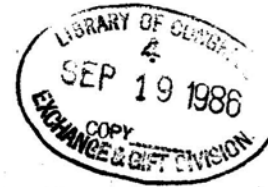


INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA



HEARING BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE NINETY-NINTH CONGRESS

SECOND SESSION

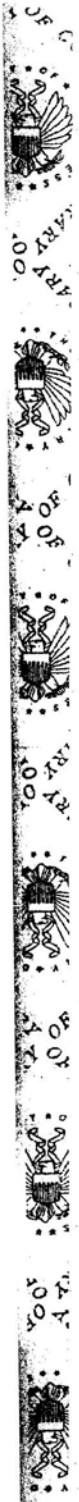
ON

S. 1452

TO SETTLE INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA,
AND FOR OTHER PURPOSES

APRIL 9, 1986
WASHINGTON, DC





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INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA

WEDNESDAY, APRIL 9, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:18 p.m., in room 538, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews, Gorton, and Murkowski.

Staff present: Peter S. Taylor, staff director; Debbie Storey, professional staff member; Michael Mahsetky, staff attorney; Ginny Boylan, staff attorney; Phyllis Thompson, professional staff member; Sheila Rogan, professional staff member; Irene Herder, staff secretary; Mary Jo Vrem, legislative assistant; and Ipo Lung, professional staff member.

Mr. ANDREWS. The committee will come to order.

The hearing this afternoon is on S. 1452, a bill to settle Indian land claims in the town of Gay Head, MA, on Martha's Vineyard.

This legislation would resolve a land claim filed in Federal court in 1974 by the Gay Head Wampanoag Tribe for title to 238 acres of common land presently held by the town of Gay Head.

While this claim is limited to the common lands within the town, the effect of the claim is to cast a cloud on title to other privately owned lands within the town.

The legislation before us today incorporates a joint memorandum of understanding that was signed by the Wampanoag Tribal Council of Gay Head, Inc., the town of Gay Head, the Taxpayers Association of Gay Head, Inc., and the Commonwealth of Massachusetts in November 1983.

It is my understanding that the Department of the Interior did not participate in the negotiations that led to this agreement. The agreement calls for the transfer of 238 acres of common land now held by the town, an acquisition of three parcels of land of the former Strock estate, comprising about 175 acres to be held as settlement lands and 11 acres currently in private ownership.

In addition, the town agrees to transfer a parcel of land, known as the Cook lands, to the tribe.

S. 1452 would authorize the appropriation of \$3 million for establishment of settlement funds to carry out the terms of this act. However, it is my understanding that the State of Massachusetts may contribute 50 percent of these funds.

[The text of S. 1452 follows:]

99TH CONGRESS
1ST SESSION

S. 1452

To settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17 (legislative day, JULY 16), 1985

Mr. KENNEDY (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Gay Head Wampanoag
5 Indian Claims Settlement Act of 1985".

6 SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF 7 POLICY.

8 The Congress hereby finds and declares that—

9 (1) there is pending before the United States Dis-
10 trict Court for the District of Massachusetts a lawsuit

1 that involves Indian claims to certain public lands
2 within the town of Gay Head, Massachusetts;

3 (2) the pendency of this lawsuit has resulted in
4 severe economic hardships for the residents of the town
5 of Gay Head by clouding the titles to much of the land
6 in the town, including land not involved in the lawsuit;
7 (3) the Congress shares with the Commonwealth
8 of Massachusetts and the parties to the lawsuit a desire
9 to remove all clouds on titles resulting from such
10 Indian land claim;

11 (4) the parties to the lawsuit and others interested
12 in settlement of Indian land claims within the Com-
13 monwealth of Massachusetts executed a Settlement
14 Agreement which, to become effective, requires imple-
15 menting legislation by the Congress of the United
16 States and the General Court of the Commonwealth of
17 Massachusetts; and

18 (5) the town of Gay Head has agreed to contrib-
19 ute approximately 50 per centum of the land involved
20 in this settlement.

21 SEC. 3. GAY HEAD INDIAN CLAIMS SETTLEMENT FUND.

22 (a) FUND ESTABLISHED.—There is hereby established
23 within the Treasury of the United States a fund to be known
24 as the "Gay Head Indian Claims Settlement Fund".

1 Amounts in the fund shall be available to the Secretary to
2 carry out the purposes of this Act.

3 (b) **AUTHORIZATION FOR APPROPRIATION.**—There is
4 hereby authorized to be appropriated \$3,000,000 for such
5 fund to remain available until expended.

6 **SEC. 4. APPROVAL OF PRIOR TRANSFERS AND EXTINGUISH-**
7 **MENT OF ABORIGINAL TITLE AND CLAIMS OF**
8 **GAY HEAD INDIANS.**

9 (a) **APPROVAL OF PRIOR TRANSFERS.**—(1) Any trans-
10 fer before the date of the enactment of this Act of land or
11 natural resources now located anywhere within the United
12 States from, by, or on behalf of the Wampanoag Tribal Coun-
13 cil or the Gay Head Indians, or (2) any transfer before the
14 date of the enactment of this Act by, from, or on behalf of
15 any Indian, Indian nation, or tribe or band of Indians, of any
16 land or natural resources located anywhere within the town
17 of Gay Head, Massachusetts, including any transfer pursuant
18 to any statute of the State, and the incorporation of the town
19 of Gay Head, shall be deemed to have been made in accord-
20 ance with the Constitution and all laws of the United States
21 that are specifically applicable to transfers of land or natural
22 resources from, by, or on behalf of any Indian, Indian nation,
23 or tribe or band of Indians (including the Trade and Inter-
24 course Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1
25 Stat. 137), and all amendments thereto and all subsequent

1 versions thereof). Any such transfer and any transfer in im-
2 plementation of this Act, shall be deemed to have been made
3 with the consent and approval of Congress as of the date of
4 such transfer.

5 (b) **EXTINGUISHMENT OF ABORIGINAL TITLE.**—Any
6 aboriginal title held by the Wampanoag Tribal Council, any
7 other entity presently or at any time in the past known as the
8 Gay Head Indians, to any land or natural resources the
9 transfer of which is consented to and approved in subsection
10 (a) is considered extinguished as of the date of such transfer.

11 (c) **EXTINGUISHMENT OF CLAIMS ARISING FROM**
12 **PRIOR TRANSFERS OR EXTINGUISHMENT OF ABORIGINAL**
13 **TITLE.**—Any claim (including any claim for damages for use
14 and occupancy) by the Wampanoag Tribal Council, the Gay
15 Head Indians, or any other Indian, Indian nation, or tribe or
16 band of Indians against the United States, any State or polit-
17 ical subdivision of a State, or any other person which is based
18 on—

19 (1) any transfer of land or natural resources which
20 is consented to and approved in subsection (a), or

21 (2) any aboriginal title to land or natural re-
22 sources the transfer of which is consented to and ap-
23 proved in subsection (b), is extinguished as of the date
24 of any such transfer.

1 (d) **PERSONAL CLAIMS NOT AFFECTED.**—No provision
2 of this section shall be construed to offset or eliminate the
3 personal claim of any individual Indian which is pursued
4 under any law of general applicability that protects non-Indi-
5 ans as well as Indians.

6 **SEC. 5. CONDITIONS PRECEDENT TO FEDERAL PURCHASE OF**
7 **SETTLEMENT LANDS.**

8 (a) **INITIAL DETERMINATION OF STATE AND LOCAL**
9 **ACTION.**—No action shall be taken by the Secretary under
10 section 6 before the Secretary publishes notice in the Federal
11 Register of the determination by the Secretary that—

12 (1) the Commonwealth of Massachusetts has en-
13 acted legislation which provides that—

14 (A) the town of Gay Head, Massachusetts, is
15 authorized to convey to the Wampanoag Tribal
16 Council the public settlement lands and the Cook
17 lands subject to the conditions and limitations set
18 forth in the Settlement Agreement,

19 (B), the settlement lands shall be exempt
20 from taxation by the State or any political subdi-
21 vision of the State to the extent provided in the
22 Settlement Agreement, and

23 (C) the Wampanoag Tribal Council shall
24 have the authority, after consultation with appro-
25 priate State and local officials, to regulate any

1 hunting by Indians on the settlement lands that is
2 conducted by means other than firearms or cross-
3 bow to the extent provided in, and subject to the
4 conditions and limitations set forth in, the Settle-
5 ment Agreement; and

6 (2) the town of Gay Head, Massachusetts, has au-
7 thorized the conveyance of the public settlement lands
8 and the Cook Lands to the Wampanoag Tribal
9 Council.

10 (b) **RELIANCE UPON THE ATTORNEY GENERAL OF**
11 **MASSACHUSETTS.**—In making the findings required in sub-
12 section (a) of this section, the Secretary may rely upon the
13 opinion of the Attorney General of the Commonwealth of
14 Massachusetts.

15 **SEC. 6. SECRETARY REQUIRED TO PURCHASE AND TRANSFER**
16 **PRIVATE SETTLEMENT LANDS.**

17 (a) **NEGOTIATIONS AND SURVEY BY THE SECRE-**
18 **TARY.**—Within sixty days following the date of publication of
19 findings under section 5(a), the Secretary shall enter into ne-
20 gotiations for the purchase of the private settlement lands on
21 behalf of the tribe at the fair market value of such lands
22 (determined without regard to pending Indian claims). The
23 Secretary, during this time period, shall also cause a survey
24 to be conducted to determine the precise acreage and bound-
25 aries of the settlement lands.

1 (b) **ARBITRATION REQUIRED IN CASE OF FAILURE TO**
 2 **ESTABLISH PURCHASE PRICE.**—If the Secretary and any
 3 owner of private settlement land are unable to agree on fair
 4 market value before the end of the ninety-day period begin-
 5 ning on the last day of the sixty-day period described in sub-
 6 section (a), the fair market value of such land shall be deter-
 7 mined by binding arbitration conducted in accordance with
 8 the rules and procedures of the American Arbitration Asso-
 9 ciation.

10 (c) **PURCHASE BY THE SECRETARY.**—Within sixty
 11 days after the price and any other terms for the purchase of
 12 the private settlement land has been agreed to under subsec-
 13 tion (a) or determined in accordance with subsection (b), as
 14 the case may be, the Secretary shall acquire all rights, title,
 15 and interest to such private settlement land.

16 (d) **TRANSFER AND SURVEY OF LAND TO WAMPANOAG**
 17 **TRIBAL COUNCIL.**—All rights, title, and interest to all pri-
 18 vate settlement land purchased by the Secretary under this
 19 section shall be transferred to the Wampanoag Tribal Council
 20 and shall be held by such council in accordance with the pro-
 21 visions of this Act, the Settlement Agreement and any other
 22 applicable laws.

23 (e) **PROCEEDINGS AUTHORIZED TO ACQUIRE OR TO**
 24 **PERFECT TITLE.**—The Secretary is authorized to commence

1 such condemnation proceedings as the Secretary may deter-
 2 mine to be necessary—

3 (1) to acquire or perfect any right, title, or inter-
 4 est in any private settlement land, and

5 (2) to condemn any interest adverse to any osten-
 6 sible owner of such land.

7 **SEC. 7. JURISDICTION OVER SETTLEMENT LANDS; RESTRAINT**
 8 **ON ALIENATION.**

9 (a) **LIMITATION ON INDIAN JURISDICTION OVER SET-**
 10 **TLEMENT LANDS.**—No Indian tribe or band may exercise
 11 any form of jurisdiction (whether or not such tribe or band is
 12 a federally recognized Indian tribe or band) over any part of
 13 the settlement lands, or any other land that may now or in
 14 the future be owned by or held in trust for such Indian entity
 15 in the town of Gay Head, Massachusetts, except to the
 16 extent provided in this Act, the State Implementing Act, or
 17 the Settlement Agreement.

18 (b) **RESTRAINT ON ALIENATION—**

19 (1) **IN GENERAL.**—No right, title, or interest in
 20 any settlement land (other than the Cook lands and the
 21 West Basin Strip in accordance with paragraph 11 of
 22 the Settlement Agreement) may be sold, granted, or
 23 otherwise conveyed by the Wampanoag Tribal Council
 24 (or, in the case of private settlement land held by the
 25 Secretary pursuant to section 6(c) before the transfer of

1 such land under section 6(d), by the Secretary) to any
 2 person other than any Indian tribe or tribal organiza-
 3 tion in Gay Head, Massachusetts, whose existence is
 4 subsequently acknowledged by the Secretary.

5 (2) PROHIBITED DISPOSITION WITHOUT LEGAL
 6 EFFECT.—No disposition and no attempt to make any
 7 disposition of settlement land to any person other than
 8 any Indian tribe or tribal organization referred to in
 9 subparagraph (1) shall have any effect in law or equity.

10 (3) SUBSEQUENT HOLDER BOUND TO SAME
 11 TERMS AND CONDITIONS.—Any tribe or tribal organi-
 12 zation which acquires any settlement land from the
 13 Wampanoag Tribal Council shall hold title to such land
 14 subject to the same terms and conditions as are appli-
 15 cable to such lands when held by such council.

16 (b) RESERVATIONS OF RIGHT AND AUTHORITY RE-
 17 LATING TO SETTLEMENT LANDS.—No provision of this Act
 18 shall affect or otherwise impair—

19 (1) any authority to impose a lien or temporary
 20 seizure on the settlement lands as provided in the
 21 State Implementing Act,

22 (2) the authority of the Secretary to approve
 23 leases in accordance with the Act entitled “an Act to
 24 authorize the leasing of restricted Indian lands for
 25 public, religious, educational, recreational, residential,

1 business, and other purposes requiring the grant of
 2 long-term leases.” and approved August 9, 1955 (25
 3 U.S.C. 415 et seq.), as such Act may have been or
 4 may be amended; or

5 (3) the legal capacity of the Wampanoag Tribal
 6 Council to grant or otherwise convey—

7 (A) the right to use the settlement lands to
 8 its members,

9 (B) any easement for public or private pur-
 10 poses in accordance with the laws of the Com-
 11 monwealth of Massachusetts or the ordinances of
 12 the town of Gay Head, Massachusetts, or

13 (C) title to the West Basin Strip to the town
 14 of Gay Head, Massachusetts, pursuant to the
 15 terms of the Settlement Agreement.

16 SEC. 8. MISCELLANEOUS PROVISIONS.

17 (a) LIMITATION ON LIABILITY OF UNITED STATES TO
 18 WAMPANOAG INDIANS UNDER THIS ACT.—Subject to sub-
 19 section (b), the United States shall have no duties or liabil-
 20 ities with respect to the Wampanoag Tribal Council or any
 21 settlement lands after the Secretary has completed any action
 22 required under this Act.

23 (b) RESERVATION OF INDIAN RIGHT TO FEDERAL
 24 RECOGNITION.—No provision of this Act shall be construed
 25 to affect—

1 (1) the right of any Indian entity in the town of
2 Gay Head, Massachusetts, to petition the Secretary for
3 Federal recognition of such entity as an Indian tribe,
4 or

5 (2) the eligibility of such entity, or members of
6 such entity, for services or benefits provided by the
7 United States to federally recognized Indian tribes if
8 the Secretary acknowledges the existence of such
9 entity as an Indian tribe.

10 **SEC. 9. DEFINITIONS.**

11 For the purposes of this Act:

12 (1) **COOK LANDS.**—The term “Cook lands”
13 means the lands described in paragraph (5) of the Set-
14 tlement Agreement.

15 (2) **GAY HEAD INDIANS.**—The term “Gay Head
16 Indians” means any Indian tribe, band, group, or
17 nation whether or not considered an eligible recipient
18 under the Indian Self-Determination and Education
19 Assistance Act (Public Law 93-638) or under chapter
20 67 of title 31, United States Code, or otherwise feder-
21 ally recognized, known as the Gay Head Indians, Gay
22 Head Tribe, Gay Head Wampanoag Tribe, or the
23 Wampanoag Indians of Gay Head, or any other entity,
24 person, or group of persons, or any predecessor or suc-
25 cessor in interest or shareholder of any such tribe or

1 entity, claiming or having tribal status, tribal land, or
2 aboriginal title to any land or natural resources situat-
3 ed in whole or in part in the town of Gay Head, Mas-
4 sachusetts.

5 (3) **LAND OR NATURAL RESOURCES.**—The term
6 “land or natural resources” means any real property or
7 natural resources, or any interest in or right involving,
8 any real property or natural resource, including but not
9 limited to, minerals and mineral rights, timber and
10 timber rights, water and water rights, and rights to
11 hunt and fish.

12 (4) **LAWSUIT.**—The term “lawsuit” means the
13 action entitled Wampanoag Tribal Council of Gay
14 Head, and others versus Town of Gay Head, and
15 others (C.A. No. 74-5826-McN (D. Mass.)).

16 (5) **PRIVATE SETTLEMENT LANDS.**—The term
17 “private settlement lands” means approximately one
18 hundred and seventy-five acres of privately held land
19 described in paragraph 6 of the Settlement Agreement.

20 (6) **PUBLIC SETTLEMENT LANDS.**—The term
21 “public settlement lands” means the lands described in
22 paragraph (4) of the Settlement Agreement.

23 (7) **SETTLEMENT LANDS.**—The term “settlement
24 lands” means the private settlement lands and the
25 public settlement lands.

1 (8) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior.

3 (9) SETTLEMENT AGREEMENT.—The term “Set-
4 tlement Agreement” means the document entitled
5 “Joint Memorandum of Understanding Concerning Set-
6 tlement of the Gay Head, Massachusetts, Indian Land
7 Claims,” executed as of November 22, 1983, and re-
8 newed thereafter by representatives of the parties to
9 the lawsuit, and as filed with the Secretary of the
10 Commonwealth of Massachusetts.

11 (10) STATE IMPLEMENTING ACT.—The term
12 “State implementing act” means legislation enacted by
13 the Commonwealth of Massachusetts conforming to the
14 requirements of this Act and the requirements of the
15 Massachusetts Constitution.

16 (11) TRANSFER.—The term “transfer” includes—

17 (A) any sale, grant, lease, allotment, parti-
18 tion, or conveyance,

19 (B) any transaction the purpose of which is
20 to effect a sale, grant, lease, allotment, partition,
21 or conveyance, or

22 (C) any event or events that resulted in a
23 change of possession or control of land or natural
24 resources.

1 (12) WEST BASIN STRIP.—The term “West
2 Basin Strip” means a strip of land along the West
3 Basin which the Wampanoag Tribal Council is author-
4 ized to convey, under paragraph (11) of the Settlement
5 Agreement, to the town of Gay Head.

6 (13) WAMPANOAG TRIBAL COUNCIL.—The term
7 “Wampanoag Tribal Council” means the Wampanoag
8 Tribal Council of Gay Head, Incorporated.

9 SEC. 10. APPLICABILITY OF STATE LAW.

10 Except as otherwise expressly provided in this Act or in
11 the State Implementing Act, the settlement lands and any
12 other land that may now or hereafter be owned by or held in
13 trust for any Indian tribe or entity in the town of Gay Head,
14 Massachusetts, shall be subject to the civil and criminal laws,
15 ordinances, and jurisdiction of the Commonwealth of Massa-
16 chusetts and the town of Gay Head, Massachusetts.

17 SEC. 11. LIMITATIONS OF ACTION; JURISDICTION.

18 Notwithstanding any other provision of law, any action
19 to contest the constitutionality or validity under law of this
20 Act shall be barred unless the complaint is filed within sixty
21 days following publication of the notice specified in section 5.
22 Exclusive original jurisdiction over any such action and any
23 proceedings under section 6(d) is hereby vested in the United
24 States District Court of the District of Massachusetts.

1 SEC. 12. EFFECTIVE DATE.

- 2 The provisions of section 4 shall take effect upon the
 3 transfer of title to the settlement lands to the Wampanoag
 4 Tribal Council. The fact of such transfer, and the date there-
 5 of, shall be certified and recorded by the Secretary of the
 6 Commonwealth of Massachusetts. All other provisions of this
 7 Act shall take effect upon enactment.

○

Mr. ANDREWS. From the statement of the Department of the Interior, it appears that the most important remaining issue is completion of the acknowledgment process, to determine the legal existence of this tribe.

We have letters of support from the Governor of Massachusetts. We understand that the Senators from Massachusetts will testify, and we would like to call, as the administration witness, Hazel Elbert, Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior.

Ms. Elbert.

It is good to have you here. Let me assure you that your statement will be included in the record as though you gave it in its entirety. You can summarize in any way you wish.

We have a problem. I was trying to out-wait the vote, and it is probably where our Senators from Massachusetts are. There is a vote going on on the floor. I am going to have to depart for a while, but I will leave your chief counsel to continue this, because I know that many of you have traveled from Massachusetts, and I do not want to hold you up.

You may proceed.

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOHN SHAPARD, CHIEF, BRANCH OF FEDERAL ACKNOWLEDGMENT AND RESEARCH

Ms. ELBERT. Thank you, Mr. Chairman.

I have here with me at the witness table John Shapard, who is Chief of our Branch of Federal Acknowledgment and Research.

Mr. Chairman, and members of the committee, I am pleased to present the views of the Department of the Interior on S. 1452, the Gay Head Wampanoag Indian Claim Settlement Act of 1985.

I will not repeat all the information and discussion that is—

Mr. TAYLOR [presiding]. Do you want to pull the microphone a little closer to you so that we can hear a little better?

Ms. ELBERT. Is that better?

I will not repeat all the information and discussion that is included in our February 5, 1986, report to the committee on S. 1452, but I have attached a copy of the report to my statement.

As stated in that report, Mr. Chairman, we oppose enactment of S. 1452 because it does not meet the criteria for the settlement of eastern Indian land claims as set forth in the President's veto message on another eastern land claims bill during the 98th Congress.

These criteria are: Completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; verification of the claim; and payment by the State of Massachusetts of at least one-half of the settlement costs.

S. 1452 would settle outstanding Indian land claims in the town of Gay Head, MA. The settlement would terminate a Non-Inter-course Act claim that has been pending before the U.S. District Court for the District of Massachusetts since 1974. The lawsuit in-

volves a claim to approximately 240 acres of land presently held by the town of Gay Head as town common lands.

The claims have also resulted in the clouding of titles to certain private lands in the town of Gay Head, even though many of these lands are not involved in the lawsuit. As part of the settlement in S. 1452, an appropriation of \$3 million is authorized.

To establish a prima facie case under the Non-Intercourse Act, a plaintiff must show that it is, or represents, an Indian tribe within the meaning of the act; the parcels claimed are tribal land; the United States did not consent to the alienation of the land; and the trust relationship between the tribe and the United States has never been terminated or abandoned.

Since the United States has had little or no involvement with the Gay Head Indians and has never formally acknowledged that a tribe even exists, it has never been in a position from which it could consent to an alienation of their lands or a termination of the trust relationship. Thus, the only two issues of significance in this matter are whether there is a tribal group capable of bringing a claim, and whether the lands at issue are covered by the Non-Intercourse Act.

As I indicated, there is currently no Gay Head or Wampanoag Tribe acknowledged as existing by the Federal Government. Section 8 of S. 1452 specifically preserves the right of the Indian entity at Gay Head to petition for Federal recognition.

A group representing itself as the Gay Head Wampanoag Tribe did file a petition for acknowledgment pursuant to 25 C.F.R., Part 83, in 1981. We anticipate that a recommendation concerning the group's eligibility for Federal status will be available by June 1986.

We believe that processing of the recognition petition filed by the Gay Head Indians should be completed before any legislative settlement is considered.

We acknowledge that there is limited precedent in the Rhode Island Indian Claims Settlement Act for settling a claim prior to acknowledgment of a tribe. However, we believe this precedent should not be followed in this or future Non-Intercourse Act settlements because it is our view that the determination of tribal existence is a fundamental threshold issue in making such a claim.

