I have listened to
two previous speakers, and the young lady -- I don't
remember your (indicating) name, the Suffolk law
student, her remarks about the importance of tribal
courts in the process, and then Hiawatha Brown's
remarks really moved me to speak, because he
addressed the issue, he spoke of it, also, of the
importance of oral tradition, and I don't see
anywhere, in any of the regulations, anything about
the importance of oral tradition.

    If I remember, I believe, in 1976,
when Mashpee was undergoing the trial for federal
recognition in Boston, and I was present, and they were addressing the issue of proving long-term
maintenance of laws, tribal laws, and the issue came up about -- regarding written laws as opposed to oral
laws, and I remember specifically listening to the elders talk about why they did not get the hearing
after they had got to a higher -- moved on higher in the herring run.

It was very clear to the Court that there was an unwritten law that everybody in the tribe obeyed; whether a child, adult, elderly person. There was no need for written law because the tribe had all the laws, laws that were not broken.

These were laws of nature, but -- the laws to govern, to protect future generations. I don't know if anyone here remembers that. That struck me as a -- as very important, going to the importance of oral tradition, and I don't see it here, oral tradition.

I'm seventy years old, and, to me, at my point in my life, at this point in my life, I understand that.

I understand that what my grandmother
told me and what her grandmother told her is much more important than any proof on paper that I might be able to present.

So I want to thank Mr. Hiawatha Brown for his remarks, and, also, for this (indicating) young lady. I know it's a long shot, tribal court participation, but I think that she was right about tribal courts understanding a lot more than the federal courts.

Thank you.

MR. WASHBURN: Thank you.

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MR. LION HEART (Phonetic): My name is Lion Heart of the Royal House of the Weekanoket Wampanoag Nation.

The reason I'm called Royal is because -- (unintelligible) twenty-two years, first christened in Charlestown seventy-eight years ago.

God shows us signs as we walk the earth and the sign that he shows us is for direction, four moons and four seasons, and, also, the letter L, L-O-V-E, and this is four, this is the love he has
for each and every one of us as we walk the earth.

Over the years, we have gotten away from the spiritually that the creator has used among our people.

In the fifties, everything was going well, but all of a sudden, people came in, tried to change what was taught from ancient times.

The Native Americans I spoke to, they don't want to worship the son of God. In Revelations, Chapter twenty-two, verse sixteen, it tells us that the Son of God is the bright morning star. How old is your Bible?

My godmother was Princess Red Wing and it was her who shared this. We never had a Bible, never had time to learn to read the Bible, but we knew how to communicate, and the communications we had and shared was, our God was alive and here for each and every one of us.

As we walk the earth today, he shares with us the hand of God. God gives you the gift of time, a lifetime to walk upon the earth. He gives us a mind: Yes, no, maybe.

So, God/no God? But, the greatest
things he gives with each and every one of us, he takes us, and through his love, he chooses your mother and are -- your father and your mother, and your father, that's the -- a gift from God, but he --

Also, he put you in the family, the greatgrandmothers and greatgrandfathers, brothers, cousins, sisters, and also includes the in-laws, but the fifth gift that he gave each and every one of us as we walk the earth, he gave each and every one of us a soulmate.

He loves you, forgives you, he teaches you; but, most important, if you believe in his son, some day he will receive you.

Think now, God, and (indicating) ten, ten, ten, the native people came together to arise, a miracle comes out of the Colony of Virginia, from Florida, all the way up to New York, and also involved the first natives.

And so God, the creator, is moving, and now is the time for every one of us, even you who don't understand, to look in the scriptures, circumscribed, your heart has to be circumscribed before you go any further.
The gift he's given each and every one of us is the spirituality and you have to connect with him. If you don't connect with him, we're going to have another time then of denial, delay and discourage.

Ah-ho.

MR. WASHBURN: Thank you, sir.

Is there anybody else who would like to be heard?

* * * * * * * *

MR. AUSTIN: My name is Stephen Austin. I spoke earlier. I'll try to do it quickly.

I was concerned I wasn't going to get my point in in three minutes, and now I've got a couple of seconds.

It's easy to complain about things when they're not going right. Sometimes we don't stop and say thank you, express gratitude, and I want to do that right now. I want to say thank you for all the hard work you've put in working on these proposed regulations.
And I remember, when I was a staff member at OFA, we tried many times to make revisions, change the ways in which we interpreted regulations, things like that, and to make it more simple, the process, and always, almost always, to no avail.

And when I heard about this latest attempt to revise the regulations, I was very skeptical, that it was probably never going to go anywhere, they'd tried it so many times before.

I'm here to say, I'm not as skeptical as I once was, and I appreciate the work that's gone into this.

