

TESTIMONY ON THE FEDERAL TRIBAL RECOGNITION PROCESS
Senator Christopher J. Dodd
May 11, 2005

First, I would like to thank the Indian Affairs Committee -- particularly Chairman McCain and Vice Chairman Dorgan -- for holding this hearing this morning. No Committee has done more in the Senate, or in the whole Congress, to advance the cause of improving America's understanding of native peoples and native cultures. Chairman McCain and Vice Chairman Dorgan, along with their predecessors -- Senators Campbell and Inouye -- have worked tirelessly to enable America to better understand her native peoples and protect their sovereign states.

I would also like to acknowledge Governor Rell and my colleagues from the Connecticut Congressional delegation -- Senator Lieberman, Congresswoman Johnson, Congressman Shays, and Congressman Simmons. I would also like to acknowledge two other witnesses: Chief Richard Velky of the Schaghticoke Tribe and Mr. Ken Cooper of the Town of Kent, Connecticut.

At this time I ask Unanimous Consent that testimony given by the Attorney General of Connecticut, Richard Blumenthal, and by the First Selectman of Kent, Connecticut, Dolores R. Schiesel, be inserted into the Committee record.

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

For several years now, the recognition process administered by the BIA has come under scrutiny. The General Accounting Office, in a study it released in November, 2001, concluded that –

"...because of weaknesses in the recognition process, the basis for BIA's tribal recognition decisions is not always clear and the length of time involved can be substantial."

These findings are reminiscent of the testimony offered by Kevin Gover, who until January 2001 was the Assistant Secretary for Indian Affairs. In May of 2000, Assistant Secretary Gover told this committee that –

"I am troubled by the money backing certain petitions and I do think it is time that Congress should consider an alternative to the [existing] process. [Otherwise], we're more likely to recognize someone that might not deserve it."

Mr. Gover further stated –

"(the) more contentious and nasty things become, the less we feel we are able to do it... I know it's unusual for an agency to give up a responsibility like this, (but) this one has outgrown us.... it needs more expertise and resources than we have available."

Furthermore, The Chairwoman of the Duwamish Tribe of Washington State testified that she and her people ``...have known and felt the effects of 20 years of administrative inaccuracies, delays and the blasé approach in...handling and...processing the Duwamish petitions."

Taken together, these statements speak to a startling admission. I would suggest that any time an Assistant Secretary says in effect that his or her agency is incapable of grappling with one of its fundamental responsibilities, that person is issuing a cry for help that should not and cannot be ignored.

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

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

As Senator Inouye said two-and-a-half years ago on the Floor of the Senate, the process for conferring federal recognition on our nation's Indian tribes is a "...scandal...[that] should be changed." Those tribes deserve better. And so do others who look to their government to act fairly and expeditiously. I believe that we have an obligation to restore public confidence in the recognition process.

Toward this end, Senator Lieberman and I have reintroduced two bills designed to ensure that the recognition process will yield decisions that are beyond reproach.

The Tribal Recognition and Indian Bureau Enhancement, or TRIBE, Act would improve the recognition process in several ways. First, it would require that a petitioner meets each of the

seven mandatory criteria for Federal recognition spelled out in the current Code of Federal Regulations. It is by now well known that several decisions of the BIA applied all seven criteria to some tribes, but not to others. This is patently unfair to those tribes subjected to a higher level of scrutiny by the BIA than other tribes. It runs contrary to our country's sense of fair play. Second, the TRIBE Act would provide for improved notice of a petition to key parties who may have an interest in a petition, including the governor and attorney general of the State where a tribe seeks recognition, other tribes, and elected leaders of municipalities that are adjacent to the land of a tribe seeking recognition. Third, it would require that a decision on a petition be published in the Federal Register, and include a detailed explanation of the findings of fact and of law with respect to each of the seven mandatory criteria for recognition. Fourth, the TRIBE Act would authorize \$10 million per year to better enable the Bureau of Indian Affairs to consider petitions in a thorough, fair, and timely manner.

I want to emphasize what this legislation would not do. It would not in any way alter the sovereign status of tribes whose petitions for Federal recognition have already been granted. It also would not restrict in any way the existing prerogatives and privileges of such tribes. Tribes would retain their right to self-determination consistent with their sovereign status. Finally, and

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

Our second bill would provide grants to allow poor tribes and municipalities an opportunity to participate fully in important decision-making processes pertaining to recognition.

Consequently, these grants would enable these communities to provide to the BIA more relevant information and resources from which to make a fair and fully-informed decision on tribal recognition. When the Federal Government, through the BIA, makes decisions that will have an enormous impact on a variety of communities--both tribal and non-tribal--it is only right that the Government should provide a meaningful opportunity for those communities to be heard.

I believe that every tribe that is entitled to federal recognition ought to be recognized and ought to be recognized in an appropriately speedy process. At the same time, we must make sure that the BIA's decisions are accurate and fair. Every recognition decision carries with it a legal significance that should endure forever. Each recognition decision made by the BIA is a foundation upon which relationships between tribes and States, tribes and municipalities, Indians and non-Indians will be built for generations to come. We need to make sure that the foundation

upon which these lasting decisions are built is sound and will withstand the test of time. We cannot afford to build relationships between sovereigns on the shifting sands of a broken bureaucratic procedure.