Without tribal status, a claim is not valid. If there is no tribe, there can be no claim. Thus, if Congress were to settle this claim and the group was subsequently found not to be a tribe, Congress will have legislatively settled a claim lacking merit.

If the bill were to be amended to make implementation of the settlement contingent upon Federal acknowledgment of the Gay Head Wampanoag Tribe by the Department, our concerns about the existence of the tribe would be alleviated. However, that amendment would not address the inadequacy of the State contribution to the proposed settlement.

We believe State participation called for in S. 1452 is inadequate. Other than the agreement to allow the town to reconvey the town common lands back to the tribe, we see no contribution from the State in the settlement bill. Inasmuch as the town common lands, if transferred to the tribe, will be subject to sever land use restrictions and will, except for a nominal change in record ownership, maintain the current status of the land in most respects, we view

the State's contribution as largely illusory. However, we understand that, in addition, the State legislature may appropriate \$1.5 million for the settlement, which would be half of the \$3 million called for in section 3(b) of the bill.

Finally, we believe that the circumstances of the alleged taking and the applicability of the Non-Intercourse Act should be examined with care to establish the validity of the claim or sharply reduce the uncertainties. The attached report summarizes the information we have on the circumstances of this unusual case. While the resolution of unresolved legal questions through a legislative settlement may properly be the subject of congressional action, the unresolved issues regarding tribal existence and the State's inadequate contribution force us to recommend against enactment of this bill.

This concludes my prepared statement. I will be happy to answer any questions you may have.

[Prepared statement of Ms. Elbert appears in the appendix.]

Mr. TAYLOR. Ms. Elbert, I do have a few questions that I would like to ask.

We would not like to pass this bill without settling the issue of recognition. I think that is a key element here.

Your statement says that the process should be completed by June 1986. Does this mean early June, or late June?

Ms. ELBERT. The date that we have for completion of our work on the petition is June 8, 1986.

Mr. TAYLOR. Is that a date that we can hold you to?

Ms. ELBERT. June 6; I am sorry.

Mr. TAYLOR. Can we hold you to that date?

Ms. ELBERT. Yes.

Mr. TAYLOR. Good. Will the recommendation that you reach on June 6 be a preliminary recommendation, or a final one?

Ms. ELBERT. It will be a recommendation to the Assistant Secretary. The recommendation becomes final when he signs off on it. It is a proposed finding, rather, that is published in the Federal Register according to our regulations, and then there is a certain period of time for everyone involved or concerned to comment on the proposed finding.

Mr. TAYLOR. What is the normal time lapse between a preliminary finding and a final recognition?

Ms. ELBERT. I would like to defer to John Shapard, who heads up the Federal Acknowledgement Office, to respond to those questions.

Mr. SHAPARD. You mean after the proposed finding, how long does it take before it becomes effective?

Mr. TAYLOR. Yes.

Mr. SHAPARD. All right. There is a 120-day comment period, or rebuttal period, depending on the finding, or on the people's attitude toward the finding. After that, there is a 60-day period in which the acknowledgment staff has to review any comments they have. If there were no comments, that could conceivably be reduced to less than a week, and has been in the past. At that time, we would publish a final determination, which is not effective until 60 days after that, to allow an opportunity for appeals to the Secretary of the Interior.

Mr. TAYLOR. That is the normal course of events.

Mr. SHAPARD. Right.

Mr. TAYLOR. And, of course, in this case we have the unusual situation of settlement legislation pending before the Congress which may lead to some different approach. If the preliminary recommendation is favorable and the timing for passage of this bill should occur before the final recognition by the BIA, would you object to an amendment to this bill that would formalize congressional recognition of the Wampanoag Tribe of Gay Head?

Mr. SHAPARD. Let me clarify the question. If the proposed finding was positive, would we object to a bill recognizing the group?

Mr. TAYLOR. Yes.

Ms. ELBERT. I do not think we would oppose that. I have asked the staff to see if we cannot speed up the process, to arrive at a recommendation for the Assistant Secretary as early as the second or third week in May.

Mr. TAYLOR. That would certainly be helpful, because our clock is running in this Congress, but, nevertheless, following the normal process, you would be caught with the regulations that would normally spell out, what was it, a 120-day period.

Ms. ELBERT. 120 days.

Mr. TAYLOR. There are startup costs that are associated with newly recognized tribal government. What source of funding is used for this purpose, if a tribe is recognized through the acknowledgement process, and can the same source of startup funding be utilized by a tribe that is recognized through legislation?

Ms. ELBERT. Yes; we use the same appropriated moneys new tribes acknowledged under our FAP process, as well as through the courts and legislation.

Mr. TAYLOR. So the mere fact that there is a legislative initiative involved here should not alter or affect the ability to utilize that newly recognized tribe fund.

Ms. ELBERT. That is correct.

Mr. TAYLOR. Among the criteria, the three criteria, that were spelled out in the earlier letter of Assistant Secretary Swimmer, and your testimony here today, we have the matter of the State Contribution.

This bill, as it was introduced, provided for an appropriation, or authorized an appropriation, of \$3 million. It is our understanding at this point that the State is preparing to take the necessary legislative action to appropriate \$1.5 million to go toward the settlement. That is 50 percent of the cash, in addition to the lands that will be transferred.

In light of that proposal by the State to contribute \$1.5 million in cash, would this meet the criteria that you have set out for State contribution?

Ms. ELBERT. Yes, sir; that would satisfy our concerns about the third criteria.

Mr. TAYLOR. Your statement, Ms. Elbert, also indicates that you acknowledge the role of Congress in resolving certain of these legal issues and indicates that the only other issue that would remain unresolved, other than the State contribution, is the question of tribal existence.

If that existence is, in fact, acknowledged through your FAP process, would the Department of the Interior support this legislation?

Ms. ELBERT. If the tribe—

Mr. TAYLOR. In other words, the third issue there was the question of, I guess, meritoriousness of the claim, but it seems in the testimony that you are acknowledging the function of Congress to take a hand in the resolution of that issue.

Ms. ELBERT. Yes; if our process acknowledges them as a tribe, then, of course, that satisfies criteria No. 1, and if the State comes across with the \$1.5 million, that takes care of No. 3. I think No. 2 depends on No. 1; if there is an existence of a tribe, that takes care of criteria No. 3.

Mr. TAYLOR. I have one other question I will ask you, and I think it may be redundant, but I am not sure.

Will the Bureau of Indian Affairs' lack of participation in the negotiation of this settlement in any way affect the BIA's position on the terms of the settlement, or will the Department insist on reopening negotiations with the goal of a new settlement, in which the administration is a participant?

Ms. ELBERT. Are you asking if we would change our criteria for settlement of claims? I thought those were pretty well laid out.

Mr. TAYLOR. No; but if, in fact, the state contribution is met, the acknowledgment of the tribe is met, do you have any other problems with this legislation?

Ms. ELBERT. I am not aware of any other problems.

Mr. TAYLOR. So it would appear, upon the meeting of those three or two criteria—however we look at it—that that would remove any further the Interior Department problems.

Ms. ELBERT. Any concern on the part of the Department; yes.

Mr. TAYLOR. I don't have any other questions at this time. We may have some that we will be submitting after we have completed the hearing and heard from other witnesses. So, thank you very much for your testimony today.

I would like to call the next panel of witnesses: Gladys Widdiss, the tribal chairperson of the Gay Head Tribe, accompanied by Luther Madison, Jack Campisi, and Henry Sockbeson.

Ms. Widdiss, you can handle the panel any way you want.

Ms. WIDDISS. Thank you.

Mr. TAYLOR. And your prepared testimony will be made a part of the record as if it had been read in full, and if you can summarize, that would be helpful.

STATEMENT OF GLADYS A. WIDDISS, PRESIDENT, WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC., ACCOMPANIED BY LUTHUR MADISON, TRIBAL MEDICINE MAN, GAY HEAD TRIBE; JACK CAMPISI, DOCTOR OF ANTHROPOLOGY; AND HENRY J. SOCKBESON, COUNSEL

Ms. WIDDISS. Good afternoon, Mr. Chairman. My name is Gladys Widdiss, president of the Wampanoag Tribal Council of Gay Head, Inc. I am a member of the Gay Head Wampanoag Tribe and a resident of the town of Gay Head.

I have prepared a complete statement which I have submitted to the committee. Mr. Chairman, I request that the statement be entered in the record. Rather than read that statement in its entirety, I would like to summarize those remarks and respond to any questions you may have.

I have come here today to voice the support of the Wampanoag Tribal Council of Gay Head, Inc., the traditional leadership of the tribe, and my own personal support for S. 1452.

Mr. Chairman, S. 1452 is the result of over 10 years of litigation and 7 years of negotiation by the Gay Head Wampanoag Tribe. When the tribe initially considered the land claim, there were three primary objectives considered as vitally important.

The first objective was control and preservation of tribal common lands. These common lands include the colorful Gay Head cliffs, the Herring Creek, and the cranberry bogs and dunes. These areas are of cultural and historical significance to the tribe. Traditionally our people held ceremonies, gathered food, and made a modest living from these lands.

Second, the tribe needed to provide a land base so that tribal members would have the opportunity to continue to live in the Gay Head community. Since the early 1960's, land values have increased dramatically, making it difficult for members of the tribe to make a living and maintain or build homes on Gay Head. This, coupled with a limited, seasonal economy forced tribal members to leave the community to live and find work.

Our people are being forced to leave Gay Head and the tribe is in danger of being destroyed by the forces of the marketplace.

Third, as a nonfederally recognized tribe, we felt that we needed to clarify our relationship with the Federal Government and to actively seek Federal recognition. The benefits and services available to federally recognized tribes would dramatically increase the chances for the Gay Head Wampanoags to maintain the Indian community and provide a measure of self-sufficiency for the tribe. This relationship, with a viable land base, would provide for ensuring that Gay Head would continue as an Indian community.

I believe that S. 1452 accomplishes these goals. The town's common lands will be turned over to the tribe. The State of Massachusetts has already passed legislation which enables the town to legally transfer these lands, once S. 1452 becomes a law.

The legislation also provides for the appropriation of sufficient money to purchase half the private settlement land. The State of Massachusetts will, we are confident, provide the other half.

The lands acquired will meet the housing and economic development needs of our community for the foreseeable future.

With respect to recognition, the committee should note that we have already petitioned the BIA for recognition. We expect a preliminary determination on our petition shortly.

We urge this committee not to report on S. 1452 until the preliminary determination is issued by the BIA. When a favorable ruling is issued, we request that S. 1452 be amended so as to provide recognition to the Wampanoag Tribe of Gay Head.

We would urge the committee to ensure passage of S. 1452 prior to the day we settle. We believe this approach would satisfy the

concerns expressed in the February 5, 1986 letter of Assistant Secretary Ross Swimmer.

As to the role the newly recognized tribe will play under the settlement, we have recently learned of charges that there is no requirement that the Wampanoag Tribal Council of Gay Head, Inc., convey title to the settlement lands to the tribe after the BIA has recognized us and a new tribal governing board has been established.

I want to make it clear to this committee that it always has been, and continues to be, the intent of the Wampanoag Tribal Council of Gay Head, Inc., to serve as interim body which would hold title on behalf of the tribe until such time as our newly recognized tribe is organized. I believe that sections 6(d) and 7(b)(1) provide adequate language to accomplish this result.

I have, however, no objection to any amendment that would further clarify this intent, should your committee deem it necessary.

Although most tribal members support S. 1452, there are those within our membership who do not. They provide vocal and active opposition. I will not attempt to fully discuss our efforts to ensure that the majority of the tribe has voiced its support for the bill, as that is set forth in my written testimony.

I would, however, like to make the following point.

No. 1, many of the dissidents who challenge the right of the tribal corporation to act for the tribe were active members of its board in top offices. While they were in power, they asserted the corporation's power to speak for the tribe. It was only after they were voted out of office that they took the position that the corporation could not speak for or bind the tribe.

No. 2, we took great pains to ensure that all those eligible to be on our tribal roll, be there. Dr. Campisi will address this issue further, and I assure this committee that we were as fair as possible.

I have appended to my written testimony copies of the notices of the enrollment process that was sent out.

No. 3, Mr. Hahn's exaggerated statements of support for his position within the tribe are unsubstantiated and untrue. He has never produced the signed withdrawals that we requested, nor has he responded to the BIA, when asked for documents to the extent of his support.

No. 4, we have conducted two votes on this settlement; once in 1981 and again in 1983. Prior to both votes, our tribal members were invited to tribal meetings, where the terms of the settlement were discussed. Members of the dissident faction attended these meetings and spoke against the settlement. In the 1981 vote, the tribe voted in favor of settlement by a margin of 115 to 60. Despite intense lobbying against the settlement—not to mention their litigation efforts—the tribe again voted in favor of the settlement in 1983. The margin of acceptance actually increased at the second vote, with 164 in favor and 29 opposed.

Dissidents Frank James and Thelma Weissberg and many of the opponents of settlement that you will hear from today voted in both the 1981 and 1983 tribal votes.

We realize the limitations of the settlement. For example, there is only limited provision for tribal jurisdiction, but traditionally the Gay Head Wampanoags control the town government, and we be-

lieve that the settlement provides the opportunity for the tribe to maintain that control.

Also, there is no provision for Federal recognition. The Gay Head Wampanoags have submitted documentation to support a petition for Federal acknowledgement. We expect a preliminary determination will be issued by the BIA shortly.

It must be kept in mind that the Gay Head Wampanoag Tribe, since 1870, has consistently elected Gay Head Indian people to town government positions. At present, all three selectmen—the town clerk, the tax collector, both constables, the chief of police, and the shellfish warden—are all Gay Head Indians, and, with few exceptions, have always been Indian.

If this legislation is enacted, the tribe, with an land base and the opportunity to develop economically and socially, will continue to control its control of the leadership position in the Gay Head community.

The last thing, Mr. Chairman, we recognize and accept that this bill will not empower our tribe to conduct high-stakes gaming on the public or private settlement lands provided for in this bill.

Thank you for providing me an opportunity to address the committee in regard to this most important issue. I urge you to favorable report S. 1452 out of committee.

Thank you.

Mr. TAYLOR. Thank you very much, Ms. Widdiss.

[Prepared statement of Ms. Widdiss appears in the appendix.]

Mr. TAYLOR. Would other members of the panel like to express themselves?

Mr. Luther Madison?

**STATEMENT OF LUTHER T. MADISON, TRIBAL MEDICINE MAN,
GAY HEAD TRIBE**

Mr. MADISON. Good afternoon, Mr. Chairman.

My name is Luther Madison, Luther T. Madison. I am a member of Wampanoag Tribe of Gay Head and a life-long resident of Gay Head. Since the death of my father in 1972, I have served as the tribe's medicine man. My father had served as medicine man from 1923 until his death.

I have come here today to express my support for S. 1452. I have always supported this legislation and believe that this settlement will serve the tribe and the town's best needs. Hopefully, this settlement will permit the town and the tribe to work together to make Gay Head a safe and friendly community once again.

I know there are people within the tribe who oppose this settlement, but I have listened to their objections and arguments at tribal and town meetings and find them, in my mind, to be unquestionably wrong.

This settlement preserves the town common lands for the tribe, which has been a major objective from the start of the suit. It also provides that the tribe will acquire land that can be used for affordable housing. This will ensure that our people are not driven out of Gay Head by the forces of the marketplace.

As a tribe, we have considered the terms of this settlement time and time again. We have conducted open tribal meetings and dis-

cussed the settlement at numerous town meetings. I believe that any tribal member who is interested has complete knowledge of the terms of the settlement and is aware that, although not perfect, it achieves our basic tribal goals. The tribe has voted on two occasions to accept this settlement. I have no doubt that a substantial majority of the tribal members want and need this settlement.

We Indians of Gay Head have always been a tribe. We have always believed that. We have always taken care of our own and have conducted our own affairs. This bill will ensure that our way of life will not be lost. I urge this committee to act favorably on S. 1452 as soon as possible.

Mr. Chairman, I would like to thank you for providing me with this opportunity to testify here. This concludes my remarks, and I will be willing to answer any questions that you may have.

Mr. TAYLOR. Thank you very much, Mr. Madison.

I think we will hear from the panel before we ask questions.

[The prepared statement of Mr. Luther T. Madison appears in the appendix.]

Mr. TAYLOR. Mr. Campisi.

STATEMENT OF JACK COMPISI, DOCTOR OF ANTHROPOLOGY

Mr. CAMPISI. Mr Chairman, thank you.

My name is Jack Campisi, and I am here today to express my views on the tribal membership as it relates to Senate bill 1452.

I have a doctorate in anthropology and have specialized in research for the American Indian communities. Since 1978, I have assisted a number of tribes in the preparation of petitions for Federal acknowledgment. In this context I have conducted research on the Gay Head Wampanoag Tribe since 1981. I have attached a copy of my curriculum vitae to my written statement.

I would like to summarize my findings as presented in my written statement to the committee.

First, it is important to make clear the distinction between the Gay Head Wampanoag Tribe and other Wampanoag groups. During the 19th century there were as many as 12 tribes or groups identified as separate Indian communities in Massachusetts. Each had its own membership, location, and leadership. The Gay Head Wampanoag Tribe was one of these.

In the course of my research I found no instance where any group exerted control or asserted authority over the Gay Head Wampanoag Tribe. It has been advanced by some that there is a sizable number of individuals of Wampanoag descent who are eligible for tribal membership.

This is an erroneous conclusion that apparently derives from a failure to distinguish between Gay Head Wampanoag descendants and all others of Wampanoag descent.

Second, some have questioned the tribe's use of the 1871 census as its base line. In my opinion, this is the best of the three available censuses for this purpose. It is the most complete, containing the names of more individuals than either of the other censuses, and it contains names not on the other censuses.

Additionally, I find the probability of its accuracy to be higher, since it was the basis for the division of land among the tribal

members. I reasoned that there was likely to be a more critical look at the membership under such conditions.

In summary, it is my professional opinion that the current Gay Head Wampanoag tribal membership list is as complete as can be reasonably expected. I believe that an honest effort was made to include all those who are eligible for membership.

Thank you.

[The prepared statement of Jack Campisi appears in the appendix.]

Mr. TAYLOR. Does that conclude your testimony?

Mr. CAMPISI. Right.

Mr. TAYLOR. Could you hold on just a second?

Mr. CAMPISI. Yes.

Mr. TAYLOR. I would ask the panel to just delay this testimony a moment.

We have Senator Kennedy with us, the sponsor of the bill, and, Senator, if you care to make a statement, we would be happy to receive it.

I apologize for Senator Andrews. He had to go to the floor for the vote and has not gotten back yet.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM MASSACHUSETTS

Mr. KENNEDY. I apologize for Senator Andrews. He had to go to the floor for the vote and has not gotten back yet.

First of all, Mr. Chairman, I want to express my very sincere appreciation to the members of the committee for considering this legislation, and I know that the case is very well presented by very capable and able spokesmen and women who will be speaking in support of this particular program and legislation.

Let me just say that the legislation that we have before us is a result of an extremely long, difficult, challenging set of negotiations that have taken place over many, many years, involving the best efforts of the members of the Indian tribe, the local community, those at the State level, as well as those at the Federal level.

This is not an issue which is new, certainly to the people in the Gay Head area or to the people on Martha's Vineyard, or Massachusetts. We have been wrestling with this question for many, many years in this administration and in previous administrations.

We are very hopeful that we can gain a favorable consideration of this legislation, because it really is indispensable in the terms of justice to the Wampanoags, and it is indispensable, I think, in terms of the clarifications of various land titles in that area which have been unsettled for many, many years.

The State of Massachusetts is quite prepared to meet its responsibility. I have talked to the Governor about this. The request for the \$1.5 million funding is in the Governor's budget. He is strongly committed to it. He has spoken in favor of it, and he has given us virtual assurances that in any budget that is considered it will include these funds.

As the Chair knows, this legislation is contingent upon the State action, in any event, so the security of the taxpayer, the Federal taxpayer, is quite assured.

I would have preferred, Mr. Chairman, that we would have been able to fashion legislation that would have, as a matter of definition, given the assurances to the members of the tribe—they do not need them, themselves; the others perhaps do—that the Wampanoags are a tribe.

We are sensitive to procedures which have been established to deal with these particular considerations at a national level.

We know of the apparent resistance that would come if such a language were actually included, and we have taken that into consideration and fashioned the legislation as we have at the present time, but I must say, as one who was formerly the head of the Indian Education Committee and spent time on Indian affairs a good deal more than I have in the recent times, I know that in terms of criteria, I feel personally, and I know that those who have reviewed the case for the tribe feel, that that should be forthcoming.

We were very hopeful that it would be forthcoming prior to this hearing. It is to no fault of the witnesses here, the members of the local community, that that has not been forthcoming, but we recognize, as well, that there is a contingency on the legislation that there be such a finding. We recognize it. We wish it could have been otherwise, but, once again, that was a matter that we took into consideration in fashioning the legislation.

Finally, I would just say, given the assurances, Mr. Chairman, that I know that there are those who might question this particular approach and would want more expansive consideration of the interests of the tribe. Those issues have been thoroughly reviewed with great time, great deliberation, and with very adequate chance for consideration of those other interests. I think that the decision by the tribe and tribal leaders in a series of two particular occasions indicated wide support, overwhelming support.

This is a very clear indication of the degree of support for this particular proposal by those that would be most affected by it.

So, for all those reasons, which I won't repeat for the chairman—Chairman Andrews, if you just take into consideration we have made a strong case in favor of this legislation in your absence, I would hope that we could get favorable consideration.

I will take the opportunity to privately talk with you and hopefully you will have a chance to review the record.

I wanted to express appreciation to all of the people in our State and also particularly to those that are most directly affected, Mr. Chairman, by the consideration of this legislation.

Mr. ANDREWS. Let me point out, Senator, that we appreciate your coming and extend my apologies. I was here earlier. I tried to outguess the vote on the front, and you outguessed it on the back. You know how those things go, but your statement is a strong one, a powerful one, one of commitment to the people you represent, and this committee will, of course, do everything we can to abide by your suggestion, because, after all, you know that area far better than we do.

Mr. KENNEDY. I thank the Chair, and I think you are hearing from very able spokesmen and women here, and I am very grateful to you for giving them a chance. This is a matter of great impor-

tance and significance to the quality of lives of many people there, and you are going to give them a chance to speak to the issue.

I want to thank you very much.

Mr. ANDREWS. Thank you very much, Senator. As I understand, Henry Sockbeson has not yet spoken.

Henry.

STATEMENT OF HENRY J. SOCKBESON, COUNSEL

Mr. SOCKBESON. Thank you, Mr. Chairman.

I am a member of the Penobscot Tribe and an attorney with the Native American Rights Fund. Since 1983, I have been the attorney who has worked with the Gay Head Tribe in order to try to settle this claim.

I have submitted written testimony to the committee, which covers the litigation that has been brought by the dissident faction within the tribe in Federal and State court. I would ask that that testimony be entered in the record.

Mr. ANDREWS. It will be, at your request.

Mr. SOCKBESON. I would like to briefly summarize the points made in that written document.

The dissident members of the tribe have been unwilling historically to accept the tribe's 1981 and 1983 vote accepting the principles of settlement.

On those two occasions, they lost the tribal vote, but have since sought to impose their will on the tribe by retaining an attorney and seeking to force a settlement through the judicial process. They first turned to the Federal court, where they attempted unsuccessfully to intervene on an individual basis in the tribe's Non-Intercourse Act claim.

The court there ruled against the attempted intervention, but rather than appeal this decision, they dropped their intervention effort and instead attempted to bring a separate supposedly independent action based on essentially the same Non-Intercourse Act claim made by the tribe in the same court where the tribe's claim was then pending.

