

TESTIMONY OF JEFF BENEDICT

**AUTHOR OF “WITHOUT RESERVATION” AND PRESIDENT OF THE
CONNECTICUT ALLIANCE AGAINST CASINO EXPANSION, INC.**

BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE

HEARING ON TRANSPARENCY IN BIA ACKNOWLEDGMENT PROCESS

MAY 5, 2004

Mr. Chairman and members of the Committee: I appreciate your invitation to testify on the Indian Gaming Regulatory Act and the undue influence of undisclosed financial backers and their lobbyists supporting tribal acknowledgment. The aim of my testimony is first to offer a national perspective and context to the issues being explored by this hearing. Second, I will identify casino financiers and lobbyists, and attempt to connect the dots between them and recent decisions for acknowledgment churned out by the Bureau of Indian Affairs. But to set the stage, let me start out with some essential legal and political background.

BACKGROUND

Over the past fifteen years, casino gambling has swept across America at a break neck pace. In 1988, there were only two states – Nevada and New Jersey – that offered state-sanctioned casino gambling. Today there are over 300 casinos operating in 31 states. Two-hundred and ninety of those casinos are Indian casinos, operating in 28 states.

How did we get from there to here? In 1988 Congress passed the Indian Gaming Regulatory Act, a law that was intended to clarify and set standards for gambling on Indian lands. Instead, it has become an instrument exploited by the casino industry to expand into states throughout the country that don't otherwise permit casinos.

Connecticut is such a state. Casinos have never been legal within its borders. Yet today the state finds itself hosting the two largest casinos on earth, both constructed on tiny slivers of Indian land, outside the reach of the state's regulatory laws, taxing authority and civil jurisdiction. In California casinos are also illegal; yet the state has seen more than fifty Indian casinos pop up since the passage of IGRA, including many in and around urban centers such as San Diego and Los Angeles.

As casino gambling has rapidly swept the country, it has transformed communities overnight. Connecticut's two casinos, for example, attract 80,000 motor vehicles per day. As burdensome as this is for the communities and roads around the casinos, traffic probably ranks amongst the smallest of its impacts. The sudden eruption of hundreds of casinos across America has brought stunning, far-reaching societal impacts on business, labor, financial markets, social services, affordable housing, infrastructure, government, and law. Consider:

Seventy-five percent of Americans now live within driving distance to a casino.
Americans now spend \$600 billion a year on gambling, versus \$400 billion on food.
Eighty percent of teenagers today have gambled within the previous year.
Compulsive gambling is up fifty percent since casinos were legalized on Indian reservations. In the same time period, U.S. bankruptcies rose from 770,000 to 1.3 million.
States throughout the country are now involved in litigation with tribes, casino developers or the federal government over casino-related disputes ranging from land use regulations to taxes. And the corporations operating the most successful Indian casinos now surpass most Fortune 500 companies in the amounts spent on campaign contributions and lobbyists in Washington.

This is just the tip of a very large and ominous iceberg. Many states without Indian casinos have been persuaded to legalize casinos in order to capture the revenue being lost by their residents who are traveling over the border to gamble at Indian casinos in neighboring states. Here again, Connecticut offers an illustration. Since casinos don't exist in any other New England state, residents from those states that wish to visit casinos flock to Connecticut's tribal casinos. The casino industry has launched casino expansion campaigns in every New England state – except Vermont – using the argument that states

should legalize casinos in order to capture the revenue from its citizens that are presently going to Connecticut.

This tactic is not unique to New England. Currently nineteen states have legislation or ballot initiatives pending to expand gambling. They include: Arkansas, California, Delaware, Florida, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Pennsylvania, Ohio, Oklahoma, Rhode Island and Washington. After an Indian casino opened in Buffalo last year, proposals have surfaced to open non-Indian casinos in other parts of the state. California may get fifty more Indian casinos in the next decade. And places like Martha's Vineyard, the Hamptons and coastal Maine have been hit with litigation, land claim lawsuits or casino proposals by groups wanting to construct Indian casinos.

Needless to say, the Indian Gaming Regulatory Act's reach has gone far beyond its narrow intent with respect to gambling on Indian lands. Instead IGRA has established broad national policy favoring casino gambling expansion. It is arguably one of the most poorly drafted and reckless pieces of legislation to come out of Congress in the last twenty years. Moreover, this law that was supposed to aid Indian tribes has the shameful distinction of instead being a boon to non-Indian millionaires and casino moguls that have exploited the law's loopholes to enrich themselves, often at the expense of needy Indian tribes.