And after taking into consideration the comments being made, that this proposed regulation does move forward, in some form, if not exactly like it is now, that at least some of the changes that have been proposed will actually take effect.

I thank you.

MR. WASHBURN: Thank you, Dr. Austin.

Anyone else?

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MS. STONE: Marie Stone, tribal secretary for the Mashpee Wampanoag Tribe.

Thank you for coming, and welcome to God's country.

My question is specific to the thirty year matter. Could you help to -- could you help me to understand, out of the proposed recommendations, which one is -- how will it reduce or prevent someone from having to wait thirty years? And how do you set your own goal, from start to finish of that cycle, so it's better managed from a time standpoint?

MR. WASHBURN: Sure.

First, let me say that I'm a mere mortal, so I won't promise you any specific time frame.

And one of the reasons -- as I said, one of the reason is that it's taking -- it has taken thirty years, that people are encouraged to write letters of intent, but the evidence wasn't forthcoming for many years after that, and so people shouldn't have an expectation that they're getting an answer if all they provide is a letter of intent. We're clarifying this, that you need a complete
petition before the clock can start running. That's one of the aspects.

We've got several things to, sort of, expedite the process, and I talked about a couple of them in the very beginning, one of which is, if we get a positive proposed finding for a group, additional group, we don't get comments about that when you put it up for public comment, that should be determined -- a final determination should be produced quickly, but a positive determination, rather that waiting for a statutory period, and, you know, for more time, so that's one of the things.

Certainly, the negatives will be even more -- can be more expedited under the new process, and we propose, if there's going to be a negative finding, and as we've seen, there are more negative findings in the past than positive, overall, the adjudicated petitions we've had, and so it's a rigorous process, which can sometimes be lengthy.

And we've taken away a process such as the IBIA piece but added an opportunity for a hearing before a judge. That also has the potential of lengthening the process in certain ways; however, we
do believe that if we clarify what the rules are, I
would think that -- did we make that clearer, you
know, and that would be easier for petitioners, and
so that -- and we believe that will help to move
things along a little more quickly.

Liz or Kaity, would you like to add
anything?

MS. APPEL: Sure.

We have tightened the time frames for
the time that the department begins the review and
petitions, and so from the time it begins a review of
a petition, I think it's a year, to issue the
proposed findings, and the proposed rule would cut
that back to six months.

And there's also time frames for the
assistant secretary and the office of hearings and
appeals, a separate rule governing the hearing
procedures and has very stringent time frames on the
hearing itself, which they base on their experience
with other types of hearings.

MS. KLASS: In section 83 point
thirty-two of the proposed rule, there is a specific
breakdown of the time frames for OFA's review, and
that's pretty helpful.

MS. STONE: My second question -- and I do agree, that it seems to be easier West of the Mississippi, have you taken a look at doing a sample, to say, would it -- is every tribe West of the Mississippi -- is the turn-around time half of what it is for East of the Mississippi? What type of problem solving are you doing to get to the root cause of what -- outside of delays of information, papers and letters and comment period, all of that, how have you analyzed the process itself to make sure that what you're proposing is going to have a positive impact? Have you gone through the pros and cons and impact of those?

MR. WASHBURN: Well, let me say this: We attempt to apply the same standard to any petition that comes before us, no matter where they live.

Hiawatha is correct, though, there are differential treatments. I'll explain partially why that is. Under the existing rule, and we're trying to change that, part of the reason is, we typically -- if we view the tribe's history from the time of first contact, that's a much earlier period
for Eastern tribes than Western tribes, so, you know, Western tribes, it might be 1850 or '60; whereas, the Eastern tribes might predate it by two centuries. That's difficult evidence to gather.

So our new rule will alleviate that disparity to some degree. Every tribe will have to give us a narrative of its history, but some of the most important criteria, they have to show that criteria from 1934 to the present rather than historical times or first contact to the present, and that, to some degree, levels that playing field.

Having said that, we don't actually believe any of the tribes that we have -- that have failed, have gotten a negative finding out of the process, there were none that could pass the 1934 forward period that would have failed based on time from that point, and that's why we think the 1934 period going forward is a good proxy for all of history.

We have not found the case where a group failed the earlier period but succeeded in the post 1934 period.

We have -- and we actually think this
new approach is sound; in other words, still rigorous
and still substantive, and it's the same information
we need without the expense of looking two centuries
erlier, hiring all the anthropologists and
historians to do that, but -- and it's a rigorous
petition, process, but a lot less expense and less
time consumed in trying to prepare that petition.

MS. STONE: I understand the
"rigorous," but put a cap on that time. It's
frustrating. Thirty years is a long, long time, and
many of us would like to be alive and get our land
back, but -- and I would suggest, strongly, a cap on
the time, because we're also taxpayers, and we also
believe that you guys need accountability in that
regard, and -- because of the turnover of
administrations and personnel, and people picking up
where others left off.