This latter attempt resulted in the published decision, *James v. Watt*, which held that only tribes could maintain a cause of action under the 1795 Non-Intercourse Act. The U.S. Supreme Court refused to review this decision.

I have appended a copy of this decision to my written testimony.

The purpose of both of these Federal actions was to halt the settlement of the tribe's Non-Intercourse Act claim. Having lost in the Federal court, the dissidents then turned to the State court system. There, they filed a bewildering array of cases in both State Probate and Superior Courts.

Again, the purpose of these actions was to stop the tribal corporation from settling these claims. I will not attempt to outline the course of this State litigation. I refer you to a copy of the case entitled *James v. Bellotti*, where they are tracked in detail. A copy of this decision is also appended to my written testimony.

Recently, all of these State court actions have been consolidated. On October 30, 1985, a superior court judge granted a motion for summary judgment for all of these consolidated actions. The court

based its ruling on the principles of *res judicata*, meaning essentially that a litigant bringing a Federal action must also bring any State law based theories which are grounded on the same facts.

The court held that because the dissidents failed to bring their State claims which they filed their Federal claims they were subsequently barred from bringing them in a later State court action. Of course, this ruling has been appealed.

It has been suggested that action by this committee be delayed, pending the resolution of this State action. Since the court's decision was based on the principles of *res judicata* and not on the merit, I suggest to the committee that no quick solution of these cases can be anticipated. Even if the State appellate court were to rule in the dissidents' favor, the case would be remanded back to the Superior Court for trial on the merits.

It will take years for the State courts to finally determine the merit of the issues that the dissidents have raised.

I can, however, assure this committee that there are currently no outstanding State court orders which would in any way restrain the ability of the Wampanoag Tribal Council of Gay Head, Inc., from settling this claim on behalf of the tribe.

I thank you for the opportunity to appear here today.

[Prepared statement of Mr. Sockbeson appears in the appendix.]

Mr. ANDREWS. I appreciate your testimony. Let me ask a few questions that I would like to have as a matter of the record.

What will be the tax status of lands that will be acquired by the tribe under this legislation?

Mr. SOCKBESON. The tax status would be that those lands would be subject to tax if they are developed. If they are not developed, they would not be subject to tax. It is not really called a tax, although that is the effect of it. They are called in-lieu-of payments to the town. Basically, the idea is that the tribe is still a part of the town and would require some town services, and the taxes that would be paid, would serve to pay the tribe's share of the cost of the town's supplying services.

Mr. ANDREWS. Incidentally, let me point out to the other members of the panel that we assume that, as your attorney, as your counsel, he is speaking, and you are agreeing with him. If you do not agree with him, speak up and say.

Mr. SOCKBESON. I can assure you, Mr. Chairman, that has never been a problem with my client.

Mr. ANDREWS. I just want to make absolutely sure, because when we go to the floor with this piece of legislation, we want to know that we have heard not just from the counsel, but from also these key leaders of the Gay Head Tribe. It makes a lot better record.

Now, what is meant by payment in lieu of taxes, and would failure to make such payment result in tax forfeiture?

Mr. SOCKBESON. No; it would not. Basically, what the town would do would be to take over the property and lease it until the payments were made, so that the tribe could never lose title to that property for taxes.

Mr. ANDREWS. Why were the public beaches not transferred to the tribe along with the cliffs and cranberry bog lands?

Ms. WIDDISS. There was a question with particularly the non-Indians at Gay Head who were afraid that if we controlled the beach-

es, that they would be excluded from them, and it has never been the position of Gay Head Wampanoags to exclude anyone from anything, and today, when we begin to make rules and regulations, it is only because we have to because of the numbers, and in order to keep the relationship on a good basis, we agreed that we should take like a double control of the beaches; that the town of Gay Head and the tribal council and taxpayers association would monitor the control of the beaches.

When I say it to you, it comes out as three entities. In my mind, it is two entities, because the tribe controls the town, and this is hard for some people to understand. So when I say the town, taxpayers association, and the tribe, I am really speaking of two entities, and we agreed that it would be to everyone's advantage that the beaches would be controlled by—would be under the control of both parties.

Mr. ANDREWS. What is the status of the schoolhouse at Gay Head?

Ms. WIDDISS. The schoolhouse is now the town library.

Mr. ANDREWS. OK. What are the present hunting and fishing rights of Indians at Gay Head, and are they the same or different from the rights of others?

Ms. WIDDISS. Right now, they are the same as anyone else.

Mr. ANDREWS. OK. Are you confident that every opportunity was given to the so-called dissident members to make their views known during the negotiation process?

Ms. WIDDISS. Yes.

Mr. ANDREWS. To what extent was information on the terms of this settlement disseminated to tribal members before the vote on settlement?

Ms. WIDDISS. I have attached to my written testimony copies of letters that were sent to the tribal members, with the date and what was contained in the letter.

Mr. ANDREWS. We will make that a part of the record so we have it complete, and under the agreement which settlement lands will be available to the tribe for development other than the Cook lands?

Ms. WIDDISS. There will be what is the so-called Strock property. Those will be available to the tribe for housing development. At the time that we chose them, they were chosen more or less for two reasons. They border the old Indian cemetery. We have two cemeteries at Gay Head. The old Indian cemetery, which was in the original village, and then the new one, so the Strock property borders that, and then we have the land that borders the Herring Creek, which is called the Cook property. That will come to us as economic development property.

Mr. ANDREWS. Thank you very much. We appreciate your statement. It will be most helpful to us.

We will next from panel No. 2: Priscilla Attean and Curtis Osceola.

If you would identify yourself, your statements will be made a part of the record, and you can summarize them, or give them in your entirety, depending upon what you wish. We will be glad to hear from you.

STATEMENT OF PRISCILLA ATTEAN, PENOBSCOT TRIBE OF MAINE, ACCOMPANIED BY CURTIS OSCEOLA, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, INC., NASHVILLE, TN

Ms. ATTEAN. Good afternoon, Mr. Chairman.

My name is Priscilla Attean, and I am here today representing Gov. Tim Love and the Penobscot Indian Nation of Maine.

On behalf of Governor Love and the Penobscot Indian Nation, I would like to thank you for this opportunity to give testimony in support of the Gay Head settlement legislation.

The Gay Head Tribe has long been recognized by the Penobscot people. As one of the first tribes in the United States to settle its claim though a congressionally sanctioned negotiated settlement, it gives the Penobscot Nation extreme pleasure to come here today as a federally recognized tribe, with an everdeveloping reservation and what we consider to be a sound working relationship with the Federal Government and the State of Maine.

As I am sure you will recall, these things do not come easily. Our tribe was in court for over 7 years. Our settlement took over 3 years to negotiate, and Congress took another period of months to enact the settlement legislation into law.

In looking back over the course of the last few years, the Penobscot Indian Nation can honestly state that despite a few minor problems the Settlement Act has worked well for us, and we in no way regret our decision to go for a negotiated settlement of our claim.

One of the reasons our relationship with the State of Maine has developed as well as it has may well be the fact that Congress and the Federal Government, while providing unquestionably necessary assistance and support, respected the tribe's right to negotiate and arrive at a mutually acceptable solution to its claim.

It was this negotiation process and the Federal endorsement of our position that encouraged the State of Maine to respect the sovereign rights of the Penobscot Nation despite extreme political pressure to do otherwise.

Our brothers at Gay Head have also undertaken many of the same hard bargaining sessions and in and out of court arguments that the Penobscots faced only a few years ago.

We therefore strongly encourage this committee and the Congress of the United States to provide the Gay Head Tribe with the same technical assistance and Federal encouragement that they so graciously gave to our tribe when we were in their position.

It is our understanding that the Gay Head settlement has received the overwhelming endorsement of Gay Head people and is supported by the duly elected government of the Gay Head community.

The Gay Head Tribe supports this legislation. We therefore ask this committee to recognize their sovereign right to make these decisions and support them in their efforts to have their settlement enacted into law at the earliest possible time.

This is not to state that we do not wish to see this committee and other representatives of the Federal Government work to improve the Gay Head position in the settlement, itself, should such effort

prove to be necessary. We, instead, suggest that any such efforts should be undertaken jointly by this committee and the Gay Head Tribe if the tribe's sovereign right to make such an important decision is to be respected.

We feel it is also relevant to point out that as is the case at Gay Head, the Penobscot Tribe had within its membership a group of individuals who were opposed to a negotiated settlement of our claim. As is the case at Gay Head, this group was a small minority, and while we made every effort to address their specific concerns, we felt, and continue to feel, that the wishes of the overwhelming majority of tribal members must be adhered to. It is the democratic process clear and simple.

The Penobscot Nation urges this committee's support of any settlement that can be negotiated with the Gay Head Tribe.

Again, on behalf of the Penobscot Nation, I thank you for this opportunity to testify here today.

I will be glad to answer any questions.

Mr. ANDREWS. Thank you very much for a very complete statement.

[Prepared statement of Ms. Attean appears in the appendix.]

Mr. ANDREWS. We will now hear from Curtis Osceola, who is the executive director of the United South and Eastern Tribes, Inc.

Mr. OSCEOLA. Thank you, Mr. Chairman.

Again, my name is Curtis Osceola. I am executive director of the United South and Eastern Tribes, and I am here today to express the support of the member tribes of USET, and USET is an inter-tribal organization composed of 16 federally recognized American Indian tribes located in the Eastern United States.

USET is headquartered in Nashville, TN, founded in 1968, and dedicated to promoting the economic and social welfare of its member tribes.

On March 12, the member tribes voted to support the efforts of the Wampanoag Tribal Council of Gay Head by resolution, the efforts being the passage of legislation to implement the settlement of the Federal litigation entitled "Gay Head Tribe of Indians versus Town of Gay Head."

The member tribes support the legislation in principle. We understand that the reporting of the legislation will be somewhat modified or changed as the process goes along, and we hope that it would be in the best interests of the people of the Gay Head Tribe.

That is our statement. Thank you.

[Prepared statement appears in the appendix.]

Mr. TAYLOR [presiding]. Thank you very much, Mr. Osceola.

We do not have any questions of this panel of witnesses. We appreciate very much your testimony, and I am pleased to hear the testimony with regard to how it is working in Maine. As you know, this committee was deeply involved in that Maine settlement act. It is always nice to hear followthrough.

Thank you very much.

The next panel of witnesses is Hannah Malkin, president, Gay Head Taxpayers Association, accompanied by Jim Quarles, counsel for the association.

STATEMENT OF JAMES L. QUARLES III, COUNSEL FOR GAY HEAD TAXPAYERS ASSOCIATION, ACCOMPANIED BY HANNAH L. MALKIN, PRESIDENT, GAY HEAD TAXPAYERS ASSOCIATION

Mr. QUARLES. Good afternoon, Mr. Taylor.

My name is James Quarles, and seated on my right is Mrs. Hannah Malkin. Mrs. Malkin is the president of the Gay Head Taxpayers Association. I and my law firm have the privilege of representing the Gay Head Taxpayers Association.

Mrs. Malkin and I have previously submitted written statements expressing our support of this bill. In view of the limited time available we do not propose to burden the committee with extended statements. However, Mrs. Malkin has some brief remarks to make on behalf of the Taxpayers Association.

Thank you.

[Prepared statement of Mr. Quarles appears in the appendix.]

STATEMENT OF HANNAH L. MALKIN, PRESIDENT, GAY HEAD TAXPAYERS ASSOCIATION

Mrs. MALKIN. Mr. Chairman, members of the committee, I am Hannah Malkin, a landowner in the town of Gay Head, MA, and the president of the Gay Head Taxpayers Association. It is an honor to appear before you today to testify on S. 1452, a bill which means so much to the people of Gay Head.

Our organization, the Gay Head Taxpayers Association, was formed in 1973. Our membership, of approximately 140 families, includes approximately 75 percent of Gay Head's seasonal and year round residents who are not affiliated with the Wampanoag Tribal Council of Gay Head, or other who assert an ancient claim to the ownership of Gay Head.

In 1976, our organization voluntarily joined the litigation commenced by the tribal council as a defendant. That lawsuit, if successful, would threaten the title of all Gay Head landowners. From the very beginning, our goals had been to protect our homes and land and to return Gay Head to the harmonious atmosphere which attracted us to it in the first place.

All of us also believe that there is an inherent and obvious inequity in compelling innocent landowners to defend their titles against a land claim based on acts occurring more than a hundred years ago.

In 1977, Albert Sacks, then dean of the Harvard Law School, became a mediator and attempted to resolve the disputes between the residents of Gay Head who were aligned with the tribal council and those who were aligned with our organization. That effort of mediation continued for more than 2 years, but was ultimately not successful. Negotiations, however, continued. In 1981, we began another concerted effort to attempt to settle the dispute. For more than 2 years, Lawrence Mirel, on our behalf, and Thomas Tureen, of the Native American Rights Fund, negotiated in an attempt to achieve a mutually acceptable solution to the competing interests.

In late 1983, we were successful in reaching the understanding contained in the joint memorandum of understanding concerning settlement of the Gay Head, MA, Indian land claims. The bill which is before the committee today is a result of that agreement.

Our membership urges the passage of this bill for three basic reasons.

First, the litigation of an Indian land claim is an extremely complex and extraordinarily expensive undertaking. Our membership of only 140 families has raised and spent almost \$175,000 in an effort to defend our properties and to seek the passage of the legislation necessary to resolve this dispute; this, despite the fact that no one suggested any member of our organization is in any way responsible for any of the wrongs the tribal council claims were worked upon it.

We are, of course, committed to continue to defend our homes and property, but believe that the continuation of the litigation is a burden we should not be forced to bear.

Second, in addition to the money we have spent, the pendency of this lawsuit has been a severe hardship to us. Title insurance companies are reluctant to insure the titles of Gay Head properties. Banks have been reluctant to provide mortgages, thus making land transactions difficult if not impossible.

Third, this legislation is a fair resolution of the dispute. It produces a result which is desired by the plaintiffs. From our standpoint, not only does the bill remove the cloud upon our titles, but it respects the expectations we had when our members came to Gay Head.

Our members bought their lands and homes on the understanding that they were moving into a community where the rules and regulations were the same as in other towns in Massachusetts. It was for that reason that we conditioned our acceptance of the settlement upon a requirement that all of the laws, ordinances and regulations of the Commonwealth of Massachusetts apply to all of the lands in our town.

Section 10 assures that none of the lands in our town will be exempt from generally applicable State regulation against gambling or other presently prohibited activities which would ruin our town.

While this bill does not provide any party with all they might want, it does provide all parties with that which they need most. For the tribal council, the bill provides an inalienable land base and a new opportunity to pursue their Indian ancestry. For the town, the bill preserves the invaluable common lands from development, continues its ownership of the beaches, preserves its tax base, and confirms its jurisdictional authority.

For the State, the bill likewise confirms that Gay Head and its residents are subject to the same laws and regulations as any other citizens of the Commonwealth of Massachusetts. For the property owners, the bill removes the cloud on their titles, removes a heavy financial burden.

Mr. Chairman, and members of the committee, on behalf of the Gay Head Taxpayers Association I ask that you report favorably on this bill. Only the enactment of a bill such as this can end the expense, uncertainty and division which has been visited upon our town.

We understand the Commonwealth is planning to contribute one-half to the cost of this settlement, and now only the Congress can

effectuate the settlement which both we and the tribal council have reached and desire.

Thank you for permitting me this opportunity to convey the settlement of our members.

[Prepared statement of Mrs. Malkin appears in the appendix.]

Mr. TAYLOR. Thank you, Mrs. Malkin.

In the past, there has been some technical hitch between the Gay Head Taxpayers Association and the tribe, itself, on this petition for recognition and how the legislation should be structured. I think we have received some pretty positive testimony today from the Department of the Interior and definitely the word from the State of Massachusetts was quite favorable.

In light of that, does the Gay Head Taxpayers Association any longer have any concerns about the legislation being amended in such a way that it is extending formal acknowledgment to the tribe at the same time that it is bringing about the resolution of the claim?

Mrs. MALKIN. Well, I think that our organization would have no objection if settlement and recognition were simultaneous, because we view the settlement as a resolution of this whole question. Maybe Mr. Quarles would like to expand on that.

Mr. QUARLES. Mrs. Malkin has accurately expressed our view. In response to your question, we have been in the position of both litigating these kinds of claims and in settling them. We have litigated on behalf of some of our clients and represented the State of Maine along with the Attorney General in the settlement of another.

It is our position that the settlement of these claims by legislation such as this is the appropriate way to proceed. Our view is that recognition in the context of the legislation is not inappropriate unless its insertion in the legislation causes the legislation to be less palatable to the people in the administration who will be required to pass upon it.

Mr. TAYLOR. Thank you very much, Mr. Quarles.

Senator Murkowski, do you have questions?

Mr. MURKOWSKI [presiding]. I have a question that I am interested in, because it has ramifications beyond this particular subject matter at this hearing.

I understand that there is about 491 acres involved in the settlement, and the contribution by the Federal Government and the State would be \$1.5 million each. For land that generates revenues that would come as a consequence of any productivity on the 491 acres, would there be an applicable tax levied on land that generated revenues?

Mr. QUARLES. My understanding is that the so-called Strock lands which are subject to development, and which are in fact developed, would produce an in-lieu-of-taxes obligation to be paid to the Commonwealth of Massachusetts and to the town.

Mr. MURKOWSKI. So the Commonwealth of Massachusetts would pay the taxes?

Mr. QUARLES. Sir?

Mr. MURKOWSKI. Waive the taxes? You say taxes in-lieu-of, and I—

Mr. QUARLES. It would be payments in lieu of taxes.

Mr. MURKOWSKI. So the State would, instead of the State collecting taxes—

Mr. QUARLES. They would collect a payment which would be computed in an equivalent manner, but would be considered payments in lieu of taxes, the principal distinction being the activity which would be available to compel payment in the event that payment was not made. Mr. Sockbeson, on behalf of the tribal council, explained that it is contemplated that in a situation in which in lieu-of-taxes the payments were not made, instead of a foreclosure sale, either the assets of the Tribal Land Corporation would have a lien placed on them or the land would be leased by the town for such period as was necessary to recover the in-lieu-of-taxes payments.

Mr. MURKOWSKI. Well, let's put it in another way. Let's assume that there is a facility built on the land to generate revenues and the facility operates and makes a profit. Are there taxes levied on that application of the facility and the land and the reality that it is producing a revenue?

Mr. QUARLES. All of the land and the activities on it will be subject to the jurisdiction of the Commonwealth of Massachusetts, so that our understanding would be that to the extent that any entity operated to make a profit on there, that they would be subject to the same taxes as any other resident of the Commonwealth of Massachusetts. And furthermore, the so-called Cook lands remain subject to taxation and foreclosure in the same manner as privately held lands.

Mr. MURKOWSKI. So they would pay taxes applicable to whatever any other resident of the Commonwealth of Massachusetts would pay.

Mr. QUARLES. It is my understanding they will.

Mr. MURKOWSKI. I would assume, if that is the case, why then that satisfies my concern on that particular question.

On nonrevenue-producing lands, would there be a tax requirement?

Mr. QUARLES. My understanding is that there would not, except for the so-called Cook lands.

Mr. MURKOWSKI. I believe that we have the junior Senator from the State of Massachusetts, Senator John Kerry.

Senator Kerry, I believe that you may have a statement. You certainly are welcome before the committee, and as one of the members of the Select Committee on Indian Affairs in lieu of our Chairman, Mark Andrews, who is temporarily at another committee meeting, which is where I am going to be going in a few minutes, we welcome you. We look forward to your testimony and your position with regard to this matter before us.

We have had the senior Senator, Senator Kennedy, previous. We welcome you and look forward to your statement.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM MASSACHUSETTS

Mr. KERRY. Thank you very, very much, Senator, and I appreciate the committee's indulgence. I will be very, very brief because I am arriving out of turn, and I know that there is important testimony yet to be heard.

I simply would like to thank the committee for holding today's hearings on S. 1452, and I want to welcome the citizens of the Commonwealth who have traveled to Washington to be with us today to testify on this important piece of legislation.

I joined with Senator Kennedy as a cosponsor of this bill, because we both believe that it represents the realization of the important settlement which brought together the Wampanoag Tribal Council, the Gay Head Taxpayers Association, and the Commonwealth.

This dispute has been long and it has been costly. Like any dispute, it has been contentious, but the settlement, more importantly, we believe it really does represent a very welcome and permanent resolution to this complicated emotional land claim issue.

It also represents a very important opportunity to move beyond a decade of deadlock into a position which will provide us with a stable future for Gay Head.

You, obviously, are aware of the details, and I am not going to go through them at this time. But I would simply like to note that Massachusetts and our Governor, by submitting a supplemental budget request for \$1.5 million as the Commonwealth's share of \$3 million, we believe are trying very hard to show our good faith in this effort, and I hope that this contribution will enhance the settlement and put us in a position of being able to enjoy Gay Head and its cliffs and give to the Wampanoag Tribal Council an opportunity that is long overdue.

So, I simply want to commend the committee for its consideration of this bill and urge it to adopt it. I also want to thank those who have taken part in this process.

Mr. TAYLOR [presiding]. Thank you very much, Senator. I might just say that we have received, I thought, some very fairly positive testimony from the Department of Interior today, and we were assured that they would complete at least their preliminary work on the petition for recognition by June 6.

Mr. KERRY. Thank you very much, and I know you played an important part of that.

Thank you very much.

Mr. TAYLOR. We have another question for you.

Ms. BOYLAN. I just need some clarification.

My understanding, from reading the bill, is that there will not be any State taxation on tribal lands; that it is strictly local taxes. Is that correct?

Mr. QUARLES. I understood the Senator's question to be directed to revenues generated from activities which were conducted upon the land, as opposed to the taxation of the land.

Ms. BOYLAN. Yes; but generally if activities are on trust lands, then that income is not taxable at the State level either, if it is generated off of Indian tribal land. The way I read the bill, there is no provision for State taxation. Maybe I am wrong, but if you cannot clarify it, I will ask Mr. Sockbeson.

Mr. QUARLES. Perhaps Mr. Sockbeson is an appropriate person. However, section 10 of S. 1452 provides that, unless expressly otherwise provided, the settlement lands and any other lands hereafter acquired are subject to the laws of the Commonwealth of Massachusetts and the town of Gay Head.

Mr. TAYLOR. Perhaps Mr. Sockbeson could come back to the table for 1 minute.

Mr. SOCKBESON. Well, that is a very good question.

The actual settlement agreement, itself, is the document that would, in large part, cover the question of taxation. If you read the settlement agreement, it talks pretty much, I think, in terms of the land itself, and the town taxes that would be applied to the land, and I think that was the concern of the parties when they sat down to negotiate it. I do not see any evidence in here that anyone considered the question of income derived from the Strock property and what State taxes would apply there.

The only area where that would be covered is in the bill itself, when it talks about the civil and regulatory control or jurisdiction over the lands, and I think you could argue both ways. I do not think it is clear at all from the bill, frankly, precisely which State taxes are applicable.

Ms. BOYLAN. The States normally do not tax land, anyway.

Mr. SOCKBESON. The States would not tax land, but they may apply other taxes. I am not really familiar with the Massachusetts scheme.

Ms. BOYLAN. They would tax a business.

Mr. SOCKBESON. They would certainly perhaps tax some businesses.

Ms. BOYLAN. The bill says there will be no State taxation. There would not be in any case, so I took it to mean no taxation on any development either.

Thank you.

Mr. TAYLOR. Perhaps this an area we need to get clarified, because, as I read the bill and the settlement agreement, it appeared that the land was never subject to taxation but improvements put upon those lands that are eligible to have improvements put upon them. Those improvements would be subject to a payment in lieu of tax.

Ms. BOYLAN. To the town.

Mr. SOCKBESON. To the town. Well, I mean, that's correct, but—

Mr. TAYLOR. Through the taxing entity.