The Bureau of Indian Affairs – the agency with a trust responsibility to aid and look out for the welfare of tribes – has been the enabling partner to the non-Indian financiers and investors that have cashed in on Indian gambling. Initially, casino moguls like Donald Trump attacked the rise of Indian casinos as a fraud. He even testified before the United States Senate and suggested that the Mashantucket Pequots, which operate Foxwoods, the world's largest casino, may not be true Indians. But Trump and other casino entrepreneurs recognized the writing on the wall and adopted an 'If you can't beat them, join them' approach.

Instead of railing against Foxwoods and the Mashantucket Pequots who operate it, Trump went out and found another group calling itself Pequots. According to court documents, on March 11, 1997, Trump entered into a Memorandum of Understanding to finance the Paucatuck Eastern Pequot Tribal Nation's bid for federal recognition. The

contract between Trump and the Paucatucks states that the two parties would work jointly “to obtain federal recognition for the Paucatucks and to secure the legal rights of the Paucatucks and Trump to operate a tribal gaming facility in the State of Connecticut” that would be managed by Trump. In a five-year-span between 1997 and August 31, 2002, court papers indicate that Trump advanced the Paucatucks \$9,192,807.

Put simply, instead of viewing Indian casinos as a threat, the casino industry began to recognize them as an opportunity. Casino operators and those who invest in them realized that IGRA offered them a vehicle to crack into markets across the country that had previously been off limits to casinos. The key was finding a tribal group to sponsor or finance. Suddenly, federal tribal acknowledgment became a bankable proposition for investors.

Here’s where the scandalous nexus between IGRA and the BIA takes place. In addition to swamping the nation with Indian casinos, IGRA ended up swamping the BIA with petitions from groups seeking federal tribal status, a prerequisite to building a casino on tribal land. Presently, there are 291 groups seeking federal recognition from the BIA. Published reports estimate that two-thirds of these petitioners are bankrolled by casino investors.

It is no accident that a disproportionate number of these petitioning groups are based in California (53 petitions pending) and Connecticut (12 petitions pending) – the two states with the most lucrative Indian casino markets in the U.S. In addition to being the most populated state in the country, California currently has the fifth largest economy in the world. Although it has over fifty casinos, the market demand for more remains great. Connecticut is home to Foxwoods and Mohegan Sun, the top two casinos in the country, reputed to be grossing a combined \$3 billion-plus per year. Neither casino pays taxes. Nor is their development and construction subject to state and local zoning and building codes, environmental regulations, or safety and licensing requirements. Labor laws don’t apply to the employees and the casino is immune from lawsuits by patrons. It is a casino operator’s paradise.

THE ACKNOWLEDGMENT PROCES S

Connecticut is serving as an unwilling witness to one of the most remarkable breakdowns in federalism – the relationship between the federal and state governments – in the history of the United States. The likely consequence is the complete transformation of the economic vitality, quality-of-life, and governmental structure of the State. All these changes would be for the worse, and they are being forced upon the State by the federal government.

The tool being used to expand casinos in states like Connecticut is the so-called “acknowledgment process,” by which the BIA bestows the status of “federal Indian tribe” on groups of individuals who claim descent from tribes that existed during colonial times. The people and towns of Connecticut are rightfully outraged over what is happening, and dramatic and immediate action is needed to protect the State’s interests.

How can tribal acknowledgment have such a significant effect? And isn’t acknowledgment little more than the symbolic act of according federal status to Indian groups long ago recognized as tribes by the State? The answers to these questions demonstrate why the future of the State of Connecticut is at risk. They also show how the actions of a few federal bureaucrats, combined with the investment of tens of millions of dollars by gambling financiers, have manipulated federal law to strip away Connecticut's inherent right to determine its own future.

Once a group obtains status as an Indian tribe under federal law it becomes, in effect, a sovereign governmental entity. The new tribe, its members, and its businesses, are exempt from virtually all state and local laws, including taxation. Their lands are open to any kind of development. The tribe and its businesses do not need to comply with state and local environmental, land use, health and safety, labor and other laws. They cannot be sued. For many purposes, they act as foreign governments.

In Connecticut, there are two acknowledged tribes and twelve groups that are seeking tribal status. The two acknowledged tribes are the Mashantucket Pequot, who were acknowledged by Congress in 1983, and the Mohegans, who achieved tribal designation from the BIA in 1994. Of the twelve additional groups trying to become tribes under the BIA acknowledgement process, four are well advanced in the process:

the Eastern Pequot/Paucatuck Eastern Pequot, the Schaghticoke, the Golden Hill Paugussetts, and the Nipmuc, who are actually located in Massachusetts, but they assert land rights in Connecticut.

