

TESTIMONY OF KENNETH F. COOPER  
PRESIDENT, TOWN ACTION TO SAVE KENT (TASK)  
BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS  
MAY 11, 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>1</sup> LETTER TO HONORABLE CHRISTOPHER DODD, AUGUST 27, 2005, EARL E. DEVANEY, INSPECTOR GENERAL

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

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

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

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

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<sup>2</sup> UNITED STATES DEPARTMENT OF INTERIOR, OFFICE OF HEARINGS AND APPEALS, DECEMBER 2, 2004, BARBARA N. COEN, ESQ.

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

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

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

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

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

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<sup>3</sup> DEPARTMENT OF INTERIOR OFFICE OF FEDERAL ACKNOWLEDGEMENT, FEDERAL REGISTER, MARCH 31, 2005, 70 FED REG. 61 AT 16513-16

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

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

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

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

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

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