Mr. SOCKBESON. It is also specified in the settlement agreement that when development is placed on a parcel of land, that not only the improvement but also if there were a requirement for 2-acre zoning, for example, that the value of those 2 acres would be included in whatever in-lieu-of-taxes would be applied. I do not think that it is totally clear from the legislation itself, precisely what other taxes with respect to the State might be applicable. And I was not a party to the negotiation process, so I really have no idea what was in the minds of the various parties.

Ms. BOYLAN. Thank you, Henry.

Mrs. MALKIN. I believe that the property known as the Cook property was treated a little differently from the rest of the property. I think that the in-lieu-of-taxes pertains only to the Strock property for development on the Strock property and that both the agreement and the bill specifically provide that development on the Cook property would be treated as any other land. I believe I am correct on that, am I not?

Mr. SOCKBESON. My recollection is that all activity on the Cook properties is taxable.

Mrs. MALKIN. That land was specifically set aside for fish-related industry, and the understanding was that that would be taxable as any other business or industry on any other land.

Mr. TAYLOR. You say this was for fish-related activities?

Mrs. MALKIN. Fish-related. The intent of the agreement was to permit development of fish or seashore-related activities there, as opposed to the Strock land, which was expected to be residential.

Mr. SOCKBESON. I understand that to be the case, but it is not specified in the agreement.

Ms. BOYLAN. Thank you for clarifying it.

Mr. TAYLOR. We do not have any further questions at this time, but there may be some followup inquiries.

Thank you all very much.

Next, we will have panel No. 4: Jeff Madison, Chairman of the Board of Selectmen, town of Gay Head, MA, accompanied by Mark Widdiss, Selectman, and David Vanderhoop, Selectman.

STATEMENT OF JEFFERY L. MADISON, SELECTMAN, BOARD OF SELECTMEN, TOWN OF GAY HEAD, MA, ACCOMPANIED BY MARC WIDDISS, CHAIRMAN, GAY HEAD BOARD OF SELECTMEN; DAVID VANDERHOOP, SELECTMAN, GAY HEAD BOARD OF SELECTMEN

Mr. MADISON. My name is Jeff Madison. I am a member of the Wampanoag Tribe, and while I am not the chairman of the Board of Selectmen—Marc Widdiss is—I will speak first, if that is OK with you.

I want to thank you for the opportunity to speak here today on this legislation which means so much to our small community.

Mr. TAYLOR. Is Mr. Widdiss here? You are Mr. Madison?

Mr. MADISON. I am Mr. Madison.

Mr. TAYLOR. Who is the chairman of the Board of Selectmen?

Mr. MADISON. Mr. Widdiss.

Mr. TAYLOR. And you are Marc Widdiss, right? OK.

Mr. WIDDISS. It is all right for Mr. Madison to speak first, as far as I am concerned.

Mr. TAYLOR. OK.

Mr. MADISON. Thank you for having us here today, and this legislation does mean a lot to our small community in Gay Head. It is pretty awesome for us to come here and address you folks here, and if I ramble a little bit, forgive me.

I have submitted some testimony, and I would like that included in the record, but I would like to say a few personal comments, if I might, regarding this legislation.

As you listen to the testimony that is given here today, non-Indian, Indian, and inter-Indian, I think that it has a common theme, and that is that all we want is the opportunity to have a weight that has been put upon us these last 12 years or 112 years, depending upon how you look at it, relieved from our shoulders.

All we want is to have that relief and to let us enjoy the beauty and live in harmony in this small community.

As you get down through the list of witnesses, I am sure you will hear some comments in opposition to this legislation. The only thing that I can say about that is that the people in opposition to this actually started the action and initiated the court action in the first place. Their motives for opposition are only known to them.

I also want to take the opportunity to say that this is a fair compromise, accepted by a tremendous majority of all of those people who are involved.

As a public official in the town of Gay Head, I represent all of the people, and I am in an awkward position, because there should be no doubt that I strongly lean in favor of the Wampanoag Tribal Council. But I have refrained through the course of this litigation from becoming an active participant in the Wampanoag Tribal Council.

And with that in mind, I would like to use the rest of my time here today, giving a different position from those you will hear today. You hear from the Indian people, you hear from the non-Indian people, but there is another group of people that are affected deeply by this problem that we have, and that is the people who are non-Indian who are not in the Taxpayers Association, and this affects them as righteously as it affects all of us. And while they may be nonpolitical in the sense that they do not belong to the Taxpayers Association, they are not represented here today, but they should be heard.

I would like to have entered into the record an application for abatement of real estate tax by a non-Indian person from Gay Head, and just read from his statement as to why he feels he should be entitled to an abatement on his property tax in Gay Head. It is very short.

Mr. TAYLOR. We will be very happy to make that a part of the record at the conclusion of your remarks, and please feel free to read what you want to read.

Mr. MADISON. Thank you.

In the early 1970's we listed this property, subject for his property, for sale. We could not sell due to the initiation of the local dispute which resulted in the refusal by financial institutions to consider the financing of properties in the Town of Gay Head.

This dispute went on and on for years to our detriment. In 1985, we were close to a sale to a bonafide buyer who was ready, willing and able to purchase the property. We were refused a permit for a standard minimum septic system for one house on these 22 acres of property.

The presentation was based on a reasonable request for variance made necessary due to the continual change of setback requirements to where they are double those required by the State over the 12-year period of the ongoing dispute referred to. In all these years we have contributed to the town. The town has never contributed to us. We help pay for the services utilized by the people who are allowed to live in the town and to build on their property. Our property, presently assessed for \$145,000, continues to be taxed even though we and our sons are put in the position of being unable to use any of the services for which we pay.

This discrimination has resulted in an unfair and inequitable situation.

It is a serious problem. You are the only people who can help us out. Please give us that help.

I will conclude my comments with that. Thank you.

Mr. TAYLOR. Thank you. Is the other gentlemen here?

[Prepared statement of Mr. Madison appears in the appendix.]

STATEMENT OF MARC WIDDISS, CHAIRMAN, GAY HEAD BOARD OF SELECTMEN

Mr. WIDDISS. Yes; Thank you.

My name is Marc Widdiss. I am the chairman of the Board of Selectmen in Gay Head, and also I am a member of the Wampanoag Tribe. I want to thank you all for having us here today. It is the very significant part of this whole process.

I have submitted a statement that I request be made part of the record. I just want to add a few thoughts, a few personal thoughts, to the testimony.

As far back as I can remember, the town of Gay Head has had a special significance to me. As a child, I would be packed off in a car with my two brothers and sister who would be brought to the island where we could enjoy the clean air, the clean beaches in its natural beauty.

As I grew older, I realized that there was something more significant to that bond. I knew there was deeper feeling that was involved, and it certainly guided me at times.

Finally, 10 years ago, I made part of the most significant decision in my life. I decided to move to Gay Head. Ten years later, I am still very comfortable with that move. I am into my second term as a selectman in town, and I can see myself contributing for a number of years to the town, both as a selectman and as a member of the Indian community.

The favorable passage of this legislation, I believe, will perhaps open up the opportunities for a number of other Gay Head Indians that are not living on the island, to perhaps fulfill their dreams of coming back and living with the community that they belong to.

If there are any questions, I would be happy to answer them.

Thank you very much.

Mr. TAYLOR. We may have some when we conclude the remarks.

Mr. Vanderhoop.

STATEMENT OF DAVID VANDERHOOP, SELECTMAN, GAY HEAD BOARD OF SELECTMEN

Mr. VANDERHOOP. Mr. Chairman, and members of the committee, thank you for giving me this time to voice my testimony.

I am David Vanderhoop, selectman representative in the town of Gay Head. I am a member of the Wampanoag Tribal Council of Gay Head and a lifelong resident of Gay Head. I would like to take this time to summarize for you the reasons why I support and wish you to take favorable action on Senate bill 1452, the Wampanoag settlement.

The Gay Head Wampanoag Tribe has endured through the centuries to the present and has been the vital element in the continuing community. When vacation cottages and second homes have been left for primary residences out of town, it has been the Indian resident who remains, keeping the institution alive and the town functioning.

We realize that we cannot change the hands of time, and with this negotiated settlement we are not trying to do so. All we are asking is the chance for us, including our children, as a Wampanoag

ag Tribe, to be granted the right to remain in Gay Head, where our people's heritage lies and will forever.

That is why I, David Vanderhoop, Wampanoag, and selectman representing the town of Gay Head, have come today to voice my support of Senate bill 1452, to ensure the tenure of the fragile culture of the Wampanoag people.

Thank you for giving me this opportunity to voice my support. [Prepared statement of Mr. Vanderhoop appears in the appendix.]

Mr. TAYLOR. You gentlemen are all selectmen of the town of Gay Head, and that is the posture or position from which you have testified. You are also members of the tribe. Are you on the tribal council by any chance?

Mr. WIDDISS. Yes, sir.

Ms. BOYLAN. All three?

Mr. VANDERHOOP. I have been, but as of a couple of months ago, my term on the board of directors was ended.

Mr. TAYLOR. How many members are there of the Gay Head Tribe?

Mr. MADISON. I think those comments would be better coming from Ms. Widdiss.

Mr. TAYLOR. I felt that maybe we had passed by a panelist here that I should be directing the questions to.

Well, let me ask another question, then.

What is the current use of the Cook property?

Mr. MADISON. It lays fallow. The town owns it. We leased it on a yearly basis to a local person who wants to engage in the marketing of herring.

Mr. TAYLOR. So the concept is a commercial activity as opposed to, let's say, a resort activity?

Mr. MADISON. Actually, members of the Taxpayers Association and summer visitors from both Chilmark and Gay Head use that property as a mooring spot for their sailboats.

Mr. TAYLOR. But it would be property that would be fruitful to go into a fish business. That was the reference that was used.

Mr. MADISON. At the time of the negotiated settlement, there was a thought that the tribe might enter into a fish hatchery or shellfish hatchery operation, and since that has happened, I think they have not, you know, they have stepped aside of that position.

Ms. BOYLAN. So what are you envisioning now, a marina?

Mr. MADISON. As members of the town, you know, I think we are the wrong people to ask that. With all respect, I think you asked the tribe questions that should have been asked of us, and you are asking us questions that should properly be answered by the tribe.

Ms. BOYLAN. I have one other question. This has to do with the herring creek. As I understand it, Herring Creek is also part of the common lands that are being transferred on which no development can occur.

Does that mean you could not dredge the creek or anything; the tribe could not do anything with the creek, to make access between the two ponds, for example, easier? Even though the Cook land is right next to it, as I understand it?

Mr. MADISON. That's right.

Mr. WIDDISS. I am not sure we would encourage disturbing the natural environment that is there. I think that for years it has supported that industry without significant alterations. I don't think it would be a good idea—

Ms. BOYLAN. So there is no reason to do anything with the creek?

Mr. WIDDISS. I do not foresee any.

Ms. BOYLAN. It is not navigable?

Mr. WIDDISS. No; just if you had hip boots, you could navigate it, but no craft.

Ms. BOYLAN. Thank you.

Mr. MAHSETKY. I have one question, and that is, to be a member of the selectmen, what is the relation between a selectman and the council? Is there any relationship?

Mr. WIDDISS. There is no official relationship. Later on, as far as well, you know, I say, as a selectman, as a member of the tribal council, it is not necessary that—gosh, how can I put it.

Mr. Vanderhoop. We are just like any other town. There are elected officials in the town.

Mr. MAHSETKY. You are elected by the entire community?

Mr. VANDERHOOP. We are elected by the entire community.

Mr. MAHSETKY. Not by just members of the tribe?

Mr. VANDERHOOP. No.

Mr. MAHSETKY. But your tribal council is only elected by members of the tribe, right?

Mr. VANDERHOOP. That is right.

Mr. MAHSETKY. If this legislation goes forward, and you are officially recognized, do you anticipate any change in the relationship between the selectmen and the council?

Mr. WIDDISS. I cannot foresee anything significant. I don't know what would precipitate anything.

Mr. TAYLOR. I don't think we have any more questions. I am going to follow your advice.

Mr. Widdiss, I think there are a couple of other questions we would like to ask. We have been a little disjointed in this hearing, and I wonder if you and Henry Sockbeson could come back to the table for just a moment.

Thank you very much.

I did have a couple of questions that I think we did not get an opportunity to get to. First of all, Ms. Widdiss, could you tell us what the membership of the Gay Head, MA tribe is? I am sure that is spelled out in your petition for recognition.

Mr. WIDDISS. In June 1985, I did an update, and I believe the result was 535.

Mr. TAYLOR. Does that include both adults and children?

Mr. WIDDISS. Yes.

Mr. TAYLOR. Approximately how many voting members would there be?

Mr. WIDDISS. About 350.

Mr. TAYLOR. You indicated in your first statement that the legal action had been initiated by the Gay Head Wampanoag Tribe, Inc., the structure that I think you are currently operating under. And that ultimately there was a change in the membership of the corporation, of the leadership.

When did the change occur?

Mr. WIDDISS. In '76.

Mr. TAYLOR. 1976?

Mr. WIDDISS. Yes.

Mr. TAYLOR. I cannot recall precisely why I wanted that on the record, but there was a reason, and eventually it may come back to my mind.

Mr. WIDDISS. Most of those questions will be answered in my written testimony, because I have records of meetings, lists of how we went about finding the members, and meetings that we had prior to the votes, and things like that. That is fully included in my written testimony.

Mr. TAYLOR. We just have not had a chance to review all that, but another question: could you tell me what the criteria for membership is in the Gay Head Tribe?

Mr. WIDDISS. Yes; we use an 1871 census that Dr. Campisi spoke of, and he gave you the reasons why we settled on that particular one—because there are several.

Mr. TAYLOR. And is there a blood quantum requirement for membership in the tribe?

Mr. WIDDISS. No.

Mr. TAYLOR. Simply straight descendancey—

Mr. WIDDISS. Yes.

Mr. TAYLOR. From the 1870 census.

Mr. WIDDISS. Yes; a direct link back from a person on that census.

Mr. TAYLOR. Now, let me just follow this. If that membership criteria is followed over the next 50 years, the blood quantum ultimately could get pretty thin in that tribe.

Mr. WIDDISS. It could, but there is no guarantee that it will. If this legislation goes through, and we can accomplish what we envision, we may be building it up again, instead of it getting less. This is one of the basic reasons that we started the suit, because in our minds Gay Head Wampanoags have always been a tribe; they have always taken care of their own; and they have always known that they own those lands. It is only in the last few years that we have gotten any opposition to it, and we did not know how to go about having it clarified until the suit was filed, or prior to that, when we had gotten some information.

That basically was the main reason that we filed the suit. It was the reason that we incorporated the tribe, not because we felt that we needed to be incorporated, but in order to do what we are doing now, we had to.

Mr. TAYLOR. I understand that. I don't have a question with the corporate structure.

Ms. BOYLAN. Subsequent to the 1976 election in which the original founders, or some of them, were not reelected, were any of their names removed from the tribal list that you are talking about? Does it include those people?

Mr. WIDDISS. Yes; it still includes everyone. We have taken no one off the list.

Ms. BOYLAN. You have taken no one off?

Mr. WIDDISS. No.

Ms. BOYLAN. Thank you.

Mr. TAYLOR. Did that turnover in 1976 result in a change of the criteria for membership in the tribe?

Mr. WIDDISS. No; the only change was the governing body and the people in control, more or less.

Mr. TAYLOR. So, prior to 1976, the membership criteria also was premised on the 1870 census.

Mr. WIDDISS. Oh, yes. None of that has been changed; no.

Mr. MAHSETKY. Of the 535 members, approximately how many live in Gay Head or the surrounding areas?

Ms. WIDDISS. Roughly—you see, Martha's Vineyard is comprised of six towns. Gay Head is the smallest, and we have members who are down-island, as we say, of some of the other towns—but roughly 250 of our members are on the island. In Gay Head, we have probably, what, 100 to 125, but, there again I cannot give you definite numbers, because I can, like in permanently, but during the summertime we have more of our members come home for vacations, some to stay the summer, and the same with the down-island community.

Mr. MAHSETKY. I understand that you have a health program.

Ms. WIDDISS. We did a health survey so that when we are recognized, we will be able to start the service.

Mr. MAHSETKY. What is the source of funds for the health survey? It is a total survey, not a delivery of services?

Ms. WIDDISS. No; it is not a delivery; it was just a survey.

Mr. MAHSETKY. And what are the sources of those funds, the survey funds?

Ms. WIDDISS. The funds came from the ANA.

Mr. MAHSETKY. The Administration for Native Americans?

Ms. WIDDISS. Yes.

Mr. MAHSETKY. You are not receiving any money from the Indian Health Service at this point?

Ms. WIDDISS. No.

Mr. MAHSETKY. Thank you.

Ms. TAYLOR. Ms. Widdiss, I have one other line of questioning that I would like to pursue, because I know that it is going to come up later, and that is the feeling that this statement is not providing the tribe with an adequate base for economic development. We have the common lands that are to be retained in their current status. I assume that includes the cranberry bogs. The Strock estate, I don't know what economic activity that might generate, but a part of the premise for acquiring property here is to provide adequate land for affordable housing for members of the tribe, and then we have the Cook property.

What are the economic development possibilities of the lands that are being acquired here, other than the common lands, which are—

Ms. WIDDISS. Well, the common lands we have no intention of doing any development on.

We filed the land suit because we were afraid that someone would be getting control of them, and they would be developed; so, they are out.

The Strock property, in our minds, principally it was for low-income housing because of the location.

The Cook property, because it borders the Herring Creek, we did do a survey, and we has a program started with a fish hatchery which did not pan out because the numbers did not come out right.

Mr. TAYLOR. The cost benefit ratio?

Ms. WIDDISS. Because we are a fishing tribe, that whatever development we had on the property, the Cook property, would be related in some way to fishing.

Mr. TAYLOR. I don't think we have any more questions. I appreciate your testimony very much.

I would like to call the fifth panel of witnesses: Frank James, Thelma Weissberg, Helen Manning, Joan Pantadel. I don't know how in the world we are going to get all of these people to the table.

Mr. Hahn, are you the spokesman basically for this panel, and then other people could follow with statements?

Mr. HAHN. Yes.

Mr. TAYLOR. OK. Why don't I just let you coordinate your own panel here, and we will start with you.

Mr. HAHN. I was going to suggest panels of three, if that is agreeable.

Mr. TAYLOR. That sounds fine.

STATEMENT OF ROBERT C. HAHN, COUNSEL, JAMES GROUP, GAY HEAD TRIBE

Mr. HAHN. Mr. Chairman, as you know, my name is Attorney Robert Hahn. I represent the James Group, and I would like to point out, if I may, that although I am a lawyer, I also am a former Republican State Chairman of the Commonwealth of Massachusetts having spent 20 years of my adult life in active politics. So, when I address the subject before us today, I do it not only with appreciation of the legal principles involved but also the politics of the situation.

And I would like to say this: That we are very conscious of the pressures that lie behind this situation that is before us today. Now, in the early 1970's Senator Kennedy filed a bill which was to do with a Nantucket Island trust situation that he was pushing. And that was, in those days, in 1973, Senate 1929, and in connection with his remarks in offering that bill, which was later approved by Senator Henry Jackson's committee which recommended that it ought to pass.

The Senator said, that is, Kennedy, they live on Martha's Vineyard, the last survivors of the Gay Head Indian Tribe. And he went on to talk about the status of their lands. He ended his remarks by saying something which I think is most significant: We cannot turn back the clock and restore to the Indians of this country all they once had, but where we have an opportunity, as we do on Martha's Vineyard, and with this legislation, meaning his island trust bill, we should make an effort and a determined effort to restore to the Indians what is rightfully theirs.

Now, in the recommendation by Senator Jackson's committee, it was recommended the Interior Secretary shall transfer such land to the Wampanoag Indian Tribe of Gay Head without consideration, to be held in tribal trust status.

Now, Mr. Chairman—

Mr. TAYLOR. Mr. Hahn, pardon me, could you give me the bill number again and the Congress, and what page of the Congressional Record you are looking at?

Mr. HAHN. This was Senate 1929 in 1973.

Mr. TAYLOR. And you were reading from the Congressional Record?

Mr. HAHN. I was reading from the Congressional Record of May 31, 1973, page 17579, and from page 17585.

Mr. TAYLOR. Thank you.

Mr. HAHN. Now, from my point of view, with the basic responsibility of trying to help these people in the James Group, their situation, we think that this language sets the tone. We are not talking about turning the clock back, as Senator Kennedy said; but we are very interested in doing whatever is feasible legally and politically to return to the Indians what is rightfully theirs.

We know that cannot be done in its entirety, but certainly if there is an opportunity, it should be done as far as can be.

We know that there are certain basic facts here that must be appreciated. First off, you are dealing with a group of people who have been there with their ancestors for 4,000 years at least, and we are dealing with a piece of land in its entirety, the town of Gay Head, that is 3,400 acres. And has 16 miles of beaches.

Now, 150-odd years ago, when the Commonwealth of Massachusetts was a good deal younger, this was considered quite undesirable land; it was poor land, like the land at Chappaquiddick, poor, and not wanted. Today, with a great accent on summering, the great appreciation of water view, beaches, and so forth, and the land value has so jumped in the last 10 years—they had a steady climb before that—but in the last 10 years, or even the last 5, there has just been an enormous jump.

So, we are dealing with land and beach front which have become most valuable. Land that was once given to the Indians because nobody wanted it, now basically the impetus is to take away that land from the Indians or make darn sure that they do not have any say over those parts of the lands which are so critical, and your beaches are one example.

Mr. James is going to point out how many miles of beach there are and yet how many feet will be left to Indian control. Senator Kennedy said that what we are talking about trying to do is to return to the Gay Head Tribe as much control as possible. And, Mr. Chairman, with all due respect, there is not one single thing, either in this settlement agreement, or in the bill that is based upon it, which accomplishes that.

Another factor we must recognize is there are 220 registered voters in Gay Head. Of that number, 141 are non-Indians and 79 are Indians, which include 67 Indians and 12 Indian spouses. So, the political control and the political power at Gay Head is in the non-Indians overwhelmingly: 141 to 79.

The only reason, politically, that there are three Indian Selectment and Indians in other town offices is because they serve at the pleasure of the non-Indians who control the politics of the town; and as long as they stay in line, they stay in office. If they dared step out of line, they would be out of office. That is obvious.

We had a previous speaker representing the Taxpayers Association, and she talked about the terrible cost and drain on resources. Mr. Chairman, that group of taxpayers is all non-Indians, and they are among the wealthiest people of any group that you could look to. So that, personally, I think, is just so much rubbish.

Mr. TAYLOR. How many members are there in the Taxpayers Association.

Mr. HAHN. I do not happen to know.

Mr. TAYLOR. There are 179 people in the town that are not Indian, or families?

Mr. HAHN. There are 141 non-Indian voters on the voting list. Of that number, I cannot tell you how many are members of the Taxpayers Association, but when you consider some of the prices for which they sell and buy property down there, they deal in many hundreds of thousands of dollars.

Mrs. Onassis bought 375 acres just a few years back which adjoins a lot of these for, I recall \$1.1 million, or \$1.2 million, about \$3,000 an acre, if I am not mistaken.

They talk about clouds on title; it has no effect on land transactions down there. The other witnesses who follow from the Indian community can tell you of many that they know of. There has been no effect.

That is a political device to try to add to the pressure of this confounded thing.

Now, there are roughly 350 to 400 known adult members of this tribe who have the right to vote under the so-called tribal council rules, but the fact of the matter is that when this tribal council incorporated, was formed in the early seventies, 1971 or 1972, as a Massachusetts membership nonprofit corporation, it was with the idea of trying to engender some Indian programs that might be of some economic benefit. And it is very true. Those that were the early leaders of that were much the people who are here today in opposition to this proposed settlement and your bill.