These groups claim that land belonging to their historical ancestors was unlawfully taken away 200 years ago and that they are entitled to get it back regardless of its current ownership. As much as one-third of the State is potentially subject to these land claims. The Schaghticoke and Golden Hill Paugussetts have already filed lawsuits against innocent landowners for this purpose.

But these tribal acknowledgement efforts have less to do with land and more to do with gambling. Each of the four groups that are furthest along in seeking recognition is bankrolled by casino moguls or developers. These groups hope to secure recognition in order to take advantage of the federal Indian Gaming Act that permits federal tribes to open massive new casinos and earn over one billion dollars a year, as the Mashantucket Pequots and Mohegan do at their existing casinos. The biggest winners in these casino ventures are not the tribes, but the wealthy non-Indian moneymen who provide the financial, legal, and political muscle to help get these groups get acknowledged.

Thanks to the BIA's artificially propagated and arbitrarily applied acknowledgement process, the State faces a serious risk of being transformed into a gambling hub with as many as six separate sovereign nations within its boundaries, each one of which will pursue large tracts of land to carve out from state and local control for purposes of opening new casinos.

Make no mistake about it; life in Connecticut will never be the same if this process is not stopped and corrected. Otherwise, the BIA will transform Connecticut from the "Constitution State" to the "Casino State." The two largest gambling halls in the world are already here. With potentially four more, already jammed highways will go into gridlock with the cars of casino patrons. The local tax base will be reduced. Land use control and planning will become a thing of the past. Environmental quality will decline due to air pollution from cars and other impacts. Crime will increase, and societal values will shift, as they always do in gambling centers. The labor base will change. Affordable housing will dissipate in towns around the casinos. Corporations and large businesses will flee the State to be replaced with low-paying, unskilled jobs,

bringing attendant demographic shifts in Connecticut's population. Within a decade or so, Connecticut as we know it today will no longer exist.

For about twelve years, the small towns in southeastern Connecticut have struggled with the consequences of reservation lands, tribal sovereign immunity and Indian casinos. They have lived with the many adverse impacts of the Mashantucket Pequot Foxwoods and Mohegan Sun resorts, and they are now confronted with a third possible mega-casino on lands of the Eastern Pequot Indian group, which BIA is proposing to acknowledge as a tribe.

The problems that resulted in southeastern Connecticut have not been fully understood in other more populous and politically powerful parts of the State. Then, on January 29, 2004, the BIA issued a decision that seeks to acknowledge the Schaghticoke Tribe. Now there is the prospect for land claims throughout southwestern and western Connecticut, and the specter of a new casino resort along the already over-burdened I-84 and I-95 corridors has risen.

The BIA's decision to drop yet another sovereign nation in Connecticut has finally turned a spotlight on the flawed acknowledgment process. Much of the illumination has been triggered by the BIA's own conduct. Right after the BIA announced its decision in the Schaghticoke matter; an internal BIA memorandum dated January 12, 2004, and titled "Schaghticoke Briefing Paper," surfaced. In it, the staffer from the Office of Federal Acknowledgment responsible for reviewing the Schaghticoke petition notified the Assistant Secretary that the petitioner's "evidence of political influence and authority (of the petitioning group) is absent or insufficient for two substantial historical periods." The memo also acknowledged that the petitioner's "membership list does not include a substantial portion of the actual social and political community."

Despite these gaping holes in evidence, ones which the BIA does not have authority to arbitrarily fill with substitutes for the mandatory criterion, the agency nonetheless granted acknowledgment. The BIA's brazen internal memo is a glaring illustration of how badly this process needs legal and political reform. This agency is absolutely unaccountable and by its own words acting outside its authority.

FINANCIERS AND LOBBYISTS

Up until now, little attention has been paid to the role that wealthy financial backers play in helping petitioner groups obtain tribal acknowledgment. Numerous high-powered lobbyists have been identified as the recipients of significant sums of money to lobby for the Eastern Pequots and the Schaghticoke. But there is far more that remains unknown, undisclosed and secretive about both the financiers and the lobbyists in these petition cases.