I want to -- last and least, I want to
endorse that, they should participate with tribal
courts, in that perspective, as the woman from
Suffolk said.

My own old English high school teacher
said, as Dawn said -- oral tradition, we will need to
do a better job collaborating directly with the tribes on this, just as we're doing today; that should be part of the material, and included, because we probably have more of that, but -- but how do you define it?

That's all. Thank you.

MR. WASHBURN: Let me say that oral tradition is not -- is alive and well in our communities and certainly considered in anthropology and by the historians, and we don't talk about paper evidence, either; we didn't talk about that, and we didn't describe all of the evidence in our rules. We don't consider changing those things.

Oral tradition is relevant to the social scientists doing the history, and, in my experience, oral traditions are stronger than paper traditions.

A lot of times, people write on paper, stick it on the shelf and forget about it. Oral tradition, the facts get repeated and remain more deep-seated in people's memories and identities than the paper, the written down history, and so -- -- that's my experience.
Let's (indicating) -- just for a minute --

(Discussion off the record).

MR. WASHBURN: Would you say your name for --

MR. GUY: William Guy.

MR. WASHBURN: Thank you.

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MR. GUY: My particular question is on the -- on page five, proposed rule, criteria G, where it says congressional determination, the burden of the government to show the recognition was determined by congress.

How far back does that go? Does that go back in colonial times?

One of the problems with the tribes up here in the colonial Indian government, we were a society long before the West was won; therefore, there should be a separate criteria for the tribes of the thirteen original colonies.

Now, I don't know if you take that
into consideration, because if you look at the
history of the English coming to -- going to Europe,
they did the same thing in Europe they did here, in
the United States of America, what their intention
was, to wipe the Indian race out here in New England;
therefore, if you're saying that the congress -- was
terminated by congress, the government at that time
terminated a lot of these tribes, because when they
came to this country, the Pokok Tribe (phonetic) had
sixty tribes in it. You're lucky if you can find
twenty of them. They don't know who they are. They
did their job well, and if you look at English
history, you married into the royal family to take
the land.

So, what I'm asking you is, why do we
have to prove who we are? The treaties of 1790, they
say we're a sovereign people. Why do we have to come
to you?

My parents made it perfectly clear to
me back in the forties, and I'm in my seventies, and
I can -- I'll tell you who I am. I can tell you who
was in it, my greatgrandfather, and where his son
came from, and my greatgrandfather, ten generations.
One of the Native Americans crossing the Delaware with George Washington is my greatgrandfather, six generations, that's the greatgrandson.

You people know the history. You're keeping it from us. I know who I am because my parents made it perfectly clear to us. I know who the tribes are, and we are the tribes not being recognized here.

So I want to know, what is the criteria here? Just what is it the government wants when they make this here statement (sic)?

MR. WASHBURN: Yes, Mr. Guy, there was a period in the 1950s, the United States Congress enacted specific legislation, I believe, around a hundred tribes, by name, which are listed in the legislation, and the issue here is if congress has terminated the tribe. The executive branch, who we work for, does not have the authority to resurrect them. This is determined by congress, in essence, this principle, when congress enacted -- where they named a tribe, said it has been terminated.

There may be other instances, but the principles -- this is where it's talking about
that -- not "talking about," sort of, in general, actions resulting in termination of a tribe or the dissipation of a tribe, but specific acts addressing termination of a specific tribe.

Kaity.

MS. KLASS: I would just add, the specific government-to-government relationship between the tribe and the Federal Government, just like Secretary Washburn said, it's not general actions, a specific government-to-government relationship.

MR. GUY: One other thing, you need to take into consideration the fact that if it were not the Pokanoket Tribe or Nation, when you came to this country, pre-Pokanoket Nation or confederacy --

MR. WASHBURN: Mr. Guy, I have to stop you -- I'm a member of the Chickasaw Nation of Oklahoma. We're hearing from a different part --

MR. GUY: -- we're talking different colonies, and Rappahannokcs down in Virginia, Jamestown, Virginia, these are the first two colonies in this country, and were it not for these two tribes, there might not be a United States of
America. Think about that. You know it's true.

* * * * * * * * * *

UNIDENTIFIED SPEAKER: I have one point concerning the proposed regulations, I don't know if it can be done, but perhaps there is a way to have something in the rules to identify records in some states or counties which were burned, to ensure that -- for instance, in the county for my --

THE COURT REPORTER: Excuse me --

UNIDENTIFIED SPEAKER: -- in 1884, the Civil War, the county records we almost totally burned, so the records pertaining to all the people were gone.

In 1884, the Courthouse was again burned, and that happened in several cases in Virginia and in other states. I wanted that to be on the record, to say that, perhaps, there is a possibility to identify those as specific problem areas.