It is true, too, that they are the ones that started the one lawsuit that is referred to in the settlement agreement and your bill, but they did it on the advice of Mr. Sockbeson's predecessor, Tom Tureen, who said that, in his view, the tribal council could bring this action on behalf of the tribe legally. But I call your attention to the fact—

Mr. TAYLOR. You mean as a State incorporated organization?

Mr. HAHN. Right.

Mr. TAYLOR. OK.

Mr. HAHN. Consequently, they brought the action. Almost immediately, however, the special town counsel retained by the town of Gay Head filed his appearance in court, and strongly opposed this tribal council action. It is a matter of record, which is among the papers that I gave you before the hearing, there is an extract of his remarks, Douglas Randall, special counsel to Gay Head, in which he challenges the right of the tribal council to bring this action on behalf of the tribe.

Mr. TAYLOR. Who is this person?

Mr. HAHN. That was Randall. His remarks are among the group of papers I gave you, and it says at the top—it gives his name—and that is from this particular law case that you refer to, and he

brought a motion to dismiss; said the tribal council is not the ruling group of this tribe; under the law it cannot be. It is not the tribe, and what powers it has are a matter of State law, and you will notice at the end that Mr. Tureen agreed that the question of the legal powers of this corporation was a question of Massachusetts law, and, therefore, added the tribe. He brought an amended complaint, and he added the tribe as a party plaintiff.

Mr. TAYLOR. What is the difference between the membership of the tribe, itself, as opposed to the incorporation that brought the original action?

Mr. HAHN. Well, Mr. Chairman, when the corporation was formed, it had a provision in it that all members of the Wampanoag Gay Head Tribe would automatically be members of the tribal council. When we came into this picture, around 1980 or 1981, and reviewed these things as time went along—we certainly could not do it all at once, because it is very complex and very time-consuming—but, at any rate, we finally—we stumbled on the statement by Attorney Randall which quotes not only him, but quotes Mr. Tureen in the early 1970's as showing that the tribal council did not have the legal power, and Mr. Tureen agreed. That information was never transmitted to the then leadership of the tribal council. They labored under the opinion all the way down through until we advised them differently that the tribal council did have that power. So we showed them.

Mr. TAYLOR. But, basically, the membership of the two organizations—we are talking two different entities.

Mr. HAHN. That's right, but, as things developed, and as the principles of settlement that they referred to, you know, that were not 10 years of intense negotiations. This thing lay idle from probably the early 1970's until the early 1980's without anything substantially taking place. Then there was an intense effort by the Taxpayers Association through to a huge 1-page ad in which they talked about this terrible cloud hanging over Gay Head. All other communities in Massachusetts were able to get the sun through to shine on them with the warm rays, and all that, but not at Gay Head; they had this terrible cloud hanging over them, and they started to create a public relations pressure to force this settlement, and that is when all this agitation started. That is when the James Group, who were very disturbed over the course of some of this, came to us and asked us if we would help them.

We did not know beans about any of it at all. We had to start from scratch. But as we learned more about it, and in an analysis we gave to Mr. James, which I gave you copies of this morning, a letter dated August of 1981, in which I analyzed for him all the ideas behind the proposed settlement, which are essentially what is before us today, and pointed out all the reasons why, from our view, it looked like a very poor thing, because they are talking about restoring the sovereignty, creating a land base, giving the tribe control over its own affairs, and all of that. That is absolute rubbish, Mr. Chairman, because, as you know, from reviewing the settlement agreement, this was essentially drawn by the non-Indians, and it gives them—the non-Indians—essentially what they want and the Indians get nothing.

Now, the non-Indians have got a group of Indians who are willing to play ball, but, you know, the Widdiss name keeps cropping up. This is the Indian group that is agreeing with the taxpayers' group. They would be knocked out of power if they did not go along. Mr. Marc Widdiss would not be a selectman, and he would not be chairman. Mrs. Widdiss is willing to go along. Those that go along with them do not know certain facts about this Strook land, certain facts about this Cook land, and I am going to touch on some of that, but those who live on island are here today, and some who don't but who grew up there, can tell you more than I.

But, at any rate, the basic thing is, you will notice from the settlement agreement there is a creation of a tribal land corporation; the settlement lands go into the tribal land corporation, and it specifically says that will be a State corporation subject to State and local laws, and there is no way that this is trust land in the usual sense, none whatsoever, and there are many strings attached to it.

Mr. TAYLOR. I would just like to interrupt there for a second, and, first of all, for the benefit of you and the audience, I am Pete Taylor. This is Virginia Boylan, and this is Mike Mahsetky. The court reporter probably likes to hear that, too.

Also, I noticed the State Land Corporation in the settlement agreement, but on rereading the legislation, I realize that that is an interim device; that the land would go to the State Land Corporation, and that that corporation would be restricted in any party that it could pass that land on to, namely, the only party it could do so to would be the recognized tribe of Gay Head Indians after the recognition process is complete. It was clearly intended as a pass-through device.

Mr. HAHN. Mr. Chairman, that may be the intent of this bill, but let me—

Mr. TAYLOR. We may even be outrun by events in light of the fact that the Department of the Interior apparently is going to come up with a decision pro or con on the status of this tribe on June 6.

Mr. HAHN. Well, I believe that the settlement agreement—for one thing, it talks about all the parties to the lawsuit and all those who are interested in this settlement, and I believe that your bill's antecedents say much the same thing.

But let me point this out: We brought our own separate lawsuit finally. We did consider an intervention, but withdrew the idea because intervention law is pretty restricted, and we felt the legal base of this land suit that was started by Mr. Tureen—the Non-Intercourse Act—was too limited. So we brought one under the ancient principle, which antedates the Non-Intercourse Act, as you know, and we said that because of this ancient principle there could be no transfer of Indian land or dealings with Indian lands except with the consent of the central sovereign, which dates back to King George's 1763 proclamation.

That was the basis on which we brought the suit, and we brought it as a group of individuals, individually, and as a class on behalf of the entire tribe. And when we filed that suit in the district court, it was dismissed on the basis that only a tribe can bring a Non-Intercourse Act claim. They disregarded the fact that this was essentially an ancient principle claim, disregarded it was class action, the

case went up to the first circuit. The first circuit essentially upheld the dismissal, but they came up with this weird reasoning, harking back to the States' rights theories advanced before the Civil War.

They said that the Commonwealth of Massachusetts, by holding the fee title on all these lands, which it had before 1789, coupled with its general police powers, had the right, in 1869 and 1870, to try to make it possible for all the individual Indians to enjoy the same right as all other citizens, and, therefore, they stripped them of their Indian status, removed the Federal alienation restriction, and put them in a position where the non-Indians started their own incursion. They started coming in there, because up to that time, there had been a real question as to how much could go on at Gay Head as well as at Mashpee and some of the others.

Mr. TAYLOR. Was this the action that you brought in 1980, was it?

Mr. HAHN. We brought this action in 1981, as I recall; yes.

Mr. TAYLOR. At that time, there was already pending this other action that was filed in 1974.

Mr. HAHN. That is correct.

Mr. TAYLOR. So what you are referring to was handed down in the 1980's.

Mr. HAHN. In ours; right. That other one has never been tried. There has never been any effort to move that case. It just sat there. You know, that is another thing: Extensive litigation, they never litigated. They never pushed.

Now, at any rate, we brought up a petition for certiorari with the U.S. Supreme Court, and, as you know, the Solicitor General filed a memorandum to the Supreme Court, in which they fully supported both our legal position on the ancient principle approach, as well as on this class action approach, and the only thing that they did—and this is a copy of the Solicitor General's opinion, which I will leave with you—but the only caveat, so to speak, to that was that the Solicitor General said that he acknowledged the fact that there were two land suits, one by the tribal council and one by the James group, and said that question was one of State law, and it was apparently going to be resolved through some litigation back at State court.

Later on, in 1984, there was a bill filed to do the very thing that is here today, to settle these land claims. We came down to that hearing. That was first heard on the House side, and eventually they decided 2 years ago, because there was such an even split, as many within the tribe on the James side as there were on the Widdiss side, that the legislation was not advanced.

But the Supreme Court got wind of the fact this legislation was pending, and finally at the last minute, before they finished their term, they denied certiorari. Now, they did not say so, but we can only assume from the signs that we try to read, as lawyers, that it looked as though the solution was going to be a legislative one, so they denied certiorari and threw the thing out.

Mr. TAYLOR. Did they state the grounds for denying certiorari?

Mr. HAHN. I am sorry.

Mr. TAYLOR. Did they state their grounds for—

Mr. HAHN. They did not. It was a simple denial.

Mr. TAYLOR. Please correct me, or maybe you can identify for me where I may have gotten this impression, but I thought there was a denial of certiorari—maybe it was at the circuit court level I am thinking of—where there was a holding against the 1980 action on the grounds that there was already an action pending in which the tribe was represented and also that the parties-plaintiff in the 1980 action were individuals, and, as individuals, did not have the legal standing to bring the action based on tribal claims of the land.

Am I right about that?

Mr. HAHN. Well, Mr. Chairman, as I said before, the first circuit opinion did talk about that, but the Solicitor General upset that. We think, even though the Solicitor General's opinion is not a binding one, we certainly think it is a far better informed opinion.

Mr. TAYLOR. OK. And the Supreme Court denied certiorari without comment.

Mr. HAHN. Yes; but the Solicitor General issued this in January 1984, and recommended that the Supreme Court hold the thing, and recommended that they grant certiorari and so they held it for several months after that. But, as I say, at that time, it looked—we had a hearing in June 1984 down here at the House side—and it looked apparently to them that legislation might solve the problem. And you know the load that they have to carry, we think it is quite reasonable to say that they looked upon that as a way out.

But the legislation did not go through.

Now, this will be a little disjointed, but I will try to make some points. I will make them as succinctly and as quickly as I can.

Mr. TAYLOR. I will try to keep from interrupting you.

Mr. HAHN. Here is one thing that bothers. On page 2 of your proposed bill, "the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles"—the people that follow me will deal with that. That shows a concern. But it is a non-Indian concern, Mr. Chairman.

The next thing is, Congress shares with the Commonwealth and the parties to the lawsuit in the desire to remove all clouds on the titles resulting from; well, what about fairness to Indians? Why isn't that the concern? We have had the devil's own job all the way down the line; granted, both of the Federal courts in Boston and by the State courts, in trying to get across the idea that there are two basic groups here with two different views, one willing to play ball with the non-Indians, and the other trying to get much better deal for the Indians, and yet the great pressure back there, unfortunately, is—let's settle the confounded thing; we don't care about all of this intertribal dispute; we don't care. We just want to get rid of it, and there are a lot more votes among non-Indians and a lot more campaign contributions certainly than from the Indians, because, by and large, the Indians are a very impecunious group. They cannot go out and spend \$1 million for a piece of land at Gay Head, let alone \$50,000 for a small lot.

Mr. TAYLOR. Mr. Hahn, isn't there—it seems to me there is a problem in taking about the non-Indians having a greater vote. If you are talking about the vote for the town council, that may be so, but the testimony of Mrs. Widdiss here is that the tribal member-

ship is in excess of 500, and there are about 350 voting members. That takes in the membership throughout.

Mr. HAHN. That is fair enough. Now, as we pointed out to the House when they held the hearing, and we have got a compilation of all the pledges here in writing from all the people that support the James effort. Now, it is true that it started out at, I think, maybe—well, originally maybe 12 people grew to 40, grew to 100—and now it is approximately 170 firm adult voting members of the tribe.

Now, those two elections that they spoke of—

Mr. TAYLOR. Could they be made a part of the record?

Mr. HAHN. I am sorry.

Mr. TAYLOR. Is that compilation—

Mr. HAHN. Oh, yes, we will leave that with you. We don't need it.

Mr. TAYLOR. Can you tell me then that was compiled?

Mr. HAHN. Well, at various times; 1983 are some of the dates; 1984 are some of the dates. It essentially speaks for itself as you go through it.

Mr. TAYLOR. And all these people are, in fact, voting members of the tribe?

Mr. HAHN. Yes; well, the tribe has never been given a vote, given an opportunity to vote. These are always tribal council surveys. Now, in 1981, when they put out a tribal council vote on the principles of settlement, there was a rough return of, I think it was—I had the figure here.

Mr. TAYLOR. The testimony that we received was 115 favorable and 60 against.

Mr. HAHN. And 60 against. All right. But that was merely a vote on the principles of settlement, and a lot of people did not understand it, and there was no opportunity given to the other side to get out their views. It was kind of a sneak vote, but, at any rate, it was, as they said in their own literature that went with the ballot, this is not on the settlement; this is merely on the principles of settlement.

So, it was a test. But you will notice that of the 350, less than half responded. Then they took another vote, I believe it was in the fall of 1983, and there you had 160-odd in favor and 29 against, but, of course, at that time most of our people doing their level best to boycott the thing. In other words, we advised them to because they had withdrawn, formally withdrawn from the tribal council, which we told them they had a right to do.

Mr. TAYLOR. Just to paly a slight devil's advocate, we cannot count as opponents all those people who did not vote, because if, in fact, you could have rallied all of those nonvoters to your side, you would have won the day in the election.

Mr. HAHN. Yes; but the thing is, Mr. Chairman, this vote was not a tribal vote; it was not even taken as a tribal vote; it was taken as a vote of the tribal council membership, which is merely a State nonprofit membership group.

They did not seek a tribal vote; they sought a vote of the tribal council, and we had already formally resigned en masse from the tribal council. We had withdrawn from it.

Ms. BOYLAN. May I interrupt?

Mr. HAHN. Sure.

Ms. BOYLAN. Did those who resigned get ballots?

Mr. HAHN. Some did; some did not.

Ms. BOYLAN. Some did; some did not?

Mr. HAHN. Right. A lot of their names were struck from the tribal council's membership list at that time.

Ms. BOYLAN. There was testimony earlier that nobody's name had been deleted.

Mr. HAHN. You have got to remember, as Mr. Randall pointed out in 1973 or 1974, after the suit was first filed, that you have got to recognize the legal distinction between the Gay Head Tribe, the membership of which is by right of birth. Mrs. Widdiss, or any of her group, have no authority to screen who will be considered a member of the tribe and who won't. And the tribal council, which is merely a State membership corporation. And that is precisely—

Mr. TAYLOR. Didn't we establish at the beginning of this that the membership of the corporation is literally identical to the membership of the tribe?

Mr. HAHN. When the corporation was formed, Mr. Chairman, in 1972, yes, they made them automatically members, but we advised them later in the eighties that under Massachusetts law they had a perfect right to withdraw from a corporation that they did not wish to be members of, even though the bylaws, or rather the charter, gave them automatic membership. That did not bind them. You have a right to withdraw from any organization.

You can withdraw from the Lions, the Rotary, from anybody else. If somebody makes you an honorary member or something, you can turn it down.

Mr. TAYLOR. Or you can even withdraw from the tribe.

Mr. HAHN. I doubt it.

Mr. TAYLOR. That was established.

Mr. HAHN. Well, I don't know enough about it.

Mr. TAYLOR. It is a right of expatriation.

Did you, Mr. James, have a comment?

Mr. JAMES. I would like to clear up just one point. I will be very brief, because I have other things to say. It appears that in many people's minds that because the tribal council incorporated, that they would include all of the members of the tribe as being members of their corporation. No one has pointed out the fact that in an election for their officers, if you do not attend a certain number of meetings per year, you could not vote.

Now, there are members of the tribe living in California, and I ask you how someone in California is going to get to Gay Head four times a year to attend the tribal meetings so they can vote for an officer.

I think that is the answer in a nutshell, as far as the difference between the Tribal Council, Inc., and the Gay Head Tribe of Indians.

Mr. HAHN. By far, the greater number of people that are eligible to vote are off island.

Now, again, I would like to point out something on the tribal membership—not the tribal council membership, but the tribal membership. Mr. Campisi talks about using the 1870 census as a

base. We strongly disagree with that, because it is only a partial census. There was a very complete census made earlier in that decade, in 1863 or so, by the ten Commissioner of Indian Affairs, called Mr. Earle and the Earle report attaches a copy of the then members of the Gay Head Tribe, which includes a number of families not on the 1870 list.

Therefore, we feel, as an absolute minimum, that the 1870 list and the 1863 list should be combined to give a fair shake to all the families that were recognized back in those times as being Gay Headers. And so I have a copy of that, which I will leave.

Ms. BOYLAN. As I recall, the agreement to use that particular roll was decided in 1973 when the council was formed.

Is that correct or incorrect?

Mr. HAHN. That is correct, and yet—

Ms. BOYLAN. By those members who are now part of what is referred to as the dissident group.

Mr. HAHN. That is right, but Mrs. Weissberg will address herself to that, because that was the only one that they were fully aware of at that time, and they have since come to the conclusion, because various people come forward down there who are on-island Gay Headers who say our families, our ancestors—are not on this 1870 list, but they are on the 1863 list.

And when they went and examined that fact, they found it to be true. So we feel that at the very least the two censuses should be combined so that everybody who feels they have a claim to be considered to be a Gay Head member will be so recognized.

That is just by the by.

Mr. TAYLOR. You indicated that Mr. Earle was the Commissioner of Indian Affairs. Was that for the State of Massachusetts?

Mr. HAHN. Yes; it was. They then had an Indian commissioner.

Mr. TAYLOR. And the 1870 census, was that restricted to a specific geographical area?

Mr. HAHN. Not to my knowledge.

Mr. TAYLOR. To the town of Gay Head?

Mr. HAHN. Not to my knowledge, no.

Mr. TAYLOR. So the 1870 census, then does purport to be a complete census of the entire tribe membership?

Mr. HAHN. Right. But through some means that we cannot explain because we are dealing with over 100 years later, a number of families were left off, and there is no good reason why they should have been. And certainly they feel that they want to be included. And excluding them by this arbitrary choice of the 1870 census is just not fair.

Mr. TAYLOR. Can you tell us approximately how many families contend that they were left off?

Mr. HANN. I can't, but maybe Mrs. Gentry and Mrs. Weissberg can.

Now, Mr. Chairman, I would like to point out something on this Strock land, if I may. One of the documents that I gave to you this morning included a—bear with me just a second until I can find my copy.

This is a group of documents, the top of which can be flagged by Goodwin Proctor & Hoar. This is dated March 23, 1981. Let me dwell just for 1 minute, if I may, on this so-called land base being

created for the Gay Head Tribe. I hope that it is clear that certainly under the settlement agreement, which is incorporated in the proposed bill, there is no way that tribe will have control over this land, otherwise the Attorney General would not have agreed to it.

And in no way is the tribe a party to this agreement. The tribe is expressly excluded from this agreement. They are only referred to as the alleged Gay Head Tribe, and they are not a signatory, so the only ostensible authority for signing away the Gay Head Indian rights is through Gladys Widdiss' signature as head of the tribal council, which I hope we pointed out cannot under Massachusetts law or Federal law, be considered the ruling body of this tribe, nor has the right to speak for all these tribal members, particularly where about half of them have said they do not want to be spoken for.

But, at any rate, let's get back to this. The Cook property they talk a lot about is not part of the settlement lands. It is land that surrounds the Herring Creek, and, in fact, the Cooks were close relatives of Mr. James. There are only about 2½ acres involved there. The title is in terrible shape. The town, I think, took it for nonpayment of taxes, and it is not buildable. It is very rough land; there is only a little bit of it, and it is on either side of Herring Creek.

So that really is not an important factor when we are talking land base.

As far as the Menemsha Neck lands are concerned, those are all in private ownership, and the settlement agreement points out that only if these people are willing to sell could any of that land be picked up and added to the settlement land. And there has been no expression of any willingness by any of those people to sell.

So we really come down to the common lands and the Strock lands. Now, the common lands are 238 acres. They include the face of the cliffs, the cranberry bogs, and Herring Creek. And expressly in the settlement agreement and in your legislation the beach front, which is what? Whatever number of feet or fraction of a mile there is of that and those common lands that are the face of the cliff lands are expressly excluded from even the Tribal Land Corporation control.

And that is true of all the beaches. I mean, there are 16 miles of beaches. Mrs. Onassis, for example, controls exclusively over 3,000 feet of beach front and over 7,000 feet of front along a salt and fresh water inlet. No Indians are allowed on any of that, obviously.

Mr. TAYLOR. And no non-Indians are, either, if I recall.

Mr. HAHN. It is all barb-wired off; no trespassing.

And yet, as you heard from earlier testimony, the Indians are called a fishing tribe; but they are not going to get any fishing rights back. The only rights given by the settlement agreement and by your bill is the right to hunt except with crossbows and guns. What are they going to hunt with? Stones, or slings, or what? That is pretty silly.

But the important thing is, they do not get their tribal fishing rights back.

Mr. TAYLOR. Well, that is a question that I would like a little explanation of, anyway. We asked this earlier to one of the witnesses, and I cannot recall, but just let me reread the question to you.

What are the present hunting and fishing rights of Indians at Gay Head? And are they the same or different from others?

Mr. HAHN. Right now, the hunting and fishing rights of the Gay Head Indians, as far as I know, are no different from those of any other citizen of the Commonwealth of Massachusetts, and it is our view that they should have a special status, because probably fishing down there is the most likely means of income for the Indians.

Mr. TAYLOR. We are talking ocean fishing, aren't we?

Mr. HAHN. Right. Well, I don't know. There may be some inter- or fishing that is worthwhile, too, in the inlets, but I know that you are talking scallops; you are talking sea clams; you are talking bass.

Mr. TAYLOR. Yes; is the right to fish those licensed by the State?

Mr. HAHN. No; the State licensing is done, really, by the town officials, and they can favor those they want and exclude those they do not like, as some of these people can tell you. You know, by having opposed a lot of this, they have had a lot of trouble getting their licenses.

Mr. TAYLOR. I think we have another comment here.

Mrs. WEISSBERG. I just wanted to say now that the Herring Creek has been discussed a great deal here. Believe it or not, today, the Herring Creek stands unused.

Mr. TAYLOR. I think someone said that.

Mrs. WEISSBERG. Now, this is something that is new in the history of the town of Gay Head, I am sure. There have been times when outsiders have leased the Herring Creek, but this year no one is using the Herring Creek, and when you think about our history as an Indian tribe, where our whalers were famous—practically all of our uncles caught a white whale—and to think that Herring Creek, it's just a beautiful little creek, much of the walk is falling apart, and there it stands. It hurts.

I have not dug quahogs and clams because I refuse, as an Indian and a member of the Wampanoag Tribe of Gay Head, I refuse to go in the town hall and pay \$30 for a permit to get food for my own consumption, and then, in doing research, I do know that up until 1939 Indians in the State of Massachusetts could go fishing anywhere in Massachusetts as long as they used it for their own consumption.

Mr. TAYLOR. Was that by virtue of a State statute?

Mrs. WEISSBERG. Yes; Marine Fisheries, chapter 130, was all changed around, and when they did that in 1941, when it was all settled and rewritten, we were left out, as usual.

Mr. HAHN. Mr. Chairman, for the record, this is Thelma Weissberg, W-e-i-s-s-b-e-r-g. She is a former commissioner of Indian affairs for Massachusetts, a former selectwoman at Gay Head, and a lifelong resident.

To my left is Frank James, who was first chairman of the Indian Commission in Massachusetts, when Mrs. Weissberg was a member. He grew up at Gay Head. He does not now live on Gay Head, and it is his name which is given to this group we call the James group.

Now, the last thing that I would like to address myself to, and then I am going to let the Indians take over is the Strock land. I think that I pointed out that the settlement lands consist of the

common lands, 238 acres, and the Strock land, with an alleged 175. Obviously the common lands cannot be used for building. The face of the cliff lands, the cranberry bogs, and Herring Creek are in no way available for any building, any house lots. There could be, as I understand it, a fishery developed along Herring Creek, but Mrs. Weissberg will get into that.