For example, the identity of all investors associated with Connecticut tribal petitioners remains a mystery, as is the sums they've invested; how the money has been spent; and what role the lobbyists have played in influencing the outcome of the acknowledgment decisions. Here's a breakdown of what has been reported about the investors and lobbyists involved in the acknowledgment petitions pending in Connecticut:

PAUCATUCK EASTERN PEQUOTS

Financial backers include Donald Trump and J.D. DeMatteo, the chairman of Amalgamated Industries. Published reports suggest they have spent a combined \$14 million backing acknowledgment for the Paucatucks. Court documents filed by Trump confirm that he alone spent \$9,192,807 between March 1997 and August 2002.

EASTERN PEQUOTS

Financial backers include Texas oil magnate and America's Cup racing tycoon William Koch and David Rosow, a ski resort developer and the president of International Golf Group. They have not disclosed the amount of their investment.

SCHAGHTICOKE TRIBAL NATION

Financial backers include Fred DeLuca, the founder of the Subway Sandwich restaurant franchise. He has invested \$10 million.

GOLDEN HILL PAUGUSSETTS

Financial backer is mall developer Thomas Wilmot. He has invested \$10 million.

NIPMUC NATION

Financial backer is Lyle Berman, the CEO of Lakes Gaming, Inc., a Minnesota based company that is listed on NASDAQ. Berman has spent \$4 million since announcing a development and management agreement with the Nipmuc Nation in 2001. According to the company's corporate documents, Lakes is also involved with tribal gaming operations in three other states. One of the company's founding partners, David Anderson, was recently appointed by the Bush Administration to head the Bureau of Indian Affairs.

These figures suggest that investors have pumped \$38 million into just four petitioning groups in Connecticut. It is important to note that this money is recent. Mr. Wilmot has spent in excess of \$10 million since 1995. Trump spent nearly \$10 million between 1997 and 2002. Mr. Berman has spent \$4 million since 2001. All of this suggests the price to win federal acknowledgment is going up, and so are the stakes.

These investment figures reveal only the information that the investors want the public to know; it's what these individuals have disclosed to the press or in court documents. But it's clear that there are other investors and more money behind these petitioners. For example, the Schaghticoke group has also received backing from a venture capital firm called the Eastlander Group, as well as a corporation called the Native American Gaming Fund, which has been set up by non-Indian lawyers and businessmen in Connecticut. The group has recently been seeking private investors by offering \$25,000 in private shares in a company that would aid the tribal group in building a casino. Contributors and the amounts contributed have not been disclosed.

This points to a glaring deficiency in the tribal recognition process. There is no law, regulation or procedure in place to require tribal petitioners to identify their financial backers and disclose the amounts of money received from investors.

Another deficiency in the process pertains to lobbyists working on behalf of tribal petitioners and investors. The Eastern Pequots have spent \$645,000 since 2000 on lobbyist Ronald Kaufman and his firm the Dutko Group. Kaufman is the brother-in-law to Andrew Card, President Bush's chief of staff.

The Schaghticokes have spent more than \$500,000 on lobbyists since 1998. But apparently, that does not include monies paid to Paul J. Manafort, who is not registered as a lobbyist for the tribe. He is helping the Schaghticokes and has been described by one of the group's lobbying firms as someone retained by the investors to provide "valuable strategic advice and counsel." After Manafort came on board, the BIA reversed its earlier recommendation to deny the Schaghticokes tribal recognition; instead determining that the group should be recognized despite failing to meet the mandatory criteria for recognition.

Manafort's role remains a mystery, along with any payments, benefits or incentives he may have received for his services. Manafort's former partner Roger Stone has lobbied for Donald Trump. After assisting the 2000 Bush recount operation in Florida, Stone was selected by President Bush's transition team to help staff the Interior Department's BIA. Since then he has issued a prospectus to tribes seeking approval from the BIA to build casinos. "We believe that based on our superior political contacts we could win all necessary approvals in a time between 8 and 16 months," it reads. Reportedly, Stone is projected to receive between \$8 million and \$13 million from agreements with tribal casino interests.

It is unclear whether Stone has done any work for Trump in Connecticut or in relation to Trump's backing of the Paucatuck Eastern Pequots. But he and lobbyist Scott Reed, who has represented Connecticut tribes, have worked together representing tribal gambling interests in California.

However, Diane Allbaugh, the wife of Joseph Allbaugh, head of Federal Emergency Management Agency and the 2000 National Campaign Chairman for George Bush has reportedly represented the Paucatucks on behalf of Donald Trump. At the time, Allbaugh was apparently working for the firm of Haley Barbour, chairman of the Republican National Committee. Neal McCaleb, the head of the BIA and the decision-maker on the Paucatuck and Eastern Pequots tribal acknowledgment petitions, has reportedly acknowledged that Allbaugh supported his candidacy to get appointed to the top spot at the BIA.