MR. WASHBURN: Thank you, Chief. That is something that -- I think, that we do consider it, as far as anthropology, even historians, much like
the Virginia case is especially true, certain marriages were illegal and forms weren't always filled out truthfully and accurately.

Our historians, anthropologists and genealogists do take into account those issues in reviewing things, and we support that. We think that's necessary.

Thank you.

Madame Vice-Chairman?

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

Firstly, I want to make a couple of comments about the public words here. I'm not sure who is going to be able to share information this afternoon, but -- and I am actually very thankful of the -- for a lot of the changes that are being proposed today.

And, I mean, just to put things in perspective, when Mashpee applied for federal recognition, I was fourteen years old and I ended up working on the petition as an adult, so it was a long
and arduous process, but for tribes East of the Mississippi, it was especially arduous.

We had, as you say, about two hundred more years worth of documentation to provide. We ended up with a petition that was fifty-four thousand pages, fifty-four thousand pages in thirty-two years.

For tribes West of the Mississippi, because their contact was so much later, the burden was lower, and that gives us an uneven playing field, so I think that that proposed change is very reasonable.

I would agree with one commenter, that moving the documentation date from 1934 to 1900 would keep things consistent. I think it would be better.

My only concern, and I hear what you're saying, Mr. Assistant Secretary, that no one in the process has not been labile to meet the burden since 1934, and my only concern are communities that voluntary opted not to be included in the Indian Reorganization Act, in IGRA, and somehow, some documentation may give them gaps bigger than twenty years, and I think that 1900 is more reasonable, and it's not that big a deal, but --
And I want to make one other point --
two other points; one, is just a personal statement. Someone earlier said that they felt like indigenous people here, tribes, deserve their recognition and that we as Indian people were living among them. I want to state that we, as Indian people, do not live among our neighbors; our neighbors live among us. I just want to make that point.

And, lastly, and I said this in an earlier consultation, that I think it would be helpful to the process and to our brothers and sisters and to all the Indian country, neighboring tribes, if we had more of a say in who is around us. As Hiawatha said earlier, we know who has been here. We get together during ceremonies and pow-wow and support each other on political issues, and we travel across the country as the Mashpee league of sovereign nation, the conferences here. I understand that, politically, it could be a problem if your neighbor is not willing to support you, but I also feel like, if you want to know who is actually here and who has been
functioning as a tribe, ask the other tribes in the neighborhood.

If the provision existed that recognition from one tribe of another tribe were accepted prior to the passage of IGRA, that would do two things: One, that ensures that the tribe that's saying, we were here prior to IGRA, prior to 1970, it would eliminate the possibility of that happening. The documentation would already exist prior to IGRA, and also eliminate anybody from saying, you're just supporting your neighbor so they can have Indian gaming, so -- and that's one of the issues that seems to crop up consistently, as a complaint, is whether or not there's going to be another casino, and if we look at the existence of a tribe by another tribe prior to the inception of gaming, I could see that this would eliminate the problem on both sides.

And I think that having a tribe in the neighborhood identify their neighbor, even if it's to complain about them, would be helpful in the process, because we do know who's been here, and I can tell you whose been here my whole life.

I'm fifty years old, not "old" by some
standards, but around long enough to have known who
was here when I was five, six, seven, ten years old;
and, certainly, people like our Chief, who is
ninety-two years old, can tell you who was here and
who wasn't here.

So that's all I have to say about
about that. Thank you.

MR. WASHBURN: Thank you, Madame
Vice-Chairman.

And that's all that -- we're right at
noon and we need to give everybody a break.

I do want to tell you all that I'm
grateful to every one of you for appearing, and
especially those of you who spoke, who have provided
some wisdom as we work on this process.

Some days, it feels like a thankless
task, I have to say, but I know it's important, and I
am grateful to all of you for traveling here, some of
you from great distances, to be here and be heard on
this rule.

We will resume at 1:00 o'clock, I
believe, at the same location. Thank you.

(The proceedings were adjourned for
luncheon recess at 11:59 o'clock a.m.)

* * * * * * * * * *
CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS )
COUNTY OF BARNSTABLE ) ss.

I, Diane Kelly, Stenographer, and Notary Public, duly commissioned and qualified within and for the Commonwealth of Massachusetts, do hereby certify that on 7/29/14 at 8:00 o'clock a.m., at 483 Great Neck Road, Mashpee, Massachusetts, I appeared for the purpose of stenographically recording the CONSULTATION AND LISTENING SESSION; that the proceedings of the Consultation were reduced to typewriting by computer-aided transcription; that the transcript is a true record of the proceedings thereof.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this ___ day of __________, 2014.

________________________
Diane Kelly
Notary Public

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