The Cook lands are not part of the settlement lands, and the Menemsha Neck lands, nobody has indicated any willingness to sell, so it brings us down to Strock, and it brings me back to this thing with Goodwin, Proctor & Hoar at the top.

Now, the background of that is simply this: There is a gentleman named Strock, S-t-r-o-c-k. He was a dentist, I believe, who lived in Newton, MA, who had ideas of making a lot of money on development of land on Martha's Vineyard, and over the course of the years acquired a number of parcels, including several at Gay Head. Eventually, his corporations, went bankrupt. And so all his land at Gay Head, along with other land on Martha's Vineyard came within the purview of the bankruptcy court of Boston.

These so-called Strock lots were appraised in 1981. Goodwin, Proctor & Hoar represented the two trustees in bankruptcy, and they had an appraisal done. Now, this is a cover letter, and then when you turn the page, you will find an appraisal report: property of Strock Enterprises, Gay Head, MA, March 19, 1981. And these were done by a fellow—his name is James Howell, a registered broker for the Commonwealth, a resident of Martha's Vineyard for 38 years, and he has all his credits here at the end, and then there is a map that shows in dark coloring where these properties are.

Now, I am going to quickly run through what he did. First off, the total properties that he is referring to come to approximately 98 acres. There are no 175 acres here, number one.

So when they talk about all the 400 acres of land being given to the Wampanoag Tribe for a land base, that is a figment of somebody's imagination or exaggerated talk. There are only 98 acres in his report.

Now, he goes through it. Parcel 1—I will quickly hit his analysis—Parcel 1: a 15-acre tract northeast of Marshapril. Many good water views, access by Old South Road, and Ancient Town Road, so there are 15 acres of probably buildable land.

Parcel 2: 2.85 acres; no access; no road to the property exists at this time.

Parcel 3: 2.3 acres; low wetland; no current means of legal access. There appears possibly to be one building site on the southwest part of the lot, if access can be provided.

Parcel 4: Approximately 11.5 acres of heavily wooded land; no means of access; considerable areas of standing ground water in this parcel at this time of year—March, this is; that's spring, so at least in the springtime it is wetland.

Parcel 5: 2.75 of an acre; no legal means of access. There are substantial amounts of wetland on both sides.

Parcel 6: All sand. He doubts that the town would ever issue a building permit. Slightly one acre; close to sand dunes; beach sand and sparse shoreline vegetation. No building permit on that one.

Parcel 7: 2.5 acres of sand dunes; not likely to get construction permits.

So, he sums that up by saying Parcels 1 through 7 represent the total land of Strock that is free of title defects and partial interest, but because of lack of access and environmental regulations, only Parcel 1 could be readily marketed.

Mr. TAYLOR. And how many acres were in Parcel 1?

Mr. HAHN. Fifteen.

Mr. TAYLOR. Fifteen acres?

Mr. HAHN. Fifteen acres.

So, now it goes to Parcel 8. Together, some little lots comprise 3.65 acres of brushland. The title to both is defective, and there is no access. The title, or course, could be cleared up if there was condemnation, but no access right now.

Parcel 9: 5 acres, similar to the previous one. Title defective. So that is a possibility.

Parcel 10: 25.7 acres. That is where the Government during the war had a loran, l-o-r-a-n broadcast station. The Strock people have one-third undivided interest in that. They do not have the full title, anyway, so the land is good, but there is a problem on how much Strock has.

Parcel 11: 10.2 acres in size; high dry land. There could be access if there was a road built through it, but right now there is no access, and the title is defective. So, essentially, it is no access.

Parcel 12: 11½ acres. About 25 percent of it is wetland. The rest is similar to the prior lot, which is OK. No access, however.

Parcel 13: About 3 acres; upland vegetation; excellent water views, but Strock only has a half undivided interest in that.

Parcel 14: 1.17 acres; similar half undivided interest.

Then the appraiser sums it up: Parcels 8 through 14 are tracts of land with defective title or substantial partial interests, and they could not be readily marketed on a retail basis—primary value to the other owners of the subject lots.

So, what I am saying is, the government of Massachusetts and the Government of the United States are being asked to contribute \$3 million—\$3 million—essentially to buy the Strock land.

Now, let me tell you one more thing about the Strock land. One of the recommendations that you will notice on the cover letter—

Mr. TAYLOR. Before we pass beyond that, what was his final appraised value of all of this land?

Mr. HAHN. \$100,000 to \$120,000. I did not state it, but that is what it is, \$100,000—the whole thing—\$100,000 to \$120,000.

Mr. TAYLOR. Does that show on the record you have been reading from?

Mr. HAHN. Yes; it does.

Mr. TAYLOR. And is that record being made a part of the record here?

Mr. HAHN. Yes, sir.

[Material appears in the appendix.]

Mr. HAHN. Yes, sir; we will leave it. Well, you have already got it.

Mr. TAYLOR. I have it up here?

Mr. HAHN. Right.

But let me take you back to the cover letter. He says:

Enclosed is a written appraisal report with respect to these lots, appraised value, \$100,000 to \$120,000 as contrasts with the proposed selling price of \$100,000. Since

the appraisal is in accordance with the old representations I made at the hearing, I believe it appropriate to enter an order approving the sale. The proposed order is enclosed. Would you return—

Now, look, what happened, as a result of that recommendation from the trustee who enclosed this report of the appraiser, a group of unknown lawyers, calling themselves Anchor Pacific Partnership, got an approved motion for an option to buy these properties at \$100,000. That was signed by Judge Lawless, and that stands today, Mr. Chairman. These fellows are in the background, having not even invested a cent; they do not have to pay the \$100,000 until they turn this property over.

Mr. TAYLOR. They are having to make monthly payments on it.

Mr. HAHN. I am sorry.

Mr. TAYLOR. They are making some sort of monthly payments.

Mr. HAHN. Not to my knowledge.

The thing has been held until such time as they might be able to sell it.

Mr. TAYLOR. I would say just one other thing with regard to the bill. The bill does authorize \$3 million. First of all, the State is now talking about kicking in \$1.5 million.

Mr. HAHN. Right.

Mr. TAYLOR. It also directs the United States to enter into negotiations with these people for the acquisition of that land, and—

Mr. HAHN. Right.

Mr. TAYLOR [continuing]. If they cannot come to an agreed-upon price to pay for it, then it provides for an independent arbitrator to be named to fix a price and these people would presumably be compelled to give up their option or sell it at whatever price the arbitrator fixed.

Mr. HAHN. You are absolutely right, Mr. Chairman. But what I am trying to show is that this has been held out all the way through as being such a good thing, yet everything is on such a flimsy foundation, including this highly touted Strock land.

I think that if you will read the appraisal report, you will see how exaggerated the talk has been as to acreage, as to building potential, as to access and all the rest.

I do not think this has ever been brought out. My son found it by going through the bankruptcy records, a heck of a job, because they are a huge pile, but he found this, and we found that motion, and you have got a copy of that motion which was allowed by the court, giving this option to buy.

So we have advised the James group that from the point of practical politics and practical law, this whole thing has really got an enormous non-Indian orientation because you have got this group calling themselves Anchor Pacific Partnership standing in the wings waiting for this money. They do not care whether it is all Federal, or partially Federal, partially State, because you know the bill 2 years ago had a provision in it which, thank God—you have struck now—that would have allowed any moneys paid to be considered on a condemnation basis and not subject to tax.

So, at that time, they stood to take whatever profit tax free, but at least you have knocked that out.

What we are getting at here is, the flimsy foundation that a lot of this talk that has been pushed and pushed and pushed rests on,

and it is all for the purpose of just killing off these claims without regard to so many of the things that these folks are going to say mean a lot. There is practically an even split. They are fond of calling the James group dissidents, but the fact of the matter is, you have got a group, you have got two opposing groups of equal numbers within the tribe with essentially different views.

You have got one that is willing to play ball with the non-Indians, and you have got another that is not willing to sell out so easily. That is the way they look at it, and I think that that is essentially all I can say.

I will leave things with you.

We got an appeal from a judgment of the Superior Court, Mr. Chairman, which raises the issue of the right of the tribal council as a Massachusetts corporation to represent the views of the James group and speak for them when they don't want to be spoken for.

We have got this membership list of pledges, which shows where the James group support comes from. This is the memorandum from the Solicitor General, and this is the 1863 census.

Mr. TAYLOR. We will take that into the committee files. We may make that part of the record when we receive the transcript.

Mr. Hahn, thank you very much for a very detailed statement, and I apologize for interrupting with all the questions.

Mr. HAHN. Not at all. I just hope that we made some of these views come through.

Mr. TAYLOR. OK.

[Prepared statement of Mr. Hahn appears in the appendix.]

Mr. TAYLOR. Mr. James, do you have a statement?

STATEMENT OF FRANK B. JAMES, LEADER OF UNITED AMERICAN INDIANS OF NEW ENGLAND

Mr. JAMES. Thank you, Mr. Chairman, and members of the committee.

I am Wamsutta—Frank B. James. My mother was born in Gay Head, MA, and my father was born in Christiantown, which is now West Tisbury on Martha's Vineyard.

At present, I reside in South Orleans, MA.

For the past 29 years, I have held the position of director of music at the Nauset Regional High School in Eastham, MA.

I have been involved in native American affairs in southeastern New England for many years. I was elected the first chairman of the Massachusetts Commission on Indian Affairs, when appointed by Gov. Francis Sargent in 1976.

I am the current leader and moderator of the United American Indians of New England, and I was president of the Federated Eastern League from 1974 to 1982.

I was a member of the Wampanoag Tribal Council of Gay Head, Inc., but I withdrew my membership because I believe this State corporation is illegally representing the Gay Head Wampanoag Tribe.

In addition, I believe this State corporation is acting in ways that will destroy the Gay Head Indians' cultural, aboriginal, religious, hunting, and fishing rights, even under the Federal laws designed to protect these rights.

I strongly oppose the passage of this bill before you—S. 1452—for the following reasons:

No. 1: A State corporation, governed by the laws of an individual State, cannot and should not represent an Indian tribe.

There is presently a suit before the courts of Massachusetts claiming that this State corporation had no right to sign this settlement proposal on behalf of the Gay Head Tribe. Any decision on this Senate and congressional bill should be postponed until that suit has been resolved. I am sure our attorney can answer any questions you may have on this suit.

No. 2: Although I have withdrawn from the State corporation, the officers and directors have continued to use my name as a Gay Head Indian to obtain Federal funds for the benefit of the State corporation.

I have never received any notice of Federal grants that have been funded to the State corporation.

I have not received any information or results of projects, surveys, or studies that the State corporation has conducted, including the census of the Gay Head Tribe and the petition for Federal recognition.

I may have withdrawn from the State corporation, but I cannot withdraw from the tribe, but the State corporation has never informed me since my withdrawal about what it is supposed to be doing on behalf of the tribe.

In fact, I have never received a current copy of the settlement proposal, although I have read in the newspapers that the proposal has been modified since it was originally signed.

I believe the majority of the entire tribe has not received a current copy of the settlement proposal.

This State corporation does not serve all Gay Head Indians as it claims.

No. 3: The State corporation has used fraud and deceit to entice Gay Head Indians to support this settlement. Members of the corporation have told various Gay Head Indians they will get a free house lot if they support this settlement.

But they have not told these Indians that they will still have to get a mortgage to build a house; they will still have to pay taxes. And if they do not pay, they will be kicked off their house lots.

And how many house lots are there supposed to be? This land is to be purchased with the moneys from this bill has not even yet been surveyed. Nobody knows exactly where it is.

Would you gentlemen, as individuals, buy a piece of property when you do not know the boundaries?

And who is going to get a house lot? Is there going to be a house lot for every Gay Head Indian? Do you think if I wanted to move back home, as we call Gay Head, that I could get a house lot? But I will bet you that officers and directors of the State corporation will get a house lot if this bill passes.

In addition, the State corporation has not permitted all Gay Head Indians to vote on this settlement.

And it has promised Federal moneys which it cannot deliver to individual Indians in exchange for support for this settlement.

On page 2, on line 3, this bill states that the land suit by the Gay Head Indians has caused severe economic hardship to the residents

of Gay Head because it has clouded land title, thus preventing the sale of property.

This is a false argument. It is simply not true that land in Gay Head cannot be bought or sold, or that people cannot get mortgages. It is a scare tactic being used by the taxpayers association to frighten people.

If you look at the Dukes County registry of deeds, you will find a list of properties bought and sold in Gay Head in the last 10 years that is longer than my testimony here today.

In addition, I submit for the record the following real estate ads from the local Vineyard Gazette newspaper, one dated May 3, 1985, an ad for sale: a 3-bedroom house, 4½ acres, \$470,000. One on February 14, 1986, a 2½ acre building site for \$170,000. To this Indian, those prices are not severe economic hardships.

I am further opposed to this bill because it is nothing but another land grab by the whites against the Indians.

Who is going to get this \$3 million that is to be appropriated for this land? Not the Gay Head Indians.

Just four non-Indian attorneys who offered the U.S. Bankruptcy Court \$150,000 if the Federal Government bought the land for \$3 million.

My math tells me that this is a profit of at least \$750,000 for each of the four.

And why should the Federal Government pay to buy Indian land when the Indians have a good claim to the land, anyway? Why not let the judicial process take its course.

Perhaps it is because the non-Indians believe the Gay Head Tribe has a valid claim to its reservation.

In addition, under this bill the Gay Head Indians will not own this land, anyway. Nor will the land be held in trust for them by the Federal Government. This bill goes against all Federal Indian policy for the last 100 years, which is to protect Indian land.

This land will go to another State corporation. And who knows what Massachusetts could do to this State corporation in another 25, or 30, or 50 years.

Supporters of this bill say it does not matter how title is held because it will always be Indian land. I say it was Indian land in 1870, when the State of Massachusetts took it away from the Gay Head Tribe and made it a town, even when the Indians voted not to have a town, but to keep the reservation.

And what good has Indian land done the Narragansetts in Rhode Island? How many Narragansetts are living on their Indian land the Federal Government bought under their settlement proposal? The Narragansetts are even supposed to ask permission from the State before they can use their Indian lands.

In exchange for this dubious benefit, the Gay Head Indians are supposed to give up all of their rights forever.

Page 3, lines 6-25; page 4, lines 1-24 of this bill refer to extinguishing all aboriginal claims and titles of the Gay Head Indians.

The United States has been trying to extinguish Indian rights since 1786. And this is just another example of trying to get rid of the Indian.

There are no hunting or fishing rights protected under this settlement. Out of the 16 miles of shoreline on Gay Head, this new

State corporation for the Indian land will have control of about 15 feet, and they could lose that, too, because it is subject to taking under this settlement.

Once this bill is signed, all that could be Indian in Gay Head will be gone forever. For the economic benefit of a few officers and directors of the State corporation and the white landowners, the Gay Head Tribe will forego all of its rights forever.

Even if the Federal Government re-recognizes the Gay Head Tribe still exists and never has been terminated, the remainder of the reservation will be gone and cannot be returned to the rightful owners.

Those Gay Headers who presently do not live down home will be driven further away from their heritage and their roots.

I say the passage of this bill will destroy all you hope to preserve. You will unleash unrestrained building in Gay Head with the passage of this bill. Look what happened in Mashpee, which became the fastest growing town in Massachusetts.

And look what this growth has cost them. The Indian cannot afford a condominium in the town where he was born, and he cannot even find a place to rent. Now, even the wells are polluted, and the water is not safe to drink.

In addition, passage of this bill will create more factionalism among the Gay Head Indians, themselves, as they fight to see who will get a house lot and who will get all the Federal money that has been promised by the State corporation.

I ask if this is part of the scheme of those who favor this bill? To me, it is another example of divide and conquer the Indians.

Furthermore, I challenge you gentlemen to walk in this country for over 60 years with a face of my color, and I am quite sure that long before that time, you will realize that this bill smacks of pure racism.

Why does the taxpayers association favor this bill?

Why are they opposed to Federal recognition for the Gay Head Tribe?

Why are they afraid of the Indians?

In the long history of the suit, not one Gay Head Indian has said the purpose was to take someone's house and land.

Because the non-Indian landowner puts up no trespassing signs, does he think the Indian will do the same? Because the Indian wants free access to the beaches, does the taxpayer think he will not have it? Why does the taxpayers association want to limit the rights of the Indians? To get rid of them?

In my opinion, the true, honest resolution of the Gay Head land claims can be accomplished by returning the entire reservation to the Gay Head Tribe and allowing them complete sovereignty over their own affairs.

All landowners would retain title to their land. They could give it to their children, or leave it to someone in their will. But if they wished to sell it, the tribe would have the right of first refusal.

With the return of the reservation, the tribe would have a base from which they could generate income to support themselves and funds to purchase the land.

I am not proposing a harebrained scheme. I live next door to where it has been accomplished—the Cape Cod National Seashore.

There, land is being preserved and protected for the generations to come, yet people live in a house and towns quite successfully within its boundaries.

And make no mistake: the Gay Head Indians could govern themselves quite successfully, also. They have lived on Gay Head since 2270 B.C. They lived there well and in peace until the white man came.

With the return of the reservation, they could live there another 2,000 years.

I must say that I do not know if what I and others who are opposed to this bill say here today is going to make any difference at all. I wonder, in view of the way the Indian has been treated by the United States in the past, if this hearing is a charade.

I know the forces and resources gathered in favor of this bill are many. I know there are enormous political pressures being exerted to pass this bill. I know some of the members of the taxpayers association used to work for the Federal Government, and I know what find of influence that means.

Those of us opposed to this bill have not got that kind of influence. I cannot even get a meeting with my Congressman because I oppose this settlement.

I also know the lies that are being told: that only a few of us are against this bill. Not so. The majority of us Gay Headers are opposed to this bill and this settlement, but Indians do not play power politics well.

And we do not have the resources to combat the lies.

For example, the town of Gay Head paid for the selectmen to come here today.

The State corporation paid—with Federal money—for its officers to come here.

The Native American Rights Fund uses Federal moneys to pay for the high-powered attorney to come and go in Washington to lobby as he pleases.

Members of the taxpayers association can well afford to pay to come if they do not already live in the Washington area.

I paid my own way down here today. In addition, I have to lose income from my job to attend this hearing. But I will not agree to the termination of the Gay Head Indians which this bill will do. I will not agree to signing away the land. The land is sacred.

And I will not agree to signing away the rights of all the Gay Head Indians to come.

I ask you, in your deliberations on this bill, to remember the Indian philosophy that you are responsible for your actions unto the seventh generation.

Seven generations is not a very long time compared to the 4,000 years the Indians have lived on Gay Head.

The lawmakers who pass this bill will destroy forever the Indian culture of Gay Head, just as if they dropped a nuclear bomb on Gay Head.

In fact, S. 1452 is a nuclear bomb for the Gay Head Indians. The fallout will be with us for years.

May I remind you, in conclusion, that the Indian way is not necessarily the white man's way. As Sitting Bull said: "If the Great Spirit had wanted me to be a white man, he would have made me

so in the first place. He put certain wishes and desires in your heart. He put other wishes and desires in my heart. Both are good in his sight. It is not necessary for eagles to become crows." Wam-sutta.

Mr. TAYLOR. Thank you.

[Prepared statement of Mr. James appears in the appendix.]

Mr. TAYLOR. Mrs. Weissberg, do you have a statement?

I would like to urge the witnesses to summarize, if I could. This hearing originally was scheduled to end at 4 p.m. It was very interesting, and we had a period here until 5:10 p.m.

At some point, we are all going to get kicked out of here, so I would urge, if you could summarize, and we will make the written statement a part of the record as if they had been read.

Mrs. Weissberg.

STATEMENT OF THELMA VANDERHOOP WEISSBERG

Mrs. WEISSBERG. Thank you, Mr. Chairman.

It is very difficult for me to continue right now, because, believe me, I feel the same way as Frank James.

I think the thing that disturbs me so are the bold-faced lies. Maybe I could summarize my speech very much, because right now I feel sick at heart.

I do want to say a few things, though. For instance, when Luther Madison, the so-called medicine man, sat here, and Gladys Widdiss sat here, and said that they were born and brought up in all this time on Gay Head, it is not true. I am 59 years old. With the exception of a couple of winters, and a couple of summers, and maybe 6 years out of my 59 years, I have lived on Gay Head, and if I don't get any nails, any more nails in my driveway, if I don't get any more cutoff deer heads with a knife in their forehead—which I got when my husband who is no longer living, was recovering from a heart attack—and if I don't get any more hate letters using his deceased name, I will continue to live on Gay Head.

And I am going to continue to fight this. I don't know how; I don't know if I will accomplish it, but just maybe, if worse comes to worse, the thing that I would not like to see is two bands of Indians in Gay Head. But that is just a thought.

Things that go on in Gay Head are not any different than any other reservation in any other town, but the point of it is, we have always lived on Martha's Vineyard, and you know that is kind of different. You have to go across the water. We have been there all those years by ourselves.

I had a lot of things here. There are a lot of frivolous things, because having lived in Gay Head all my life—I attended the Gay Head schoolhouse; I caught frogs beside it; I watched the boys being sent for a bucket of water and came back with only a half of bucket of water; I, too, had to stay after school for falling in the ice when we were told to go on the pond; I listened to the boys tell us of the teacher smoking in the outside john—these were the frivolous things that I was just going to mention, but I will, you know, continue.

I put up with the tourists when I was a little girl. I have my oldest sister here—one of my oldest sisters—here today, and I, you

know, used to sell pottery that was from the cliff. I used to hate to see those tourists come. I thought, well, they are kind of nice people, even though they do use the camera all the time and ask you stupid questions like what time does the light go on, and you would say to them, at sundown, at sunset, and they would say, yes, but what time will it go on tonight because it is foggy? You know, we would just laugh at that.

So I really know what it means to live on Gay Head, pick berries, roam around the beaches. There were no no-trepassing signs. Some of the untruths that have been said here today, you know, it does not make any sense.

Now, I—and my niece is also here today—spent 2 days in the Dukes County Courthouse before I came here. Since 1974, there have been 250 land transactions. Now, some of them were big pieces of land that sold. Some of them were not, but always there was that greedy person sneaking around to take advantage of a little old lady that is almost blind, someone taking advantage of a woman, bringing her cookies, getting her to sign off; and we do have someone here that is here because her family does not have a house to live in and sometimes has to sleep in the woods.

So, you can see, we too, want this to go through, but we want it to go through with our rights. I told you about the herring creek. What Indian does not want to have the fishing rights? Of course we should have our fishing rights, particularly if we could at least go to the pond and gather shellfish and all up until 1970—but things are always happening. Even Massachusetts has done so many things to us; for instance, they send the buses down there, and because somebody cannot sell a hotdog or a Belgian waffle, they will tell the buses: yeah, go ahead; park where you want to; we don't care where you park.

The property—I can tell you one thing about property. When pieces of property have been listed in the Vineyard Gazette, which is one of the largest local newspapers, a number of years ago, almost every person in Gay Head petitioned in the land court of Massachusetts, and what does that mean? Somebody has to buy; somebody has to sell. We had little interest. Some people ended up after the long land court deal was over, they had 22 cents; they got \$2; I got \$50. You know how much that land is being sold for today? There are four lots, and out of that four lots, it was advertised one week in the Vineyard Gazette. Those lots are being sold for \$1,194,000.

So when any person sits here and tells about those land sales, that is a bold lie. They have been going on since 1984.

Somebody might now say; what kind of an Indian sells the house? I am guilty of selling my house. I sold my house because I had to when my husband passed away. I am in the process of selling a camp because of health reasons and the trips I take to Boston, Washington, telephone calls, and such; so don't tell me that you cannot sell.

I think that is about it. I list in my testimony here a number of things that Massachusetts and the Federal Government have taken, but, in ending, I want to say a couple of things.