To me, the picture is clear – these investors and their lobbyists have hijacked the tribal acknowledgment process. IGRA has given these entrepreneurs an opening and they have seized it. It's an outrage that investors and their lobbyists have been able to penetrate this market virtually without any accountability or adequate disclosure.

It would be instructive to know, for example, what Eastern Pequot lobbyist Ronald Kaufman and his firm did in exchange for receiving \$645,000 in lobbying fees. Who did Mr. Kaufman lobby? And what is the relationship between his lobbying efforts and the BIA's decision to recognize the Pequots?

The people with the answers to these questions – the tribal group leaders, their financial backers and their lobbyists – are no where to be found at this hearing. That must change. The impacts of IGRA and the flaws with tribal acknowledgment are all too clear at this point. It can no longer remain a mystery as to how much financiers and lobbyists have contributed to the breakdown. These individuals have managed to avoid scrutiny and accountability long enough. It is time that each of the tribal petitioners comes clean and fully disclose all of their investors and the full extent of the investments.

Also, it is time for the investors to document how much they've spent and what the expenses have been. Finally, the lobbyists and other consultants or experts like Mr. Manafort should be required to disclose who they have had contact with and what they have done to justify the fees they've received from these tribal groups and their financial backers.

SUMMARY

As the dots connect linking financial investors, lobbyists and the outcome of BIA acknowledgment decisions, an ugly picture of influence peddling and political scandal is coming into focus. This is particularly evident with three petitioning groups – the Paucatuck Eastern Pequots, the Eastern Pequots, and the Schaghticoke Tribal Nation. In all three petitions, the Office of Federal Acknowledgment had to conclude that none of these groups had enough direct evidence to receive federal tribal status. It took manipulating the rules, giving undue weight to the petitioners' evidence, ignoring other evidence and ignoring procedural standards to award these groups acknowledgment.

Even more amazing, these decisions were made by an administration and a Secretary of Interior with a reputation for being staunch supporters of state's rights. Yet the BIA rejected Connecticut's view of its own laws and history and instead adopted a view put forward by some career bureaucrats. The BIA also took the unprecedented step of combining the two Pequot petitioners into one tribe, as well as redefining the membership of the Schaghticoke tribe to include individuals who did not want to be part of that tribal group.

All of this begs the question, why? In an attempt to fill in more blanks, it is necessary to look at Neal McCaleb, the decision-maker on the Eastern Pequot and Paucatuck Eastern Pequot decisions. McCaleb reportedly got this job with the help of people like Roger Stone, Scott Reed and Joe Allbaugh, all prominent players in the Bush 2000 election campaign.

Aurene Martin was the decision maker on the Schaghticoke petition. She was McCaleb's deputy and reportedly got her job with the help of some of the same people.

Diane Allbaugh (wife of Joe Allbaugh, who helped McCaleb obtain his position at BIA) reportedly represented the Paucatuck Eastern Pequots on behalf of Donald Trump. A published report indicates she did so while working for Haley Barbour's firm. Barbour, of course, was chairman of the Republican National Committee.

The Eastern Pequots had their own angle going. One of their primary backers is Bill Koch, considered a friend to President Bush. Koch's group brought in Ron Kaufman as their lead lobbyist. Kaufman is married to White Chief of Staff Andrew Card's sister. He and his firm reportedly received \$645,000 to lobby for the Easterns.

The more the picture comes into focus, the clearer it becomes that the direction of investigation and reform must aim clearly and sharply on the political connections. Without a doubt, there is more information and evidence to collect. But preliminary indications are that the Historic Eastern Pequot decision and the Schaghticoke decision are shaping up to be a first-rate political scandal.

There is no reason to believe that the Bureau of Indian Affairs is capable of reforming itself at this point. Presently, the head of the agency is Dave Anderson, a founding partner in Lyle Berman's company Lakes Gaming, Inc. Besides financing the pending petition of the Nipmuc Nation, Lakes has been involved in developing four

Indian casinos in the country. The idea that the head of the agency charged with reviewing tribal recognition petitions financed by the casino industry is himself a previous investor in the industry sums up how conflicted and contaminated this entire business has become. At a minimum, Congress should pass an immediate moratorium on all tribal recognition matters until the gambling interests are fully exposed and rooted out of the process.

I thank the committee for affording me this opportunity to contribute to this hearing.