As for the taxpayers association, I am ashamed it has many, many Jewish members. How I wish my husband was living; he was

a rabbi. Perhaps he could explain to me clearer the situation in Gay Head. I hope and pray the same does not go on in the Middle East.

My last statement will be: I find it necessary to tell you I no longer attend Gay Head town meetings, not since Henry Sockbeson, the lawyer for NARF, attended the meeting where we voted on the land settlement. That is all I have to say.

Mr. TAYLOR. Thank you very much.

[Prepared statement of Mrs. Weissberg appears in the appendix.]

Mr. TAYLOR. Next, we will have Helen Manning, Joan Patadal, and Beatrice Gentry.

Let me just ask you, Joan, have you submitted written testimony for the record?

I might say the record will stay open for an additional 2 weeks for any other submission.

Ms. PATADAL. This is Adriana Ignacio. She is a Gay Head Wampanoag. She is married to a northern Ute, and she has just recently returned home to live on Martha's Vineyard after living in Utah for 3 years.

This is Roland James, and this is Rosalie Francis. She lives in Vineyard Haven, MA, one of the towns on Martha's Vineyard. She is a lifelong resident of Martha's Vineyard. She has lived most of her life in Gay Head, and now lives in Vineyard Haven, at the other end of the island.

And this is Ms. Helen Manning, and she is a school teacher, with friends, and she has taught in the Gay Head Public Schools in the last 15 years it existed, in the grades one through six, and actually the Gay Head schools was abolished because of financial purposes. She taught in Oak Bluff.

Mr. TAYLOR. For the record, the person making the introductions is Joan Patadal.

Mrs. IGNACIO. Shall I begin?

STATEMENT OF ADRIANA G. IGNACIO, MEMBER OF THE WAMPANOAG TRIBE

Mrs. IGNACIO. I am Adriana Giles Ignacio, a member of the Wampanoag Indian Tribe of Gay Head. I graduated from the Institute of American Indian Arts in Santa Fe, NM. My husband is an enrolled member of the Northern Ute Tribe of Fort Duchesne, UT, and we have three daughters. We have just moved back to Gay Head, where we will be building a home and living there. All of my life I have lived with, and participated in, Indian functions.

The Federal Government has a responsibility to correct an error that they made when they allowed the State of Massachusetts to wash their hands of us. From the outset, the interference and the stance of the Gay Head Taxpayers Association has resembled the paternalism which historically has characterized non-Indian relations with tribes nationwide.

Two groups stand to gain by the present agreement: the Taxpayers Association and the group of lawyers holding the Strock land. How can we be given something that was and is ours to begin with? And why do we need Taxpayers Association approval before exercising tribal self-determination in assuring for future genera-

tions what was and still is ours? It is not right for others to define what is or is not of value and meaning in our tribal heritage.

The land settlement, as it reads, is saying that hereafter we can no longer claim lands or even exercise our hunting and fishing rights, which to some of us is our only source of income. The settlement is an insult to any intelligent-thinking human being.

I object to the subdivision of some of the lands that the Taxpayers Association has decided that we could acquire. For example, the common lands, but not the beaches, that always were a part of the common lands. The Strock lands, some of the lots have no right-of-way. We do not know how much of the Strock lands can be built on due to town and State building regulations concerning the wetlands.

As I understand, the Federal Government will not spend millions of dollars on lands that will not be held in trust and with so many strings attached. For example, item No. 5, pertaining to the Cook lands, shall not be part of the settlement lands; shall remain subject to taxation and foreclosure in the same manner as any other privately owned property in Gay Head. I know of no other Indian lands in the United States that are subject to tax by surrounding towns or by the State that they exist in.

Any structure on this property is subject to Federal, State, and local laws, including the Martha's Vineyard Commission.

If this settlement goes through as it now stands, the only protection we would have is that the lands be put in Federal trust status.

I ask you to be just and fair to my children and the remaining Indian people of Gay Head. We would like to feel it is still our home. It is all we have left that we can call Indian land. The land and the people are the same.

Thank you very much.

I also have a letter to you, to the committee, by Mrs. Shirley Jardin, who was unable to come. I would like to submit it.

Mr. TAYLOR. We will make that a part of the record.

[Prepared statement of Mrs. Ignacio and letter of Mrs. Jardin appears in the appendix.]

STATEMENT OF ROLAND JAMES, MEMBER OF THE WAMPANOAG TRIBE

Mr. JAMES. I am Roland James, and I am a member of the Gay Head Wampanoag Tribe.

I come before you today to speak in opposition to the passage of this bill. Since the dates and figures have been stated over and over again in the many legal documents that have been filed by all parties during the 12 years this settlement proposal has been debated, and, as we all know, statistics can be manipulated to bolster any side one takes in an argument, I do not feel they need to be repeated today. Instead, I am going to speak of the negative impact this bill's passage will have on my people.

I believe that the one thing that disturbs me most, if you allow this legislation to pass, is never again, and I say never again, will Gay Head Wampanoags, whether singularly or as a tribe, will be able to sue for land, land which is rightfully owned by my people.

I feel very strongly that it is wrong for any of us, Indian or non-Indian, to feel that we have the right to negotiate or legislate away the rights of unborn generations.

The State corporation has told people that if the settlement, as written, goes through, they will be able to use the land as they see fit, perhaps to build homes or make a living. This sounds pretty good on the surface.

We should all realize that once government, be it State or Federal, gets involved, one cannot even build a doghouse without having to go through endless paper drills, impact studies, conferences, meetings, and the like; in short, loss of control forever.

If this bill is allowed to pass, we will have a little less than 5 percent of our land, and land that we can never hope to get.

I am also disturbed—

Mr. TAYLOR. Mr. James, let me ask a question on this.

Mr. JAMES. Yes.

Mr. TAYLOR. Is it your contention that the land that is currently in private ownership is, in fact, Indian land?

Mr. JAMES. I believe that strongly that the 3,400 acres that was originally the reservation down there is Indian land; yes, sir.

Mr. TAYLOR. That encompasses the entire township of Gay Head, does it not?

Mrs. IGNACIO. Yes, May I add to that, please? I am sorry.

I was with my aunts at the county courthouse, looking up the land sales that were made between 1974 and 1986. After the lands were described, the lot numbers, and so forth, they all say Indian land. That is how they are described.

Mr. TAYLOR. Well, I think the question or the point I am driving at—let's take Jackie Kennedy's estate. The estate has come up two or three times today. She owns a title from the State of Massachusetts, or at least the county that has jurisdiction in the Gay Head area. What I am trying to get at is, what are we looking at here as an alternative to what is before us? Are you saying that Jackie Kennedy's estate, as well as all other properties that are within this 3,400 acres, the title has currently been issued to by the State of Massachusetts, that that land should be taken from the current owners and returned to the tribe? Is that what you are recommending?

Mr. JAMES. No.

Mrs. IGNACIO. No; I have never said that.

Mr. JAMES. I believe it was brought out before, when someone mentioned that it could be put into a Federal trust, like the National Seashore on Cape Cod, where these people would be allowed to stay there, and they could will the house to their future generations, and if they decided to sell it, the tribe would get first refusal. I think that was brought out before.

Mr. TAYLOR. Right, Let me ask another question. Are there lands within the 3,400 acres there that are currently available? We are talking here about common lands. We have got the Strock estate. We have the Cook property, and we have one other—

Mrs. IGNACIO. There are town lands that taxes are not being paid on, the owners are no longer living—I feel those lands should be returned to the tribe.

Mr. TAYLOR. Do you have any estimate of the number of either lots or acreage?

Mrs. IGNACIO. No; I don't. No.

Mr. TAYLOR. Go ahead. I am sorry.

Mr. JAMES. OK. I think it was mentioned before that a group of four attorneys, I guess, stand to gain substantially if this settlement goes through.

I would also like to state that the State corporation does not represent me in any way in this action. I withdrew when I realized they were operating in a way that was not for the overall good of my people. And since I withdrew, I have not been notified of any of their meetings, nor have I received any statements, notices, et cetera.

Although I withdrew from the proposal, I am still a member of the Gay Head Wampanoag Tribe.

In closing, I would like to ask the members of the committee to realize that the Gay Head Indian people will not benefit in any way if this bill is passed. By your recommendation that the bill not be passed, you will ensure that the Indians of Gay Head will be able to enjoy all that is theirs by birthright, all that is ours by being born a Gay Head Wampanoag. Thank you.

[Prepared statement of Mr. Roland James appears in the appendix.]

Mr. TAYLOR. Thank you, Mr. James.

Would you state your name again for the record?

STATEMENT OF ROSALIE FRANCIS

Mrs. FRANCIS. Mr. Chairman, and members of the committee, my name is Rosalie Francis.

I was born and raised in Gay Head. My father was a fisherman. There were eight children in our family. Today, only one member of my family has a home in Gay Head. That is built on his wife's land.

My daughter, Shirley Jardin, has tried repeatedly to get back land the town took from us, the reason being that my grandfather, in 1929, was too ill to care for himself. The town put him a State hospital in Tewksbury, where he died after 11 months.

Everyone on Gay Head knew he was too sick to sign a deed. The town won't lift a finger to help us. Another complaint against the tribal council is, when they received a huge grant from the Federal Government, which involves my nephew, Emay Francis, they solicited him and persuaded him to go to a hospital for help and took him there and signed for his treatment. Now the refuse to pay the bill. I have enclosed a copy.

Signing this land bill now would be devastating to me and my family.

Now, this is one that was returned. It is from Terry Watkin, in Hyannis, the doctor. It says:

Dear Mr. Francis, we were in contact with the Wampanoag Indian Council and they feel they are not responsible for your bill. You will have to resolve this with them as we are not responsible for these kinds of matters. Sincerely, Lannie Smith.

Thank you.

Mr. TAYLOR. Fine. Thank you.

The statement, other than the letter you just read, could we have that statement for the record? I think it would help the reporter.

Mrs. FRANCIS. This last one? The one I just read?

Mr. TAYLOR. Not the one about the bill. The handwritten statement.

Mrs. FRANCIS. Yes; sure.

Mr. TAYLOR. I think it will help the court reporter.

[Prepared statement of Mrs. Francis appears in the appendix.]

**STATEMENT OF HELEN VANDERHOOP MANNING, GAY HEAD
INDIAN PUBLIC SCHOOL TEACHER (RETIRED)**

Ms. MANNING. I know you have my letter, and in the letter I have listed the 14 points which give my reasons and this group's reasons that we did not like the settlement for those 14 things.

One of the things that has not been mentioned, however—oh, I also want to say that Joan and I took this before the tribal council and read them and gave our objections and asked them to consider them. They just simply gave us token silence and just right away voted no. They would not even consider them.

But be that as it may, also the one—I am a retired school teacher, and I taught in the Gay Head public schools—Indian public school—for 12 years, and now I am interested in the history and the culture of Gay Head and Martha's Vineyard, and I am finding that in doing all of this history which I hope will lead to a tribal history, the landmarks are one of the things that are very, very important to the tribal history of the Gay Head Indian, and those landmarks are listed here that are now on private property, but which we would like to have, not taken away from private property, but have access to them my members of the tribe.

And everything that has been said here today is certainly, during this last few minutes I should say, or the last few hours or so, has said exactly what I would have said and the way I feel about it.

I also object to the settlement because it just is not enough. It does not give us enough.

Mr. TAYLOR. Ms. Manning, I also have got a piece of paper that Joan Patadal gave us last night, and the title is "Fundamental Demands Essential To Preserve and Maintain Wampanoag Indians of Gay Head Heritage and Tradition."

Are those the same 14 points?

Ms. MANNING. Yes; they are.

Mr. TAYLOR. And you say those were taken to the tribal council—

Ms. MANNING. Joan and I went there. Yes, we presented them to the tribal council for consideration.

Mr. TAYLOR. And when?

Ms. MANNING. October 1983.

Mr. TAYLOR. Fine. OK. Well, that will be made a part of the record.

[Prepared statement of Ms. Manning appears in the appendix.]

Mr. TAYLOR. I appreciate all of your testimony, and we will try to get to our last group here.

James Faction?

Oh, pardon me, I thought we were dealing with a—OK, there's a Mr. Sapio that wanted to testify, too. Why don't you come up. Is Mr. Sapio here?

This will be the end of the witnesses we have on the witness list. Now, is there anyone here expecting to testify that we have not called on?

[No response.]

Very good.

Joan, do you want to coordinate this?

Ms. PATADAL. Yes.

**STATEMENT OF JOAN PATADAL, MEMBER OF THE WAMPANOAG
TRIBE**

My name is Joan Patadal. I am a Gay Head Wampanoag. I live in Gay Head, MA. This is Barbara Gentry. She is my sister and currently is not living on Gay Head. She lives in Laramie, WY. She works for the University of Wyoming. She is director of the Indian program there.

And this is Beatrice Gentry. She is my mother. She was the first chairperson of the Gay Head Wampanoag Tribal Council, and this is Sammy Sapio, a Penobscot from Maine, who joined us here at his own expense.

And we are here at our own expense.

Ms. BOYLAN. Do you want to identify your daughter, Joan?

Ms. PATADAL. And this is my daughter—I am sorry, Virginia—this is my daughter, Beatrice, and she is in the fourth grade, and she is to make a report on this hearing because she missed school all week.

I have been here all afternoon, and I will be very brief, and I appreciate the time. First of all, I just want to say just a couple of things, and I will let everyone get on.

It saddens me to come here and testify in opposition to other Indian people. I think that this is the real tragedy of this legislation, that it is a little premature, it is a little rushing—it is just a little premature.

I think that communications, if they had been better on all sides, not just the Tribal Council, Inc., with us, and also the Tribal Council, Inc., and the town of Gay Head, and the Taxpayers Association—I mean, this would have been avoided. It could have been avoided a long time ago, and so I understand that the Taxpayers Association have spent 10 years—they are talking 10 years as length of time. Well, you must understand that the Taxpayers Association is not familiar with Indian affairs, and they are not familiar with the land claims in other parts of the United States, and how many years; and so 10 years, I am sure, to your knowledge of Indian affairs, this does not mean a whole lot as far as time goes.

To me, as I am 35, 10 years does not seem to mean a lot of time to me, either, because if someone says, where are you going to be in 20 years—home is RFD, 159 State Road, Gay Head—I will be there in 20 years, and I think that the idea of hardships that the Taxpayers Association talks about, I understand it is a hardship; you know, this is their second home; they came to Gay Head for a summer home, and they wanted to keep everything pretty, and, of

course, the problem we have is that we never messed up the whole island to begin with; we kept it pretty, and it will always stay pretty, as far as I am concerned, if you let us control our own lives.

And if we have control of those lands which we have to have to ensure their protection and our future existence as Indian people, when we will always be happy on Gay Head, and we have never ever sought to disenfranchise anybody. The land case was simply over three small areas of Gay Head.

We did not sue for the whole town of Gay Head in the beginning. We discussed it. We discussed it with Mr. Tureen. Mr. Sockbeson was not involved at that point. This is 1974, and we talked with Mr. Tureen about what our possibilities were as far as suing. Shall we sue for the whole island? Shall we sue for certain areas of the island? Because, after all, everybody knows that Gay Head had four areas of Indian lands on it in 1870.

Gay Head was the State reservation. There was an area in Christiantown, at West Tisbury, which is called Christiantown, because we are all good Christians there, and in Edgartown; there were two areas: Chappaquiddick and Deep Bottom.

So, in 1970, on Martha's Vineyard, there was only one area left of Indian population, and that was in the town of Gay Head, because the other areas had become incorporated into the other towns and had been sold off, and whatever.

So, when Mr. Madison, who is the tribal medicine man, set up a town meeting last year, and talked concerning this land settlement case, of why we should accept it, what its benefits were to us as Indians and the benefits to the Town of Gay Head, his statement was, let's be a good American and vote for the settlement.

Well, I tell you, Mr. Madison, I know he knows if you go by the front door of the town hall of Gay Head, there is a little plaque there on a rock where Gay Head gave in World War I the most men per capita of any town in Massachusetts; so, believe me, we have been good Americans for World War I; we have been good Americans in the Civil War, and we were good Americans in the American Revolution; and when King Phillip's war came on, the Gay Head Wampanoags did not join, OK, with the Wampanoag confederacy at that point. King Phillip's war, in 1676 to 1678, which brought out the wholesale annihilation of the Wampanoags in Massachusetts was fought mostly on the mainland and at that point when the Wampanoags were defeated with the Narragansetts in Rhode Island, our brothers.

Then we were sold into slavery, those that were not killed, and, of course, we believe that as the boat rounded to Gay Head, the ship captain took pity on the poor families and let a few of them off to swim ashore to us in Gay Head. I like to believe that story.

So, I am really tired of hearing about being a good citizen and a good American, and let's take the settlement and that is all that we are going to get. And so I just wanted to say a few brief things, and the only thing I wanted to say was: Mr. Madison, Jeffrey, who is chairman of the board of the selectmen, who did not seem to know much about the fishing project, he was assistant to the director of the aquiculture project. He used to run one of the boats, and he was the No. 2 guy. There was a director who was the marine biologist, and so Mr. Madison has full knowledge of it.

He may not want to talk about it, but he knows of it.

Also, Mr. Vanderhoop, David Vanderhoop, was a student at the Laramie School of Aquiculture in Bellingham, WA. I believe he has a degree from there—I am not too sure—but he can talk about aquiculture and development in Gay Head.

Now, I think that all of this talk about development and the reason why these lands have to have settlement and some have to have trust status, and some of them won't have trust status, I am telling you, if they are not protected, all of them that we get, I don't care what you are talking about—I don't care whether you are talking about beaches or whatever—if there is not protection for them, they will be gone, because I have a wonderful paper that you and I looked at, you know, and this is the history of the fishing project on Gay Head, and what is there after the blood death and a few little old buildings, and God only knows what the vote is; so I would like to now give my time to these other people.

Mr. TAYLOR. Thank you, Joan.

STATEMENT OF BEATRICE GENTRY, FIRST CHAIRPERSON OF THE GAY HEAD WAMPANOAG TRIBAL COUNCIL

Mrs. BEATRICE GENTRY. I am Beatrice Gentry, Joan's mother, and I was the first president of the tribal council of Gay Head. The tribal council really originated because there were many organizations on the island who were looking at our common lands. One of them was the conservation commission. They wanted to take those 238 acres of virgin soil and put it into conservation.

So, a group of people, Thelma Weissberg was one of them, got together and said we must organize to save these, and we must organize a tribal council to keep these lands for the people because, on record, and it is in this book that Joan is going to give you, it shows the people who did not want to become a town.

So we organized the tribal council just to save those lands. When we made the charter, Gladys Widdiss sat there today and said that we did not want Federal recognition. One of the objectives in our charter, which you will have, says definitely that we wanted Federal recognition, and we must have land for a land base before we could have it. So that is a statement which is not—I wanted to correct.

And Helen Manning, and Joan, too, are going to give you the 14 reasons that Jeffrey Madison said that he does not know why we disagree with this land settlement.

Now, I think I told you when I talked to you yesterday, I urge everyone to vote against the passage of S. 1452 because I do not see how we can say you are going to give us something that is going to be under Federal trustship. I want to have Federal trustship before you give us the land.

And that is all I have to say.

Mr. TAYLOR. Thank you very much. By the way, the 14 points that you gave me I realize are in Helen Manning's testimony, but I would like also to make those a part of the record at this point as pertaining to the testimony of Joan Patadal.

[Prepared statement containing the 14 points appears in the appendix.]

Mr. TAYLOR. We will have to make this pretty short, and we want to get to the rest of the panel.

STATEMENT OF BARBARA GENTRY, DIRECTOR OF INDIAN EDUCATION PROGRAM, UNIVERSITY OF WYOMING

Ms. BARBARA GENTRY. First of all, my name is Barbara Gentry, and I am currently working at the University of Wyoming. I am a director of their Indian Education Program. I have a bachelor's in social work from Utah State University, and also a master's from the University of Wyoming.

If you are wondering why they are western universities, it is because 20 years ago there were no Indians going to school on the east coast, so I opted to go to a school where there were Indian people, and it made a big difference in my life.

I have worked on the Ute Reservation, Northern Ute Reservation, for approximately 2 years. I have worked with the Arapaho and Shoshone Tribes. This is my second time with them at the University of Wyoming. I am putting this into the record because I think it is important that you see our involvement, not only with our own Wampanoag Tribe and people, but also with other Indian nations across the United States.

They say we are just a small group of dissenters. This is not true. Half of the tribe is against us. We have come here today on our own money, and it is costing us money, and some of us really cannot afford it, but I think that we are putting the future of our tribe before ourselves, and we are not trying to hurt the Wampanoag Tribal Council of Gay Head.

By the way, I am not a member. I withdrew when I found out about the letter between the two lawyers, Tom Tureen and the town lawyer, when Tom said that the Wampanoag Tribal Council was not the governing body of the tribe.

At that point, I said, well, what kind of organization is it? Also, on the membership, that question has come up three times, and I would like my mother to respond to that because during the membership—I attended two meetings; I have not lived at home all of this time; I have been out working, and, unfortunately, there is no way for me to work on the island with Indian people. There are not jobs to do that; the closest place is the Boston Indian Council, where I worked for 5 years as the education director, and we had programs there from day care to adult education. We serviced over 200 people a day—200 Indian people a day. Could you talk about that?

Mr. TAYLOR. Well, what I am interested in is the question about the membership, and then I want to hear from Mr. Sapio.

Mrs. BEATRICE GENTRY. We started the tribal council by going by the roll of 1870, just as they are doing at the present time, but we said, in order to be given tribal benefits, in order for you to be able to send your child to school, for instance, and get money, tribal money, then you could marry away three times from the roll, which would make about one-eighth, the quantum would be about one-eighth.

Now, I can tell you that the roll was made up—

Mr. TAYLOR. That would be three generations from the—

Mrs. BEATRICE GENTRY. That's right, and that roll was left in 1970, when I left the—1976, I mean—when I left as president. It was left in the tribal council office, and, Helen, were you on that committee? I don't know whether any are on that committee here today, but we had a committee that worked on that for 2 years. We connected all the people from the 1870 roll that we could find, to see, you know, who was eligible, and they made up a roll. Now, I don't know where the roll is, or what happened to it, but it was for tribal benefits.

Now, we are not saying that they were not descendants of Gay Head Indians. We were saying in order to get tribal benefits, they could not have married away over that many times, and I know that is the Federal guideline, because when I went into the Indian service, I was given preference.

Ms. BARBARA GENTRY. I just have one more thing to say, and it was a question that came up on membership, and if they are going to claim every descendant, why did they not advertise like the Alaskan Native Land Settlement did for their members, and also various tribes in Oklahoma have also advertised for its tribal members across the United States.

Now, I have seen those in a Chicago paper years ago. It is a common practice done with many land settlement cases before they close the rolls to identify all of its members. This was not done in Gay Head, and it was brought up that if you are going to claim in any one of the tribal council meetings, it was asked that this be done. And it was never done.

Mr. TAYLOR. Fine. Thank you.

Mr. Sapio. Last, but I hope not least.

STATEMENT OF JOHN SAMMY SAPIO, MEMBER OF THE PENOBSCOT NATION

Mr. SAPIO. Well, I am always last, anyway, because this is their problem. They have asked me to come down to speak about it because I have been through this whole situation. I can understand what they are going through and what is happening to them.

Mr. TAYLOR. You are a member of the Penobscot Tribe?

Mr. SAPIO. I am a member of the Penobscot Nation. Henry Sockbeson is a member, too, but I have never seen him around the reservation.

I wish he would come back and work for us up there, so we would not have to keep running down to Portland and talk to Tom Tureen. He could work around our reservation with the Indian people.

What I would like to say: I am here to talk against this bill, 1452.

Ladies and gentlemen, and members of the committee, my name is Ganutch. My English name is John Sammy Sapio, a Penobscot community name. It used to be the Penobscot Nation, but they have changed it around, and we come under the community bit because of the land claim thing, but they still call it the Penobscot Nation, just to keep the people happy.

But since the land claim, it has changed. Big money deals—wells, one of the things I am trying to say, I am kind of confused here—but I am here to oppose the land claim settlement for the Gay

Head Wampanoags as it will not benefit the individual members of the tribe.

There is nothing in the settlement. It's a total sellout of the birthright of the Indian people of Gay Head. It is like building a social welfare nation like the settlement in Maine, as was described in an article in the Bangor Daily News by one of our tribal people.

You will hear a lot of testimony here today for the settlement which will probably be passed. This group has money. Why I am saying money is because the people that come in and testify belong to organizations that have money from the Federal Government, like USET, BIA, and all of these.

We people, we have to spend our own money to get, you know, to get here and to go back, so that is kind of a discrimination thing. I think all people should be heard on both sides, not just one side. The one side gets paid; the other side doesn't get paid, so they have to use their own money.

Any everybody, I think, today here works to earn a living, and they cannot afford it. But with the great spirit, the Creator, he helps us along so that we can get to these places where we are supposed to be.

That money that they spend is supposed to go to Indian people on reservations, you know, for jobs, welfare, education, and, as I said before, these people have to use their own money, and the people that have the government money, you know, can use that money to pay their way down.

Indian people—I am just skipping around here—so, we have a lot of problems in Maine now because of the nuclear waste dump. They want to put a nuclear waste dump on the land, and the people that are for this land claim, for the money part of it, which comes to 300,000 acres that we had to buy, was our own documentary land that we knew, you know, where it was. The three townships that we lost, the trust money that we had, the Indian people had got from the changeover from Massachusetts to Maine, that is all gone. So now we have another trust fund. I don't know how long that is going to last because it seems we are getting into a big deficit here, where we are almost as bad as Reagan. We are losing all our money one way or the other.

The ones that talk of this land claim are for it. They talk about how their land is so sacred to them, and they will fight for it. I guess they forgot their ways. It is like committing the worst sin in the white man's religion, a mortal sin.

By talking on both sides of their mouth, what I call jumping the fence, or an apple Indian, red on the outside, white on the inside, I like to end by, you know, saying to the Indians of the Piute Nation, who are stronger than any Indians—they turned down their settlement. They had a settlement and they turned it down because it was not going to benefit the individual people out there in Tacoma, WA.

And what I would like to say is, you know, they are following in the footsteps of their ancestors who left us this land to protect and preserve for generations to come. I would like to say that they probably had NARF, Native American Rights Fund, represent them, and that is why they turned it down.

Mr. TAYLOR. I think we are going to have to bring this hearing to a close.

I would like to thank all of you for your testimony, and I would simply like to observe for the record that we have three generations of family here, Joan Gentry, Joan Patadal, and Beatrice, who is going back to write a report about what she has seen here, and we will probably hear from your fourth grade teacher.

The hearing will stand adjourned.

[Whereupon, at 6 p.m., the hearing was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE APRIL 9, 1986, HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 1452, THE "GAY HEAD WAMPAOAG INDIAN CLAIMS SETTLEMENT ACT OF 1985."

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1452, the "Gay Head Wampanoag Indian Claims Settlement Act of 1985".

I will not repeat all the information and discussion that is included in our February 5, 1986, report to the Committee on S. 1452, but I have attached a copy of the report to my statement. As stated in that report we oppose enactment of S. 1452 because it does not meet the criteria for the settlement of eastern Indian land claims as set forth in the President's veto message on another eastern land claims bill during the 98th Congress. These criteria are (1) completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; (2) verification of the claim, and (3) payment by the State of Massachusetts of at least one-half of the settlement costs.

S. 1452 would settle outstanding Indian land claims in the Town of Gay Head, Massachusetts. The settlement would terminate a Non-Intercourse Act claim that has been pending before the U.S. District Court for the District of Massachusetts since 1974. The lawsuit involves a claim to approximately 240 acres of land presently held by the Town of Gay Head as town common lands. The claims have also resulted in the clouding of titles to certain private lands in the Town of Gay Head, even though many of these lands are not involved in the lawsuit. As part of the settlement in S. 1452, an appropriation of \$3,000,000 is authorized.

TESTIMONY OF JAMES L. QUARLES III
ATTORNEY FOR THE GAY HEAD TAXPAYERS ASSOCIATION
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

Mr. Chairman, members of the Committee, I am James L. Quarles of the law firm of Hale and Dorr, counsel to the Gay Head Taxpayers Association. Since 1976 my firm has defended thousands of landowners in Massachusetts, Maine, New York, and South Carolina who have unexpectedly learned that their right to possess the land and homes in which they have invested their lives and fortunes have been called into question by the pendency of an Indian land claim. I am honored to appear before you today to testify in support of S. 1452, a Bill which would settle the Indian land claims in the Town of Gay Head, Massachusetts.

Gay Head is a small town at the western-most end of the island of Martha's Vineyard. For more than 200 years Gay Head has been a community in which people of various backgrounds and heritages have lived together harmoniously. However, in 1974 a lawsuit was filed in the United States District Court for the District of Massachusetts entitled Wampanoag Tribal Council of Gay Head, et al. v. Town of Gay Head, et al., C.A. No. 74-5826-McN (D. Mass.). Although, by its terms, that lawsuit seeks only the recovery of a portion of the land in Gay Head, its pendency has clouded the title of all of the landowners in Gay Head.

Our client, the Gay Head Taxpayers Association, was formed in 1973 to protect the rights of landowners in Gay Head. In 1976 the Taxpayers Association voluntarily joined the litigation as a defendant. Faced with the prospect of lengthy,

inordinately expensive and divisive litigation, the Taxpayers Association twice commenced negotiations with the plaintiff, Wampanoag Tribal Council of Gay Head, Inc. The first effort at mediation was undertaken by Dean Sacks of the Harvard Law School. In 1981 another effort was commenced to settle the litigation which threatened to divide the community. After two years a settlement agreement was reached. That settlement included an undertaking by the Taxpayers Association to join with the plaintiff to seek the passage of legislation which would bring a final solution to this dispute. S. 1452 is that final solution, and we urge this Committee to report favorably on it.

It is not our purpose to argue here the merits of the litigation which this Bill would settle. If this Bill is not enacted and the parties must return to the courtroom for its resolution, there will be many disputes among the residents of Gay Head. There is, however, no dispute that the resolution of this problem by litigation will be an expensive ordeal for all parties, and one which should not be visited upon the innocent residents of Gay Head.

The rights of the innocent landowner must be considered in evaluating this legislation. Their right to ownership and possession of the land they hold is jeopardized. Consider for a moment who the people are whose rights are threatened by the assertion of this ancient claim. The vast majority of them are homeowners who have acquired land and homes in Gay Head within the last twenty or thirty years, completely unaware of any ancient

legislation or conveyance which forms the basis of the plaintiffs' claims. Here the Wampanoag Tribal Council of Gay Head, Inc. claims that an action taken by the Commonwealth of Massachusetts in 1870 permits them to challenge the validity of titles which are now more than 110 years old. The claim is, apparently, that state officials failed to follow correct procedures when Gay Head became a town and failed to involve the federal government in that process. But my clients, innocent, good-faith purchasers of land, had nothing to do with the transactions in question, and should not be at risk because of some claimed error by public officials who acted more than a century ago. These private citizens now face the possibility of a claim that actions occurring in 1870 may threaten their homes and property. Surely this Committee, this Congress, and the entire Nation must sympathize with these guiltless people who face the terrible burden of defending their homes and property.

Faced with the horrible risk of losing their land, citizens such as the members of the Gay Head Taxpayers Association are compelled to defend themselves at great effort and expense. The first Indian claim in which our firm was involved was the Mashpee trial in the Massachusetts federal court. Mashpee is but 30 miles from Gay Head. After months of hotly contested pretrial motions and depositions, the court ordered a jury trial on the single issue of whether the Mashpee plaintiffs constituted an Indian tribe. The trial on that single issue took more than forty days, after which the judge and jury found that the plaintiffs were not an Indian tribe at certain key dates, and therefore, had

no claim under the federal statute which is the cornerstone of all these lawsuits. The judgment for the defendants was appealed and affirmed.

Tribal existence is only one of several elements of a plaintiff's prima facie case in Indian land claim litigation, and if the entire Mashpee case had to be tried, the trial would have taken months. In addition to the legal fees that are incurred in pursuing or defending against an Indian land claim, the trials require lengthy testimony for both sides by historians and other expert witnesses who also receive payment for their time. A trial on the merits of all issues would likely take years of preparation and research and would exact an enormous toll on the pocketbooks of the landowners and all the parties. Although the plaintiffs often receive indirect financial assistance from the federal government in prosecuting these lawsuits, there is no federal statute which entitles a prevailing party to an award of attorneys' fees in Indian land claims, and the burden falls on the taxpayers of these isolated communities to defend what they have always believed to be theirs.

Legal fees in Mashpee totaled approximately \$250,000 in 1977, and trial on all of the issues could have cost several times that. The expense of defending against Indian land claims, however, is almost insignificant when compared with the enormous uncertainties and disruptions engendered by the mere pendency of the lawsuits. From the day that a group claiming to be Indians first announces its intent to claim ownership of and possession to land in dispute, the title to the land is clouded, and the value

and marketability of the land is seriously impaired. And the resolution of these claims is neither simple nor quick. For example, our firm is presently engaged in the defense of the State of South Carolina, several communities, and landowners in a land claim brought in the United States District Court for the District of South Carolina. That claim, which involves 225 square miles aptly demonstrates the complexity of the litigation of Indian land claims. That case was filed in 1980. We moved to dismiss on the grounds that a 1959 statute precluded the claim. The district court agreed and dismissed the claim. The plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit, and a panel of three judges split two-to-one and reversed the dismissal. We sought a rehearing before all of the active judges on the Fourth Circuit. Those seven judges split four-to-three and affirmed the original panel's conclusion that dismissal was inappropriate.

We sought and received certiorari from the United States Supreme Court. That case was argued on December 12, 1985 and a decision has not yet been rendered. Seventeen federal judges will have considered the threshold question of whether this litigation may proceed, and the case has been litigated for almost six years but no answer has yet been filed, and the merits of the plaintiffs' challenge to the transaction have not yet even been considered.

Enactment of S. 1452 will remove from all of the residents of Gay Head the burden of facing a comparable piece of

litigation. We believe that the enactment of this legislation is the appropriate response for four reasons.

First is the recent decision by Governor Dukakis to support a contribution by the Commonwealth of Massachusetts to the funding of this legislation. That action, as well as the Commonwealth's enactment of a Bill authorizing the transfer of the Town lands to the plaintiff, demonstrates the Commonwealth's recognition that the burdens of this litigation should not be shouldered by the innocent landowners who, by happenstance, purchased homes in Gay Head instead of the adjoining community of Chilmark or other communities on Martha's Vineyard.

Second, S. 1452 strikes an appropriate accommodation between the desires of the plaintiffs and the other citizens of Gay Head. Section 10 of S. 1452 provides that the lands acquired under this Bill and any lands later acquired shall be subject to the criminal and civil laws, ordinances and jurisdiction of the Commonwealth of Massachusetts. For the last 110 years the Town of Gay Head has operated in the same manner as other towns in Massachusetts. This Bill ensures that that jurisdictional relationship will remain unchanged and that the residents of Gay Head will not suddenly learn that some of the generally applicable laws of the Commonwealth do not apply any longer.

Third, the Bill will remove the cloud which has hung over the land titles in Gay Head. Although the parties' agreement to attempt to settle the litigation by the enactment of this legislation has mitigated the problem, the failure to enact legislation may have a crushing impact on the ability of innocent

landowners to transfer their property. In the course of the litigation of the Mashpee case, one of my partners was approached by an elderly woman as he returned to his car in Mashpee. She recounted that her husband had died, she had medical problems, and her doctor had instructed her to move to Florida for health reasons. However, because of the pending Indian land claim, she could not get her house, her only asset, out of probate so that it could be sold and she could retire to Florida. S. 1452 would ensure that that injustice does not reoccur in Gay Head.

Finally, and perhaps most importantly, enactment of S. 1452 would remove the cloud which threatens the relationships between the residents of Gay Head. For years people have elected to live in Gay Head because of their desire to live in a remote community which welcomed people from diverse backgrounds and promised an opportunity to return to the simpler way of life in which your neighbors were your friends and a true sense of community prevailed. However, since the filing of the litigation non-Indian residents have faced the uncertainty engendered by the threat that their title to and possession of their homes may be in jeopardy.

Congress alone can protect the innocent citizens of Gay Head not only from the risks they face in the litigation, but also from the cost and uncertainty occasioned by the very existence of claims threatening those citizens' homes. Whatever may be the sincerity of the Indian plaintiffs' belief that they were aggrieved in the past, we cannot forget the grievous losses which threaten the non-Indian citizens of Gay Head in the present. The

courts cannot erase yesterdays' mistakes, but Congress can erase todays' misfortunes. This Bill is an appropriate resolution to a difficult problem and we urge this Committee to report favorably on it.

I would be pleased to answer any questions any of you may have.

TESTIMONY OF HANNAH L. MALKIN
 PRESIDENT OF THE GAY HEAD TAXPAYERS ASSOCIATION
 BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
 UNITED STATES SENATE

Mr. Chairman, members of the Committee, I am Hannah L. Malkin, a landowner in the Town of Gay Head, Massachusetts and the President of the Gay Head Taxpayers Association. It is an honor to appear before you today to testify on S. 1452, a Bill which means so much to the people of Gay Head.

Gay Head is a small community located on the Island of Martha's Vineyard. It has long been famous for the magnificent clay cliffs which overlook the Elizabeth Islands. The lighthouse located on those Gay Head cliffs has, since 1799, guided mariners and more recently attracted tourists to Gay Head and to Martha's Vineyard.

My husband and I came to Gay Head in 1969 to purchase a home. We selected Gay Head for many of the same reasons which have attracted people to Gay Head for hundreds of years. Although Gay Head is only 90 miles from Boston, 7 miles off of Cape Cod, and 15 miles from the more settled Martha's Vineyard towns of Edgartown and Vineyard Haven, Gay Head remains a remote location of extraordinary beauty. It combines areas of woods, moors and dunes with breathtaking views of Vineyard Sound, the Atlantic Ocean, and Menemsha Pond.

However, perhaps even more attractive than its physical beauty was the fact that Gay Head offered the opportunity to enjoy the simpler way of life which had vanished from much of America. Gay Head has always been a small town. Even today there are fewer

than 250 homes in Gay Head. For centuries Gay Head has offered the sense of community which results from living in a small community where families know and trust each other.

To obtain the benefits of this sense of community, individuals now members of the Taxpayers Association purchased land in Gay Head at considerable sacrifice and expense. In many cases, the sellers were the individuals whose claim now poses a threat to that land.

In the early 1970's Gay Head underwent a change. At a time when other eastern Indian groups were beginning to assert claims to land, 14 people formed the Wampanoag Tribal Council of Gay Head, Inc. The Tribal Council promptly began to work toward the transfer of the common lands owned by the Town of Gay Head to the Tribal Council. In March 1973, the Tribal Council proposed at a town meeting that the Town transfer those common lands to it, but the matter was never brought to a vote. In the Fall of 1974 Thomas Tureen, Esq., who was then handling an Indian land claim in Maine, filed in the Massachusetts federal court a suit on behalf of the Tribal Council against the Town of Gay Head. According to Mr. Tureen's lawsuit, the ownership of those common lands never passed out of the hands of the proprietors of Gay Head when Gay Head became a town and the Tribal Council was the rightful representative of the heirs of those proprietors. That lawsuit, if successful, would threaten the titles of all Gay Head landowners.

The filing of that lawsuit worked a substantial change at Gay Head. The suggestion that any portion of the town lands

did not belong to all of the people of the town was a sharp break from Gay Head's tradition as a close-knit community. Non-Indian taxpayers and residents became concerned that they would lose title to their property, that access to the shoreline and other natural resources would be lost and that the jurisdiction of state and local governments would be compromised.

Our organization, the Gay Head Taxpayers Association, was formed in 1973. I am currently its president. Our membership includes more than 75 percent of the people of Gay Head who are not affiliated with the Wampanoag Tribal Council of Gay Head, Inc. or others who assert an ancient claim to the ownership of Gay Head. Approximately 140 families are members of our organization. In 1976 our organization voluntarily joined the litigation commenced by the Tribal Council as a defendant. From the very beginning, our goals have been to protect our homes and land, and to return Gay Head to the harmonious atmosphere which attracted us to it. All of us also believe that there is an inherent and obvious inequity in compelling innocent landowners to defend their titles against a claim based on acts occurring more than 100 years ago.

In 1977, at our urging, Albert Sacks, then dean of the Harvard Law School, became a mediator and attempted to resolve the disputes between the residents of Gay Head who were aligned with the Tribal Council and those who were aligned with our organization. That effort at mediation continued for two years, but was ultimately unsuccessful.

Later, in 1981, we began another effort to attempt to settle the dispute which was tearing our town apart. For more than two years Lawrence Mirel and Thomas Tureen negotiated in an attempt to achieve a mutually acceptable solution to the competing interests of the Tribal Council on one hand and our association and its members on the other.

In late 1983 we were successful in reaching the understanding contained in the Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims. The Bill which is before the Committee today, S. 1452, is the result of that agreement, and, on behalf of the members of my association, I urge this Committee to report favorably on that Bill.

Our membership urges the passage of this Bill for three basic reasons.

First, as our counsel will testify, the litigation of an Indian land claim is an extremely complex and extraordinarily expensive undertaking. Our membership of only 140 families has raised and spent almost \$175,000.00 in an effort to defend our properties and to seek the passage of the legislation necessary to resolve this dispute. We have been forced to raise and spend these funds despite the fact that no one suggests that any member of our organization is in any way responsible for any of the wrongs the Tribal Council claims were worked upon it. We are, of course, committed to continue to defend our homes and property,

but believe that the continuation of the litigation is a burden we should not be forced to bear.

Second, in addition to the money we have spent, the pendency of this lawsuit has been a severe hardship to us. Although the prospect that the litigation might be settled by the enactment of a Bill such as S. 1452 has spared us the extraordinary hardships visited on the residents of Mashpee and other areas where Indian land claims are pending, title insurance companies are reluctant to insure the titles of Gay Head properties. In addition, banks have been reluctant to provide mortgages, thus making land transactions difficult if not impossible.

Third, this legislation is a fair resolution of the dispute. It produces a result which is desired by the plaintiffs. From our standpoint, not only does the Bill remove the cloud upon our titles, but it respects the expectations we had when our members came to Gay Head. Our members bought their lands and homes on the understanding that they were moving into a community where the rules and regulations were the same as in the other towns in Massachusetts. It was for that reason that we conditioned our acceptance of the settlement upon a requirement that all of the laws, ordinances and regulations of the Commonwealth of Massachusetts apply to all of the lands in our town. That is what is contained in Section 10 of this Legislation. That section insures that none of the lands in our town will be exempt from generally applicable state regulations

against gambling or other presently prohibited activities which would ruin our town.

While this bill does not provide any party with all they might want, it does provide all parties with that which they need most. For the Tribal Council, the Bill provides an inalienable land base and a new opportunity to pursue their Indian ancestry. For the Town, the Bill preserves the invaluable common lands from development, continues its ownership of the beaches, preserves its tax base and confirms its jurisdictional authority. For the State, the Bill likewise confirms that Gay Head and its residents are subject to the same laws and regulations as any other citizen of the Commonwealth of Massachusetts. For the property owners, the Bill removes the cloud on their titles, removes a heavy financial burden and provides an opportunity to eliminate the divisiveness which so threatens our community.

Mr. Chairman and members of the Committee, on behalf of the Gay Head Taxpayers Association I ask that you report favorably on this Bill. Only the enactment of a Bill such as this can end the expense, uncertainty and division which has been visited upon our town. The Commonwealth of Massachusetts has done at least its share to make this settlement of this litigation possible both by authorizing the transfer of town lands and its expression of a willingness to contribute one-half of the cost of this settlement. Now only Congress can effectuate the settlement which both we and the Tribal Council have reached and desire.

Thank you for permitting me this opportunity to convey the sentiments of our members.



TOWN OF GAY HEAD
GAY HEAD, MASSACHUSETTS 02535

PREPARED STATEMENT OF JEFFREY L. MADISON

My name is Jeffrey Madison, I am a member of the Gay Head tribe and a life-long resident of Gay Head. I come here today as a Selectman who represents all of the residents of Gay Head, Indian and non-Indian, year round and seasonal, and I support overwhelmingly the terms and conditions as outlined in Senate Bill #1452.

I would like to point out to the Committee that Gay Head Indians have always held the Selectmen's position and all other elected town offices since the incorporation of our town in 1870. It is my opinion that the government of the Town of Gay Head has been the traditionally recognized government of our Indian people since our status was changed from an Indian district to a township.

We as Indian people maintain control of the Town government today because we continue to outnumber non-Indian residents during the off-season (October to May), when the annual town meeting and elections are held. This, however, is sure to change unless you, as our Representatives, act favorably on this legislation.

Because of skyrocketing real estate values and a lack of an established local economy, my people are being forced to move from the land we so dearly revere. These problems can be resolved by the approval of the legislation under consideration here today.

Throughout the ten years of debate between the parties concerned with this problem, the Town of Gay Head suffered greatly. The animosity generated on all sides of this dispute was not the least of our problems. At the height of this animosity we had trouble getting approval, at summer town meetings, when seasonal residents can muster their forces, for such trivial items as fixing a Town Hall door, or such necessary items as replacing a thirty-five year old piece of fire apparatus.

During the summer of 1983, the Selectmen, after maintaining a neutral position in the settlement process, called all sides together in an open forum. This action was prompted by a particularly vicious advertisement in the local newspaper, paid for by the Gay Head Taxpayers Association, which made an Island wide appeal for funds to carry on their fight in opposition to the Indian land claim. To our surprise, almost everyone on both sides of this issue who attended the hearing awakened to the fact that unless each side compromised somewhat there would be no alternative to a costly and divisive trial. A prospect no one wanted to consider.

Following the August, 1983 hearing, the Wampanoag Tribal Council of Gay Head, the Gay Head Taxpayers Association, and the Town of Gay Head all made concerted efforts to come to a compromise agreement which all sides could comfortably present to their members for their approval.

I cannot express to you the change in attitude in our tiny community after all sides finally ratified the agreement. It was as if a monstrous weight was finally cast aside.

This agreement does not give both sides everything they desire. What it represents is ten years of struggle, give and take, of understanding and learning the concerns of our neighbors, and developing a respect for those concerns.

It is an agreement which both Indian and non-Indian people who love Gay Head can accept.

It is an agreement that will provide land for our Indian children and their children to build homes and maintain the unique identity of Gay Head. Thus preserving the timeless heritage of our forefathers.

This is an agreement that provides access to beaches for the summer visitors who have invested so much in the beauty each one of us enjoys in Gay Head.

This is an agreement which has been presented fairly to each and every person we are aware of who may have an interest in the outcome of this case.

This is an agreement which has been accepted overwhelmingly by every organization with a stake in its outcome. In case of the Town of Gay Head, at a legal town meeting held in November, 1983, the agreement was approved by a vote of ninety-two to thirteen.

Finally, we face the threat of this agreement expiring and once again reliving the past no one wants. We respectfully request that you act on this proposal now.

Our tribe has traditionally lived in peace and welcomed our non-Indian neighbors. We want you to give us the opportunity to continue this tradition of peaceful co-existence.

I urge you, on behalf of the people of Gay Head, to recommend that the United States Senate act favorably on Senate Bill #1452.
Thank you.